

A NEW
LAW-DICTIONARY:

CONTAINING, THE

Interpretation and Definition of WORDS
and TERMS used in the LAW; And also the
WHOLE LAW, and the PRACTICE thereof, Un-
der all the HEADS and TITLES of the same.

Together with such

Informations relating thereto, as Explain the *History*
and *Antiquity* of the *Law*, and our *Manners*, *Customs*, and
Original Government.

Abstracted from all

Dictionaries, Abridgments, Institutes, Reports, Year-Books, Charters,
Registers, Chronicles, and Histories, Published to this Time.

And fitted for the Use of

Barriers, Students, and Practisers of the Law, Members of Parlia-
ment, and other Gentlemen, Justices of Peace, Clergymen, &c.

By *GILES JACOB*, Gent.

In the *SAVOR*:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *E. Sayer*, Esq;) for J. and J. Knapton, J. Darby, A. Bettelworth, F. Fapam, W. Hears, J. Pemberton, J. Osborn and C. Longman, C. Richardson, F. Clay, J. Batley, and A. Ward. MDCCXXIX.

To the RIGHT HONOURABLE
Sir *R O B E R T R A Y M O N D*, Knt.
Lord Chief Justice of *England*.

MY LORD,

AT length, by your Lordship's generous Encouragement, vouchsafed me on a former Dedication to your Lordship, my New *Law-Dictionary* appears to the World committed to your Patronage and Protection, and as You are universally allowed to be the most proper Patron for a Work of this Nature.

It hath been often observ'd to be a Commendation to any Person, to attempt any Great and Useful Undertaking; but it is not every One who engages in it is capable to perform it: Whatever Censure, in this particular, is pass'd upon me by the Readers, my Judges, I have one very great Satisfaction; which is, that your Lordship is at the Head of them, whose generous Influence and kind Interpretation will silence others into Candor and Good Nature.

To say, That every Thing Praise-Worthy belongs to your Lordship, is not to pay the Debt of Compliment, but of Merit: As by indefatigable Study and Application to Business, Reputation ever attended You; so on your Advancement to the Supreme Station of the Common Law, your Behaviour therein hath evidently gain'd You universal Approba-

The DEDICATION.

tion. There have been Many who have filled the prime Offices of Judicature, which must always be supply'd with a Succession of Men, tho' few that have adorned them; But 'tis your Lordship's Glory to do both: And after the Great *Lord Chief Justice Holt*, it is the Happiness of the present Age to boast of a RAYMOND.

My Lord, Applause and Popularity Court You, whilst You endeavour to shun them, for they are the natural Reward of doing impartial Justice; and those who least seek them in Publick Authority, by their great Integrity and consummate Abilities have the largest Share of Them: It is impossible to be otherwise, than that your Lordship should be a Favourite of Mankind, when your whole Conduct is so exceeding Just as to merit the Highest Honour, and give me Leave to observe of You, what every One finds who Approaches your Lordship.

On a Character so very considerable as your Lordship's, much more might be enumerated; but I am conscious of my Inequality to the Task, and therefore desist from it, my only Aim being to shew how much I am,

MY LORD,

Your Lordship's

Most Dutiful, and most

Obliged Humble Servant,

Giles Jacob.

THE PREFACE.

ALL Prefaces to Writings, are intended by Authors either to Explain the Works to which they belong, and set forth the Reasons of their Engaging in them, or to Vindicate their Writings and Reputations from those Reflections which may be cast upon them by the Critical Part of Mankind; and I think it Necessary for me to say something on these Heads, in my Preface to this Work.

According to a Great Writer, the Study of the Law is not rendered easy by numerous Volumes, but by reducing the Sense into a compleat methodical System; and the Difficulty and Disagreeableness of this Study, is not to be imputed to any material Defect in it self, but to the Manner in which the Books that contain this Learning are Written: The Justice of this Wise Observation, hath been always acknowledged; As our Abridgments of the Law abound in Tautologies and Confusion, and are very voluminous to little Purpose, (except Nelson's Abridgment, the latest and best of the Kind) which has been a Principal Reason for my Attempting the following Sheets.

This large Work now publish'd, contains the Derivations and Definitions of Words and Terms used in the LAW, and
likewise

The P R E F A C E.

likewise the whole Law, with the Practice thereof, extracted from all other Books in an easy concise Method, for the Universal Use of all Barristers, Students, and Practisers of the Law, and other Persons of what Degree or Profession soever, and for all Studies and all Offices, being a Kind of Library; so that although I have the Interpretation of Words, to give it the Title of a Dictionary, yet my Scheme is very different from the other Law-Dictionaries: And the Great Lawyer Sir EDWARD COKE having observ'd, that the Forms of Writs, and Judicial Proceedings, do much contribute to the Right Understanding of the Law; Therefore these, together with Forms of Deeds and Conveyances, illustrating the Practice on that Head, are here inserted: Further, the Reader will find interspersed, taken from the most antient Authors treating of the British, Saxon, Danish, and Norman Laws, such Informations as Explain the History and Antiquity of the Law, with our Manners, Customs and Original Form of Government.

As in this Age it is become common for Arts and Sciences to be comprehended in Dictionaries, I have pursued this Method; and the Knowledge of the Arts themselves, cannot be improper to follow the Terms and Definitions of Them. Under the Heads of Law, by the Advice of my Learned and Judicious Friends, I have gone through and gather'd every Thing I could find any ways Useful; and there is nothing Collected, but some Benefit may be drawn from it, either as immediately to the Purpose, or Explanatory of what the same hath Relation to: In my Larger Heads, where they interfere with Others, I have but just touch'd upon the Matters interfering; and left the particular Learning to the more particular Heads, where 'tis expected to be found, at the same Time some Notice being required under the general Titles.

*I may with great Truth and Justice affirm, that considerably above two Thirds of my Work, with some Hundreds of very material Words, are entirely New in a Performance of this Kind; and the Other Part is greatly Improv'd, although Abridg'd as to Quantity by omitting a great Deal of Obsolete Matter. There is not any Thing in the following Dictionary,
directly*

The P R E F A C E.

directly the same as appears elsewhere, but in such Cases only where it was absolutely Necessary for my own Justification; (though the Compilers of the other Law-Dictionaries have generally transcribed verbatim from each Other.) The Law-Latin in many Instances differing from other Latin, I have purposely used and followed it, as those have done who have gone before me.

As to the other Dictionaries, let who will for the Future Enlarge them, it must be always confess'd, that it was I who first attempted a Body of the Law, and the Practise of it, in any Law-Dictionary: This I ought to mention, in Justice to my self; That it may not at any Time be affirm'd I have wholly built on the Others, but They on Me as to any Additions, if they should fill up their Works in my Method beyond what they were in the Year 1720, when I first began this elaborate Treatise. And if I have borrow'd from my Own Productions hitherto Publish'd, I have assumed no Freedom but such as Writers of the best Reputation have thought fit to take; who have had Occasion to treat subsequently on their former Subjects, in any larger or more general Work: Also I have every where inserted References unto them, sometimes Pointing out the Best Editions, where One Impression is esteem'd better than another.

I have now made deeper and closer Searches into the Knowledge of the Law, and taken a long Journey of Observations and Improvements on those Things which I had but just seen at a Distance before; which however painful to my self, I am confident I have struck out therein a much easier Path for Others than they had before to Walk in. I have endeavour'd to make a Right Choice of Matter, as well as to follow an exact Method, which I found no small Task; And of this I may say with Virgil,

Hoc Opus, hic Labor est.

'Tis indeed True that my great Work is chiefly Collection; but let this be Consider'd with it, That Collecting on the Subject of the Law, is infinitely more difficult than upon other Subjects; because

The P R E F A C E.

because most other Subjects are treated of with Order and Connexion, but the Law is not, and is with great Difficulty capable of it.

If at any Time it hath happened, That some small light Treatises have dropt from my Pen, They have been the Offspring of Leisure Hours, and as a Relaxation from severer Studies; without which, I could not have gone through Great Undertakings: And as for what I have already written, a prudent Author will commonly attempt many of the smaller Matters, by Way of Trial of his Abilities, and See their Success, before he will have Courage to venture upon Larger; and if I had not Experienc'd what hath fallen in my Way, it would have been Impossible for me to have perfected this Work in the advantageous Manner it is now handed to the Publick.

And thus much I am obliged to say farther in Behalf of this Dictionary; That if notwithstanding the infinite Pains I have taken, it be not in it self Authority, it carefully refers to Books of the greatest, which is all as can be asserted in Favour of any of the Abridgments of Law: But where there is such great Variety of Learning and abundant Quantity of Nice Matter, with the utmost Care, there must be some Faults and Failings to be Pardon'd by the Reader, and many Literal Errors.

I hope upon the Whole, tho' I am sufficiently Sensible of my own Inabilities, it will appear That I have done my Part, and given some Testimony to the World of what Industry and Application are capable of Effecting.

G. Jacob.

A NEW

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CONTAINING

The whole *Law*, and the *Practice* thereof, under all the
Heads and Titles of the Same.

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A, The first Letter of the *Alphabet*, which being prefix'd to Words in *English*, signifies as much as *un* in *French*, as a Man *un homme*.

Ab, From the Word *Abbot*, and in the Beginning of any Place signifieth that the Place belong'd to some *Abbey*.

Abacot, A Cap of State, wrought up in the Form of two Crowns, worn by our antient *British* Kings. *Chron. Angl.* 1463. *Spelman's Gloss.*

Abactores, (*Abactores*, derived *ab abigendo*) Stealers and Drivers away of Cattle by Herds, or in great Numbers. They are thus distinguish'd from *Fures*: *Nam qui ovem unam surripuerit, ut fur coercetur, qui gregem ut abactor. M. S.*

Abacus, *Arithmetick*, From the *Abacus* or Table on which the Antients made their Characters.

—*Omnium liberalium artium peritus*, *Abacum*, *principue*, *lunavem compotum* & *cursum rimatus*. *Knighton's Chron.* lib. 1. cap. 3.

Abandum, (*Abandonum*) Any Thing sequestred, proscribed or abandon'd. *Abandon*, i. e. *In Bannum res missa*.—A Thing *bann'd* or denounc'd as forfeited and lost; from whence is to *abandon*, desert, or forsake as lost and gone.

Abarnare, From the Sax. *Abarian*, to discover and disclose to a Magistrate any secret Crime.—*Si homo furtivum aliquid in Domo sua occultaverit, & ita fuerit abarnatus, rectum est ut inde habeat quod quesivit.* *Leg. Canuti Reg.* cap. 104.

Abate, Is deriv'd from the French *Abatre* or *Abbatre*, which signifies as much as *destruere*, *profermere*, to break down or destroy: It is taken in the common Sense for to diminish or take away; and in our Law it has the like Signification. For to *abate* a Castle or Fort, is interpreted to beat it down. *Old Nat. Br.* 45. *Westm. I. c.* 17. *Abater Maison*, is to ruin or cast down a House. *Kitch.* 173. As he that puts a Person out of Possession of his House, Land, &c. is said to *dissesse*; so he that steps in between the former Possessor and his Heir, is said to *abate*: And this in its special Sig-

nification. *Old Nat. Br.* 115. To *abate* a Writ, is to defeat or overthrow it, by some Error or Exception. *Brit. c.* 48. In the Statute *De conjunctim Feoffatis*, the Writ shall be abated, that is, shall be disabled or overthrown. 34 *Ed.* 1. *Stat.* 2. The Appeal shall *abate* by Covin, i. e. The Accusation be defeated by Deceit, *Staundf. Pl. Cr.* 148. And the Justices shall cause the said Writ to be *abated* and quash'd. *Anno* 11 *H.* 6. c. 2.

Abatement, (from the French *Abatement*) Is called in Latin *Intrusio*, or rather *Interpositio*, to distinguish it from *Intrusion* after the Death of Tenant for Life. It is used for the Act of the *Abator*; as the *Abatement* of the Heir into the Land before he hath agreed with the Lord. *Old Nat. Br.* 91. And it is also used for the Affection or Passing of the Thing *abated*; as *Abatement* of the Writ. *Kitch.* 214. In this last Signification, which is most general, it is an Exception alledged and made good in our Law; being as much as *Exceptio dilatoria* with the Civilians. *Brit. c.* 51. And this Exception may be taken either to the Insufficiency of the Matter, or the Incertainty of the Allegation, by misnaming the Plaintiff or Defendant, or the Place; to the Variance between the Writ and the Specialty or Record; to the Incertainty of the Writ, Count, or Declaration; or to the Death of either of the Parties before Judgment had; or for that a Woman Plaintiff is married before, or hanging the Suit; and for many other Causes, upon which the Defendant prays that the Writ or Plaint may *abate*, viz. That the Suit of the Plaintiff may for that Time cease. *Terms de Ley* 1. On *Abatement* of Suits, all Writs and Process must be begun *de Novo*: And one great Cause for the *Abatement* of Writs is, that the Party prosecuted may not be twice charged or vexed for one Debt; as where the Plaintiff hath another Action depending for the same Matter, &c. 3 *Lev.* 304. In an Action of Debt, &c. another Action depending in the Courts at *Westminster*, for the same Matter, is a good Plea in *Abatement*: But Plea of Action in an inferior Court is not good, unless Judgment

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be given. 5 Rep. 62. In an Appeal, Information, &c. it is a good Plea in *Abatement*, that another Prosecution is depending; but not on Indictment. 2 Hawk. Pl. Cr. 190, 367. Error depending in the Exchequer Chamber, is a good Plea in *Abatement* to Debt on Judgment in B. R. 5 Mod. 68. A Suit may be *abated*, for that the Writ in Debt precedes the Day of Payment: For that there are not 15 Days between the *Teste* and Return of the Writ. 1 Lutw. 16, 25. Where a Defendant binds himself jointly with another, and he is not named: Or the Bill is in Case, and ought to be in Account: And where the Plaintiff declares of several and distinct Causes of Action in the same Bill; or it appears by the Plaintiff's own Shewing, that he had no Cause of Action for the Whole or for Part, the Writ shall *abate*. 2 Mod. Intr. 18. 4 E. 4. 32. If a Plaintiff, after Appearance, be nonsuit, discontinue, &c. the Writ shall *abate*. 7 Rep. 27. And where the Plaintiff discharges Part of the Debt after the Writ purchased, on shewing the Acquittance, the Writ shall *abate*. *Misnomer* in the Addition, Place, Trade, Dignity, &c. of the Defendant, may *abate* the Writ; as where one pleads there is no such Place, or that he is a Baronet and no Knight, &c. 1 Vent. 154. If the Addition of the Defendant's Quality and Dwelling be omitted in any original Writ, in a personal Action, Appeal or Indictment, where Exigent may be awarded, the Writ shall *abate*; but it shall not *abate* for Surplusage in the Addition. 1 H. 5. c. 5. Where one is misnamed in a Bond, the Writ must be brought against him by the same Name as in the Bond. Dyer 279. And where a Defendant comes in *gratis*, or pleads by the Name alledged by the Plaintiff, he is estopped to alledge any Thing against it. Style 440. To the Plea of *Misnomer*, the Plaintiff may reply, the Defendant was known by the Name in the Writ. 1 Salk. 6. Where an Indictment for a capital Crime is *abated* for *Misnomer* of the Defendant, the Court will not dismiss him, but cause him to be indicted *de novo* by his true Name. 2 Hawk. 367. Pleas in *Abatement* found against a Defendant in capital Cases, are not peremptory as they are in other Cases; but he may afterwards plead over to the Felony, &c. *Ibid.* 191. None shall plead *Misnomer* but the Party himself: He may not plead *Misnomer* of a Partner or Companion. Lutw. 36. And a Person cannot to an Action brought against him, plead in Disability of himself, that he is attainted of Treason, &c. 1 Leon. cap. 466. Outlawry may be pleaded in *Abatement*, or in Bar; but 'tis only a Disability till the Outlawry is reversed. 1 Inst. 128. Excommunication, or any Plea in Disability of the Plaintiff, may not be pleaded after a general Impar lance. 1 Lutw. 19. After Plea in Bar to annul the Action for ever, and after Impar lance, one cannot plead in *Abatement* of the Writ. An Alien born may be pleaded in *Abatement*: But *Jews* may prosecute Actions and recover, a Plea in *Abatement* against them being but a Disability so long as the King shall prohibit them to trade. 1 Lill. 4. One may plead in *Abatement* of a Declaration, where 'tis by Original; but if the Action be by Bill, you must plead in *Abatement* of the Bill only. 5 Mod. 144. A little Variance between the Declaration and Bond pleaded, will not make naught the Declaration: But Incertainty will *abate* it. Plowd. 84. The Court *Ex Officio* *abates* Writs for Want of proper Words of Art, Want of legal Form, &c. And false *Latin*

will *abate* an original Writ; but not make void any judicial Writ, Plea, &c. *Litch.* 178. An Original tested in the Reign of a King, who dieth before the Return, by the Common Law 'tis *abated* and gone, and shall not be return'd in the Reign of another. Dyer 165, 206. But by Stat. 1 Ed. 6. c. 7. No Writ shall be *abated* in any Suit between Party and Party, by the Death of the King: Nor shall any Writ or Suit *abate*, on the Preferment of the Plaintiff, pending the Suit; as by his being made a Peer, one of the Justices, &c. And Process or Suits before Justices of Assize, Gaol-Delivery, Justices of Peace, &c. shall not *abate* by any new Commission or Association. *Stat. Ibid.* Informations for the King do not *abate* upon the Death of the King; but shall be continued by Resummons, &c. *Moor* 748. The Death of a Husband, where Husband and Wife are prosecuted for Words spoke by the Wife, &c. will not *abate* the Writ or Action. *Hardr.* 151. But if the Words are by Husband and Wife, and the Husband die, the Writ shall *abate*. *Style* 135. Where two Jointenants are Defendants, the Death of one of them will not *abate* the Writ. 3 Mod. 249. And no Plea in *Abatement* shall be receiv'd in any Suit for Partition; nor shall the same be *abated* by the Death of any Tenants. *Stat.* 8 & 9 W. 3. c. 31. The Death of a Plaintiff did in all Cases *abate* the Writ before Judgment, 'till the Statute 8 & 9 W. 3. c. 10. by which neither the Death of Plaintiff or Defendant shall *abate* it, if the Action might be originally prosecuted by and against the Executors or Administrators of the Parties: And if there are two or more Plaintiffs or Defendants, and one or more die, the Writ or Action shall not *abate*, if the Cause of Action survives to the surviving Plaintiff against the surviving Defendant, &c. *Stat. Ibid.*

Abatamentum, Is a Word of Art, and signifies an Entry by Interposition. *Co. Litt.* 277. Vide *Plea, Writs, &c.*

Abator, Is a Person that *abateth* or entreth into a House or Land, void by the Death of him that last possessed the same, before the Heir takes Possession, and by that Means keeps out the Heir. *Old Nat. Br.* 115.

Abatude, Is any Thing diminished. — *Moneta* *abatuda*, is Money clipp'd or diminished in Value: *Si tempore solutionis hæc Moneta fuerit abatuda sive deteriorata.* Charta Simonis Comitis Leicesteræ, Anno 1209.

Abay, or *Abey*: Ye shall fore *Abey* it; that is, you shall suffer great Pain, or pay dear for it: From the Word *Buy*, the Letter *A* being added.

Abbay, (*Abbatia*) Is the same as to the Government of a Religious House, and the Revenues thereof, subject to an *Abbot*, as a Bishoprick is to a Bishop. This Word is used in some of our ancient Grants, particularly Anno 34 & 35 Hen. 8. in a Grant to the Countess of Pembroke.

Sciant quod ego Isabella Comitissa Pembr. pro salute Anima mea, &c. Dedi Deo & Abbatæ de Nutteleg. totam Wickham juxta prædictam Abbatiam, &c.

Abbat, or *Abbot*, (*Abbas* in Latin, in French *Abbe*, and in Saxon *Abbud*) Is a spiritual Lord or Governor, having the Rule of a Religious House: The Word is also by some derived from the Syriac *Abba Pater*. Of these *Abbots* here in England, some were elective, some preservative; and some were *mitred*, and some were not; such as were *mitred* had Episcopal Authority within their Limits, being exempted from the Jurisdiction of the Diocesan; but the other Sort of *Abbots*

bots were subject to the Diocesan in all Spiritual Government. The mitred *Abbots* were Lords of Parliament, and were called *Abbots Sovereign*, and *Abbots General*, to distinguish them from the other *Abbots*. And as there were *Abbots*; so there were also *Lords Priors*, who had exempt Jurisdiction, and were likewise Lords of Parliament. Some reckon twenty-six of these Lords *Abbots* and *Priors* that sat in Parliament. Sir *Edw. Coke* says there were twenty-seven parliamentary *Abbots*, and two *Priors*. *Co. Lit.* 97. In the Parliament 20 R. 2. there were but twenty-five: But *Anno* 4 Ed. 3. in the Summons to the Parliament at *Winton* more are named. And in *Monasticon Anglicanum*, there is also Mention of more; the Names of which were as follow: *Abbots* of *St. Austin's* in *Canterbury*, *Ramsay*, *Peterborough*, *Croyland*, *Evesham*, *St. Benet de Hulmo*, *Thornby*, *Colchester*, *Leicester*, *Winchcomb*, *Westminster*, *Cirencester*, *St. Alban's*, *St. Mary's York*, *Spresbury*, *Selby*, *St. Peter's Gloucester*, *Malmesbury*, *Waltham*, *Thorney*, *St. Edmond's*, *Beaulieu*, *Abingdon*, *Hide*, *Rading*, *Glastonbury*, and *Osney*.—And *Priors* of *Spalding*, *St. John's of Jerusalem*, and *Leves*.—To which were afterwards added, the *Abbots* of *St. Austin's Bristol*, and of *Bardeny*, and the *Priory de Sempingham*. These *Abbeys* and *Priories*, were founded by our antient Kings, and great Men, from the Year 602 to 1133. An *Abbot* with the Monks of the same House were called the *Convent*, and made a Corporation; but the *Abbot* was not chargeable by the Act of his Predecessor, unless it were under the common Seal, or for such Things as came to the Use of the House or Convent. *Terms de Ley* 4. By Stat. 27 H. 8. c. 28. All *Abbeys*, *Monasteries*, *Priories*, &c. not above the Value of 200 l. per Annum, were given to the King, who sold the Lands at low Rates to the Gentry. *Anno* 29 H. 8. the Rest of the *Abbots*, &c. made voluntary Surrenders of their Houses, to obtain Favour of the King: And *Anno* 31 H. 8. A Bill was brought into the House to confirm those Surrenders; which passing, compleated the Dissolution, except the Hospitals and Colleges, which were not dissolv'd, the first till the 33d, and the last till the 37th of H. 8. when Commissioners were appointed to enter and seise the said Lands, &c.

Abbatis, An Avenor or Steward of the Stables; the Word was sometimes used for a common Hostler, pronounc'd short in the middle Syllable.—*Abbatis ad cœnam dat Equis Abbatis avenam.* *Spelm.*

Abbrochment, (*Abbrocamentum*) The Buying up of Wares before they are expos'd to Sale in a Fair or Market, and Selling the same by Retail; which is a Forefalling of a Market or Fair. *MS. de placit' coram Rege* Ed. 3. penes J. Trevor Mil.

Abbuttals, (from the French *Abutter*, to limit or bound) Are the Buttings and Boundings of Lands, East, West, North, or South, shewing how the same lie with Respect to others; as on what Lands, Highways, or other Places, they are limited and bounded. The Word *Abuttare*, to *Abbut* or bound, is derived from the Saxon *Onbutan*, or *Butan*. *Cambden* tells us, that Limits were distinguish'd by Hillocks rais'd in the Lands call'd *Botentines*, whence we have our Word *Butting*. The Sides on the Breadth of Lands are properly *Adjacentes*, lying or bordering; and the Ends in Length *Abbuttantes*, *Abutting* or Bounding. And in old Surveys these last are called *Head-Lands*, from *Capitare* to Head. The Boundaries and *Buttals* of Corporation and Church Lands and of Pa-

rishes are preserved by an annual Procession. And Boundaries are of several Sorts; such as Inclosures of Hedges; Ditches and Stones in common Fields; Brooks, Rivers, and Highways, &c. of Manors and Lordships.

Abdicate, (*Abdicare*) To renounce or refuse any Thing. *Terms de Ley* 5.

Abdication, (*Abdicatio*) A Renunciation, Quitting and Relinquishing, so as to have nothing further to do with a Thing; or the Doing of such Actions as are inconsistent with the Holding of it. On King *James's* Leaving the Kingdom and *Abdicating* the Government, the Lords would have had the Word *Desertion* made Use of; but the Commons thought it was not comprehensive enough, for that the King might then have Liberty of Returning. *Abdication Debates*. The Scots called it a *Forfeiture* of the Crown, from the Verb *Forisfacio*.

Abditozium, An Abditory or Hiding-Place, to hide and preserve Goods, Plate, or Money: And is used for a Chest in which Reliques are kept, as mentioned in the Inventory of the Church of York. *Mon. Angl.* p. 173.—*Item unum Coffeur, & una pixis de Ebore ornata cum argento deaurato, Item tria Abditoria, &c.*

Abbeched, From the French *Abbecher* to feed, is an old Word, which signifies to be satisfied.

Abberemurder, *Abberemurdrum*, Plain or downright Murder, as distinguish'd from the less heinous Crimes of Manslaughter and Chance-medley. It is derived from the Saxon *Æbepe*, apparent, notorious, and *Mord*, Murder: And was declared a capital Offence, without Fine or Commutation, by the Laws of *Canute*, cap. 43. and of *Hen. 1.* c. 13. *Spelm.*

Abbeſſed, (from the French *Abbaiffer*, to depress) Hath the Signification of Humbled; and hence we derive the Words *Abase* and *Base*.

Abett, (*Abettare*) From the Saxon *A* and *Bedan* or *Beteren*, to stir up or incite; or from the French *Bouter*, *Impellere* or *Excitare*. In our Law it signifies as much as to encourage or set on. The Substantive *Abetment*, is used for an Encouraging or Instigation. *Staundf. Pl. Cr.* 105. And *Abettor* (*Abettator*) is an Instigator or Setter on; one that promotes or procures a Crime. *Old Nat. Br.* 21. *Abettors* of Murder, are such as command, procure, or counsel others to perpetrate the Murder; and in some Cases these *Abettors* shall be taken as Principals, in others but as Accessaries; their Presence or Absence at the Time of committing the Fact, making the Difference. *Co. Lit.* 475. Vide *Accessaries*.

Abeyance, or *Abbeyance*, (from the Fr. *Bayer*) To expect: It is what is in Expectation, Remembrance and Intendment of Law. By a Principle of Law, in every Land there is a Fee-simple in some Body, or it is in *Abeyance*. *Litt. c. Discontin.* If a Man be Patron of a Church, and Presents one to the same, now the Fee of the Lands and Tenements pertaining to the Rectory is in the Parson: But if the Parson die, and the Church become void, then is the Fee in *Abeyance*, until there be a new Parson presented, admitted and inducted; for the Patron hath not the Fee, but only the Right to present, the Fee being in the Incumbent that is presented. *Terms de Ley* 6. The Frank-tenement of the Glebe of a Parsonage, during the Time the Parsonage is void, is in no Man; but in *Abeyance* or Expectation, belonging to him who is next to enjoy it. If a Man makes a Lease for Life, the Remainder to the right

Heirs of *J. S.* the Fee-simple is in *Abeyance* until *J. S.* dies. *Co. Lit.* 342. In this Case the Remainder passeth from the Grantor presently; tho' it vests not presently in the Grantee, but is said to be in *Abeyance* until *J. S.* dies, after whose Death the Heir has a good Remainder, and it ceases to be in *Abeyance*. *Terms de ley*. If Lands be leased to *A. B.* for Life, the Remainder to another Person for Years, the Remainder for Years is in *Abeyance* until the Death of the Lessee, and then it shall vest in him in Remainder as a Purchaser, and as a Chattel shall go to his Executors. *3 Leon.* 23. Where Tenant for Term of another's Life dieth, the Freehold of the Lands is in *Abeyance* till the Entry of the Occupant. Fee-simple in *Abeyance* cannot be charged until it comes in esse, so as to be certainly charged or aliened; tho' by Possibility it may fall every Hour. *Co. Lit.* 378. The Word *Abeyance* hath been compared to what the Civilians call *Hereditatem jacentem*; for as the Civilians say Lands and Goods do *jacere*, so the Common Lawyers say, that Things in like Estate are in *Abeyance*, as the Logicians term it *in posse*, or in Understanding; and as we say *in nubibus*, that is in Consideration of Law. See *Plowd. Rep. Walsingham's Case*.

Abgatoria, Abgetorium, The Alphabet *A. B. C.* &c. This seems to be an *Irish* Word. *Mat. Westm.* reports of *St. Patrick* — *Abgetoria quoque* 345. & *eo amplius scripsit, totidem Episcopos ordinavit* — The *Irish* still call the Alphabet *Abghittin*.

Abigevus, For *Abigens*, signifies a Thief who hath stoll many Cattle, viz. *Si quis suam surripuit fur erit, & si quis gregem Abigevus erit.* *Bract.* l. 3. cap. 6.

Abissuring, Is understood to be quit of Amercements. It originally signified a Forfeiture or Amercement; and is more properly *Misshering* or *Miskering*, according to the Learned *Spelman*. Since it hath been termed a Liberty or Freedom, because where-ever this Word is used in a Grant or Charter, the Persons to whom made have the Forfeitures and Amercements of all others, and are themselves free from the Control of any within their Fee. *Rastal's Abr. Terms de ley*.

Abjuration, (Abjuratio) A Forswearing or Renouncing by Oath, signifies a sworn Banishment, or an Oath taken to forsake the Realm for ever *Staundf. Pl. Cr.* l. 2. c. 40. It also hath now another Signification extending to the Person, as well as Place; as to *abjure* the Pretender by Oath, &c. Formerly in King *Edward the Confessor's* Time, and other Reigns down to the 22 *H. 8.* (in Imitation of the Clemency of the *Roman* Emperors towards such as fled to the Church) if a Man had committed Felony here, and he could fly to a Church or Church-yard before his Apprehension, he might not be taken from thence to be tried for his Crime; but on Confession thereof before the Justice, or before the Coroner, he was admitted to his Oath to *abjure* or forsake the Realm; which Privilege he was to have for forty days, during which Time any Persons might give him Meat and Drink for his Sustenance, but not after, on Pain of being guilty of Felony: The Form of the Oath you may read in an ancient Tract *de officio Coronatorum*, and in *Horn's Mirror of Justice*, lib. 1. But at last, this Punishment being but a perpetual Confinement of the Offender to some Sanctuary, wherein (upon *Abjuration* of his Liberty and free Habitation) he would chuse to spend

his Life, as appears by the Statute *Anno 22 H. 8. c. 14.* it is enacted 21 *Jac. 1. c. 28.* That thence after no Sanctuary or Privilege of Sanctuary should be allowed; whereupon this *Abjuration* ceased. 2 *Inst.* 629. An *Abjuration* or Deportation for ever into a foreign Country, is a civil Death; and called (by the Lord *Coke*) a Divorce between Husband and Wife; and the Wife of such a Person may bring Actions, or be impleaded during the natural Life of the Husband, which she may not do in any other Case. *Co. Lit.* 133. This is where a Person suffers Banishment for any Crime. By Stat. 35 *Eliz.* Popish Recusants not making the Submission of Conformity, &c. are to *abjure* the Realm. And by 1 *W. & M.* 13. *W. 3.* 1 *Geo.* &c. All Persons are to *abjure* the pretended Prince of *Wales*; and refusing the Oath, are liable to divers Penalties and Forfeitures, &c. This *Abjuration* Oath was invented for the Security of the Crown, and the Protestant Religion. See *Oaths*.

Abolition, A Destroying or Effacing, or putting out of Memory: And signifies the Leave given by the King, or Judges, to a Criminal Accuser to desist from further Prosecution. *Stat.* 25 *H. 8. c. 21.*

Abzidge, (Abbreviare) Is derived from the *French* Word *Abreger*, to make shorter in Words so as to retain the Sense and Substance. And in the Common Law it signifies particularly the Making a Declaration or Count shorter, by severing some of the Substance from it: A Man is said to abridge his Complaint in Assize; and a Woman her Demand in Action of Dower, where any Land is put into the Complaint or Demand which is not in the Tenure of the Defendant; for if the Defendant pleads Non-tenure, Joint-tenancy, &c. in Abatement of the Writ, the Plaintiff may leave out those Lands, and pray that the Tenant may answer to the Rest. The Reason of this Abridgment of the Complaint is, because the Certainty is not set down in such Writs, but they run in general: And though the Demandant hath abridged his Complaint in Part, yet the Writ will be good for the Remainder. *Brook, Tit. Abridgment, Anno 21 H. 8. c. 3.*

Abzidgment, (Abbreviamentum) A Treatise or Writing abridged and made shorter.

Abzocamentum, The Buying Goods by Wholesale before they are brought to the Market, and Selling them again in Parcels. See *Abzocament*.

Abzogate, (Abrogare) To disannul or take away any Thing: As to *abrogate* a Law, is to lay aside or repeal it. *Stat.* 5 & 6. *Ed. 6. c. 3.*

Abzenter, or Des Absentees, Was a Parliament so called, held at *Dublin* 10 May 28 *H. 8.* And mentioned in Letters Patent, *Dar.* 29 *H. 8.* Vide 4 *Co. Inst.* 354.

Abzolve, (Absolvere) To absolve one excommunicated, or pardon, or set free from Excommunication. Vide *Affoile*.

Abzolutions from Rome, High Treason, &c. *Stat.* 23 *Eliz.* See, *Bull.*

Abzoniare, Was a Word used by the *English Saxons* in the Oath of Fealty, and signified to shun or avoid — As in the Form of the Oath among the *Saxons* recorded by Mr. *Sommer*: *In illo Deo, pro quo sanctum hoc sanctificatum est, volo esse nunc Domino meo N. fidelis & credibilis, & amare quod amat, & abzoniare quod abzoniatur, per Dei rectum, & seculi competentiam* —

Abzque hac, Are Words of Exception made Use of in a *Traverse*; as the Defendant pleads that

that such a Thing was done at, &c. *absque hoc*, that it was done at, &c. *Mod. ca. 103. v. Ardenne*.
Accapitum, and *Accapitare*, The same with Relief due to Lords of Manors—*Capitali Domino accapitare*, i. e. to pay a Relief to the Chief Lord. *Fleta l. 2. c. 50.*

Arcebas ad Curiam, Is a Writ that lies where a Man hath received false Judgment in a Hundred-Court, or Court-Baron. It is directed to the Sheriff; and issued out of the Chancery, but returnable into B. R. or C. B. And is in the Nature of the Writ *de falso judicio*, which lies for him that hath received false Judgment in the County-Court. In the *Register of Writs*, it is said to be a Writ that lies as well for Justice delayed, as for false Judgment; and that it is a Species of the Writ *Recordare*, the Sheriff being to make Record of the Suit in the inferior Court, and certify it into the King's Court. *Reg. Orig. 9. 56. F. N. B. 18. Dyer 169.*

Arcebas ad Wircomitum. Where a Sheriff hath a Writ called *Pone* delivered to him, but suppresseth it; this Writ is directed to the Coroner, commanding him to deliver a Writ to the Sheriff. *Reg. Orig. 83.*

Acceptance, (*Acceptatio*) Is the Taking and *Accepting* of any Thing 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. For Example; If a Bishop before the Statute 1 *El.* leased Part of his Bishoprick for Term of Years, reserving Rent, and then dies; and after another is made Bishop, who accepts and receives the Rent when due, by this *Acceptance*, the Lease is made good, which otherwise the new Bishop might have avoided. It is the same if Baron and Feme seized of Lands in Right of the Feme, join and make a Lease or Feoffment, reserving Rent; and the Baron dies, after whose Death the Feme receives or accepts the Rent; by this the Lease or Feoffment is confirmed, and shall bar her from bringing a *Cui in vita*. *Co. Lit. 211.* But if a Parson, &c. make a Lease for Years not warranted by the Statute 32 *H. 8.* but is void by his Death; *Acceptance* of Rent by a new Parson or Successor, will not make it good. 1 *Saund. 241.* And if a Tenant for Life make a Lease for Years, there no *Acceptance* will make the Lease good, because the Lease is void by his Death. *Dyer 46, 239.* So if Tenant in Dower, Leases for Years, and dies, and the Heir accepts the Rent. Tenant in Tail makes a Lease for Years not warranted by the Statute, rendering Rent, and dies; if the Issue *accepts* the Rent, it shall bind him. 3 *Leon. Case 36.* And if an Infant *accepts* of Rent at his full Age, it makes the Lease good, and shall bind him. But if 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 Ancestor. *Plowd. 418.* If a Lessor *accepts* from his Tenant, the last Rent due to him, and gives the Lessee a Release for it, all Rent in Arrear is by Law presumed to be satisfied. *Co. Lit. 373.* And if a Lessee for Term of 20 Years, *accepts* of a Lease of the same Land for 10 Years, by the Lessee's *Acceptance* of the new Lease, the Term of 20 Years is determined in Law. 2 *Roll. Abr. 469.* Lease is made on Condition, that the Lessee shall do no Waste; if he commits Waste, and af-

terwards the Lessor *accepts* the Rent, he cannot Enter. *Godb. 47.* And where a Lessor *accepteth* of a Surrender from the Lessee, he will be concluded of his Action of Waste, for Waste before the Surrender. *Acceptance* of the next Rent due, at a Day afterwards, will bar one to Enter for a Condition broken before by Reason of Non-payment of the Rent; because the Lessor thereby affirmeth the Lease to have Continuance. *Co. Lit. 211.* And taking a Distress, affirmeth the Continuance of the Rent: But if Rent was due, at a Day before, and thereby the Condition was broken, one may receive that Rent; and yet re-enter. And if he *accepts* of Part of the Rent, he may enter for a Condition broken, and retain the Lands until he has the whole Rent. 3 *Rep. 64. 1 Inst. 203.* On *accepting* of Rent afterwards, the Lessor must have Notice of the Breach of the Condition, to bar his Entry. 1 *Leon. 626.* If a Lessor *accepts* of Rent from an Assignee, knowing of the Assignment, it bars him from Action of Debt against the Lessee; for the Privy of Contract is extinguished: But after such *Acceptance*, the Lessor, or his Assigns may maintain an Action against the first Lessee upon his Covenant for Payment of the Rent. 1 *Saund. 241. 3 Rep. 24.* *Acceptance* of Rent from the Assignee has been adjudged a sufficient Notice of this Assignment, so that the Lessor could not resort to the first Lessee. 2 *Bulst. 151.* *Acceptance* of a lesser Sum of Money, may be in Satisfaction of a greater Sum, if it be before the Day on which the Money becomes due. 3 *Bulst. 301.* But it will not be so after the Money is due. *Moor 671.* A Bill or Bond *accepted* may not be pleaded in Satisfaction of a Bond; but 'tis said a new Bond may, if it be not for Payment of Money on another Day. *Hob. 68, 69.* Where the Condition of a Bond is to pay Money, *Acceptance* of another Thing is good: But if the Condition is not for Money, but a collateral Thing, it is otherwise. *Dyer 56. 9 Rep. 79.* And the *Acceptance* of uncertain Things, as Customs, &c. made over, may not be pleaded in Satisfaction of a certain Sum due on Bond. *Cro. Car. 192.* If a Woman hath Title to an Estate of Inheritance, as Dower, &c. she shall not be barred by any collateral Satisfaction or Recompence: And no collateral *Acceptance* can bar any Right of Inheritance or Freehold, without some Release, &c. 4 *Rep. 1.* When a Man is intitled to a Thing in gross, he is not bound to *accept* it by Parcels; and if a Lessor distrains for Rent, he is not obliged to accept Part of it; nor in Action of Detinue, Part of the Goods, &c. 3 *Salk. 2.*

Accessory, *Accessorius vel Accessorium*, (*Particeps Criminis*) Is where a Man is guilty of a felonious Offence, not Principally, but by Participation, as by Command, Advice, or Concealment, &c. And is of two Sorts, *viz. Before the Fact*, and *after it*: An *Accessory* before the Fact, is he that Commands or Procures another to commit Felony, and is not himself present when it is done; for if he be present, he is a Principal: And an *Accessory* after the Fact, is he that receives, assists or comforts any Man that hath committed Murder or Felony, which hath come to his Knowledge; But this doth not extend to a Woman, who receives or assists her Husband; tho' a Husband receiving his Wife, will be *Accessory*; and a Servant may be *Accessory* in relieving his Master, or assisting him in his Escape, &c. Also

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Persons furnishing others with Weapons; finding a Felon a Horse for his Journey, or relieving him with Money, Victuals, &c. will make Persons *Accessary*. H. P. C. 218. 3 Inst. 108. There is likewise an *Accessary* of an *Accessary*; as he that receives an *Accessary* to a Felony. Fitz. Coron. 197. And *Accessaries* in Petit Treason, Murder, Robbery on the Highway, in Dwelling-Houses, &c. shall not have their Clergy. 4 & 5 P. & M. c. 4. One that is present and aiding the Stabbing of another, is not a Principal, but *Accessary* to the Stabbing, within the Act 1 Jac. 1. There cannot be an *Accessary* before the Fact in Manslaughter, because it is committed of a sudden, and unpremeditated. H. P. C. He who Counsels or Commands any Evil, shall be adjudged *Accessary* to all that follows upon it; but not to any Thing else. If a Person commandeth another to beat such a Person, and he beats him so that he dies of his Wounds, the Person commanding will be *Accessary* to the Murder: But if the Command had been to beat another Person; or to burn such a House, and he burns another; he that commandeth will not be *Accessary*. 3 Inst. 51. If I command a Person to do an unlawful Act, as to rob A. B. at one Place, and he doth it at another; or to rob him on such a Day, and he doth it not himself, but procures another to do it; or to kill by Poison, and he doth it by Violence; in all these Cases I shall be *Accessary*: But where the Command is to kill A. B. and he killeth A. D. this differing in Substance, will not make the Commander *Accessary*. Plowd. 475. If a Man counsels a Woman to murder the Child in her Womb, and the Woman murder her Child after it is Born, he is *Accessary* to the Murder. Dyer 185. If the Owner of stolen Goods, after Complaint made to a Justice of Peace, consent to the Escape of the Felon, or compound the Offence, this 'tis said will make him *Accessary* after the Fact. Lamb. 285. Persons buying or receiving stolen Goods, knowing the same to be stolen, are *Accessaries* to the Felony. Stat. 3 & 4 W. & M. If a Principal be not attainted, convicted, or outlawed thereupon, the *Accessary* may not be arraigned; there being a Law-Maxim, *Ubi non est principalis non potest esse accessorius*. If the Principal is pardoned, or hath his Clergy, the *Accessary* cannot be arraigned; for the Principal must be adjudged so by Law: But if the Principal is pardoned after Attainder, in such Case the *Accessary* may be arraigned, because it appears judicially that there was a Principal. 4 Rep. 43. If the Principal be erroneously attainted, it must stand good 'till 'tis reversed. 9 Rep. By Stat. 1 Ann. c. 9. It is enacted, that where the Principal is convicted of Felony, or stands Mute, or challenges above twenty of the Jury, it shall be lawful to proceed against the *Accessary* in the same Manner as if the Principal had been attainted; and notwithstanding such Principal shall be admitted to his Clergy, pardoned, or delivered before Attainder. And if the Principal can't be taken, then the *Accessary* may be prosecuted for a Misdemeanor, and punished by Fine, Imprisonment, &c. Stat. *ibid.* See Stat. 5 Ann. c. 31. *Accessaries* are by Common Law, and by Statute: But in the highest and lowest Offences, there are no *Accessaries*; but all are Principals. Co. Lit. 71. Vide Murder, Principal, &c.

Accola, An Husbandman whocame from some other Parts or Country to till the Lands, *eo quod*

adveniens terram colat — And is thus distinguished from *Incola*, *viz.* *Accola non propriam, propriam colit Incola terram.* Du Fresne.

Accolade (from the French *Accoller*, *collum amplecti*) A Ceremony used in Knighthood by the King's putting his Hand about the Knight's Neck.

Accompt, (*Computus*) Is a Writ or Action which lies against a Bailiff or Receiver to a Lord or others who by Reason of their Offices and Business, are to render *Accompts*; but refuse to do it. F. N. B. 116. If a Man make one his Bailiff of a Manor, &c. he shall have a Writ of *Accompt* against him as Bailiff. Where a Person makes one his Receiver, to receive his Rents or Debts, &c. he shall have *Accompt* against him as Receiver. And if a Man make one his Bailiff, and also his Receiver, then he shall *Accompt* against him in both Ways. Also a Person may have a Writ of *Accompt* against a Man as Bailiff or Receiver, where he was not his Bailiff or Receiver; as if a Man receive Money for my Use, I shall have an *Accompt* against him as Receiver; or if a Person deliver Money unto another to deliver over unto me, I shall likewise have *Accompt* against him as my Receiver. So if a Man enter into my Lands to my Use, and receive the Profits thereof, I shall have an *Accompt* against him as Bailiff. 9 H. 6. 36 H. 6. 10 R. 2. Fitz. *Accompt* 6. A Judgment in *Accompt* as Receiver, is no Bar to Action of *Accompt* as Bailiff. 2 Lev. 127. But a Bailiff cannot be charged as Receiver, nor a Receiver as Bailiff; because then he might be twice charged. 1 Danv. Abr. 220, 221. Where two Persons are adjudged jointly to *Accompt*, if one Discharges himself upon the *Accompt*, it shall be a Discharge to the other; and if he be charged by the *Accompt*, it shall be a Charge upon the other. Danv. 230. None shall be generally charged in *Accompt* but as Bailiff or Receiver, or Guardian in Socage. 1 Danv. 220. Action of *Accompt* will not lie against Executors or Administrators, but Action of Debt for Money delivered the Testator, &c. 1 Roll. Rep. 52. By the Stat. Westm. 2. 13 Ed. 1. c. 11. Masters may assign Auditors to take the *Accompt* of Servants, &c. (this extends not to Guardians in Socage.) And if the *Accomptant* be found in Arrear, the Auditors assigned have Power to commit him to Prison, there to remain till he makes Agreement with the Party: But if the *Accomptant* be not allowed his reasonable Expences and Costs, or if he be charged with more Receipts than he ought, he may sue out of the Chancery a Writ *ex parte talis*, directed to the Sheriff to take four Mainpernors for bringing his Body before the Barons of the Exchequer at a certain Day, and to warn the Lord or Master to appear at the same Time. Vide the Statute. Where a Man is adjudged to *Accompt*, the Court may assign him Auditors: And before the Auditors, the Plaintiff or Defendant may join Issue, or demur upon the Pleadings before them; which shall be certified to the Court, and there tried or argued. If Auditors are assigned, and a Day given the Defendant to *Accompt* before them, if the Defendant would pray a further Day to give in his *Accompt*, the Auditors must grant it, and not the Court: But if the Defendant is remiss and negligent, they must certify to the Court that he will not *Accompt*. 1 Danv. 231. 1 Mod. 42. By 4 & 5 Ann. Actions of *Accompt* may be brought against the Executors and Administrators of Guar-

Guardians, Bailiffs, Receivers, &c. And by one Joint-tenant, &c. against the other his Executors and Administrators, as Bailiff for receiving more than his Share; and the Auditors appointed by the Court, where the Action shall be depending, are authorized to Administer an Oath, and examine the Parties, &c. The Auditors are Judges of Record. 2 *Inst.* 380. But what may be pleaded in Bar to the Action, shall not be allowed to be pleaded before the Auditors. *Cro. Car.* 82. 161. If Action of *Accompt* be brought against one as Bailiff, he shall be allowed his Costs and Expenses; but 'tis otherwise if such Action be brought against him as Receiver. *Co. Lit.* 172. If a Bailiff or Receiver make a Deputy, Action of *Accompt* will not lie against the Deputy, but against them. 1 *Leon.* 32. If a Person receive Money due to me upon an Obligation, or for Rents owing to me, I may either have an Action of *Accompt* against him as my Receiver, or Action of Debt, or on the Case, as owing me so much Money as he hath received. 1 *Lill.* 33. If I pay Money to another, I may bring an Action against him for so much Money received to my Use: But then he may Discharge himself by alledging it was for some Debt, or to be paid over by my Order to some other Person, which he hath done, &c. 1 *Lill.* 30. An Apprentice shall not be charged with Action of *Accompt*: But if a Man have a Servant, whom he Orders to receive Money, the Master shall have *Accompt* against him, if he were his Receiver. 1 *Inst.* 172. If Money be received by a Man's Wife, Action of *Accompt* lies against the Husband, and he may be charged in the Declaration as his own Receipt. *Co. Lit.* 295. As to other Actions of *Accompt*, they will not lie of a Thing certain; if a Man delivers 10 l. to Merchandize with, he shall not have *Accompt* of the 10 l. but of the Profits, which are uncertain. And this is one Reason why this Action shall not lie for the Arrears of Rent. 1 *Danv.* 215. Action of *Accompt* may be brought against a Factor who sells Goods and Merchandizes upon Credit, without a particular Commission so to do, tho' the Goods are *bona peritura*. 2 *Mod.* 100. The usual Pleas in this Action, are *Quod nunquam fuit Receptor*, *quod plene computavit*, &c. It is no Plea in an *Accomptant* that he was robbed; but alledging it was without his Default and Negligence, will be a good Plea. *Co. Lit.* 89. This Action is now almost disused: Damages are not given by it, for the Judgment is only to *Accompt*. 1 *Leon.* 302. The usual Judgment is *quod computet*, on which the Defendant is taken by *Capias ad computandum*. The Process in *Accompt*, is Summons, Pone, and Distress, and upon a *Nihil* returned, the Plaintiff may proceed to Outlawry. The Statute of Limitations, 21 *Fac.* 1. doth not bar a Man who is a Merchant from bringing Action of *Accompt* for Merchandize at any Time: But all other Actions of *Accompt* are within the Statute.

A Writ of *Accompt* to the Sheriff of the County.

R *Ex vic. Wilts. salutem. Præcipim. tibi quod Justici. A. B. quod juste & sine dilatione reddat C. D. rationabile computum suum de tempor. quo fuit Balivus ipsius C. in, &c. & recepit. denar. ipsius C. sicut rationabiliter Monstrar. poterit, quod ei redd. debet, ne amplius inde clam. audiamus pro defectu Justitie, &c. Teste, &c.*

Accord, (*French*) Is an Agreement, Concordance or Consent; and signifies an Agreement between

two or more Persons where any one is injured by a Trespass, Offence or 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 any Action for the same. *Terms de ley* 14. And it is to be observed that *Accord* executed only is pleadable in Bar; and Executory not. 1 *Mod.* 69. Also in Pleading it, 'tis safest by Way of Satisfaction, and not of *Accord* alone. For if it be pleaded by Way of *Accord*, a precise Execution thereof in every Part must be pleaded: But by Way of Satisfaction, the Plaintiff need only alledge, that he paid the Plaintiff such a Sum, &c. in full Satisfaction of the *Accord* which the Plaintiff received. 9 *Rep.* 80. The Defendant must plead that the Plaintiff accepted the Thing agreed upon in full Satisfaction, &c. And if it be on a Bond, it must be in Satisfaction of the Money mentioned in the Condition, and not of the Bond; which can't be discharged but by Writing under Hand and Seal. *Cro. Jac.* 254, 650. When a Duty is created by Deed in Certainty, as by Bill, Bond, or Covenant to pay a Sum of Money, this Duty accruing by Writing, ought to be discharged by Matter of as high a Nature: But when no certain Duty arises by Deed, but the Action is for a Tort or Default, &c. for which Damages are to be recovered, there an *Accord* with Satisfaction is a good Plea. 6 *Rep.* 43. As a Contract upon Consideration may commence by Words; so by an Agreement by Words for any valuable Consideration, the Agreement may be dissolved. In *Accord*, one Promise may be pleaded in Discharge of another, before Breach; but after Breach, it cannot be discharged without a Release in Writing. 2 *Mod.* 44. *Accord* with Satisfaction, is no Plea to a Covenant not broken; for the Covenant being created by Deed, by Deed must be discharged: But upon a Covenant broken, it is a good Plea in Satisfaction and Discharge of the Damages. *Lutw.* 359. And *Accord* made before the Covenant broke, hath been adjudged a good Bar of Action of Covenant, as it may be in Satisfaction of Damage to come. 1 *Danv.* 546. An *Accord* with Satisfaction may be pleaded in Bar in Account; but not in Discharge. *Heth.* 114. If a Contract without Deed is to deliver Goods, &c. there Money may be paid by *Accord* in Satisfaction: But if one is bound in an Obligation to deliver Goods, or to do any collateral Thing, the Oblige can't by *Accord* give Money in Satisfaction thereof: Though when one is bound to pay Money, he may give Goods or any other valuable Thing in Satisfaction. 9 *Rep.* 78. 1 *Inst.* 212. Where Damages are uncertain, a lesser Thing may be done in Satisfaction, and in such Case an *Accord* and Satisfaction is a good Plea; but in Action of Debt on a Bond, there a lesser Sum cannot be paid in Satisfaction of a greater. 4 *Mod.* 88. *Accord* with Satisfaction is a good Plea in personal Actions, where Damages only are to be recovered; and in all Actions which suppose a Wrong, *vi & armis*, where a *Capias* and *Exigent* lay at the Common Law, in Trespass and Ejectment, Detinue, &c. *Accord* is a good Plea: So in an Appeal of Maihem. But in real Actions it is not a good Plea. 4 *Rep.* 1, 9, 70. 9 *Rep.* 77. An *Accord* is not any Bar of an Action, unless it be executed, because the Plaintiff hath not any Means to recover that which he ought to have by the *Accord*. *Danv. Abr.* 240. But of late it hath been

been held, that upon mutual Promises an Action lies, and consequently there being equal Remedy on both Sides, an *Accord* may be pleaded without Execution, as well as an Arbitrament. *Raym.* 450. 2 *Jones* 158. Acceptance of the Thing agreed on in these *Accords* is the only material Thing to make them binding. *Hob.* 178. 5 *Mod.* 86.

Accroche, (from the French *Accrocher*) To hook or grapple unto: It signifies as much as to encroach, and is mentioned in the Statute 25 *Ed.* 3. c. 8. to that Purpose. The French use it for Delay, as *Accrocher un Proces*. to stay the Proceedings in a Suit.

Accusation, (*Accusatio*) To charge any Person with a Crime. By *Magna Charta*, no Man shall be imprisoned or condemned on any *Accusation*, without Trial by his Peers, and the Law. 9 *H.* 3. And none shall be compelled to answer an *Accusation* to the King, without Presentment, or some Matter of Record. *Stat.* 42 *Ed.* 3. Promoters of Suggestions are to find Surety to pursue them; and not making them Good, shall satisfy Damages to the Party *accused*, and pay a Fine to the King. 38 *Ed.* 3. c. 9. In Treason there must be two lawful Accusers. *Stat.* 5 & 6 *Ed.* 6. Vide the Statutes.

Acephali, The Levellers in the Reign of *H.* 1. who acknowledged no Head or Superior. *Leges H.* 1. They were reckoned so poor that they had not a Tenement by which they might acknowledge a superior Lord. *Du Cange*.

Ac etiam Bille, Words or a Clause of a Writ, where the Action requires good Bail. The Stat. 13 *Car.* 2. c. 2. which enjoins the Cause of Action to be particularly expressed in the Writ or Process which holds a Person to Bail, hath ordained the Inserting of this Clause in Writs; but it ought not to be made out against a Peer of the Realm, or upon a penal Statute, or against an Executor or Administrator, or for any Debt under 10 *l.* Nor in any Action of Account render, Action of Covenant, &c. unless the Damages are 10 *l.* or more: Nor in Action of Trespas, or for Battery, Wounding or Imprisonment, except there be an Order of Court for it, or a Warrant under the Hand of one of the Judges of the Court out of which the Writ issues. 1 *Lill. Abr.* 12.

Achat, (Fr. *Achet*) Signifies a Contract or Bargain. Purveyors by Statute 36 *Ed.* 3. were called *Achators*, from their frequent Making of Bargains.

Acherfet, A Measure of Corn, conjectured to be the same with our Quarter or eight Bushels. The Monks of *Peterborough* had an Allowance weekly of twelve *Acherfetos* de frumento, and eight *Acherfetos* de Brasio, and Six de Grad. and eleven *Acherfetos* de fabis, &c.

Acholite, (*A. bolitus*) An inferior Church Servant who, next under the Subdeacon, followed or waited on the Priests and Deacons, and perform'd the meaner Offices of lighting the Candles, carrying the Bread and Wine, and paying other servile Attendance.

Acknowledgment Money, Is a Sum paid in some Parts of England by Tenants on the Death of their Landlords, as an Acknowledgment of their new Lords; in like Manner as Money is usually paid on the Attornment of Tenants.

Solvet XII d. ad Recognitionem cujuslibet novi Domini de Hope, &c.—*Ex libro Cart. Prior. Leominstræ.*—It is in Latin called, *Laudativum vel Laudemium*, a *laudando Domino*.

Acquietancia de Shiris & Hundredis, To be free from Suits and Services in Shires and Hundreds.

Acquietandis Plegiis, A Writ of *Justicies* lying for the Surety against a Creditor, who refuses to acquit him after the Debt is satisfied. *Reg. of Writs* 158.

Acquittal, (from the French Word *Acquitter*, and the Latin Compound *Acquietare*) To free or discharge: It signifies in one Sense to be free from Entries and Molestations of a superior Lord for Services issuing out of Lands; and in another Signification (the most General) it is taken for a Deliverance and Setting free from the Suspicion of Guilt; as he that on Trial is discharged of a Felony, is said to be *Acquietatus de Felonia*; and if he be drawn in Question again for the same Crime, he may plead *auter foits acquit*; as his Life shall not be twice put in Danger for the same Offence. When two are indicted, the one as Principal and the other as Accessary, the Principal being discharged, the Accessary of Consequence will be acquitted by Law: *Acquittal* in Fact, is when a Man is found Not guilty of the Offence by a Jury, on Verdict, &c. 2 *Inst.* 385. But in Murder, if a Man is acquitted, Appeal may be brought against him. 3 *Inst.* 275. If a Person is acquitted on a malicious Prosecution, he may bring his Action, &c. for Damages, after he hath obtained a Copy of the Indictment and the Judge's Certificate. An Offender may be acquitted by the King's Pardon, or Proclamation. *Staundf.* 168.

Acquittance, (*Acquietancia*) Signifieth a Discharge in Writing of a Sum of Money, or Debt due: As if a Man be bound to pay Money upon Bond, or Rent reserved upon a Lease, &c. And the Party to whom due, on Receipt thereof, gives a Writing under his Hand witnessing that he is paid. This will be such a Discharge in Law, that he cannot demand and recover the Sum or Duty again, if the *Acquittance* be produced. *Terms de Ley* 15. *Dyer* 6, 25, 51. An *Acquittance* is a Discharge and Bar in the Law, to Actions, &c. And if one acknowledges himself to be satisfied by Deed, it may be a good Plea in Bar, without any Thing received: But an *Acquittance*, without Seal, is only Evidence of Satisfaction, and not pleadable; for no Deed signifies a Deed of *Acquittance*. 1 *Inst.* 52. The Obligor is not bound to pay Money upon a single Bond, except an *Acquittance* be given him by the Obligee: Nor is he obliged to pay the Money before he hath the *Acquittance*. But in Case of an Obligation with a Condition, it is otherwise; for there one may aver Payment. And by 3 & 4 *Ann.* c. 16. If an Action of Debt is brought upon a single Bill, and the Defendant hath paid the Money, such Payment may be pleaded in Bar of the Action. A Servant may give an *Acquittance* for the Use of his Master, where such Servant usually receives his Master's Rents, &c. and the Master shall be bound by it. 1 *Inst.* 112. The Manner of Tender and Payment of Money shall be generally directed by him who pays it, and not by him who receives it; and the *Acquittance* ought to be given accordingly.

Acre, (from the German Word *Aker*, i. e. *Ager*) A Quantity of Land, containing in Length 40 Perches, and in Breadth four Perches: Or in Proportion to it, be the Length or Breadth more or less. By the Customs of Countries, the Perch differs in Quantity, and consequently the Acres of Land: It is commonly but 16 Feet and a Half; but in *Staffordshire* it is 24 Feet. According to the Statute 34 *Hen.* 8. concerning the Sowing of Flax, it is declared that 160 Perches make an

an *Acre*, which is 40 multiplied by Four. And the Ordinance of measuring Land, 35 Ed. 1. agrees with this Account. The Word *Acre* formerly meant any open Ground; as *Castle-Acre*, *West-Acre*, &c. and not a determined Quantity of Land. Also *Acre*, or *Acre-fight*, is an old Sort of Duel fought by single Combatants, *English* and *Scott*, between the Frontiers of their Kingdoms, with Sword and Lance; and this Duelling was called Camp-fight, and the Combatants Champions, from the open Field that was the Stage of Trial.

Astilia, Military Utensils.— *Quilibet paratus sit cum Astiliis & Harnesiis, &c. & quicumq; habet decem Libras in bonis & non habuerit omnia cremorum Astilia, perdat omnia bona.* Du Cange.

Action. (*Actio*) Is the Form of a Suit given by Law for Recovery of that which is one's Due: Or it is a legal Demand of a Man's Right. 1 *Inst.* 285. And the learned *Braffton* thus defines it: *Actio nihil aliud est quam jus prosequendi in Judio quod alicui debetur.* And *Actions* are either *Criminal* or *Civil*; *Criminal*, to have Judgment of Death, as Appeals of Death, Robbery, &c. or only to have Judgment for Damage to the Party, Fine to the King and Imprisonment, as Appeals of Maihem, &c. 1 *Inst.* 284. 2 *Inst.* 40. *Civil Actions* are such which tend only to the Recovery of that which by Reason of any Contract, &c. is due to us; as *Action* of Debt; upon the Case, &c. 6 *Inst.* 61. There are also *Actions Penal*; which lie for some Penalty or Punishment in the Party sued, be it corporal or pecuniary. *Braff.* *Actions upon the Statute*, brought upon the Breach of any Statute, whereby an *Action* is given that lay not before: As where one commits Perjury to the Prejudice of another, the Party that is injured shall have a Writ upon the Statute. *Actions Popular*, given on the Breach of some penal Statute, which every Man hath a Right to sue for himself and the King, by Information, &c. And because this *Action* is not given to one especially, but generally to any that will prosecute, it is called *Action Popular*. These last *Actions* may be rank'd under *Criminal Actions*: And *Actions Civil* are divided into *Real*, *Personal*, and *Mix'd*. *Action Real* is that *Action* whereby a Man claims Title to Lands, Tenements or Hereditaments, in Fee, or for Life: And these *Actions* are Possessory, or Auncestrel; Possessory, of a Man's own Possession and Seisin; or Auncestrel of the Possession or Seisin of his Ancestor. *Action Personal* is such as one Man brings against another, on any Contract for Money or Goods, or on Account of any Offence or Trespas; and it claims a Debt, Goods, Chattels, &c. or Damages for the same. *Action Mix'd* is an *Action* that lieth as well for the Thing demanded, as against the Person that hath it; on which the Thing is recovered, and likewise Damages for the Wrong sustained: It seeks both the Thing whereof a Man is deprived, and a Penalty for the unjust Detention. But Detinue is no *Action mix'd*, notwithstanding the Thing demanded and Damages for with-holding it be recovered; for it is an *Action* meerly personal, brought only for Goods and Chattels. In a *Real Action*, setting forth the Title in the Writ, several Lands held by several Titles may not be demanded in the same Writ: In *Personal Actions*, several Wrongs may be comprehended in one Writ. 8 *Rep.* 87. A Bar is perpetual in *Personal Actions*, and the Plaintiff is without Remedy, unless it be by Writ of Error or Attaint: But in *Real Actions*, if

the Defendant be barred, he may commence an *Action* of a higher Nature; and try the same again. 5 *Rep.* 33. *Action of Waste* sued against Tenant for Life, is in the Reality and Personality; in Reality, the Place wasted being to be recovered, and in the Personality, as treble Damages are to be recovered. 1 *Inst.* 284. If a Disfeisor make a Feoffment to another, the Disfeisee shall have Assize of *Novel Disseisin* against the Disfeisor and the Feoffee, and recover Seisin of the Lands, and Damages for the Profits: And so it is by *Action Mix'd*, not only in Waste, but *Quare Impedit*, &c. *Terms de Ley* 18. But if a Lessee for Years commit Waste, and dies, *Action of Waste* may not be had against his Executor or Administrator, for Waste done by the deceased. And where a Keeper of a Prison permits one in Execution to escape, and afterwards dieth, no *Action* will lie against his Executors. Also if a Battery be committed on a Man, and he that is the Aggressor, or the Party on whom committed, die, the *Action* is gone: For *Personal Actions* die with the Person. 1 *Inst.* 53. *Actions Real and Mix'd*, Ejectment, Waste, Trespasles, *Quare clausum fregit*, &c. are to be laid in the same County where the Land lieth. But *Personal and Transitory Actions*, as Debt, Detinue, Assault and Battery, &c. may be brought in any County (except it be against Officers of Places, &c. by Stat. 21 *Fac.* 1.) 1 *Inst.* 282. *Actions Transitory* may be laid in any County, altho' the Statute 6 R. 2. enacted, That Writs of Debt, Account, &c. should be commenced in the County where the Contracts were made; for that Statute was never put in Use; and yet generally *Actions* have been laid in the County where the Cause of them was arising. *Actions* are said to be perpetual and temporal; Perpetual, those which cannot be determined by Time, and all *Actions* may be called perpetual that are not limited to Time for their Prosecution: *Temporary Actions* are those which are expressly limited: As for Example; the Statute 7 H. 8. c. 3. gives *Action* within four Years after the Offence committed: The 1 *Ed.* 6. c. 1. within three Years: The 31 *Eliz.* c. 5. within one Year, &c. Since the Statute of Limitations, all *Actions* seem to be temporary; or not so perpetual, but they may in Time be prescribed against: A *Real Action* may be prescribed against within five Years, on a Fine levied, or Recovery suffered. By Stat. *Hen.* 8. A Writ of Right for Recovery of Lands is to be brought within sixty Years: By 21 *Fac.* 1. Writs of *Formedon* for any Title to Lands in *Esse*, are to be sued within twenty Years: *Actions* of Debt, on the Case, of Account, Detinue, Trover and Trespas, are to be brought within six Years; of Assault and Battery within four Years; and Slander within two Years: But the Right of *Action* in these Cases is saved to Infants, Feme Coverts, Persons beyond Sea, &c. And on a fresh Promise the Time limited may be enlarged; also the Taking out and Filing of a Writ, is a good bringing of an *Action* to avoid the Statute of Limitations. 1 *Lill.* 19. *Actions* are joint or several; Joint, where several Persons are equally concerned, and the one cannot bring the *Action*, or cannot be sued, without the other; Several, in Case of Trespas, &c. done, where Persons are to be severally charg'd, and every Trespas committed by many is several. 2 *Leon.* 77. A Man attainted of Treason or Felony, convict of Recusancy, an Outlaw, excommunicated Person, convict of *Premunire*, an alien Enemy, &c. cannot

not bring an *Action*, 'till Pardon, Reversal, Absolution, &c. But Executors or Administrators being outlawed, may sue in the Right of the Testator or Intestate; tho' not in their own Right. A Feme Covert must sue with her Husband. 1 *Inst.* 128. *Litt.* 196, &c. Infants are to sue by Guardian, &c. *Actions* may be brought against all Persons, whether attainted of Treason or Felony, a convict Recusant, outlawed and excommunicate, &c. and a Feme Covert must be sued with her Husband. A *Scire facias*, or any Writ to which the Defendant may plead, or by which a Plaintiff may recover, is an *Action*. 6 *Rep.* 3. *Salk.* 5. But where it appears upon the Record, that an *Action* is brought before the Cause of *Action* arises, either in the Declaration or Verdict, or otherwise by the Plaintiff's own Shewing, he shall never recover. 3 *Salk.* Right and Wrong are the Mother of all *Actions*; and therefore no *Action* can be brought without the having of a Right, and the Laying of a Wrong done before the *Action*. *Hob.* 198. Also *injuria* & *damnum* are the Foundations of *Actions on the Case*. March 114.

Action upon the Case, (*Actio super casum*) Is a general *Action* given for Redress of Wrongs and Injuries, done without Force, and by Law not provided against: And in *Actions upon the Case*, the like Process is to be had as in *Actions* of Trespass or Debt. 19 *H.* 7. c. 9. *Terms de Ley* 17. If my Fire, by Misfortune, burn the Goods of another Man; for this Wrong he shall have *Action on the Case* against me: And if my Servant puts a Candle or other Fire in any Place in my House, and this burns all my House and the House of my Neighbour, *Action of the Case* lies for him against me. 1 *Danv.* 10. But see the Stat. 10 *Ann.* c. 14. If a Person delivereth Goods to a common Carrier, to carry them to a certain Place, and he loseth them, *Action upon the Case* lies against him, for by the common Custom of the Realm he ought to carry them safely: It is the same of a common Hoyman or Lighterman, who is a Water-Carrier of Goods; but Goods in this Case, may be thrown over-board in a Tempest, to preserve the Passengers Lives in the Lighter, &c. and no *Action* lie. 2 *Bulst.* 280. If a common Carrier is robbed of Goods, he is chargeable for them, because he had his Hire, and took upon himself the safe Delivery of the Goods therefore: And tho' a Person doth not acquaint the Carrier with all the Particulars in a Box, as that there is such a Sum of Money, &c. the Carrier shall answer for the Money, if robbed: Tho' a special Acceptance may excuse the Carrier. 1 *Danv.* 13. A common Inn-keeper is chargeable for Goods stolen in his House. And if the Inn-keeper be not of sound Memory, it is said *Action* lies against him: But if the Inn-keeper be an Infant, no *Action* will lie against such Infant. The Person robbed must be a Traveller, and Guest in the Inn: If the Goods are committed to the Host upon another Account, and are stolen, no *Action* will lie. So if a Man comes to an Inn, and leaving Goods there, goes away for two or three Days, if in that Time they are stolen, no *Action* lies against the Inn-keeper; for at the Time of the Stealing he was not his Guest. But where a Man comes on Horseback to an Inn, and leaves his Horse with the Host, if he goes away from the Inn for several Days, and in his Absence the Horse is stole, the Inn-keeper shall be charged for it; because he had Benefit by the Continuance of the Horse

with him, he being paid for it, and so the Owner was a Guest. *Moor* 877. If a Man upon a special Agreement boards in an Inn for any Time, and is robbed, the Inn-keeper shall not answer for it. *Latch* 127. An Inn-keeper is liable, tho' the Guest doth not acquaint him what Goods or Money he hath. 8 *Rep.* 33. If an Inn-keeper refuse to entertain his Guest, this *Action* may be brought against him. *Dyer* 158. If a Mail is robbed, and Bills are lost; by *Holt* Chief Justice, *Action* lies against the Post-master, as against a common Carrier, &c. he being paid a Salary for doing his Duty; but 'twas over-ruled by the other Justices. 1 *Salk.* 17. Breaches of Trust are *actionable*: And this *Action* lies for Deceits in Contracts, Bargains and Sales. If a Vintner sells Wine, knowing it to be corrupt, as good and not corrupt, tho' without Warranty, *Action* lies. *Danv.* 173. So if a Man sells a Horse, and warrants him to be sound of his Limbs, if he be not, *Action on the Case* lies. 11 *Hen.* 6. If a Smith promises to shoe my Horse well, if he pricks him, this *Action* lies: And so when he refuses to shoe him, whereby I travel without, and my Horse is damaged. If a Man sells certain Packs of Wool, and warrants that they are good and merchantable, if they are damaged, *Action of the Case* lies against him. 1 *Danv.* 187. The bare Affirmation by the Seller of a particular Sort of Diamond, without warranting it to be such, will not maintain an *Action*. 2 *Cro.* 4. 196. But where a Man hath the Possession of a personal Thing, the Affirming it to be his Own, is a Warranty that it is so: Tho' 'tis otherwise in Case of Lands, where the Buyer at his Peril is to see that he hath Title. 1 *Salk.* 210. If a Person sells to another Cattle or Goods, that are not his own, *Action of the Case* lies: So if he sells Wares by false Weights or Measures; or warrants Cloths to be of such a Length, that are deficient of it. If a Taylor undertakes to make a Suit of Clothes, and spoils them, *Action* lies. And if a Carpenter promises to mend my House before a certain Day, and doth not do it, by which my House falls: Or if he undertakes to build a House for me, and doth it ill; *Action on the Case* lies. 1 *Danv.* 32. If a Chirurgeon neglects his Patient, or applies unwholesome Medicines, whereby the Patient is injured, this *Action* lieth. And if a Counsel retained to appear on such a Day in Court, doth not come, by which the Cause miscarries, *Action* lies against him. For Stopping up a Water-course or Way; Breaking down a Man's Wall, Stopping of ancient Lights, and for any private Nuisance to a Man's Water, Light, or Air, whereby a Person is damaged, this *Action* lieth. 1 *Cro.* 427. *Yelv.* 159. If a Horse that is hired, hath been abused by the Rider; *Action* lies: So where Goods pawned are not delivered, on Offering the Money: Where any one personates another; for Cheating at Gaming; where a Surety is not saved harmless, &c. 2 *Inst.* 198. *Action on the Case* also lieth for Toll of a Mill, or Marker, &c. And *Action of the Case* on *Assumpsit*, lies for not making a good Estate of Land sold, according to Promise: Not paying Money upon a Bargain and Sale, according to Agreement; not delivering Goods upon Promise, on Demand: This is by express *Assumpsit*; and may relate to one's Real or Personal Estate, or to one's Person: Implied *Assumpsit* is where Goods are sold, or Work is done, &c. without any Price agreed upon; on *Action of the Case* by *Quantum meruit*, the

Law implies a Promise and Satisfaction to the Value. If a Man make a Lease for Years, rendering Rent, he cannot have *Action upon the Case sur Assumpsit* for this Rent; but is to have *Action* of Debt on the real Contract. 1 *Danv.* 28. So it is upon Promise of Payment of Money on a Bond; unless there be a Collateral Promise. And for Breach of Promise made by Deed, Writ of Covenant is to be brought. 1 *Roll. Abr.* 517. *Indebitatus Assumpsit* will not lie upon a Bill of Exchange accepted; but *Action* upon the Custom only. 1 *Vent.* 152. The Consideration is the Ground of the common *Action on the Case*: And no *Action on the Case* lieth against a Man for a Promise where there is no Consideration why he should make the Promise. 1 *Danv.* 53. A Consideration wholly past and executed before, is not sufficient to bring *Action of the Case*. Moor 820. But it may be good on Promise for Service done. 2 *Leon.* 225. If a Man promise to do a Thing by such a Day, without any Consideration or Reward, and doth it not, no *Action* will lie; but if he actually enters upon the Performance of the Thing, and then neglects it to the Deceit of the Plaintiff, *Action on the Case* lies. *Trin.* 2 *Ann.* 3 *Salk.* 11. 'Tis said the Folly of a Defendant hath been considered in some Promises, and reasonable Damages given by the Jury. *Mod. Ca.* 305. The Person to whom a Promise is made, shall have the *Action*; and not those who are Strangers, or for whose Benefit it is intended. *Danv.* 64. Nor shall *Action* be brought against one for what another receives, not at his Request, &c. 1 *Salk.* 23. But if a Man delivers Money to A. B. to my Use, I may have an *Action on the Case* against him for this Money. If a Man accounts, and upon the Account is found in arrear to a certain Sum, and presently in Consideration thereof assumes to pay the Debt at a Day; *Action on the Case* lies for this after the Day. *Yelv.* 70. And where Account lies, *Indebitatus* will lie. 2 *Mod.* 263. For malicious Prosecutions, where a Suit is without Ground, and one is arrested, *Action on the Case* lies for unjust Vexation: So for false Imprisonment. And for falsely and maliciously arresting a Person for more than is due to the Plaintiff, whereby the Defendant is imprisoned, for Want of Bail; or if it be on Purpose to hold him to Bail, *Action on the Case* will lie, after the Original *Action* is determined. 1 *Lev.* 275. 1 *Salk.* 15. And *Action* likewise lies against Sheriffs for Default in executing Writs; permitting Escapes, &c.

Action on the Case for Words, Is brought where a Person is injured and defamed in his Reputation. And for Words spoke of a Person, which affect his Life, Office, or Trade, or tend to his Loss of Preferment in Marriage, Service, or to his Disinheritance, or which occasion any particular Damage, this *Action* may be had. To say of another, that he hath killed a Man, *Action* lies; though he did not design any particular Person. 1 *Danv.* 150. To call an honest Person Thief, *Action* on the Case lies: But not to say of a Man he deserves to be hang'd: Nor to call another Rogue generally, or say he will prove him to be a Rogue; though it will lie to say a Man is a Rogue of Record. 4 *Rep.* 15. *Danv.* 92. To say of another he is a Traitor, *Action* lies. 1 *Bulst.* 145. And so to say that he is a Witch, and did bewitch such a Person, &c. but not to call a Person Witch, without more Words. 1 *Brownl.* 15. To say a Man was in Gaol

for stealing any Thing, is not *actionable*, for the Words do not affirm the Theft. *Danv.* 104. But to say I will not keep a Thief, as A. B. doth: Or that I think A. B. committed such a Felony; or I dreamt he stole a Horse, &c. these are *actionable*. *Dal.* 144. 1 *Danv.* 105. If one say of another, thou art a Bugging Rogue, and I could hang thee, *Action* lies. 1 *Sid.* 373. And if a Man say, I know my self, and I know you, I never bugger'd a Mare, &c. it is *actionable*. To say of a Person, he hath perjured himself; or that he would prove him perjured; or that he was forsworn in the Court of Chancery, Common Pleas, &c. are *actionable*: But not to call a Person forsworn Man, unless it be said in a Court of Record. 3 *Inst.* 163. *Danv.* 87, 89. If a Man say he gave another Money for forswearing himself; or call him perjured Knave, *Action* will lie. To say a Man hath forged an Obligation, &c. and he will prove it; this is *actionable*. *Danv.* 130. When such Words are spoken of another maliciously, for which Words, if true, such other might be punished, *Action* lies: As to say of a Man, he can prove him perjured, &c. Or if he might have his Will he would do such a Thing, which Thing is *actionable*. 10 *Rep.* 130. If A. says that B. said that C. did a certain scandalous Thing, C. shall have *Action* against A. with Averment that B. never said so, whereby A. is the Author of the Scandal. *Cro. Jac.* 406. If one say of a Bishop, that he is a Papist, *Action* lies: So of a Member of Parliament, &c. But to call any other Papist, or Heretic, is not *actionable*. 2 *Brownl.* 166. To say a Minister preacheth Lies in the Pulpit, *Action* lies: Not if the Words are that he is a Preacher of false Doctrine. *Danv.* 119. If one says of a Parson that he hath a Bastard, whereby he receives Injury, it is *actionable*. 1 *Lev.* 248. To say a Justice of Peace doth not administer Justice, is *actionable*. *Cro. Eliz.* 358. And so for other Disgrace in his Office. To call an Attorney Rogue and Knave, in his Profession; or say he is not fit to be an Attorney; or to say a Man is a cheating Knave; if it be in his Trade and Profession, these are *actionable*. *Danv.* 111. Moor 261. To call a Clerk in Court corrupt Man, and say he deals corruptly, is *actionable*. 4 *Rep.* To say of a Counsellor, that he is no Lawyer; that they are Fools that come to him for Law, and that he will get nothing by the Law, *Action* lies. *Danv.* 113. And it is the same to say he hath disclosed Secrets in a Cause. To call a Doctor of Physick Fool, Ass, Empirick and Mountebank, or say he is no Scholar, are *actionable*. *Cro. Car.* 270. If one calls a Merchant Bankrupt, *Action* lies. 1 *Leon.* 336. And to call a Trading Person Bankrupt Knave, is *actionable*. 1 *Danv.* 99. Also if one say of a Merchant, that he is a beggarly Fellow, and not able to pay his Debts: Or say of a Person that he is a Runaway, and dares not shew his Face, by Reason whereof he is disgraced and injured in his Calling, these are *actionable*. *Raym.* 184. To say an Alehouse-keeper keeps a Bawdy-house, *Action* lies. *Cro. Eliz.* 582. Though to say of an Inn-keeper, that he harbours Rogues, &c. is not *actionable*; for his House is common to all Guests. 2 *Roll. Rep.* 136. To say of another he hath the French Pox, *Action* will lie. *Cro. Jac.* 430. But 'tis said, if one say that he had the Pox, after cured, no *Action* lies; because none will then avoid his Company, &c. *Noy* 151. To call

call a Man Whore-master, or a Woman Whore, no *Action* lies; for these are merely spiritual. *Danv.* But Calling a Woman Whore in *London* is *actionable* by the Custom of the City. And to say that a Woman hath a Bastard, or is with Child, or that a certain Person hath had the Use of her Body, whereby she loses her Marriage, *Action* lies. Though not without special Damage, on *Action* at Common Law. 2 *Salk.* 696. To say of a Man that he lay with a certain Woman, &c. by which he loses his Marriage, is *actionable*: For in these Cases there is a Temporal Damage. 1 *Danv.* 81. If one says of another that has Land by Descent, that he is a Bastard; *Action* upon the Case lies, as it tends to his Disinheritance. *Co. Ent.* 28. But to say of a Son and Heir apparent, that he is a Bastard, *Action* lies not until he is disinherited, or is prejudiced thereby. 1 *Danv.* 83. To slander the Title of another Person, is *actionable*. And though scandalous Words are spoken before a Man's Face, or behind his Back, by way of Affirmation, or Report, when drunk, or sober; and although they are spoke in any Language, if they are understood by the Hearers, they are *actionable*. 4 *Rep.* 14. *Hob.* 165, 236. But if the Defendant can make Proof of the Words, he may plead special Justification. *Co. Ent.* 26. And where Words may receive a double Interpretation, the one Way that they shall be *actionable*, and the other Way not, they shall be taken in *mitiori sensu*, so as not to be *actionable*. *Cro. Jac.* 438.

Action Prejudicial, (otherwise called *Preparatory* or *Principal*) Is an *Action* which arises from some Doubt in the Principal; as in Case a Man sues his younger Brother for Lands descended from his Father, and it is objected against him that he is a Bastard: Now this Point of Bastardy is to be pre-tried, *viz.* before the Cause can any further proceed: And therefore it is termed *Præjudicialis, quia prius Judicanda*. *Bract.* 1. 3. cap. 4.

Action of a Writ, Is a Term used when a Man pleads some Matter by which is shewn that the Plaintiff had no Cause to have the *Writ* which he brought: But it may be that he may have another *Writ* for the same Matter. It is called a *Plea to the Action of the Writ*, as a Distinction from a *Plea to the Action*; which is where the Plaintiff hath no Cause to have any *Action* for the Thing demanded. *Terms de Ley.* 17.

Actionare, i. e. *In jus vocare*, Or to prosecute one in a Suit at Law. *Thorn's Chron.*

Action Burnel, The Stat. 13 *Ed.* 1. so called from its being made at a Place called *Action Burnel*, a Castle in *Shropshire*, antiently of the *Burnels*, and afterwards of the *Lovels*: It ordained the Statute-Merchant for Recovery of Debts.

Actor, The Proctor or Advocate in Civil Courts or Causes: As *Actor Ecclesia* has been sometimes used for the Advocate of the Church: *Actor Dominicus*, for the Lord's Attorney: *Actor Villa*, the Steward or Head Bailiff of a Village.

Acts of Parliament, Are positive Laws, consisting of two Parts, (*viz.*) The Words of the Acts, and being the Sense and Meaning of them, which being joined make the Law. The Words of Acts of Parliament shall be taken in a lawful Sense: Cases of the same Nature are within the Remedy, though out of the Letter of the Act; and some Acts extend by Equity to other

Things than are mentioned therein, &c. 1 *Inst.* 24, 381. Vide *Statute*.

Actuary, (*Actuarius*) A Clerk that registers the Acts and Constitutions of the Convocation.

Adcredulitate, To purge one's self of an Offence by Oath. — *Qui in Collegio fuerit ubi aliquis occisus est, Adcredulitet se quod eum non percussit.* *Leges Inæ*, c. 36.

Addition, (*Additio*) Signifieth a Title given to a Man besides his Christian and Surname, setting forth his Estate, Degree, Trade, &c. As for Example; *Additions* of Estate are Yeoman, Gentleman, Esquire, &c. *Additions* of Degree are Knight, Earl, Marquess and Duke: *Additions* of Trade, are Clothier, Carpenter, Mason, &c. Then there are likewise *Additions* of Place of Residence, as *London, York, Bristol, &c.* And these *Additions* were ordained that one Man might not be grieved or molested for another; and that every Person might be certainly known, and bear his own Burden. If one be of the Degree of a Duke, Earl, &c. he shall have the *Addition* of the most worthy Dignity. 2 *Inst.* 669. But the Titles of Duke, Marquess, Earl, &c. are not properly *Additions*, but Names of Dignity. *Terms de Ley* 20. And the Title of Knight or Baronet, is Part of the Party's Name, and ought to be rightly used; but the Titles of Esquire, Gentleman, Yeoman, &c. being no Part of the Name, but *Additions* as People please to call them, may be used or not used, or if varied is not material. 1 *Lill.* 34. An Earl of *Ireland* is not an *Addition* of Honour here in *England*; but such a Person must be written by his Christian and Surname, with the *Addition* of Esquire only: And Sons of *English* Noblemen, although they have given them Titles of Nobility in respect to their Families; if you sue them they must be named by their Christian and Surnames, with the *Addition* of Esquire, as such a one Esquire, commonly called Lord A. &c. 2 *Inst.* 596, 666. By the Common Law, a Man that had no Name of Dignity, was named by his Christian and Surname in all Writs, which was sufficient. If he had an inferior Name of Dignity as Knight, &c. he ought to be named by his Christian and Surname with the Name of Dignity. But a Duke, &c. might be sued by his Christian Name only, and Name of Dignity, which stands for his Surname. 2 *Inst.* 665, 666. By Stat. 1 *Hen.* 5. cap. 5. It is enacted that in Suits or Actions where Process of Outlawry lies, *Additions* are to be made to the Name of the Defendant, to shew his Estate, Mystery, and Place of Dwelling; and that Writs, not having such *Additions* shall abate, if the Defendant take Exceptions thereto, but not by the Office of the Court. By pleading to Issue, the Party passes by the Advantage of Exception for Want of *Addition*; for by the Common Law it is good without *Addition*, and the Statute gives Remedy only by Exception. *Cro. Jac.* 610. 1 *Roll.* 780. No *Addition* is necessary where Process of Outlawry doth not lie. 1 *Salk.* 5. If a City be a County of it self, wherein are several Parishes, *Addition* thereof as *de London* is sufficient: But *Addition* of a Parish, not in a City, must mention the County, or it will not be good. 1 *Danv.* 237. An *Addition* after the *Alias dictus* is ill; and according to *Holt* Chief Justice, if a Man of *Wilts* commit Felony at *Westminster*, he shall be indicted by his Name, as of *Westm.* 3. *Salk.* 20.

Adeling, (from the Saxon *Ædelan*) Signifying Excellent, was a Title of Honour amongst the *Angles*, properly belonging to the King's Children; it being usual for the Saxons to join the Word *Ling* to the Christian Name, which signified a Son or the Younger: King *Edward the Confessor* having no Issue, and intending to make *Edgar*, his Nephew, the Heir of the Kingdom, gave him the *Stile* and Title of *Adeling*. Spelm. Gloss.

Ad Inquirendum, Is a judicial Writ, commanding Enquiry to be made of any Thing relating to a Cause depending in the King's Courts. It is granted upon many Occasions for the better Execution of Justice. *Reg. Judic.*

Adjournment, (*Adjournamentum*) The same with the French Word *Adjournement*, and signifies a putting off until another Day, or to another Place. As *Adjournment* in Eyre, by Stat. 25 Ed. 3. is an Appointment of a Day, when the Justices in Eyre will sit again. A Court, the Parliament, &c. may be *adjourn'd*; and the Substance of the *Adjournment* of Courts, is to give Licence to all Parties that have any Thing to do in Court to forbear their Attendance 'till such a Time. Every last Day of the Term, and every Eve of a Day in Term, which is not *Dies Juridicus*, or a Law-Day, the Court is *adjourned*; and it is usually done in French two several Times, sitting the Court. The Justices of Assize have Power to *adjourn* the Parties to *Westminster*, or to any other Place. 2 Inst. 26. And Writs, Pleas, &c. may be *adjourned*, by Writ of *Adjournment*. 1 Lill. 37. After Dissolution or Prorogation of a Parliament, and after *Adjournment* for above fourteen Days, Actions may be prosecuted against Persons entitled to Privilege, &c. Stat. 12 W. 3. For the Solemnity of *adjourning* the Courts of Justice, see *Cro. Car.* 11, 12, 27, 200.

Adiratus, A Price or Value set upon Things stolen or lost, as a Recompence to the Owner. — *Poterit enim rem suam petere ut Adiratam per testimonium proborum hominum.* Braët. l. 3. tract. 2. cap. 32.

Adjudication, (*Adjudicatio*) A giving or pronouncing by Judgment, a Sentence or Decree. Stat. 16 & 17 Car. 2. c. 10.

Adjura Regis, A Writ brought by the King's Clerk presented to a Living, against those that endeavour to eject him, to the Prejudice of the King's Title. *Reg. of Writs* 61.

Ad Larnum, at large; as Title at large, *Assize at large*; *Verdict at large*; to *vouch at large*, &c.

Adlegare, or *Aleier* in French, is to purge himself of a Crime by Oath. In the Laws of King *Alfred*, in *Brompt. Chron.* c. 4. *Si se velit adlegiare*, &c. And cap. 13. *Si Accusetur, inde adlegiet se per sexaginta bidas*, &c.

Admeasurement, (*Admensuratio*) Is a Writ brought for Remedy against such Persons as usurp more than their Share, to bring them to Reason. It lies in two Cases; one is termed *Admeasurement of Dowry* (*Admensuratio Dotis*) where a Man's Widow after his Decease holdeth from the Heir more as Dowry than of Right belongs to her: And the other is *Admeasurement of Pasture* (*Admensuratio Pasture*) which lies between those that have Common of Pasture appendant to their Freehold Estates, or Common by Vicinage, where any one or more of them surcharge the Common. *Reg. Orig.* 156, 171. In the first Case, the Heir shall have this Writ against the Widow, whereby she shall be *admeasured*, and the Heir restored to the Overplus; and in the

last Case, it may be brought against all the other Commoners, and him that surcharg'd; for all the Commoners shall be *admeasured*. *Terms de Ley* 23. The Heir shall have a Writ of *Admeasurement* of Dowry, for Dowry assigned in the Time of his Ancestor: And if the Heir within Age assign unto the Wife more in Dowry than she ought to have, &c. the Guardian in Right may have a Writ of *Admeasurement*. But if the Guardian do assign Dowry more than she ought to have, the Heir, during his Nonage, shall not have a Writ of *Admeasurement* of Dowry. 7 H. 2. 4. 7 E. 2. cap. 13. If the Wife after Assignment of Dowry do improve the Land, and make it better than it was at the Time of the Assignment; an *Admeasurement* doth not lie of that Improvement. *Nat. Brevium* 332. A Person who hath Common Appurtenant certain, or Common by certain Grant, shall be *admeasured*, and a Tenant shall have *Admeasurement* against him: But he who hath a Common Appurtenant without Number, or Common in Gross without Number, shall not be stinted, nor shall Writ of *Admeasurement* of Pasture lie against him. If the Lord surcharge the Common, his Tenant must not have Writ of *Admeasurement*, but an Assize of Common against the Lord. 18 E. 2. cap. 20. And so if the Lord do make Approvement of the Common. And it is said that if the Tenant surcharge the Common, the Lord shall not have a Writ of *Admeasurement* against him; but he may distrain the Surplusage Cattle. On a second Surcharge of a Common, after *Admeasurement* made, the Plaintiff shall recover his Damages against him that was Defendant in the first Writ; and also he shall forfeit to the King the Cattle which he put in over the due Number after the *Admeasurement* made. Stat. 13 Ed. 1. cap. 7. The Writ of *Admeasurement* of Pasture is *quicongit*, and shall be directed to the Sheriff, and not be returnable.

Writ of Admeasurement of Pasture.

REX Vic. &c. *Questus est nobis A. quod B. & C. injuste superoneraverunt communiam Pasturæ suæ in, &c. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinent habendum, Et ideo tibi precipimus quod iuste & sine dilatione Admensur. fac. pasturam illam, ita quod prad. B. & C. &c. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinent habendum secundum liberum Tenementum suum, quod habent in eadem villa. Et quod prad. A. habeat in pastura illa tot animalia & pecora quos habere debet, & ad ipsum pertinet habend. ne amplius inde clam. audiamus.*

Adminicle, (*Adminiculum*) Signifies Aid, Help, or Support; being used to this Purpose. Stat. 1 Ed. 4. c. 1.

Administratoz, (*Latin*) Is one that hath the Goods of a Man dying Intestate committed to his Charge by the Ordinary, for which he is accountable when thereunto required. The Bishop of the Diocese where the Party dies is regularly to grant *Administration*: But when the Person dying hath Goods in several Dioceses, which are *Bona notabilia*, *Administration* must be granted by the Archbishop in the Prerogative Court, or it will be void. 1 Plowd. 281. When one dies without Child or Kindred, *Administration* may be granted by Letters Patent, by the King; but the

Admini-

Administrator ought to be admitted by the Ordinary. 1 *Salk.* 37. At Common Law there was no such Thing as an *Administrator*; for who-ever possessed himself of the Goods of the Intestate, was chargeable by the Name of Executor. 5 *Rep.* 82. But by the Stat. 31 *Ed.* 3. c. 11. Authority was given to the Ordinary of every Diocese to appoint *Administrators*, to gather up and dispose of the Goods of the Deceased, so as they should account for the same as Executors. Before this Statute, by the Statute of *Westm.* 2. It was ordained that the Goods of Persons dying Intestate, should be committed to the Disposition of the Ordinary, who was bound to answer the Debts of the Deceased, as far as his Goods would extend. *Administration* must be granted, 1st, To the Husband of the Wife's Goods and Chattels. 2. To the Wife of the Husband's Goods and Chattels. 3. If there is no Husband or Wife, to the Children, Sons or Daughters. 4. If there be no Children alive, to the Father or Mother. 5. Then to a Brother or Sister of the whole Blood, or of the half Blood. 6. And if there are none such, to the next of Kin, as Uncle, Aunt, or Cousin. 7. Then to a Creditor of the Deceased. 8. And for Want of all these, to any other Person, at the Discretion of the Ordinary. Or the Ordinary may grant to a Stranger Letters *Ad Colligendum bona defuncti*, to gather up the Goods of the Deceased; or may take them into his own Hands to pay the Deceased's Debts, in such Order as an Executor or *Administrator* ought to pay them: But 'tis said, he or the Stranger who hath Letters *Ad Colligendum*, cannot sell them, without making themselves Executors of their own Wrong. *Wood. Inst.* 333. By Stat. 21 *H.* 8. Widows and next of Kin, are to be appointed *Administrators*; and a Mother is to have *Administration* of Goods of a Child before a Brother or Sister, &c. But an *Administration* may be granted to the Father, before a Widow; and a Residuary Legatee ought to be preferred before the Widow in an *Administration*, *Cum Testamento annexo*. 3 *Salk.* 21. A Grandmother is as near of Kin to a Person deceased as the Aunt. 1 *Salk.* 38. An Ordinary may grant *Administration* to a Father of a Son, or the Son's Wife, at his Election: And where Persons are of equal Degree of Kindred to the Intestate, it is in the Discretion of the Ordinary to grant *Administration* to which of them he pleaseth. 3 *Salk.* 22. When there are two next of Kin to the Deceased, and one of them the *Administrator* dies Intestate within the Year, before Distribution, his next of Kin shall have the *Administration*. *Show.* 25. If an *Administrator* die, his Executors are not *Administrators*; but in this Case the Ordinary is to grant new *Administration*. *Terms de Ley* 24. An Alien may be *Administrator*, and shall have Leases for Years of Lands, and Personal Estate in Debris, because he hath them *in auter Droit*. *Cro. Car.* 8. But a Popish Recusant Convict is disabled by Statute to be an *Administrator*. 35 *El.* c. 4. On granting *Administration*, Bonds with Sureties are to be taken for the *Administrator* to make and exhibit an Inventory of the Goods of the Deceased, render a just Account thereof, and make a Distribution of the Surplusage according to Law, &c. Stat. 22 & 23 *Car.* 2. cap. 10. One of half Blood is in equal Degree of Kindred with one of the whole Blood, to take out Letters of *Administration*: And *Administrators* are to make Distribution of Personal Estate equally between

whole Blood and half Blood. 2 *Lev.* 173. And where Persons die Intestate, their Estates are to be distributed, one third Part to the Wife, and the other equally amongst the Children, and their Representatives: If their be no Children, one Moiety of the Personal Estate, shall go to the Wife, and the Residue equally to the next of Kin: If there is no Wife, but Children, it shall be distributed among such Children; and if there be no Wife or Children, it shall go to the next of Kin in equal Degree. 22 & 23 *Car.* 2. When Children shall die after their Father without Wife or Child, the Mother and every Brother and Sister and their Representatives, shall have equal Share in the Estate of such Intestates. Stat. 1 *Jac.* 2. cap. 17. But no Representatives are allowed after Brothers and Sisters Children; and Children advanced by the Intestate in his Lifetime, with any Estate equal to the other Shares, are excepted; though not the Heir at Law, who is to have equal Share in the Distribution, notwithstanding what he hath by Descent. The Stat. 22 & 23 *Car.* 2. is not to extend to the Estates of Feme Coverts, who die Intestate; but the Husband shall have *Administration* as before the Act; and not be compellable to make Distribution of their Estates. 29 *Car.* 2. cap. 3. Security may be required from those to whom Distribution is made, to refund to the *Administrator* in case Debts appear afterwards. *Administrators* have a Property vested in them of the Goods of the Intestate, immediately upon his Death, and the Possession is cast on them by Law. *Godb.* 33. They may sue for Goods before they have Possession as well as Executors. 8 *Rep.* 135. An *Administrator* hath an Interest in all the Chattels Real and Personal of the Deceased; and in all Goods and Chattels either in Possession or Action, in like Manner as an Executor: And all the Goods and Chattels which come to the Hands of the *Administrator*, shall be Assets to make him chargeable to the Creditors, as Executors are to Creditors and Legatees. 2 *Inst.* 398. A Residuary Legatee is to have the Care and *Administration* of the Estate, where the Executor of a Will dies Intestate, the Residue of the Estate being devised to such Legatee. 1 *Ventr.* 217. A Creditor *Administrator* may retain the Goods of the Intestate, to satisfy his Debt; and if the Goods are taken away before *Administration* granted to him, he may have Trespass against the Person that took them. *Stile* 384. If *Administration* is granted to an Obligor, this doth not extinguish the Debt; but it shall be Assets in his Hands. 8 *Rep.* 136. Against an *Administrator* and for him, Action will lie, as for and against an Executor, and he shall be charged to the Value of the Goods, and no further; unless it be by his own false Plea, or by waiving the Goods of the Intestate. An Executor or *Administrator* shall never be charged *de bonis propriis*, but where he doth some Wrong; as by selling the Testator's Goods and converting the Money to his own Use, concealing or waiving them, or by pleading what is false. *Dyer* 210. 2 *Roll. Rep.* 295. If an *Administrator* plead *Plene Administravit*, and 'tis found against him, the Judgment shall be *de Bonis propriis*, because 'tis a false Plea, and that upon his own Knowledge. 2 *Cro.* 191. *Contra* where he pleads such a Plea, and that he hath no more than to satisfy such a Judgment, &c. the Recovery shall be *de Bonis Testatoris*, &c. 2 *Roll. Rep.* 400. Upon *Plene Administravit* pleaded by an *Administrator*,

Administrator, the Plaintiff must prove his Debt, or he shall recover but a Penny Damages, though there be Assets; because the Plea only admits the Debt, but not the *Quantum*. 1 *Salk.* 896. Special Bail is not required of *Administrators* in any Action brought against them for the Debt of the Intestate; except where they have wasted the Goods of the Deceased. Nor shall Costs be had against *Administrators*. 24 *H.* 8. Where an *Administrator* is Plaintiff, he must shew by whom *Administration* was granted; for that only intitles him to the Action. But where an *Administrator* is Defendant, the Plaintiff need not set forth by whom *Administration* was granted, for it may not be within his Knowledge; though he must declare that it was granted to the Defendant *debita juris forma*, which is necessary to charge him with the Action. *Sid.* 228. 1 *Lutw.* 301. If a Stranger that is not *Administrator*, take the Goods and Administer in his own Wrong, he shall be charged and sued as an Executor: But if the Ordinary make a Letter *Ad Colligendum*, he that hath it, is not *Administrator*, but the Action lies against the Ordinary. *Terms de ley* 24. The Power of an *Administrator* is almost equal to that of an Executor: But if there are many *Administrators*, one cannot sell Goods, release Debts, &c. without the other, for they must all join. *Noy Max.* 106. The Office of *Administrators* is the same with that of Executors, in the Burial of the Deceased, Payment of funeral Charges, making Inventories of his Goods and Chattels, Payment of Debts, &c. The Ordinary ought not to repeal Letters of *Administration* which he hath duly granted; but if they are granted to such Persons who ought not by Law to have them, he may revoke them. 1 *Lill.* 38. For just Cause they may be revoked, and where a Person is a Lunatick, &c. And if granted where not grantable, they may be repealed by the Delegates. 1 *Lev.* 157, 186. If an *Administration* is granted, and afterwards a Will is produced and proved, the *Administration* shall be revoked; and all Acts done by the *Administrator*, are void. 2 *Roll. Abr.* 907. If a Citation is granted against a Stranger *Administrator*, and his *Administration* is revoked by Sentence, yet all Acts done by him *bona fide* as *Administrator* are good till the Revocation; the *Administration* being only voidable. 6 *Rep.* 18. 8 *Rep.* 135. But if there is any Fraud, a Creditor may have Relief upon the Stat. 13 *El.* c. 5. And when the first *Administration* is merely void, as granted by a wrong Person, &c. it is otherwise: So when there is an Appeal from the Grant of the *Administration*, to suspend the former Decree, 5 *Rep.* 30. Where the first *Administration* is void, the *Administrator* that takes the Goods is a Trespassor. 2 *Leon.* 135. Letters of *Administration* obtained by Fraud, are void. 3 *Rep.* 37. Where Infant is intitled to *Administration* of the Goods of an Intestate, *Administration* shall be granted to another *Durante minori etate*, till he is of the Age of 21 Years. But where an Infant is made Executor, such *Administration* granted during his Minority ceases at the Infant's Age of 17 Years. 5 *Rep.* 29. 6 *Rep.* 27. If a Female Infant under 17 Years old is made Executrix, and she afterwards marries with one of that Age, her Husband shall have the Execution of the Will, and the *Administration* ceaseth. 1 *Salk.* 39. An *Administrator durante minori etate* cannot sell Goods of the Deceased; unless it be of Necessity for Payment of Debts, or *bona peritura*, Goods that are perishable; for he hath his

Office *pro bono & commodo* of the Infant. 5 *Rep.* 29. *Administration cum Testamento annexo*, is where an Executor refuseth to prove a Testament, and *Administration* with the Will annexed to it is granted to the next of Kin, &c. And where an Executor dies before Probate of the Will, *Administration* is to be granted with the Will annexed, and the Testator is looked upon in Law to die Intestate. 1 *Inst.* 113. If where a Person has made a Will, after his Death the Executor proves it, and then dies Intestate, *Administration* is to be granted by the Ordinary of the Goods of the Testator unadministred, to some other Person; which is called an *Administration de bonis non*, &c. (*viz.*) *Non Administratis*. 2 *Roll. Abr.* 907. And an *Administrator de bonis non*, &c. may sue out a *Scire facias* on a Judgment after a Verdict recovered by an Executor, &c. Stat. 17 *Car.* 2. Besides all these *Administrations*, there is *Administration durante absentia extra Regnum*, where a Person is absent abroad; and *Administration Pendente Lite*, which may be granted by the Ordinary as well as *Durante minori etate*.

Administratrix, (*Lat.*) She that hath Goods and Chattels of an Intestate committed to her Charge as an *Administrator*.

Admiral, (*Admiralis*, *Admirallus*, *Admiralis*, *Capitaneus* or *Custos Maris*) and derived of the French *Amerel*, signifies an high Officer or Magistrate, that hath the Government of the King's Navy, and the Determining of all Causes belonging to the Sea. This Word is also said to be derived from the Saxon *Aen Mereal*, over all the Sea: And in ancient Time the Office of the *Admiralty* was called *Custodia Maritima Anglie*. *Co. Lit.* 260. It appears that anciently the *Admirals* of England had Jurisdiction of all Causes of Merchants and Mariners, happening not only upon the main Sea, but in all foreign Parts within the King's Dominions, and without them, and were to judge them in a summary Way, according to the Laws of Oleron, and other Sea Laws. 4 *Inst.* 75. And the *Admiral* was formerly stiled *Capitaneus Marinariorum*. In the Time of R. Ed. 1. and K. John, all Causes of Merchants and Mariners, and Things arising upon the main Sea were tried before the Lord *Admiral*: But the first Title of *Admiral* of England, expressly conferred upon a Subject, was given by Patent of R. 2. to the E. of Arundel and Surrey. Of late Times this high Office has been executed by Commissioners; who by Statute are impowered to use and execute the like Authorities as Lord *Admiral*. 2 *W. & M.* c. 2. In the Reign of Ed. 3. the Court of *Admiralty* was established; and R. 2. limited its Jurisdiction. The *Admiralty* hath Cognisance of the Death or Maim of a Man, committed in any great Ship riding in great Rivers, beneath the Bridges thereof, next the Sea: But by the Common Law, if a Man be killed upon any Arm of the Sea, where the Land is seen on both Sides, the Coroner is to inquire of it, and not the *Admiral*; for the County may take Cognisance of it; and where a County may inquire, the Lord *Admiral* has no Jurisdiction. 3 *Rep.* 107. All Ports and Havens are *infra Corpus Comitatus*, and the *Admiral* hath no Jurisdiction of any Thing done in them: Between high and low Water Mark, the Common Law and *Admiral* have Jurisdiction by Turns; one upon the Water, and the other upon the Land. 3 *Inst.* 113. The *Admiral* hath Power to arrest Ships in great Streams, for the Service of the King, or Common-wealth, and hath

hath Jurisdiction in such Streams; and during the same Voyages. Every Commander, Officer, and Soldier of Ships of War, shall observe the Commands of the *Admiral*, &c. on Pain of Death, or other Punishment. 13 *Car. 2. c. 9.* The Lord *Admiral* hath Power to grant Commissions to inferior Vice-*Admirals*, &c. to call Courts Martial, for the Trial of Offences against the Articles of War; and these Courts determine by Plurality of Voices, &c. *Stat. ibid. Admiralty* Process is made out in the Name of the *Admiral*; who has under him a Judge of the *Admiralty*: And tho' the Proceedings are according to the Civil Law, and the Maritime Laws of *Rhodes* and *Oleron*, the Sea being without the Common Law; yet by *Stat. 28 H. 8.* Murder, Robbery, &c. at Sea, may be tried by special Commission to the Lord *Admiral*, &c. according to the Laws of *England*: But see the *Stat. 11 & 12 W. 3. c. 7.* The *Admiralty* is said to be no Court of Record, by Reason it proceeds by the Civil Law. 4 *Inst. 135.* The *Admiralty* hath Jurisdiction where the Common Law can give no Remedy, and of all Contracts made *super altum mare*. 6 *Rep.* All Maritime Causes, or Causes arising wholly upon the Sea, the *Admiralty* hath Cognisance of. And the *Admiralty* hath Jurisdiction in Cases of Freight, Mariners Wages, Breach of Charter-Parties, tho' made within the Realm; so as the Penalty be not demanded: And likewise in Case of building, mending, saving, and victualling Ships, &c. so as the Suit be against the Ship, and not only against the Parties. 2 *Cro. 216.* Mariners Wages are contracted on the Credit of the Ship, and they may all join in Suits in the *Admiralty*; whereas at Common Law they must all sever: The Master of a Ship contracts on the Credit of the Owners, and not of the Ship, and therefore he cannot prosecute in the *Admiralty* for his Wages. 1 *Salk. 33.* It is allowed by the Common Lawyers and Civilians, that the Lord *Admiral* hath Cognisance of Seamen's Wages, and Contracts, and Debts for making Ships; also of Things done in navigable Rivers, concerning Damage done to Persons, Ships, Goods, Annoyances of free Passage, &c. And of Contracts, and other Things done beyond Sea, relating to Navigation and Trade by Sea. *Wood. Inst. 818.* But if a Contract be made beyond Sea, for doing of an Act or Payment of Money within this Kingdom; or the Contract is upon the Sea, and not for a Marine Cause, it shall be tried by Jury; for where Part belongs to the Common Law, and Part to the *Admiral*, the Common Law shall be preferred. And Contracts made beyond Sea, may be tried in B. R. and a Fact be laid to be done in any Place in *England*, and so tried here. 2 *Bulst. 322.* Where a Contract is made in *England*, and there is a Conversion beyond Sea, the Party may sue in the *Admiralty*, or at Common Law. 4 *Leon. c. 257.* So where a Bond is made and delivered in *France*. The Court of *Admiralty* cannot hold Plea of a Matter arising from a Contract made upon the Land, tho' the Contract was concerning Things belonging to the Ships: But the *Admiralty* may hold Plea for the Seamen's Wages, &c. because they become due for Labour done on the Sea; and the Contract made upon Land, is only to ascertain them. 3 *Lew. 60.* Contra where there is a special Agreement in Writing under Seal. *Salk. 31.* Where the Master and Mariners of a Ship, fitted out with Letters of Repisal, without the Notice or Assent of

the Owners commit Piracy, the Owners shall lose their Ship by the *Admiral* Law. 1 *Roll. Abr. 530.* If the Master pawns the Ship on the high Sea out of Necessity for Tackling or Provision, without the Consent of the Owners, it shall bind them; but 'tis otherwise where the Ship is pawned for the Master's Debt. Sale of Goods taken by Piracy in open Market, is not binding by the *Admiral* Law, so that the Owner may retake them; but at Common Law the Sale is binding, of which the *Admiralty* must take Notice. 1 *Roll. Abr.* If Goods delivered on Shipboard are imbezilled, all the Mariners ought to contribute to the Satisfaction of the Party that lost his Goods by the Maritime Law, and the Cause is to be tried in the *Admiralty*. 1 *Lill. 368.* By the Custom of the *Admiralty*, Goods may be attached in the Hands of a third Person, in *causa Maritima & Civili*, and they shall be delivered to the Plaintiff after Defaults, on Caution to restore them if the Debt, &c. be disproved in a Year and Day; and if the Party refuse to deliver them, he may be imprisoned *quousque*, &c. *March. Rep. 204.* The *Admiralty* Court may award Executions upon Land; tho' not hold Plea of any Thing arising on Land. 4 *Inst. 141.* And upon Letters Missive or Request, the *Admiralty* here may award Execution upon a Judgment given beyond Sea, where an *Englishman* flies or comes over hither, by Imprisonment of the Party, who shall not be delivered by the Common Law. 1 *Roll. Abr. 530.* When Sentence is given in a foreign *Admiralty*, the Party may libel for Execution of that Sentence here; because all Courts of *Admiralty* in *Europe* are governed by the Civil Law. *Sid. 418.* Sentences of any *Admiralty* in another Kingdom are to be credited, that ours may be credited there, and are not to be examined at Law here: But the King may be petitioned, who may cause the Complaint to be examined; and if he finds just Cause, may send to his Ambassador where the Sentence was given, to demand Redress, and upon Failure thereof, will grant Letters of Marque and Repisal. *Raym. 473.* If one be sued in the *Admiralty* contrary to the Statutes, he may have a Superseas in Nature of a Prohibition, to cause the Judge to stay the Proceedings, and may also have Action against the Party suing. 10 *Rep. 75.* And if an erroneous Judgment is given in the *Admiralty*, Appeal may be had to Delegates appointed by Commission out of Chancery, whose Sentence shall be final. *Stat. 8 Eliz. c. 5.* Appeals may be brought from the inferior *Admiralty* Courts, to the Lord High *Admiral*: But the Lord Warden of the *Cinque-Ports* hath Jurisdiction of *Admiralty* exempt from the *Admiralty* of *England*.

Admission (*Admissio*) Is when a Patron of a Church having presented to it, the Bishop upon Examination admits the Clerk, by saying *admitto te habilem*. *Co. Lit. 344.* *Admission* is properly the Ordinary's Declaration that he approves of the Presentee, to serve the Cure of the Church to which he is presented. All Persons are to have Episcopal Ordination before they are admitted to any Parsonage or Benefice; and if any shall presume to be admitted, not having such Ordination, &c. he shall forfeit 100 *l.* *Stat. 14 Car. 2.* No Person is to be admitted into a Benefice with Cure of 30 *l. per ann.* in the King's Books, unless he is a Bachelor in Divinity at least, or a Preacher lawfully allowed by some Bishop, &c. An Action of the Case will not lie against the Bishop, if he refuse to admit a Clerk to be qualified according

cording to the Canons, (as for any Crime or Impediment, Illiterature, &c.) but the Remedy is by Writ *Quare non admittit*, or *Admittendum clericum* brought in that County where the Refusal was. 7 Rep. 3.

Admittendo Clerico, A Writ where a Man has recovered his Right of Presentation against the Bishop. *Reg. Orig.* 33. If a Man do recover his Presentation in the Common Pleas against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the Metropolitan. If a Person recover an Advowson, and the six Months pass, yet if the Church be void, the Patron may have a Writ to the Bishop; and if the Church is void when the Writ comes to the Bishop, the Bishop is bound to admit his Clerk. 7 H. 8. 14 H. 4. Where a Man recovers against another than the Bishop, this Writ shall go to the Bishop; and the Party shall have an *Alias* and a *Pluries*, if the Bishop do not execute the Writ, and an *Attachment* against the Bishop, if need be. *New Nat. Br.* 84. In a *Quare Impedit* betwixt two Strangers, if there appears to the Court a Title for the King, they shall award a Writ unto the Bishop, for the King.

Admittendo in socium, A Writ for associating certain Persons to Justices of Assize. *Reg. Orig.* 206. Knights and other Gentlemen of the County, are usually associated with Judges in holding their Assizes on the Circuits.

Adnichilet, From the Latin *Nihil*, written of old *Nichil*, and signifies annulled, cancelled, or made void. *Stat.* 28 H. 8.

Ad quod Damnum, Is a Writ which ought to be issued before the King grants certain Liberties, as a Fair, Market, &c. which may be prejudicial to others: It is directed to the Sheriff to inquire what Damage it may do, for the King to grant a Market, Fair, &c. *Terms de ley* 25. This Writ is also used to inquire of Lands given in *Mortmain* to any House of Religion, &c. And it is a Damage to the Country, that a Freeholder who hath sufficient Lands to pass upon Assises and Juries, should Alien his Lands in *Mortmain*, by which Alienation his Heir should not have sufficient Estate after the Death of the Father to be sworn in Assises and Juries. *F. N. B.* 121. The Writ *Ad quod Damnum* is likewise had for the turning and changing of ancient Highways; which may not be done without the King's Licence obtained by this Writ, on Inquisition found that such Change will not be detrimental to the Publick. *Vaugh. Rep.* 341. Ways turned without this Authority, are not esteemed Highways, so as to oblige the Inhabitants of the Hundred to make Amends for Robberies; nor have the Subjects an Interest therein to justify going there. 3 Cro. 267. If any one change an Highway without this Authority, he may stop the Way at his Pleasure. But see the Statute 8 & 9 W. 3. c. 16. For enlarging of Highways by Order of Justices, &c. Where any common Highway shall be enclosed after a Writ of *Ad quod Damnum* executed, any Person aggrieved by such Inclosure, may complain to the Justices at the next Quarter-Sessions; but if no such Appeal be made, then the Inquisition and Return, recorded by the Clerk of the Peace, shall be for ever binding. 8 & 9 W. 3. It appears by the Writs in the Register, that in ancient Times, upon every Grant, Confirmation, &c. or Licence made by the King, first a Writ of *Ad quod damnum* was to be awarded, to inquire of the Truth thereof,

and what Damage the King might have by the same: But now the Practice is contrary; and in the Patents of Grants of Licence, are put in the End these Words—*Et hoc absque aliquo Brevis de Ad quod Damnum, seu aliquibus aliis brevibus sive inquisitionibus aut mandatis superinde habend. fiend. aut prosequend. &c.*

A Writ of *Ad quod Damnum*.

R *Ex dilecto, &c. salutem. Precipimus tibi, quod per Sacramentum proborum & legalium hominum de Balliva tua vel de comitat. tuo per quos rei veritas melius sciri poterit diligenter inquiras, si sit ad Damnum vel ad prejudicium nostrum vel aliorum, si concedamus, &c. Et si sit ad Damnum vel prejudicium nostrum aut aliorum, tunc Ad quod Damnum & quod prejudicium nostrum & Ad quod Damnum & quod prejudicium aliorum, &c. Et inquisitionem inde distincte & aperte factam nobis in Cancell. nostra sub sigill. tuo & sigillis eorum per quos fact. fuerit sine dilatione Mittatis, & hoc breve. Teste, &c.*

Ad terminum qui preterit, A Writ of Entry, that lies for the Lessor and his Heirs, where a Lease has been made of Lands or Tenements for Term of Life, or Years, and after the Term is expired, the Lands are with-held from the Lessor by the Tenant, or other Stranger that possesseth the same: And it likewise lies for the Heir of the Lessor. *F. N. B.* 201.

Advent, (*Adventus*) A Time containing about a Month preceding the Feast of the Nativity of our Saviour Christ. It begins from the Sunday that falls either upon St. Andrew's Day, being the 30th of November, or next to it, and continues to the Feast of Christ's Nativity commonly called *Christmas*. Our Ancestors shewed great Reverence and Devotion to this Time, in Regard to the Approach of the solemn Festival: For *in adventu Domini nulla assisa debet capi. Int. placita de temp. Regis Joh. Ebor.* 126. But the Statute *Westm.* 1. c. 48. Ordained that notwithstanding the usual Solemnity and Times of Rest, it should be lawful (in Respect of Justice and Charity, which ought at all Times to be regarded) to take Assises of Novel Disseisin, *Mort d'Ancestor*, &c. in the Time of *Advent*, *Septuagesima*, and *Lent*. This is also one of the Seasons, from the Beginning of which to the End of the Octaves of the Epiphany, the Solemnizing of Marriages is forbidden, without special Licence, as we may find from these old Verses,

*Conjugium Adventus prohibet, Helarique relaxat;
Septuagena vetat, sed Paschæ Octava reducit;
Rogatio vetitat, concedit Trina potestas.*

Ad ventrem Inspiciendum, A Writ mentioned in the Statute of *Essoins*. 12 Ed. 2. See *Ventre Inspiciendo*, by which a Woman is to be searched, whether she be with Child by a former Husband, on her with-holding Lands from the Heir.

Adultery, (*Adulterium, quasi ad alterius thorum*) *Anno* 1 H. 7. c. 4. and in divers old Authors termed *Adultery*, is the Sin of Incontinence between two married Persons; and if but one of the Persons be married, it is nevertheless *Adultery*. But in this last Case, it is called single *Adultery*, to distinguish it from the other, which is double. This Crime is severely punished by the Laws of God, and the ancient Laws of the Land: The

Julian Law, among the old Romans, made it Death; but in most Countries at this Time, the Punishment is by Fine, and sometimes Banishment: In *England* it is now punished by Fine, Penance, &c. King *Edmund a Saxon*, *Leg. suar*, cap. 4. *Adulterium affici jussit instar Homicidii. Canutus the Dane*, *Hominem Adulterum in exilium relegari jussit, facinoram nasum & aures præcidi. Leg. par. 2. c. 6. and cap. 50. Qui uxoratus faciet Adulterium, habeat Rex vel Dominus superiorem, Episcopus inferiorem. Leg. H. 1. c. 12. — Rex, &c. Præcipimus tibi quod diligenter inquiri facias per legales homines de Visn. Candeur. si Robertus Pincerna habens suspectum Will. Wake qui cum uxore sua Adulterium committeret, prohibuit ei ingressum domus sue, & si idem Will. post prohibitionem illam, domus ipsius Roberti ingressus Adulterium prædictum commisit, inde præfatus Robertus mentula eum privavit, & si inquisitio dederit, quod ita sit, tunc eidem Roberto & suis qui cum eo erant ad hoc faciend. terr. & Cattalla sua occasione illa in manum nostram seiscita. in pace esse facias, donec aliud inde tibi præcipimus, &c. Claus. 14. Joh. m. 2. Perhaps this might be in some Measure agreeable to a Law made by *William the Conqueror*, that whoever forced a Woman should lose his Genitals, the offending Parts. Before the Statute 22 Car. 2. which makes malicious maiming Felony, it was a Question, whether Cutting off the privy Members of a Man, taken in *Adultery* with another Man's Wife, was Felony or not? For according to *Braeton*, sequitur pena aliquando Capitalis: But *Anno 13 H. 3.* one *John a Monk* being taken by *Henry Hull* in the Act with his Wife, he cut off the privy Members of the Monk, and was only indicted for a Maihem. 3 Inst. 118. If a Wife elope from her Husband, and live with the *Adulterer*, (without being reconciled to the Husband) she shall forfeit her Dower. 1 Inst. 36. 2 Inst. 435. And there is a notable Case concerning *Margaret* the Wife of *John de Camois*, who with her Husband's Consent lived in *Adultery* with *Sir William Pannell*, yet lost her Dower. 2 Inst. *Adultery* being a Thing Temporal, as well as Spiritual, is against the Peace, &c.*

Advocate, Is the Patron of a Cause, assisting the Client with Advice, and who pleads for him: It is the same by the Civil and Ecclesiastical Laws, as a Counsellor by the Common Law. The Ecclesiastical or Church *Advocate*, was originally of two Sorts; either an *Advocate* of the Causes, and Interest of the Church, retained as a Counsellor and Pleader of its Rights; or an *Advocate*, or Patron, of the Presentation and Advowson. Both these Offices at first belonged to the Founders of Churches and Convents, and their Heirs, who were bound to protect and defend their Churches, as well as to nominate or present to them—As *Ailwin* Founder of *Ramsey Abbey*; *Proruit in medium, se Rameiensis Ecclesie Advocatum, se possessionum ejus tutorem allegans. Lib. Ramef. Sect. 49.* But when the Patrons grew negligent in their Duty, or were not of Ability or Interest in the Courts of Justice, then the Religious began to retain Law *Advocates*, to solicit and prosecute their Causes. *Vid. Spelman.*

Advocati, Were those which we now call Patrons, viz. who were the Founders of Churches, and reserved to them and their Heirs, a Liberty to present a Person on any Avoidance.

Advocatione Decimarum, A Writ that lies for Tithes, demanding the fourth Part, or upwards, that belong to any Church. *Reg. Orig. 29.*

Advow, (*Advocare*) To justify or maintain an Act formerly done. For Example; One takes a Distress for Rent, or other Thing, and he that is distrained sues a Replevin; now the Distrainer, justifying or maintaining the Act is said to *Advow* or *Avow*: And hence comes *Advowant* and *Advowry*. *Old Nat. Br. 43.* The Signification of this Word is also to bring forth any Thing: Anciently when stolen Goods were bought by one, and sold to another, it was lawful for the right Owner to take them where-ever they were found; and he in whose Possession they were found, was bound *advocare*, i. e. to produce the Seller to justify the Sale; and so on till they found the Thief. Afterwards the Word was taken for any Thing which a Man acknowledged to be his own, or done by him; and in this Sense it is mentioned in *Fleta*, lib. 1. cap. 5. par. 4. *Si vir ipsum in domo sua suscepit, nutriverit & advocaverit filium suum.*

Advowee, Or *Avowee*, (*Advocatus*) is used for him that hath Right to present to a Benefice: And by 25 Ed. 3. Stat. 5. we find *Advowee Paramount* is taken for the King, the highest Patron—*Advocatus est ad quem pertinet jus Advocationis alicujus Ecclesie, ut ad Ecclesiam, nomine proprio non alieno, possit presentare. Fleta lib. 5. c. 14.*

Advowson, (*Advocatio*) Signifies the Right of Presentation to a Church or Benefice. He who hath this Right to present is called *Patron*; because they that originally obtained the Right of Presentation to any Church, were Maintainers of, or Benefactors to the same Church: And therefore they are sometimes stiled *Patroni*, sometimes *Advocati*, and sometimes *Defensores*. When the Christian Religion was first established in *England*, Kings began to build Cathedral Churches, and to make Bishops; and afterwards in Imitation of them, several Lords of Manors founded particular Churches on some Part of their own Lands, and endowed them with Glebe, reserving to themselves and their Heirs, a Right to present a fit Person to the Bishop, when the same should become void: And this is called an *Advowson*, and he who hath this Right of Presentation is termed the Patron, it being presumed that he who founded the Church, will *Avow* and take it into his Protection, and be a Patron to defend it in its just Rights. 1 Nelf. Abr. 184. *Advowsons* are of two Kinds; Appendant, and in Gross: Appendant is a Right of Presentation dependant upon a Manor, Lands, &c. and passes in a Grant of the Manor, as incident to the same; and when Manors were first created, and Lands set apart to build a Church on some Part thereof, the *Advowson* or Right to present to that Church became appendant to the Manor. *Advowson* in Gross is a Right subsisting by it self, belonging to a Person, and not a Manor, Lands, &c. So that when an *Advowson* appendant is severed by Deed or Grant from the corporeal Inheritance to which it was appendant, then it becomes an *Advowson* in gross. 1 Inst. 121, 122. Also *Advowsons* are either Presentative, Collative, or Donative. *Advowsons* were formerly most of them appendant to Manors, and the Patrons parochial Barons; the Lordship of the Manor, and Patronage of the Church were seldom in different Hands till *Advowsons* were given to religious Houses; but of late Times the Lordship of the Manor, and the *Advowson* of the Church have been divided; and now not only Lords of Manors, but mean Persons have, by Purchase, the Dignity of Patrons of Churches, to the great Pre-

Prejudice thereof. By the Common Law the Right of Patronage is a real Right fixed in the Patrons or Founders, and their Heirs, wherein they have as absolute a Property as any other Man hath in his Lands and Tenements: For *Advowsons* are a temporal Inheritance, and Lay Fee; they may be granted by Deed or Will, and are Affests in the Hands of Heirs or Executors. 1 *Inst.* 119. A Recovery may be suffered of an *Advowson*; a Wife may be endowed of it; a Husband Tenant by the Curtesy; and it may be forfeited by Treason or Felony. 1 *Rep.* 56. 10 *Rep.* 55. If an *Advowson* descends to Coparceners, and the Church after the Death of their Ancestors becomes void, the eldest Sister shall first present. *Stat.* 21 *Ed.* 3. And when Coparceners, Joint-tenants, &c. are seised of an *Advowson*, and Partition is made to present by turns, each shall be seised of their separate Estate. 7 *Ann.* An Infant may present to a Church; and where an *Advowson* belongs to a Feme-Covvert, the Presentation must be by Husband and Wife. 1 *Inst.* 135. Persons seised of *Advowsons* being Papists, are disabled to make Presentations, and the Chancellors of the Universities shall present. 1 *W. & M. cap.* 26. Presentations to *Advowsons*, &c. for Money or other Reward, shall be void, &c. *Stat.* 31 *Eliz.* c. 6. Vid. *Presentation, Simony, &c.*

Advocatio medietatis Ecclesie, *Advowson* of the Moiety of the Church, is where there are two several Patrons, and two several Incumbents in one and the same Church, the one of the one Moiety, the other of the other Moiety thereof. *Co. Lit. Medietas Advocationis*, a Moiety of the *Advowson*, is where two must join in the Presentation, and there is but one Incumbent; as where there are two Parceners: And though they agree to present by turns, yet each of them hath but the Moiety of the Church. 1 *Inst.* 17. But *Vide Stat.* 7 *Anna.*

Advowson of religious Houses. Where any Persons founded any *House of Religion*, they had thereby the *Advowson* or Patronage thereof, like unto those who built and endowed Parish-Churches. And sometimes these Patrons had the sole Nomination of the Abbot, or Prior, &c. either by Investiture or Delivery of a Pastoral Staff: Or by direct Presentation to the Diocesan; or if a free Election were left to the Religious, a *Conge d'Eslire*, or Licence for Election, was first to be obtained of the Patron, and the Elect confirmed by him. *Kennet's Paroch. Antiq.* 147, 163.

Aerie, (*Aeria accipitrum*) *Airy* of Goshawks. It is the proper Term for Hawks, for that which of other Birds we call a Nest. *Stat.* 9 *H.* 3. *cap.* 12. And it is generally said to come from the French Word *Aire*, or *Eyre*, a Hawk's Nest: But *Spelman* derives it from the Saxon *Eghe*, which the Germans and Normans made *Eye*, an Egg; whence *Eyerie* was a common Name for a Bird's Nest, viz. A Repository of Eggs. The Liberty of keeping these *Aeries* of Hawks was a Privilege, granted to Great Britain: And the Preserving the *Aeries* in the King's Forests was one Sort of Tenure of Lands by Service. *Anno* 20 *Ed.* 1. *Simon de Raghton & al. Tenent terras in Raghton, &c. per Serjantiam custodiendi Aerias Austurcorum Domini Regis.*

Ætatio Capitis, (*Pretium Hominis*) King *Athelstane* ordained that Fines should be paid for Offences committed against several Persons according to their Degrees and Quality, by Estimation of their Heads. *Cress. Ch. Hist.* 834. *Leg. Hen.* 1.

Ætate probanda, A Writ that lay to inquire, Whether the King's Tenant holding in chief by Chivalry, were of full Age to receive his Lands into his own Hands. It was directed to the Escheator of the County; but is now disused, since Wards and Liveries are taken away by the Statute. *Reg. Orig.* 294.

Affeerers, (*Afferatores*) From the Fr. *Affier*, to affirm. They are those that in Courts-Leet upon Oath settle and moderate the Fines imposed on such Persons as have committed Faults arbitrarily punishable, viz. that have no express Penalty appointed by Statute: And they are also appointed for moderating Amercements in Courts-Baron. The Persons nominated to this Office, affirm upon their Oaths what Penalty they think in Conscience ought to be inflicted on the Offenders. This Word is used *Stat.* 25 *Ed.* 3. c. 7. Where Mention is made, that the Justices before their Rising in every Sessions shall cause the Amerciaments to be *affeer'd*. And this seems to be agreeable to *Magna Charta*, by which it is ordained, that Persons are to be amerced after the Manner of the Fault; and the Amerciaments shall be assessed by the Oath of honest and lawful Men of the Vicinage. 9 *H.* 3. c. 14.

The Oath of Affeerers.

YOU shall well and truly Affeer and Affirm the several Amercements here made, and now to you read over; you shall spare no one out of Love, Fear, or Affection, nor raise or inbase any out of Hatred or Malice, but impartially shall do your Duties herein. So help you God.

Affeurer, (*Affeur*) In the Customary of Normandy c. 20. this Word the Latin Interpreter expresseth by *Taxare*, that is to set the Price of a Thing, as *Æstimare*, *indicare*, &c.

Affiance, The Plighting of Troth between a Man and a Woman, upon Agreement of Marriage. It is derived from the Latin Word *Affidare*, and signifies as much as *fidem ad alium dare*. *Lit. Sect.* 39.

Affidare, To plight one's Faith, or give, or swear Fealty, i. e. Fidelity. *M. S. Dom. de Farendon* 22.

Affidatio Dominozum, An Oath taken by the Lords in Parliament, *Anno* 3 *H.* 6. *Rot. Parl.*

Affidatus, Signifies a Tenant by Fealty, also a Retainer—*Affidatio accipitur pro mutua fidelitatis connexionione, tam in sponsaliis, quam inter Dominum & vassallum*—*Proles de Affidata & non maritata, non est Heres.* *M. S. Arth. Trevor Ar.*

Affidari, *Seu Affidari ad Arma*. To be mustered and inrolled for Soldiers upon an Oath of Fidelity. *Dom. de Farendon, M. S.* 55.

Affidabit, Signifies in Law an Oath in Writing; as to make *Affidavit* of a Thing, is to testify it upon Oath. An *Affidavit* generally speaking is an Oath in Writing, sworn before some Person who hath Authority to take such Oath: And the true Place of Habitation, and true Addition of every Person who shall make an *Affidavit*, is to be inserted into his *Affidavit*. 1 *Lill. Abr.* 44, 46. *Affidavits* ought to set forth the Matter of Fact only, which the Party intends to prove by his *Affidavit*; and not to declare the Merits of the Cause, of which the Court is to judge. 21 *Car.* 1. *B. R.* The Plaintiff or Defendant may make *Affidavit* in a Cause depending; but it will not be admitted in Evidence at the Trial, only upon

Motions. 1 Lill. 44. When an *Affidavit* hath been read in Court, it ought to be filed, that the other Party may see it, and take a Copy of it. *Pasch.* 1655. An *Affidavit* taken before a Master in Chancery, will not be of any Force in the Court of King's Bench, or other Courts, nor ought to be read there; for it ought to be made before one of the Judges of the Court wherein the Cause is depending. *Style's Rep.* 445. But by *Stat.* 29 Car. 2. c. 5. The Judges of the Courts at *Westminster* by Commission may impower Persons in the several Counties of England to take *Affidavits* concerning Matters depending in their several Courts, as Masters in Chancery extraordinary used to do. Where *Affidavits* are taken by Commissioners in the Country, according to the Statute 29 Car. 2. And 'tis expressed to be in a Cause depending between two certain Persons, and there is no such depending, those *Affidavits* cannot be read, because the Commissioners have no Authority to take them; (and for that Reason the Party cannot be convicted of Perjury upon them) but if there is such a Cause in Court, and *Affidavits* taken concerning some collateral Matter, they may be read. 2 Salk. 461. On a Rule to shew Cause, &c. *Affidavits* that contain new Matter, are not to be read; but if they tend to confirm what had been alledged and sworn before the Rule was made, then they shall be read. *Salk. ibid.* No dilatory Plea shall be received in any Court, unless the Truth thereof be made out by *Affidavit*; or some probable Matter be shewn to believe the Fact. *Stat.* 4 & 5 Ann. *Affidavits* are usually for certifying the Service of Process, or other Matters touching the Proceedings in a Cause.

An *Affidavit* of serving a *Subpœna* in Chancery.

In Canc. Inter A. B. Quer. C. D. Def.

E. F. of, &c. *Gent. maketh Oath, That he this Deponent did on, &c. last, serve the Defendant C. D. with a Writ of Subpœna out of this Honourable Court, by delivering the said Writ under Seal to the said C. D. whereby the said C. D. was directed to appear in the said Court on the Morrow of the Holy Trinity then next, at the Suit of A. B. Complainant.*

Jurat. die, &c. coram, &c.

Affinage, (Fr. *Affinage*) Refining of Metal, *Purgatio metalli, inde fine and refine.*

Affirm, (*Affirmare*) Signifies to ratify or confirm a former Law or Judgment. So is the Substantive *Affirmance* used, *Anno* 8 H. 6. a 12. And so is the Verb it self by *West. Part 2. Symbol. Tit. Fines, Sect.* 152. If the Judgment be affirmed, &c. So also by *Crompton* in his *Jurisd.* f. 166. 19 H. 7. cap. 20.

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; and if they make a false *Affirmation*, they are subject to the Penalties of Perjury: But this generally relates only to Oaths to the Government, and on publick Occasions; for *Quakers* may not give Testimony in any criminal Cause, &c. *Stat.* 7 & 8 W. 3. c. 34. See *Quakers*.

Affozare, To set a Value or Price on a Thing *Et quod Amerciament. predictor. tenentium affozentur & taxentur per Sacramentum parium.* *Charta Anno* 1316. *apud Thorn.* Du Cange.

Affozatus, Appraised or valued, as Things vendible in a Fair or Market——*Retinuit Rex potestatem pardonandi ei omnimoda Amerciamenta tam Affozata, quam non Affozata, tam de se quam de omnibus hominibus.* *Cartular. Glaston. M. S. f.* 58.

Afforciamēt, (*Afforciamētum*) A Fortrefs, strong Hold, or other Fortification——*Pro reparatione murorum & aliorum Afforciamētorum dictæ Civitatis, &c.* *Pryn. Animad. on Coke, fol.* 184.

Afforciamētum Curie, The Calling of a Court upon a solemn and extraordinary Occasion. *Cartul. Glaston.* 43.

Afforcietur, To add, increase, or make stronger——*Cum juratores in veritate dicenda sunt sibi contrarii de consilio Curie Afforcietur assisa ita quod apponantur alii juxta numerum majoris partis que dissenserit.* *Bract. lib.* 4. c. 19. viz. Let the Witnesses be increased.

Afforest, (*Afforestare*) To turn Ground into a Forest. *Chart. de Forest. c.* 1. When Forest Ground is turned from Forest to other Uses, it is called *Dis-afforested.* *Vide Forest.*

Affray, Is derived from the Fr. Word *Effrayer*, to affright, and it formerly meant no more; as where Persons appeared with Armour or Weapons not usually worn, to the Terror of others. *Stat.* 2 Ed. 3. c. 3. But now it signifies a Skirmish or Fighting between two or more, and there must be a Stroke given, or offered, or a Weapon drawn, otherwise it is not an *Affray*. 3 *Inst.* 158. It is inquirable in the Court-Leet; and punishable by Justices of Peace in their Sessions, by Fine and Imprisonment. And it differs from Assault, in that it is a Wrong to the Publick; whereas Assault is of a private Nature. *Lamb. lib.* 2. A Justice of Peace may commit *Affrayers*, until they find Sureties of the Peace: A Constable may require *Affrayers* to depart, and if they resist, he may call others to his Assistance; who, if those refuse to assist him, may be fined and imprisoned: And a private Person, or Stander by, may put a Stop to an *Affray*, and seize the Offenders, where Persons are assembled in a tumultuous Manner to break the Peace. 3 *Inst.* 158. *H. P. C.* 135. In Case a Person be dangerously wounded, any Man may apprehend the Offender, and carry him before a Justice, in the same Manner as a Constable. *Dalt.* 35. In a very dangerous *Affray*, a Constable may justify Commitment, till the Offenders find Sureties for the Peace. *Lamb.* 139. He may likewise put the *Affrayers* in the Stocks till he can procure proper Assistance to convey them to Gaol. *Dalt.* 38. But in all Cases of *Affrays*, the Constable must apprehend the Persons offending before the *Affray* is over, or else he may not do it without a Warrant from a Justice, except it be in an extraordinary Case; as where a Person is wounded dangerously. *Dalt.* 36. If a Constable is hurt in an *Affray*, he may have his Remedy by Action of Trespass, and have good Damages; but the *Affrayers* if they are hurt, shall have no Remedy. *Lamb.* 141. And where any other Persons receive Harm from the *Affrayers*, they may have Remedy by Action against them. *Dalt.* 35.

An Indictment for an *Affray*.

JUR. &c. *Quod A. B. de, &c. C. D. & E. F. de, &c. vi & armis, viz. cum Gladiis & aliis bellicosis Instrumentis tal. die, &c. apud, &c. in com. prad. arraiat. & illicite congregat. insultum & Af-*

Affraiam invicem fecerunt in terrorem & perturbationem diverforum subditorum Dom. Regis tunc ibid. existen. & in malum & perniciosum exemplum Liggeorum dicti Regis, & contra pacem dicti Dom. Regis coron. & dignitat. suas.

Affreightment, (*Affretamentum*) The Freight of a Ship, from the French *Fret*, which signifies the Tons. *Pat. 11 Hen. 4.* See *Charter-Party*.

Affris, vel *Affa*, Bullocks, or Horses or Beasts of the Plough. — *Viccomes liberet ei omnia catalla debitoris, exceptis Bobus & Affris caruca.* Westm. 2. c. 18. *Et communiam Pastura ad decem Boves & duos Affros in predictis Pasturis.* Mon. Angl. par. 2. f. 291. And in the County of Northumberland, the People to this Day call a dull or slow Horse, a false *Aver* or *Afer*. Spelm. Gloss.

Agalma, The Impression or Image of any Thing on a Seal: — *Ego Dunstanus hanc Libertatem crucis Agalmate consignavi* — Chart. Edg. Reg. pro Westmonast. Eccles. Anno 968.

Age, (*Ætas*, Fr. *Age*) In common Acceptation signifies a Man's Life from his Birth to any certain Time, or the Day of his Death: It also hath Relation to that Part of Time wherein Men live. But in the Law it is particularly used for those special Times which enable Persons of both Sexes to do certain Acts, which before thro' Want of Years and Judgment they are prohibited to do. As for Example; 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 chuse his Guardian; and at Twenty-one he may alien his Lands, Goods and Chattels: A Woman at nine Years of *Age* is dowable; at Twelve she may consent to Marriage; at Fourteen she is at Years of Discretion, and may chuse a Guardian; and at Twenty-one she may alienate her Lands, &c. 1 *Inst.* 78. There are several other *Ages* mentioned in our antient Books, relating to Aid of the Lord, Wardship, &c. now of no Use. *Co. Lit.* The *Age* of Twenty-one is the full *Age* of Man or Woman; which enables them to contract and manage for themselves, in Respect to their Estates, until which Time they cannot act with Security to those as deal with them; for their Acts are in most Cases either void, or voidable: *Perk.* But a Person under Twenty-one, may contract for Necessaries suitable to his Quality, and it shall bind him: Also one under *Age* may be Executor of a Will. 1 *Inst.* 171. And at fourteen Years of *Age* a Person may dispose of Goods and Personal Estate by Will; tho' not of Lands 'till the *Age* of Twenty-one. A Person under the *Age* of Twenty-one may make a Purchase; but at his full *Age* he may agree or disagree to it. 1 *Inst.* 2. So where Persons marry, the Man under the *Age* of Fourteen, or the Woman within Twelve, they may disagree to the Marriage at those *Ages*: And the Law is the same in other Cases. Persons under the *Age* of Fourteen, are not generally punishable for Crimes: But if they do any Trespas, they must answer for the Damage. 1 *Inst.* 247. 2 *Roll. Abr.* 547. Fourteen is the *Age* by Law to be a Witness, being the *Age* of Discretion; and in some Cases a Person of nine Years of *Age* has been allow'd to give Evidence. 2 *Hawk.* 434. None may be a Member of Parliament under the *Age* of twenty-one Years; and no Man can be ordained Priest till Twenty-four; nor be a Bishop till thirty Years of *Age*.

Age Prier, (*Ætatem precari* or *Ætatis precatio*) Is when an Action being brought against a Person under *Age* for Lands which he hath by Descent, he by Petition or Motion shews the Matter to the Court, and prays that the Action may stay 'till his full *Age* of twenty-one Years, which the Court generally agrees to. *Terms de Ley* 30. But as a Purchaser, a Minor shall not have *Age-Prier*: Nor in a Writ of Affize, because it is of his own Wrong, and this Writ shall not be delayed. *Stat.* 3 Ed. 1. 38 Ed. 3. c. 27. Nor in a Writ of Dower; or of Partition. *Hob.* 242. In a Writ of Debt against an Heir, he shall have his *Age*, for at full *Age* he may plead *Riens per Descent*, or a Release to his Ancestor, and be discharged. *Dano. Abr.* 259. See *Parol Demurrer*.

Agensfrida, The true Lord or Owner of any Thing. — *Si porcus non fuerit ibi sapius quam semel det Agensfrida unum solidum.* Leg. Inæ, cap. 50. apud Brompt. c. 45.

Agenhine, A Guest at an Inn after three Nights, when accounted one of the Family. See *Hogbenhine*.

Agent and Patient, Is when a Person is the Doer of a Thing, and the Party to whom done. As where a Woman endows her self of the best Part of her Husband's Possessions, this being the sole Act of her self to her self, makes her *Agent and Patient*. Also if a Man be indebted unto another, and afterwards he makes the Creditor his Executor, and dies, the Executor may retain so much of the Goods of the Deceased as will satisfy his Debt; and by this Retainer he is *Agent and Patient*, that is, the Party to whom the Debt is due, and the Person that pays the same. But a Man shall not be Judge in his own Cause, *Quia iniquum est aliquem suæ rei esse judicem.* 8 Rep. 138.

Agild, Signifies to be free from Penalties, not subject to the customary Fine or Imposition. *Sax. a Gild, Sine multa.* Leges Aluredi, cap. 6. *Si utlagata efficiat ut occidatur, pro eo quod contra Dei vestrum & Regis imperium Stet* — jaceat Agild. In Leg. Hen. 1. c. 88. *Agilde*, was a Person so vile, that whoever kill'd him was to pay no Mulct for his Death.

Agiler, From the Sax. *a gile*, an Observer or Informer.

Agilarius, A Hey-ward, Herd-ward, or Keeper of Cattle in a common Field. Towns and Villages had their Heywards, to supervise and guard the greater Cattle, or common Herd of Kine and Oxen, and keep them within due Bounds; and if these were servile Tenants, they were privileged from all customary Services to the Lord, because they were presumed to be always attending their Duty, as a Shepherd on his Flock. And Lords of Manors had likewise their Heywards, to take Care of the Tillage, Harvest-Work, &c. and see that there were no Incroachments made on their Lordships: But this is now the Business of Bailiffs, *Kennet's Paroch. Antiq.* 534, 576. The *Agillarius* or Heyward, was sworn in his Office in the Lord's Court. *Kitch.* 46.

Agist, (from the Fr. *Giste*, A Bed or Resting-place, or from *Gister*, i. e. *Stabulari*) Signifies to take in and feed the Cattle of Strangers in the King's Forest, and to gather up the Money due for the same. *Chart. de Foresta.* 9 H. 3. c. 9. The Officers appointed for this Purpose are called *Agisters*, or *Gift-takers*, and are made by the King's Letters Patent: There are four of them in every Forest wherein the King hath any Pannage.

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Manw. For. Laws 80. They are also called *Agistators*, to take Account of the Cattle *agisted*.

Agistment, (*Agistamentum*) Is where other Men's Cattle are taken into any Ground, at a certain Rate *per Week*. Our Graziers call the Cattle which they thus take in to keep *Gisements*; and to *Gise* or *Fuice* the Ground, is when the Occupier thereof feeds it not with his own Stock, but takes in the Cattle of others to *agist* or pasture it. *Agistment* is likewise the Profit of such Feeding in a Ground or Field: And extends to the Depasturing of barren Cattle of the Owner, for which Tithes shall be paid to the Parson. There is *Agistment of Sea-Banks*, where Lands are charged with a Tribute to keep out the Sea. *Terra Agistata* are Lands whose Owners are bound to keep up the Sea-Banks. *Spelm. in Romney-Marsh*. **Agitatio Animalium in Foresta**, The Drift of Beasts in the Forest. *Leg. Forest.*

Agnus Dei, A Piece of white Wax in a Flat oval Form, like a small Cake, stamp'd with the Figure of the Lamb, and consecrated by the Pope. *Agnus Dei*, Crosses, &c. are not permitted to be brought into this Kingdom, on Pain of a *Premunire*. Stat. 13 Eliz. c. 2.

Agararia Lex, A Law made by the Romans for Distribution of Lands among the common People.

Agreement, *Agreementum*, (*aggregatio mentium*) Is a joining together of Two or more Minds in any Thing done, or to be done. *Plowd.* 17. It is Threefold, 1st, An *Agreement* executed already at the Beginning; as where Money is paid for the Thing agreed, or other Satisfaction made. 2dly, An *Agreement* after an Act done by another; as where one doth such a Thing, and another Person agrees to it afterwards, which is executed also: And, 3dly, An *Agreement* executory, or to be perform'd *in futuro*. This last Sort of *Agreement* may be divided into two Parts; one certain at the Beginning, and the other when the Certainty not appearing at first, the Parties agree that the Thing shall be perform'd upon the Certainty known. *Terms de Ley* 31. Every *Agreement* ought to be perfect, full and compleat, being the mutual Consent of the Parties; and ought to be executed with a Recompence, or be so certain as to give an Action or other Remedy for the same. *Plowd.* 5. An *Agreement* without Satisfaction, is to no Purpose. *Cro. Car.* 193. Any Thing under Hand and Seal, which imports an *Agreement*, will amount to a Covenant: And a *Proviso*, by Way of *Agreement*, amounts likewise to Covenant; and Action may be brought upon them. 1 *Lev.* 155. A forced *Agreement* of the Party is accounted no *Agreement*; and therefore he that did agree to the Thing, shall not be compelled to perform it. 1 *Lill.* 48. An *Agreement* made only by Parol, may be discharged and made void, at any Time before broken, by Parol only, without Satisfaction: But not after it is broken, when an Injury is done. 22 *Car.* 1. B. R. *Agreements* are to be in Writing by Stat. 29 *Car.* 2. c. 1. of Frauds and Perjuries: And by the Common Law, are govern'd by the Intention, or as near it as may be. They are either concerning Lands or Goods.

Articles of Agreement for Sale of an Estate.

Articles of Agreement indented, made and concluded upon this Day and Year, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, as followeth, viz.

I *Primis*, The said A. B. in Consideration of the Sum of, &c. to be paid as herein after is

A I

mentioned, doth covenant and agree with the said C. D. That he the said A. B. shall and will, at the Costs and Charges of the said C. D. on or before the Day, &c. next coming, by such Conveyances, Ways and Means in the Law as his Counsel shall reasonably advise, well and sufficiently grant, convey and assure to the said C. D. and his Heirs, or to whom he or they shall appoint, and to such Uses as he or they shall direct, All that Messuage, Tenement, &c. with Covenants to be therein contained against all Incumbrances done or committed by him the said A. B. or any claiming under him. *Item*, The said C. D. for himself, his Heirs and Assigns, doth covenant and grant to and with the said A. B. his Heirs and Assigns, That he the said C. D. shall and will, on executing the said Conveyance, pay unto the said A. B. his Heirs or Assigns, the said Sum of, &c. as and for the Purchase-Money for the said Messuage, Tenement and Premises above-mentioned. *Item*, It is further agreed by and between the said Parties to these Presents, That the said C. D. his Heirs and Assigns, shall and may, on the Day, &c. enter into and upon the said Premises, and receive the Profits thereof, to his and their own Use and Uses. *In Witness, &c.*

Aid, (*Auxilium*) Is all one with the French *Aide*, and is generally understood to be a Subsidy granted to the Crown. By the antient Law of the Land, the King and any Lord of the Realm, might lay an *Aid* upon their Tenants, for Knighting an eldest Son, or Marriage of a Daughter; but this is taken away by the Statute 12 *Car.* 2. This Imposition, which was often levied in antient Times, seems to have descended to us from *Normandy*, or rather from the feudal Laws. *Grand Custum.* c. 35. It is said to differ from Tax in Signification; for Taxes were formerly levied at the Will of the Lord, upon any Occasion whatsoever, but *Aids* could not be levied but where it was lawful and customary so to do; as to make the eldest Son a Knight, marry the eldest Daughter, or to redeem the Lord from Prison. By Statute 34 *Ed.* 1. It is ordained that the King shall levy no *Aid* or Tax without his Parliament.

Aid-Prayer, (*Auxilium Petere*) *Aid-Prayer*, A Word made use of in Pleading, for a Petition in Court to call in Help from another Person that hath an Interest in the Thing contested: This gives Strength to the Party praying in *Aid*, and to the other likewise, by giving him an Opportunity of avoiding a Prejudice growing towards his own Right. As Tenant for Life, by the Curtesy, for Term of Years, &c. being impleaded, may pray in *Aid* of him in Reversion; that is, desire the Court that he may be called by Writ to alledge what he thinks proper for the Maintenance of the Right of the Person calling him, and of his Own. *F. N. B.* 50. *Aid* shall be granted to the Defendant in a Writ of Trespass: It lies in *Ejectione firma*, for the Defendant, when the Title of the Land is in Question: Lessee for Years, shall have *Aid* in Trespass; and Tenants at Will shall have *Aid*: But Tenant in Tail shall not have *Aid* of him in Remainder in Fee; for he himself hath Inheritance. *Danv. Abr.* 292. There ought to be Privy between a Person that joins in *Aid* and the other to whom he is joined; otherwise Joinder in *Aid* shall not be suffered. *Danv.* 318. There is a Prayer in *Aid* of the King: Of *Patrons*, by Parsons, Vicars, &c. And between *Coparceners*, where one Coparcener shall have *Aid* of

of the other to recover *pro rata*. Co. Litt. And also Servants, having done any Thing lawfully in Right of their Masters, shall have *Aid* of them. *Terms de Ley* 34.

Aid of the King, (*Auxilium Regis*) Is where the King's Tenant prays *Aid of the King*, on Account of Rent demanded of him by others. A City or Borough, that holds a Fee-farm of the King, if any Thing be demanded against them which belongs thereto, they may pray in *Aid of the King*: And the King's Bailiffs, Collectors, or Accountants shall have *Aid of the King*. In these Cases, the Proceedings are stop'd till the King's Counsel are heard to say what they think fit, for avoiding the King's Prejudice. *Terms de Ley* 35. Stat. 4 Ed. 1. and 14 Ed. 3.

Aile, (of the French *Aieul*, i. e. *Avus*) Signifies a Writ which lies where a Man's Grandfather or Great Grandfather (called *Besaiel*) being seised of Lands and Tenements in Fee-simple, the Day that he died, and a Stranger abateth or entereth the same Day, and dispossesses the Heir of his Inheritance. F. N. B. 222. In this Writ, a Man cannot make Title higher than his *Besaiel*, or the Brother of his *Besaiel*. 3 E. 3. The Aunt and the Niece shall join in a Writ of *Aiel* of the Seisin of their Grandfather. And the Writ runs thus: *Rex Vic. &c. Prac. A. B. quod juste, &c. redd. B. & D. unum Messuagium, &c. de quo D. Avus præd. B. & proavus præd. D. cujus hæred. ipsi sunt, fuit seistus, &c.*

Alimentum, i. e. *Easements*, Which include any Liberty of Passage, open Way, Water-course, &c. for the Ease and Accommodation of Tenants. *Kitch.* 105.

Al, *Ald*, Words which begin with *Al* or *Ald* in the Names of Places, signify Antiquity; as *Alborough*, *Aldworth*, &c.

Alancrarius, A Manager and Keeper of Dogs, for the Sport of Hawking, from *Alanus* a Dog, known to the Antients. *Du Fresne*. But Mr. Blount renders it a Faulconer. — Robertus de Chedworth Vice-Com. Linc. liberavit lvi s. viii d. Johanni de Bellovento, pro putura septem Leporarium & trium Falconum & Alancrarii & pro vadiis unius Bracerarii. 16 E. 1.

Alba, The *Alb*, A Surplice or white sacerdotal Vest, antiently used by officiating Priests.

Alba firma, This Word is used by my Lord Coke, and seems to signify a Tenure. — *Duplex est Tenura in Com. Westmorland, scilicet una per Albam firmam, & alia per Cornagium, &c.* 2 Inst. 10.

Albergellum, The same with *Halsberga*: *Omnis homo, &c. habet Albergellum & capellum ferreum, Lanceam & Gladum.* It here signifies a Defence for the Neck. *Hoveden* 611.

Album, Is a Word made Use of for white Rent, paid in Silver. *Rot. Parl.* 6 H. 3.

Alder. Signifies the First; as *Alder best*, is the best of all; *Alder liefest*, the most Dear.

Alderman, (Sax. *Ealdorman*, Lat. *Aldermannus*) Hath the same Signification as Senator, or Senator: But at this Day, and long since, those are called *Aldermen* who are Associates to the Civil Magistrate of a City or Town corporate. Stat. 24 H. 8. c. 13. There was formerly an *Aldermannus Hundredi*, which was first introduced in the Reign of H. 1. Among his Laws, cap. 8. we read, *Præst autem singulis hominum novenis Decimus, & toti simul Hundredo unus de melioribus, & vocetur Aldermannus, qui Dei leges & hominum jura vigilantia studeat observantia promovere.* *Du Cange*. And

in *Spelman's Glossary* we find that we had antiently a Title of *Aldermannus totius Angliæ*, Witness this Inscription upon a Tomb in *Ramsay Abbey*. — *Hic requiescit D. Alwinus incliti Regis Eadgari cognatus, totius Angliæ Aldermannus, & hujus Sacri Coenobii miraculosus Fundator.* This Officer was in the Nature of Lord Chief Justice of England. *Spelm.* *Alderman* was one of the Degrees of Nobility among the Saxons, and signified an Earl; sometimes applied to a Place, it was taken for a General, with a Civil Jurisdiction as well as military Power; which Title afterwards was used for a Judge. But it literally imports no more than Elder.

Alæ Ecclesiæ, The Wings or Side Iles of the Church, from the French *Les Ailes de l'Eglise*. — *Ad bases pilariorum murus erat tabulis Marmoreis compositus, qui Chorum cingens & Presbyterium, corpus Ecclesiæ lateribus quæ Alæ vocantur, dividebat.* Gervaf. Doroborn in Descript. Eccl. Cantuar.

Alcenarium, A Sort of Hawk called a *Lanner*. See *Putura*.

Alfeth, (Sax. *Alfeth*) A Chauldron or Furnace, wherein antiently boiling Water was put for a Criminal to dip his Arm in up to his Elbow, and there hold it for some Time. *Du Cange*.

Alehouses, Are to be licensed by Justices of Peace; who have Power to put down *Alehouses*, &c. But the Act is not to restrain Selling of *Ale* in Fairs. 5 & 6 Ed. 6. c. 25. *Alehouse*-keepers are liable to a Penalty for keeping *Alehouses* without Licence; for selling their *Ale* in short Measure; and permitting Tippling, &c. 1 Jac. 1. c. 9. 3 Car. 1. c. 3. 11 & 12 W. 3. c. 15. See *Inns*.

Aler San jour, (Fr.) To go without Day, viz. To be finally dismissed the Court, because there is no further Day assign'd for Appearance. *Kitch.* 146.

Ale-Silber, A Rent or Tribute annually paid to the Lord Mayor of London by those that sell *Ale* within the Liberty of the City. *Antiq. Purvey.* 183.

Alestake, A May-Pole call'd *Alestake*, because the Country People drew much *Ale* there: But it is not properly the common May-Pole, but rather a long Stake drove into the Ground, with a Sign on it, that *Ale* was to be sold.

Ale-taster, Is an Officer appointed in every Court-Leet, sworn to look to the Affize and Goodness of Bread, *Ale* and Beer, within the Precincts of the Lordship. *Kitch.* 46. In London there are *Ale-Conners*, who are Officers appointed to taste *Ale* and Beer, &c. in the Limits of the City.

Alias, Is a second or further Writ, issued from the Courts at Westminster, after a *Capias*, &c. sued out without Effect. *Præf. Attorn. Edit.* 1.

Alias dict. Is to ascertain the Name and Additions of the Defendant in Declarations for Debt on Bond, &c. See *Misnomer*.

Alien (*Alienus*, *Alienigena*) One born in a strange Country out of the Allegiance of the King: It is taken for the contrary to a Denizen or natural Subject. But a Man born out of the Land, so as it be within the Limits of the King's Obedience beyond Sea; or born of English Parents out of the Obedience of the King, if the Parents at the Time of the Birth were of such Obedience, is no *Alien*. Statute 25 Ed. 3. c. 2. And if one born out of the King's Obedience, come and reside in England, his Children begotten and born here are not *Aliens* but Denizens. 7 Rep. All Persons being the King's natural-born Subjects,

Subjects, may inherit, as Heirs to their Ancestors, tho' their Ancestors were *Aliens*. By Statute 11 & 12 W. 3. c. 6. Children of an Embassador in a foreign Country, by a Wife being an *English* Woman, by the Common Law, are natural-born Subjects, and not *Aliens*. 7 Rep. 18. And if an *English* Merchant living beyond Sea marries a Wife there, and hath a Child by her, and dies; this Child is born a Denizen, and shall be Heir to him, notwithstanding the Wife be an *Alien*. Cro. Car. 605. March 91. Those which are born in the *English* Plantations, are Subjects born. Danv. Abr. 324. There are two Incidents regularly that are necessary to make a Subject born; First, That his Parents, at the Time of his Birth, be under the actual Obedience of the King; Secondly, That the Place of his Birth, be within the King's Dominions. 7 Rep. 18. And it is the Place of Birth that makes the Disability of an *Alien* to have Lands, &c. The Blood is not the Disability, but the Place where born. Cro. Jac. 539. An *Alien* can hold no Land by Descent, or Purchase, or be Tenant by the Curtesy, or in Dower. 5 Rep. 502. But 'tis said he may suffer a Recovery, and it will bar the Estate-tail. 4 Leon. 84. An *Alien* may purchase a House for Years, for Habitation during his Residency, as necessary for Trade; tho' not Lands. If an *Alien*, being a Merchant, leaves the Realm, the King shall have the Lease; and if he dies here possessed thereof, his Executors or Administrators shall not have it, but the King; he having it only as an Habitation for his Trade. If an *Alien* is no Merchant, the King shall have his Lease for Years, tho' it were for his Habitation. 7 Rep. 18. 1 Inst. 2, 129. 2 Inst. 741. In Case an *Alien* purchase Lands, the King upon Office found, shall have it. 1 Inst. 2. *Aliens* are prohibited to purchase Benefices, without the King's Licence, &c. Stat. 7 R. 2. c. 12. A Devise of Lands to an *Alien*, is void. 4 Leon. 82. And if a Man be bound to an *Alien* Enemy in an Obligation, the Bond is void to him; but the King shall have it. 1 Lev. 59. Danv. Abr. 322. *Aliens* may obtain Goods and Personal Estate, by Trade, &c. And may maintain Actions for the same; they may also have Actions of Assault and Battery, and for Support of their Credit. 1 Bulst. 134. But they cannot bring any Real Action, unless it be for an House for necessary Habitation, being for the Benefit of Trade. 7 Rep. And an *Alien* Enemy cannot maintain any Action whatsoever, nor get any Thing lawfully within this Realm. Terms de Ley 36. An *Alien* Enemy coming into this Kingdom, and taken in War, shall suffer Death by the Martial Law; and not be indicted at Common Law, for the Indictment must conclude *contra Ligeantiam suam*, &c. And such was never in the Protection of the King. Molloy de jur. Marit. 417. *Aliens* living under the Protection of the King, may have the Benefit of a general Pardon. Hob. 271. An *Alien* Friend may be an Administrator to a Person dying. 1 Ventr. 417. No *Alien* shall be returned on any Jury, nor be sworn for Trial of Issues between Subject and Subject, &c. but where an *Alien* is Party in a Cause depending, the Inquest of Jurors are to be half Denizens, and half *Aliens*: But in Cases of High Treason, this is not allowed. 2 Inst. 17. An *Alien* shall not have any Vote in the Choice of Knights of the Shire, or Burgesses to Parliament. Hob. 270. And Persons that are *Aliens*, or born out of the Realm, are incapable to be Members of Parliament, enjoy

Offices, &c. Stat. 12 W. 3. c. 2. *Aliens* are to take an Oath to be true to the King, and obedient to his Laws: They shall not take Apprentices, but such as are born in the King's Allegiance. Strangers not being Denizens and Householders, are restrain'd from keeping any Shop, &c. to exercise their Handicrafts: And the Goods and Wares of *Aliens*, are to be examined and marked, by Wardens of Handicrafts, &c. 14 H. 8. 21 H. 8. c. 16. 32 H. 8. c. 16. No *Alien* shall be a Factor abroad, in the *English* Plantations, under Penalties. Stat. 12 Car. 2. c. 18. See *Artificers*.

Alienation, (from *Alienare* to alien) A Transferring the Property of a Thing to another. It chiefly relates to Lands and Tenements: As to *alien* Land in Fee, is to sell the Fee-simple thereof: So likewise of Estates in Fee-tail, &c. And to *alien* in Mortmain, is to make over Lands or Tenements to a Religious House or Body Politick; for which the King's Licence is to be obtained. Stat. 15 R. 2. c. 5. Fines for *Alienations* are taken away by Statute; except Fines due by particular Customs of Manors. 12 Car. 2. Danv. Abr. 327. All Persons who have a Right to Lands, may generally *alien* them to others: But some *Alienations* are forbidden; as an *Alienation* by a particular Tenant, such as Tenant for Life, &c. which infers a Forfeiture of the Estate. 1 Inst. 118. For if Lessee for Life, by Livery *alieneth* in Fee, or make a Lease for the Life of another, or Gift in Tail, it is a Forfeiture of his Estate: So if Tenant in Dower, Tenant for another's Life; Tenant for Years, &c. do *alien* for a greater Estate than they lawfully may make. 1 Inst. 233, 251. Conditions in Feoffments, &c. that the Feoffee shall not *alien*, are void. 1 Inst. 206. Hob. 261. And it is the same where a Man possessed of a Lease for Years, or other Thing, and gives and sells his whole Property therein, upon such Condition. But one may grant an Estate in Fee, on Condition that the Grantee shall not *alien* to a particular Person, &c. And where a Reversion is in the Donor of an Estate, he may restrain an *Alienation* by Condition. Lit. 361. Wood's Inst. 141. Estates in Tail, for Life, or Years, where the whole Interest is not parted with, may be made with Condition not to *alien* to others, for the Preservation of the Lands granted in the Hands of the first Grantee.

Alfred, An old Saxon Word, signifying allowed or permitted; from whence we say such a one hath Leave, &c.

Alimony, (*Alimonia*) Signifies Nourishment or Maintenance: And in a legal Sense, it is taken for that Allowance which a married Woman sues for and is entitled to, upon any occasional Separation from her Husband. But the Woman must not be charged with Elopement or Adultery. Terms de Ley 38. Where a Woman is divorced a *Mensa & Thoro*, she may sue her Husband in her own Name for *Alimony* or Maintenance out of the Husband's Estate, during the Separation, either in the Chancery or Spiritual Court; and it will be allowed, except it be in Cases of Elopement and Adultery. 1 Inst. 235. But the Spiritual Court is the proper Court to sue in for *Alimony*: And the not allowing a Wife Maintenance, is not an Offence within the Statute 1 Eliz. but a Neglect of the Husband's Duty, and a Breach of his Vow. 12 Rep. 30. A Man may be sued in the Spiritual Court for Beating his Wife, and he may be ordered to pay her so much *per Week Alimony*: But a Prohibition hath been granted by

B. R.

B. R. in such Case ; and the Wife may have Sureties of the Peace for unreasonable Beating her. *Trin. 11. Fac. 1. Moor 874.* Alimony was anciently expressed by *Rationabile Estoverium*, Reasonable Maintenance. — *Rex Vic. Bucks. salutem. Pracipimus tibi quod de Maritagio Emmæ de Pinckeny uxoris Laurentii Penire, qui Excommunicatus est, eo quod predictam Emmam affectione Maritali non tractat, eidem Emma Rationabile Estoverium suum invenias, donec idem Laurentius Vir suus eam tanquam uxorem suam tractaverit, ne iteratus clamor ad nos inde perveniat.* — *Rot. 7. Hen. 3.* Allauds, *Ab Alanis, Scythia Gente, Hare-Hounds.*

Allay, (Fr. in Lat. *Allaya*) A Word used for the Tempering and Mixture of other Metals with Silver or Gold. *Stat. 9 Hen. 5.* This Allay is to augment the Weight of the Silver or Gold, so as it may defray the Charge of Coinage, and to make it the more fusile. A Pound-Weight of Standard Gold, by the present Standard in the Mint, is Twenty-two Carats fine, and two Carats Allay : And a Pound-Weight of right Standard Silver consists of eleven Ounces two Penny Weights of fine Silver, and eighteen Penny Weight of Allay. *Lownd's Essay upon Coins, pag. 19.* One Penny Weight of Angel Gold is worth four Shillings and Two-pence ; of Crown-Gold, three Shillings and Ten-pence ; and of Foreign Gold, three Shillings and Six-pence : And one Ounce of pure Silver, is worth five Shillings and Four-pence ; and with Allay, five Shillings. *Mod. Just. tit. Coin, pag. 120.*

Alliegance, *Allegiantia* (formerly called *Ligeance*, from the Latin *Alligare & Ligare*, i. e. *Ligamen Fidei*) is the sworn Allegiance, or Faith and Obedience, which every Subject owes to his Prince. It is either perpetual, where one is a Subject born ; or where one hath the Right of a Subject by Naturalization, &c. or it is temporary, by Reason of Residence in the King's Dominions. To Subjects born, it is an Incident inseparable, and as soon as born they owe by Birth-right Obedience to their Sovereign : And it cannot be confined to any Kingdom, but follows the Subject wheresoever he goes. *1 Inst. 2. 329. 2 Inst. 741.* This Word at first implied the legal Subjection of Vassals to their Lords. *Cow. Interp.* All Persons above the Age of 12 Years are to be required to take the Oath of Allegiance in Courts-Lect. And there are several Statutes requiring the Oath of Allegiance and Supremacy, &c. to be taken, under Penalties : Justices of Peace may summons Persons above the Age of 18 Years, to take these Oaths. *Stat. 1 Eliz. 1 W. & M. 8cc.* Absolving any Persons from their Allegiance, is High Treason, by *1 & 21 Eliz.*

Allegiare, To defend or justify by due Course of Law. — *Si quis se velit allegiare secundum Regis Weregildum hoc faciat.* *Leges Alfyred. c. 4. Spelm.*

Aller Good. The Word *Aller* is used to make what it is added to signify superlatively ; as *Aller-Good* is the greatest Good.

Allebiare, Signifies to levy or pay an accustomed Fine. Some of our ancient Histories mention such Fines paid by Persons to their Lords for Redemption of their Daughters, or for a Licence to marry them. *Brady's Pref. to Engl. Hist. 64.*

Allocation, (*Allocatio*) In a legal Sense is an Allowance made upon an Account in the Exchequer ; or more properly a Placing or Adding to a Thing.

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 the Exchequer upon Complaint made. *Reg. Orig. 206.*

Allodial : This is where an Inheritance is held without any Acknowledgment to any Lord or Superior ; and therefore is of another Nature from that which is feudal. Allodial Lands are free Lands, which a Man enjoys without paying any Fine, Rent, or Service to any other.

Allumino, (from the Fr. *Allumer*, to lighten). Is used for one who coloureth or painteth upon Paper or Parchment ; and the Reason is, because he gives Light and Ornament by his Colours to the Letters or other Figures. The Word is used *Stat. 1 R. 3. cap. 9.* But we now call such a one a Limner.

Almaria for Armaria : The Archives of a Church, a Library. — *Omnia etiam Ecclesia Almaria confregit, Chartas & Privilegia quadam igne cremavit.* *Gervaf. Dorob. in R. 2.*

Almoner, or Almoner, (*Eleemosynarius*) An Officer of the King's House, whose Business it is to distribute the King's Alms every Day. He ought to admonish the King to bestow his Alms, especially upon Saints Days and Holy Days ; and he is likewise to visit the Sick, Widows that are poor, Prisoners and other necessitous People, and to relieve them under their Wants ; for which Purpose, he hath the Forfeitures of Deodands, and the Goods of *Felo's de se*, allowed him by the King. *Fleta, lib. 2. c. 22.* The Lord Almoner has the Disposition of the King's Dish of Meat, after it comes from the Table, which he may give to whom he pleases ; and he distributes Four-pence in Money, a Two-penny Loaf of Bread, and a Gallon of Beer ; or instead thereof Three-pence daily at the Court-gate to twenty-four poor Persons of the King's Parish, to each of them that Allowance. This Officer is usually some Bishop.

Almonarium, (*Almonaria*) A Cupboard, or Safe, to deposite broken Victuals in, to be distributed in Alms to the Poor. This Sort of Repository is in the Northern Parts still called the *Aumbry* and *Ammerj.* — *Nos Dedimus totam illam seldam vocatam le Huse, cum Schopis, Solaris, Stallis, Cistis, & Almorietis, cum omnibus suis pertinentiis.* *Cart. 5. Rich. 2.*

Almesfeoh, or Aelmesfeoh, Saxon for Alms-Money : It has been taken for what we call Peter-pence, first given by Ina King of the West-Saxons, and anciently paid in England on the First of August. It was likewise called *Romefeoh, Romefcot,* and *Heorthpening.* *Selden's Hist. Tithes 217.*

Almutium, A Garment which covered the Head and Shoulders of Priests. *Quasivit Episcopus in quali habitu esset ? Responsum est, quod in tunica de Burneto & Almutio sine cuculla.* *W. Thorn. 1330.*

Alnage, (French *Aulnage*) Signifies a Measure, particularly the Measuring with an Ell. *Stat. 17 E. 4. cap. 5.*

Alnager, or Aulnager, (French *Alner*, Latin *Ulniger*) Is properly a Measure by the Ell ; and the Word *Aulne* in French signifies an Ell. An Aulnager with us is a publick sworn Officer of the King's, whose Place it is to examine into the Assise of all Cloths, made throughout the Land, and to fix Seals upon them ; and another Branch of his Office is to collect a Subsidy or Aulnage Duty granted to the King. He hath his Power

by Stat. 25 Ed. 3. and several other antient Statutes; which appoint his Fees, and inflict a Punishment for putting his Seal to deceitful Cloth, &c. viz. a Forfeiture of his Office, and the Value. 27 Ed. 3. 3 R. 2. But there are now three Officers belonging to the Regulation of Clothing, who bear the distinct Names of *Searcher*, *Measurer*, and *Aulnager*; all which were formerly comprised in one Person. 4 Inst. 31. And because the Subjects of this Kingdom should not be abused, an Office of *Searching* is established by Act of Parliament.

Alnetum, A Place where *Alders* grow; or a Grove of *Alder-trees*. — *Alnetum est ubi Alni arbores crescant*. — Domesday-Book.

Alodium, *Alodarii*. *Alodium* in Domesday signifies a free Manor: And *Alodarii* Lords of Manors, or Lords Paramount. *Quando moritur Alodarius, Rex inde habet Relevationem terra*, &c. Domesday. Tit. Kent. 1 Inst. 1. 5.

Alloverium, A *Purse*. This Word is mentioned in *Fleta*, lib. 2. cap. 82. par. 2.

Altarage, (*Altaragium*) The Offerings made upon the *Altar*, and also the Profit that arises to the Priest by Reason of the *Altar*, *obventio Altaris*. Mich. 21 Eliz. It was declared that by *Altarage* is meant Tithes of Wool, Lambs, Colts, Calves, Pigs, Chickens, Butter, Cheese, Fruits, Herbs, and other small Tithes with the Offerings due: The Case of the Vicar of *West-Haddon* in *Northamptonshire*. But the Word *Altarage* at first is thought to signify no more than the casual Profits arising to the Priest, from the Peoples voluntary Oblations at the *Altar*; out of which a Portion was assigned by the Parson to the Vicar: Since that, 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: And hence it is that Vicarages are endowed with them. *Terms de Ley* 39. 2 Cro. 516. — *Vicarius de Tickhill ad sustentationem sui habeat totum Altaragium, ita quod Nomine Altaragii contineantur omnes obventiones, Decima & proventus ipsius Ecclesie de Tickhill, Exceptis Decimis Bladi Leguminis & fœni, & terris ad dictam Ecclesiam pertinentibus*, &c. *Ordinatio Walter. Archiep. Ebor. An. Dom. 1249*.

— *Oblationes sive nummorum, sive panum, tali vel tali Altari, vel ex Devotione, vel ex consuetudine, aut a Parochianis, aut ab extraneis facta, Altaragii nomine consebantur*. Norton in Com. Northampt. Gloss. in Mat. Paris. — *Vicaria in Ecclesia Sancti Martini de Stampford consistit in toto Altaragio dictæ Ecclesie*. *Monasticon*. 2 Tom. 881. 3 Tom. 139.

Alto & Basso. By this is meant the absolute Submission of all Differences. *Pateat Universis per presentes quod Willielmus T. de Y. & Thomas G. de A. posuerunt se in Alto & Basso in Arbitrio quatuor hominum viz. — de quadam Querela pendente*, &c. *Et prædicti quatuor homines Judicaverunt*, &c. *Dat. Anno 2 Hen. 5*.

Amabyr, vel *Amvabyr*, (Br.) A Custom in the Honour of *Clun*, belonging to the Earls of *Arundel*: *Pretium Virginitatis Domino Solvendum LL. Eccl. Howeli Dha. Regis Walliæ. Puella dicitur esse defertum Regis, & ob hoc Regis est de ea Amvabyr habere*. This Custom Henry Earl of *Arundel* released to his Tenants, Anno 3 & 4 P. & M.

Ambassador, (*Legatus*) Is a Servant of the State, representing the King in a Foreign Country, to take Care of the Publick Affairs. And *Ambassadors* are either Ordinary, or Extraordinary; the Ordinary *Ambassadors*, are those who

reside in the Place whither sent; and the Time of their Return being indefinite, so is their Business uncertain, arising from emergent Occasions; and commonly the Protection and Affairs of the Merchants is their greatest Care: The Extraordinary *Ambassadors* are made *pro tempore*, and employed upon some particular great Affairs, as Condolements, Congratulations, or for Overtures of Marriage, &c. Their Equipage is generally very great and magnificent; and they may return without requesting of Leave, unless there be a restraining Clause in their Commission. *Molloy* 144. An Agent represents the Affairs only of his Master; but an *Ambassador* ought to represent the Greatness of his Master, and his Affairs. *ibid*. By the Laws of Nations, none under the Quality of a Sovereign Prince, can send any *Ambassador*: A King that is deprived of his Kingdom and Royalty, hath lost his Right of Legation. No Subject, though never so great, can send or receive an *Ambassador*; and if a Viceroy does it, he will be guilty of High Treason: The Electors and Princes of *Germany*, have the Privilege of sending and Reception of *Ambassadors*; but it is limited only to Matters touching their own Territories, and not the State of the Empire. *Molloy* 145. It is said there can be no *Ambassador* without Letters of Credence from his Sovereign, to another that hath Sovereign Authority: And if a Person be sent from a King or absolute Potentate, though in his Letters of Credence he is termed an Agent, yet he is *Ambassador*, he being for the Publick. 4 Inst. 153. *Ambassadors* may by a Precaution be warned not to come to the Place where sent; and if they then do it, they shall be taken for Enemies: But being once admitted, even with Enemies in Arms, they shall have the Protection of the Laws of Nations, and be preserved as Princes. *Moll*. 146. If a banished Man be sent as an *Ambassador* to the Place from whence he is banished, he may not be detained or molested there. 4 Inst. 153. The Killing of an *Ambassador*, has been adjudged High Treason. 3 Inst. Some *Ambassadors* are allowed by Concession, to have Jurisdiction over their own Families; and their Houses permitted to be Sanctuaries: But where Persons who have greatly offended fly to their Houses, after Demand and Refusal to deliver them up, they may be taken from thence. *Ambassadors* cannot be defended when they commit any Thing against the State, or the Person of the King, with whom they reside. 4 Inst. 152. An *Ambassador* guilty of Treason against the King's Life, may be condemned and executed: But for other Treasons, he shall be sent home, with Demand to punish him, or to send him back to be punished. 4 Inst. 152. 1 Roll. Rep. 185. If a Foreign *Ambassador* commits any Crime here, which is *contra jus Gentium*, as Treason, Felony, &c. or any other Crime against the Law of Nations, he loseth the Privilege of an *Ambassador*, and is subject to Punishment as a private Alien; and he need not be remanded to his Sovereign, but of *Curtsey*. *Dano. Abr.* 327. But if a Thing be only *Malum Prohibitum* by any Act of Parliament, Private Law, or Custom of the Realm, and it is not *contra jus Gentium*, an *Ambassador* shall not be bound by them. 4 Inst. 153. And it is said *Ambassadors* may be excused of Practices against the State where they reside, (unless it be in Point of Conspiracy; which is against the Law of Nations) because it doth not appear whether

ther they have it in *Mandatis*; and then they are excused by Necessity of Obedience. *Bac. Max.* 26. By the Civil Law, the Person of an *Ambassador* cannot be arrested: And the moveable Goods of *Ambassadors* which are accounted an Accession to their Persons, cannot be seized on, as a Pledge, nor for Payment of Debt, tho' by Leave of the King or State where they are Resident; but on Refusal of Payment, Letters of Request are to go to his Master, &c. *Molloy* 157. *Danv.* 328. By our Statute Law, an *Ambassador*, or Publick Minister, or his Domestick Servants, register'd in the Secretary's Office, &c. are not to be arrested; if they are, the Process shall be void, and the Persons suing out and executing it, shall suffer such Penalties and Corporal Punishment as the Lord Chancellor or either of the Chief Justices shall think fit. *Stat.* 7 *Ann.* c. 12. Also the Goods of an *Ambassador*, or of his Servants, shall not be distrained. *Stat.* *ibid.*

Ambidexter, (*Lat.*) One that can use his left Hand as well as his right; or that plays on both Sides. But in a legal Sense, it is taken for a Juror or Embraceror, who takes Money of both Parties for giving his Verdict. For his Punishment, See *Decies tantum*. *Crompt. Just.* 156.

Ambys, (*Sax.* *Amber*, *Lat.* *Amphora*) A Vessel among the *Saxons*: It contained a Measure of Salt, Butter, Meal, Beer, &c. *Leg. Inæ West. Sax.*

Ambry, The Place where the Arms, Plate, Vessels, and every Thing which belong'd to House-keeping were kept; and probably the *Ambry* at *Westminster* is so called, because formerly set a-part for that Use: Or rather the *Aumonery*, from the Latin *Eleemosynaria*, an House adjoining to an Abbey, in which the Charities were laid up for the Poor.

Amenable, (*Fr.* *Amener*) To bring or lead unto: Or *Amainable* (from the *Fr.* *Main* a Hand) signifies tractable, that may be led or governed: And in our Books it is commonly applied to a Woman, that is governable by her Husband. *Co. Interp.*

Amendment, (*Emendatio*) 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 writ the Record, it may be amended. *Terms de Ley.* 39. A Plaintiff may amend his Bill on the File at any Time before Plea pleaded; but not afterwards without Motion and Leave of the Court. *1 Lill. Abr.* 58. Original Writs are not amendable at Common Law; for if the Writ be not good, the Party may have another: Judicial Writs may and have been often amended. *8 Rep.* 157. And by the Statutes 8 H. 6. and 18 Eliz. the Misprision of the Clerk, and false *Latin*, &c. is amendable in Original Writs; but it must not be in another Term, when the Roll is a Record. *8 Rep.* 88. The Faults and Mistakes of Clerks are in many Cases amendable: The Misprision of a Clerk in Matter of Fact is amendable; tho not in Matter of Law. *Palm.* 258. If there be a Mistake in the legal Form of the Writ, it is not amendable: There is a Diversity between the Negligence and Ignorance of the Clerk that makes out Writs; for the Negligence (as if he have the Copy of a Bond and do not pursue it) this shall be amended; but his Ignorance in the legal Course of Original Writs is not amendable. *8 Rep.* 159. Mistakes in Matter of Form are amendable; and Matter of Substance is not. *Danv. Abr.* 349.

If a Thing which the Plaintiff ought to have entered himself, being a Matter of Substance, be totally omitted, this shall not be amended; but otherwise it is if omitted only in Part and misentered. *Danv.* 346. By the Common Law a Writ of Error returned and filed, could not be amended; because it would alter the Record. But now by Stat. 5 Geo. cap. 13. Writs of Error wherein there shall be any Variance from the original Record or other Defect, may be amended by the Court where returnable. A Declaration grounded on an Original Writ, may not be amended, if the Writ be erroneous: Though if it be on a Bill of *Middlesex* or a *Latitat*, it is amendable. *1 Lill. Abr.* 67. Declarations upon any penal Statutes, *Qui tam*, &c. may not be amended after Issue joined. *2 Mod.* 144. And Indictments of Treason, and Felony, Writs of Appeal, &c. are excepted out of the Statutes of Amendments. A Plaintiff may amend his Declaration in Matter of Form after a general Issue pleaded, before Entry thereof, without Payment of Costs: If he amend in Substance, he is to pay Costs, or give Imparance; and if he amend after a special Plea, though he would give Imparance, he must pay Costs. *1 Lill.* 58. B. R. A Plea when only on Paper, upon Notice and Payment of Costs may be amended; but if the Plea be entered on Parchment it is not amendable, being a Plea of Record: After Demurrer, and after Issue joined, a Plea may not be amended. A Demurrer may be amended, after the Parties have joined in Demurrer, if it be only in Paper. *Style* 48. An Issue entered upon Record, with Leave of the Court may be amended; but not in a material Thing, or in that which will deface the Record. *1 Lill. Abr.* 61. A Record may be amended by the Court in a small Matter, after Issue joined, so as the Plea be not altered. *Danv. Abr.* 338. If on a Writ of Error a Record is amended in another Court in Affirmance of the Judgment, it must be amended in the Court where Judgment was given. *Hardr.* 505. Where the Record of *Nisi Prius* does not agree with the Original Record, it may be amended after Verdict, provided it do not change the Issue: But a Record shall not be amended to attain the Jury, or prejudice the Authority of the Judge. *Mich.* 8 W. A General or Special Verdict may be amended by the Notes of the Clerk of Assise in Civil Causes; but not in Criminal Actions. *1 Salk.* 47. At Common Law, the Judges may amend their Judgments of the same Term; and by Statute of another Term. *8 Rep.* 156. 14 E. 3. If Judgments are not well entered, on Payment of Costs they will be ordered to be so: When Judgments are entered, 'tis said the Defects therein being the Act of the Court, and not the Misprision of the Clerk, are not amendable. *Goldsb.* 104. Mistakes in Returns of Writs, Fines and Recoveries, made by mutual Assent of Parties may be amended. *5 Rep.* 45. Judgment shall not be stayed after Verdict, for that an Original wants Form, or varies from the Record in Point of Form, which are amendable. *4 Rep.* 45. After Verdict given in any Court of Record, there shall be no Stay of Judgment for Want of Form in any Writ, or insufficient Returns of Sheriffs, Variance in Form between the Original Writ and Declaration, &c. Stat. 32 H. 8. 18 Eliz. Vide 5 Geo. Where Judgment shall not be reversed for Defects in Form or Substance. Imperfections and Defects are aided after Verdict, by the Statutes.

of Jeofails: And by 4 & 5 Ann. All the Statutes of Jeofails shall be extended to Judgments upon Confession, *Nilil di. it.* &c. And upon Demurrer, the Judges shall give Judgment without regarding Imperfections in any Writ, &c. except the same be set down as Cause of Demurrer. Stat. 4 & 5 Ann. cap. 16. Amendments are usually made in Affirmance of Judgments; and seldom or never to destroy them: And where Amendments were at Common Law, the Party was to pay a Fine for Leave to amend. 3 Salk. 29.

Amerciament, *Amerciamentum*, (from the Fr. *Merci*) Signifies the pecuniary Punishment of an Offender against the King, or other Lord in his Court, that is found to be in *Misericordia*, i. e. to have offended, and to stand at the Mercy of the King or Lord. The Author of *Terms de Ley* saith, that *Amerciament* is properly a Penalty assessed by the Peers or Equals of the Party amerced, for the Offence done; for which he putteth himself at the Mercy of the Lord. *Terms de Ley* 40. And by the Statute of *Magna Charta*, a Freeman is not to be amerced for a small Fault, but proportionable to the Offence, and that by his Peers. 9 H. 3. c. 4. *Amerciaments* are a more merciful Penalty than a Fine; for which if they are too grievous, a Release may be sued by an ancient Writ called *Moderata Misericordia*. The Difference between *Amerciaments* and Fines, is this; Fines are said to be Punishments certain, and grow expressly from some Statute; but *Amerciaments* are such as are arbitrarily imposed. *Kitch.* 78. Also Fines are imposed and assessed by the Court; and *Amerciaments* by the Country. 8 Rep. 39. No Court can impose a Fine, but a Court of Record; other Courts can only amerce. 8 Rep. 41. A Court-Leet can amerce for publick Nuisances only. 1 Saund. 135. For a Fine and all *Amerciaments* in a Court-Leet, a Distress is incident of Common Right: But for *Amerciament* in a Court-Baron, Distress may not be taken but by Prescription. 11 Rep. 45. When an *Amerciament* is agreed on, the Lord may have an Action of Debt, or distress for it, and impound the Distress, or sell it at his Pleasure: But he cannot imprison for it. 8 Rep. 41. 45. In Courts-Baron, the *Amerciaments* ought to be assessed; but 'tis otherwise of Fines imposed by a Court of Record. 2 Inst. 27. In the Court-Baron, Tenants not doing Suit of Court, Persons making any Incroachments, not performing what is ordered, or for other Misdemeanors there punishable, are to be amerced. These *Amerciements* are made upon Presentment of the Jury; and if they are grounded upon a void Presentment, the *Amerciements* are also void. 1 Lill. Abr. 72. There is also *Amercement* in Pleas in the Courts of Record, when a Defendant delays to tender the Thing demanded by the King's Writ, on the first Day. 1 Inst. 116. In all Personal Actions without Force, as in Debt, Detinue, &c. if the Plaintiff be nonsuit, barred, or his Writ abate for Matter or Form, he shall be amerced: But if on judicial Process, founded on a Judgment and Record, the Plaintiff be nonsuit, barred, &c. he shall not be amerced. 1 Nelf. Abr. 206. Sheriffs are to be amerced for the Faults of their Officers; and Clerks of the Peace are amerceable in B. R. for gross Faults in Indictments removed thither. *Hill.* 21 Car. The *Amercement* of the Sheriff, or other Officer of the King, is called *Amercement Royal*. *Terms de Ley*. A Town shall be amerced for the Escape of a Murderer, in the Day-time:

And if the Town be walled, 'tis said, it shall be subject to *Amercement*, whether by Day or Night. 3 Inst. 53. *Amerciaments* are likewise in several other Cases.

Amesse, (from the Lat. *Amictus*) Is taken for a priestly Garment.

Amicia, (the same with *Almutium*) A Cap made with Goats or Lambs Skins; that Part whereof which covered the Head was square, and one Part of it hung behind, and covered the Neck. *Monasticon* 3. Tom. p. 36.

Amictus, Was the uppermost of the six Garments worn by Priests, tied round the Neck, and it covered the Breast and Heart. — *Ne inde ad Linguam transeat mendacium, ne vanitates cogitet.* — *Amictus*, *Alba*, *Cingulum*, *Stola*, *Manipulus*, & *Planeta*. — These were the six Garments of Priests.

Amittere Legem Terræ, To lose and be deprived of the Liberty of swearing in any Court: As to become infamous, renders a Person incapable of being an Evidence. *Vide Glanvil*, lib. 2. And see the Statute 5 Eliz. cap. 9. against Perjury.

Ammobragium, A Service. — *Terras in Com. Flint. tenentur de Domino Rege per certa servitia, & per Ammobragium quod ad quinque Solidos extenditur cum acciderit.* Pat. 7. Ed. 2.

Amnitum Insulæ, Isles upon the West Coast of Britain. Blount.

Amortization, (*Amortizatio*, Fr. *Amortissement*) Is an Alienation of Lands or Tenements in Mortmain, viz. to any Corporation or Fraternity, and their Successors, &c. And the Right of *Amortization* is a Privilege or Licence of taking in Mortmain. *Fus Amortizationis est privilegium seu Licentia capiendi in Manum Mortuam.* In the Statute *De Libertatibus perquirendis Anno* 27 Ed. 1. the Word *Amortisement* is used.

Amortize, (Fr. *Amortir*) Is to alien Lands in Mortmain. See *Mortmain*, and the Statute 7 Ed. 1. of amortizing Lands.

Ampliation, (*Ampliatio*) An Enlargement, but in Sense of Law it is a Referring of Judgment 'till the Cause is further examined.

Amp, (*Amicus*) In Law *prochein Amy* is the next Friend to be trusted for an Infant. *Alien Amy* is a Foreigner here subject to some Prince in Friendship with us.

An Hour & Waste, (*Annus Dies & Vastum*) Year, Day and Waste; a Forfeiture of Lands to the King by Tenants committing Felony, and afterwards the Land falls to the Lord.

Ancestor, (*Antecessor*) Signifies as much as a Predecessor, or one that has gone before in a Family: But the Laws make a Difference between what we commonly call an Ancestor and a Predecessor; the one being applied to a natural Person and his Ancestors, and the other to a Body Politick and their Predecessors. *Co. Lit.* A Prepossessor of an Estate hath been called *Ancestor*.

Ancestrel, What relates to or hath been done by one's Ancestors; as *Homage Ancestrel*, &c.

Ancho, Is a Measure of Brandy, &c. containing ten Gallons. *Lex Mercat*.

Anchorage, (*Ancoragium*) A Duty taken of Ships for the Use of the Haven where they cast Anchor. *M. S. Arth. Trevor*, Ar. The Ground in Ports and Havens belonging to the King, no Person can let any Anchor fall thereon without paying therefore to the King's Officers.

Ancients, Gentlemen of the Inns of Court. In *Gray's Inn*, the Society consists of *Benchers*, *Ancients*, *Barristers*, and *Students* under the Bar; and here the *Ancients* are of the oldest Barristers. In the *Middle Temple*, such as have gone through or are past their Readings are termed *Ancients*: The Inns of *Chancery* consist of *Ancients* and *Students* or *Clerks*; and from the *Ancients* one is yearly chosen the Principal or Treasurer.

Ancient Demesne, or *Demain*, (*Vetus Patrimonium Domini*) Is a Tenure whereby all Manors belonging to the Crown in the Days of *St. Edward* and *William*, called the Conqueror, were held. The Number and Names of all Manors, after a Survey made of them, were written in the Book of *Domesday*; and those which by that Book appear to have at that Time belonged to the Crown, and are contained under the Title *Terra Regis*, are called *Ancient Demesne*. *Kitch.* 98. *Fitzherbert* tells us, that Tenants in *Ancient Demesne* had their Tenures from ploughing the King's Lands, and other Works towards the Maintenance of the King's Freehold, on which Account they had Liberties granted them. *F. N. B.* 14. 228. And there were two Sorts of these Tenures and Tenants; one that held their Lands freely by Charter; the other by Copy of Court-Roll, according to the Custom of the Manor. *Britt.* c. 66. The Tenants holding by Charter cannot be impleaded out of their Manor; for if they are, they may abate the Writ by pleading their Tenure: They are free from Toll, for all Things bought and sold concerning their Sustenance and Husbandry: And they may not be impanelled upon any Inquest. *F. N. B.* 14. If Tenants in *Ancient Demesne* are returned on Juries, they may have a Writ *de non ponendis in Assis*, &c. And Attachment against the Sheriff. *1 Rep.* 105. And if they are disturbed by taking Duties of Toll, &c. they may have Writs of *Monstraverunt*, to be discharged. These Tenants are free as to their Persons, but not as to their Estates: And their Privileges are supposed to commence by Act of Parliament; for they cannot be created by Grant at this Day. *1 Salk.* 57. Lands in *Ancient Demesne* are extendible upon a Statute Merchant, Staple, or *Elegit*. *4 Inst.* 270. No Lands ought to be accounted *Ancient Demesne* but such as are held in Socage; and whether it be *Ancient Demesne* or not, shall be tried by the Book of *Domesday*. A Lessee for Years cannot plead in *Ancient Demesne*: Nor can a Lord in Action against him plead *Ancient Demesne*, for the Land is frank-fee in his Hands. *Danv. Abr.* 660. In Real Actions, Ejectment, Replevin, &c. *Ancient Demesne* is a good Plea; but not in Actions merely Personal. *Danv.* 658. A Fine levied in the King's Courts will change *Ancient Demesne* to Frank-fee, at Common Law: So if the Lord enfeoffs another of the Tenancy; or if the Land comes to the King. &c. *4 Inst.* 270.

Ancienty, (*Fr. Anciennete*, *Lat. Antiquitas*) Eldership or Seniority. This Word is used in the Statute of *Ireland*. *14 Hen.* 3.

Anden, A Swath in Mowing: It likewise signifies as much Ground as a Man could stride over at once.

Anelacium, A short Knife or Dagger. — *Loricâ erat indutus, gestans Anelacium ad Lumbare.* *Mat. Paris.* 277.

Anfeldtyhde, or *Anfealtibile*, A simple Accusation; for the Saxons had two Sorts of Accusations, *viz.* *Simplex* and *Triplex*: That was call-

ed *Single*, when the Oath of the Criminal and two more was sufficient to discharge him; but his own Oath, and the Oaths of five more were required to free him a *triplici Accusatione*. *Somner.* In the Laws of *Adelstan* we read — *Et si Anfeldtyhde sit, immergatur manus post Lapidem, vel Examen usque ad Wristle.* *Leg. Adelstani*, cap. 19. apud *Brompton*.

Angaria, (from the *Fr. Angarie*, i. e. Personal Service) Is a troublesome vexatious Duty or Service which Tenants were obliged to pay their Lords; and they performed it in their own Persons. — *Terram liberam ab omnibus Angariis & Exactionibus*, &c. *M. S. Eliam Ashmole Arm.* — *Præstationes Angariarum & Perangariarum, Plaustrorum & Navium.* — Impressing of Ships, *Blount*.

Angelica Vestis, A monkish Garment which Laymen put on a little before their Death, that they might have the Benefit of the Prayers of the Monks. It was from them called *Angelicus*, because they were stiled *Angeli*, who by these Prayers *animæ salutis succurrebant*. The Word *Succurrendum* in our old Books is understood of one who had put on the Habit, and was near Death: *Siquis ad succurrendum metu mortis se loco prænominato dederit, illic recipietur.* *Monasticon.* *1 Tom.* p. 632. So likewise *De susceptis in Morte*, i. e. Those dying Persons that had put on the Habit.

Angel, Signifies, in the Computation of Money, ten Shillings of *English Coin*.

Angild, (*Angildum*) The bare single Valuation or Compensation of a Criminal. From the Sax. *An One*, and *Gild*, Payment, Mulct or Fine. *Una Solutio, Si Villanus furatus fuerit*, &c. *Et habeas plegium, admones eum de Angildo.* — *Twigild* was the double Mulct or Fine; and *Trigild* the treble, according to the rated Ability of the Person. *Laws of Ina*, c. 20. *Spelm.*

Anlote, A single Tribute or Tax. The Words *Anlote* and *Anscot* are mentioned in the Laws of *William the Conqueror*. And the Sense is, that every one should pay according to the Custom of the Country, his Part and Share as *Scot* and *Lot*, &c. *Leg. W.* 1. c. 64.

Annals, Yearlings or young Cattle of the first Year. — *Vituli primo anno postquam nati sunt, Vituli Vocantur; Secundo compoto Annales vocantur; tertio Boviculi; quarto Bovetti.* — *Regulæ compoti Domus de Farendon M. S.*

Annats, (*Annates*) This Word has the same Meaning with *First-Fruits*, *Ann.* 25 *H. 8. c.* 20. The Reason of the Name is, because the Rate of the First-fruits paid to spiritual Livings, is after the Value of one Year's Profit. *Annates more suo appellat primos fructus unius anni sacerdotii vacantis, aut dimidiam eorum partem.* *Pol. Virgil de Invent.* *rer. lib.* 8. cap. 2.

Annealing of Tile, (*Anno 17 Ed. 4.*) From the Sax. *Onalan*, *accendere*, signifies the Burning or Hardening of Tile.

Annented, (from the *Fr. Anneantir*) Abrogated, frustrated, or brought to nothing. *Lit.* 3. cap. *Seft.* 741.

Anniversary Days, (*Dies Anniversarii*) Solemn Days appointed to be celebrated yearly in Commemoration of the Deaths or Martyrdoms of Saints; or the Days whercon, at the Return of every Year, Men were wont to pray for the Souls of their deceased Friends, according to the Custom of the Roman Catholics, mentioned in the Statute of *1 Ed. 6. cap.* 14. and *12 Car. 2. cap.* 13.

cap. 13. This was in Use among our ancient Saxons, as you may see in *Lib. Ramef. Sect. 124.* — Anniversaria dies ideo repetitur defunctis, quoniam nescimus qualiter eorum causa habeatur in alia vita. This was the Reason given by *Alcuinus*, in his Divine Offices. The Anniversary or yearly Return of the Day of the Death of any Person, which the Religious register'd in their *Obitnal* or *Martyrology*, and annually observed in Gratitude to their Founders and Benefactors, was by our Fore fathers called a *Year-day*, and a *Mind-day*. i. e. a Memorial Day. And though this proceeded from one of the Trading Arts of the Priests, who got many a Legacy for thus continuing the Memorial of their Friends; yet abating the Superstition of it, we must confess this Practice of theirs has been a great Advantage to the History of Men and Times, by fixing the *Obits* of great and good Men.

Annus nubilis, (*Lat.*) When a Woman is under 12 Years of Age, her Age to marry, she is said to be *infra annos nubile*, and unmarriedable; so that it signifies the marriageable Age of a Woman. 2 *Co. Inst.* 434.

Anno Domini, The Computation of Time from the Incarnation of our Saviour; which is generally inserted in the Dates of all publick Writings, with an Addition of the Year of the King's Reign, &c. The Romans began their *Era* of Time from the Building of Rome: The *Grecians* computed by Olympiads; and the *Christians* reckon from the Birth of Jesus Christ.

Annoisance, or *Noisance*. Is a Word used for any Hurt done to a publick Place, as a Highway, Bridge, River, &c. or to a private Place, by laying any Thing therein that may breed Infection, by Incroachments, or such like Means; and it is also taken for the Writ brought upon such a Transgression. This Word is mentioned *Anno 22 H. 8. c. 5.* Vide *Nuisance*.

Annua Pensione, An ancient Writ for providing the King's Chaplain unpreferred with a Pension. It was brought where the King having due to him an *annual Pension* from an Abbot or Prior, for any of his Chaplains whom he should nominate, (being unprovided of Livings) to demand the same of such Abbot or Prior. *Reg. Orig.* 165, 307.

Annuale, A Word signifying the yearly Rent or Income of a Prebendary.

Annualia, A yearly Stipend assigned to a Priest for celebrating an Anniversary, or for saying continued Masses one Year, for the Soul of a deceased Person. — *Inhibemus quoque districtius ne aliquis Rector Ecclesie faciat huiusmodi pactum cum suo sacerdote videlicet quod ipse Sacerdos prater cetera stipendia poterit recipere Annualia & Triennialia.* *Const. Rob. Grostest Episcopi Lincoln.* in *Append. ad Fascic.* pag. 411.

Annuity, (*Annuus Redditus*) A yearly Rent, payable for Term of Years, Life, or in Fee; and it is used for a Writ that lies against a Person for Recovery of such a Rent. *Reg. Orig.* 158. *Annuity* is also defined to be a yearly Payment of a certain Sum of Money, granted to another in Fee, for Life, &c. to be received of the Grantor or his Heirs, so that no Freehold be charged therewith; whereof a Man shall never have Assise or other Action, but a Writ of *Annuity*. *Terms de Ley* 44. The Treatise called *Doctor and Student*, *Dial. 1. cap. 3.* shews several Differences between a Rent and an *Annuity*, viz. that every Rent is issuing out of Land; but an

Annuity chargeth the Person only, as the Grantor or his Heirs, who have Assets by Discent: For the Recovery of an *Annuity*, no Action lies but only the Writ of *Annuity*; but of a Rent the same Remedy lies as for Lands; and an *Annuity* is never taken for Assets, because it is no Freehold in Law; nor shall it be put in Execution upon a Statute Merchant, Staple, or Elegit, as a Rent issuing out of Land may. *Dyer* 345. 2 *Rep.* 144. If no Lands are bound for the Payment of an *Annuity*, a Distress may not be taken for it. *Dyer* 65. But if an *Annuity* be issuing out of Land, (which of late it often doth) the Grantee may bring Writ of *Annuity*, and make it Personal, or an Assise, or distrain, &c. so as to make it Real. 1 *Inst.* 144. And if the Grantee take a Distress, yet he may afterwards have Writ of *Annuity*, and discharge the Land, if he do not avow the Taking, which is in Nature of an Action. 1 *Inst.* 145. But if the Grantee of a Rent bring an Assise for it, he shall never after have Writ of *Annuity*; he having elected this to be a Rent; so if the Grantee of an *Annuity* avow the Taking of a Distress, in a Court of Record. *Danv. Abr.* 486. And if the Grantee purchase Part of the Land out of which an *Annuity* is issuing, he shall never after have a Writ of *Annuity*. *Co. Lit.* 148. When a Man recovers in a Writ of *Annuity*, he shall never have a new Writ of *Annuity* for the Arrears due after the Recovery, but a *Scire facias* upon the Judgment, the Judgment being always executory. 2 *Rep.* 37. No Writ of *Annuity* lieth for Arrearages only when an *Annuity* is determined, but for the *Annuity* and Arrearages. 1 *Inst.* 285. Though if a Rent-charge be granted out of a Lease for Years, it hath been adjudged that the Grantee may bring *Annuity* when the Lease is ended. *Moor cap.* 450. Upon a Rent created by way of Reservation, no Writ of *Annuity* lies. *Danv.* 483. If a Man grants a Rent out of his Manor, or Lands, or to be received of his Tenants, and he hath no Manor, Lands, or Tenants, yet it may be a good *Annuity*, though void as to a Rent. *Danv. Abr.* 485. A Person grants to me 10 l. every Year, that I shall be Resident in such a Parish; an *Annuity* lies for this, it being annual at my Will; and it is the same if a Rent be granted payable at the End of a certain Number of Years, though it be not annual. *Ibid.* 452. If a Man grants an *Annuity*, to be received out of his Coffers, the last Words are void, and the *Annuity* is good. A Grant is made by a Person of an *Annuity* to another and his Heirs, without the Grantor's saying for him and his Heirs, this is determinable by the Death of the Grantor. *Danv. Abr.* 482. Writ of *Annuity* may not be had against the Grantor's Heir, unless the Grant be for him and his Heirs; and there must be Assets to bind the Heir, by Grant of an *Annuity* by his Ancestor, when he is named. 1 *Inst.* 144. 1 *Roll. Abr.* 226. An *Annuity* granted by a Bishop with Confirmation of Dean and Chapter, shall bind the Successor of the Bishop. *New Nat. Br.* 340. If the King grant an *Annuity*, it must be expressed by whose Hands the Grantee shall receive it, as the King's Bailiff, &c. or the Grant will be void; for the King may not be sued, and no Person is bound to pay it if not expressed in the Patent. 9 *H. 6. New Nat. Br.* 341. If where an *Annuity* is granted *pro Decimis*, the Grantor is disturbed of his Tithes, the *Annuity* ceaseth; and so it is where any *Annuity* is granted to a Person *pro*

filio, and the Grantee refuseth to give Counsel. For where the Cause and Consideration of the Grant amounts to a Condition, and the one ceases, the other shall determine. 1 *Inst.* 204. —

The Writ of *Annuity* runs thus: *Rex vic. &c. Praecepit A. quod iuste, &c. redd. B. Decem. libr. centum Marcas, &c. quod ei a retro sunt de annuo redditu, &c. quae ei debet, ut dicit, sicut rationabiliter monstrare poterit, quod ei redder. debeat, ne amplius, &c. nisi, &c.*

Ansel, or *Ansul*, See *Ansel Weight* — *De pede, pollice, cubito, & Palma, de Ansul Balancibus & Mensuris.* Thorn. Chron.

Antejuramentum and *Præjuramentum*, by our Ancestors called *Juramentum Calumnie*, in which both the Accuser and Accused were to make this Oath before any Trial or Purgation, viz. The Accuser was to swear that he would prosecute the Criminal; and the Accused was to make Oath on the very Day that he was to undergo the Ordeal, that he was Innocent of the Crime of which he was charged. *Leg. Athelstan. apud Lambard* 23. If the Accuser failed to take his Oath, the Criminal was discharged; and if the Accused did not take his, he was intended to be guilty, and not admitted to purge himself by the Ordeal. *Leg. H. 1. c. 66.*

Antithetarius, Signifies where a Man endeavours to discharge himself of the Fact of which he is accused, by recriminating and charging the Accuser with the same Fact. This Word is mentioned in the Title of a Chapter in the Laws of *Canutus*, capite 47.

Apatifatio, An Agreement or Compact made with another. *Upton, lib. 2. cap. 12.* — *De Officio Militari, viz. Concedimus per presentes bonum & saluum conductum, ac saluam gardiam sive securitatem Apatifationis.*

Aporiare, To be brought to Poverty — *Permissit suos spoliare patriam, Aporiare vulgus. Walsingham in R. 2.* It hath been used sometimes to signify shun or avoid.

Apostare, To violate: *Apostare Leges*, and *Apostatare Leges*, wilfully to break or transgress the Laws — *Qui leges Apostabit terra sua, reus sit apud Regem.* *Leg. Edw. Confessoris c. 35.* *Apostabit* is read *Apostatabit ann. H. 1. Spelm.*

Apostata capiendo, A Writ that formerly lay against one who having entered and professed some Order of Religion, broke out again, and wandered up and down the Country, contrary to the Rules of his Order: It was directed to the Sheriff for the Apprehension of the Offender, and Delivery of him again to his Abbot or Prior. *Reg. Orig. 71. 267.*

Apothecaries Medicines, &c. are to be searched by the Physicians chosen by the College of Physicians, and if Faulty to be burnt, &c. 32 *H. 8. 1 M.* And *Apothecaries* to the Army, &c. are to make up their Chests of Medicines at *Apothecary's Hall*, there to be openly viewed, &c. Penalty of 40 *l.* *Stat. 10 Ann. c. 14. Sec Physicians.*

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, &c. *Anno 21 H. 8. c. 5.* In the Year 1316. *Walter Archbishop of Canterbury* granted the following Commission to an *Apparitor* of his Consistory Court — *Walterus Dei Gratia Cant. Archiep. totius Angliae Primas, Dilecto filio Willielmo de Graftone in Apparitoris Officio, in Curia nostra Cantuar. videlicet, in Consistorio ac*

Decanatu nostro Ecclesia Beatae Mariae de Arcubus London. ministranti salutem Gratiam & Benedictionem. Personam tuam eo quod de fidelitate in dicto Officio per laudabile Testimonium apud nos multipliciter commendaris volentes prosequi cum favore, dictum Apparitoris Officium in Curia Consistorio & Decanatu predictis perpetuo possidendum tibi conferimus per Praesentes. Ita tamen quod te fideliter geras in Officio predicto memorato. Volentes & tibi specialiter concedentes, ut cum in ministerio dicti Officii per teipsum personaliter vacare non poteris, vel absens fueris a Curia, Consistorio & Decanatu predictis, nihilominus per aliam idoneam personam, quem ad hoc assignandum omnia & singula quae dicto incumbunt Officio — facere valeas, & jugiter exercere — *Dat. apud Lambith. 8. Id. Mart. 1316.*

Apparator Comitatus. There was formerly an Officer called by this Name, for which the Sheriffs of *Buckinghamshire* had a considerable yearly Allowance; and in the Reign of *Queen Eliz.* there was an Order of Court for making that Allowance: But the Custom and Reason of it are now altered. *Hale's Sher. Acco. 104.*

Appartement, (from the Fr. *Pareilment*, i. e. likewise, or in like Manner) Signifies a Resemblance or Likelihood; as *Appartement of War.* 2 *R. 2. Stat. 1. c. 6.*

Apparura, Furniture and Implements; *Appertinen. Dominus clamat habere omnes Carrectas ferro non ligatas, & omnes Carrucas cum tota Apparura.* *Placit. in Itin. apud Cestriam 14 H. 7.* *Carrucarum Apparura* is Plough-Tackle, or all the Implements belonging to a Plough.

Appeal, *Appellum*, (from the Fr. *Appel* or *Appeller* to accuse) Is a Word used in our Law for the Removal of a Cause from an inferior Court or Judge to a Superior; but more commonly for the Accusation of a Murderer, by a Party who had Interest in the Person killed; or of a Felon. 1 *Inst.* 287. It signifies as much as *Accusatio* with the Civilians; for as in the Civil Law, Cognizance of Criminal Causes is taken either upon Inquisition, Denunciation or Accusation; so in the Common Law, it is upon Indictment, or *Appeal*, Indictments comprehending both Inquisition and Denunciation. And Accusation or *Appeal* is a lawful Declaration of another Man's Crime (being Felony at least) before a competent Judge, by one that sets his Name to the Declaration, and undertakes to prove it, upon the Penalty that may ensue of the contrary. *Bract. lib. 3. Brit. cap. 22, 25. Staundf. lib. 2. cap. 6.* An *Appeal* is presented two Ways: either by Writ, or Bill: *Appeal* by Writ is when a Writ is purchased out of Chancery by one to another, to the Intent he appeal a third Person of some Felony committed by him, finding Pledges that he shall do it: *Appeal* by Bill, is where a Man of himself gives up his Accusation in Writing, offering to undergo the Burden of appealing the Person therein named. *Bracton.* By *Stat. 3 H. 7.* The Wife or Heir of a Person killed, are to bring their *Appeal* of Murder; which differs from Indictment, being the Suit of the Subject, and the Party's private Action; who prosecutes also for the Crown in Respect of the Felony. *Lit. 116.* And this is the Reason that in *Appeal* of Death, &c. the King cannot pardon the Defendant. 3 *Inst.* 237. This *Appeal* may be brought by Bill before the Justices, in the King's Bench; before Justices of Gaol-Delivery, if the *Appellee* is in Prison before them; before the Commissioners of Oyer and Terminer, &c. or before the Sheriff and Coroner, in the County-Court: But the Sheriff and Coroner

ner have only Power to take and enter the *Appeal* and Count; for it must be removed by *Certiorari* into *B. R.* *Appeals* may be likewise brought before the Constable and Marshal, of Felony done out of the Realm. *Wood's Inst.* 628. At Common Law, *Appeals* lay for High Treason, and were commonly in Parliament. 3 *Inst.* 132. But this was ousted by Stat. 1 *H. 4. c. 14.* By the Common Law, a Man could not maintain an *Appeal* of Death, unless he had made fresh Suit. 2 *Inst.* 319. A Female might have an *Appeal* at Common Law, as Heir to any Ancestor, as well as the Male; but by *Magna Charta*, *nullus capiatur vel Imprisonetur propter Appellam foemina de Morte alterius quam viri sui*, &c. 3 *Salk.* 37. The Heir Male is to bring the *Appeal* for the Death of his Ancestor; and the Wife for the Death of her Husband; &c. 2 *Inst.* 318. But the Husband shall not have *Appeal* for the Death of his Wife; but the Heir only. *Danv. Abr.* 488. An Heir shall not have *Appeal* for the Death of a Man married, except the Wife kill the Husband; in which Case the Heir may prosecute the *Appeal*. 1 *Leon.* 326. 1 *Inst.* 33. The Wife is to be a Wife *de facto* to be intitled to *Appeal*; and if she marries again, before the *Appeal* is brought, or whilst the same is depending, her *Appeal* will be gone. 2 *Inst.* 68, 317. If a Wife dies within the Year, the Heir shall have no *Appeal*. *Kelw.* 120. And if after the Death of the Ancestor the Heir Male dies, 'tis said another Heir shall not have *Appeal*. *H. P. C.* 182. For a Person that prosecutes an *Appeal* must be immediate Heir to the Ancestor killed, or his Suit shall not be received. *Staundf.* 59. But where an *Appeal* lies against an Heir, the next Heir shall bring it. *H. P. C.* 182. An Infant may prosecute an *Appeal*: And it is to be brought where the Felony is done, and the Party wounded shall die. *Staundf.* 63. The Appellant is to commence his *Appeal* in Person; but he may prosecute it by Attorney, having a special Warrant of Attorney filed. 1 *Salk.* 60. The *Appeal* must be brought in a Year and a Day after the Death of the Person murdered: And the Count must set forth the Fact, and the Length and Depth of the Wound, the Year, Day, Hour, Place where done, and with what Weapon, &c. And that the Party died in a Year and Day. 2 *Inst.* 665. Principal and Accessaries before and after are to be joined in *Appeal*. *Danv. Abr.* 493. And this is to be observed, though the Accessary is guilty in another County. 3 *H. 7. c. 1.* In *Appeal* by Original, Principals and Accessaries are generally charged alike, without Distinction till the Plaintiff counts: But 'tis otherwise in *Appeals* by Bill. *Danv.* 494. There is to be but one *Appeal* against the Principal and Accessary: If the Principal is acquitted, it shall acquit the Accessary; and both shall have Damages against the Appellant on a false *Appeal*, or the Accessary may bring a Writ of Conspiracy. 33 *H. 6. c. 2.* 2 *Inst.* 383. Though where a Person is acquitted on a just *Appeal*, he may be arraigned upon Indictment at the King's Suit. And if a Murderer is acquitted upon Indictment, or found guilty and pardoned by the King, the Wife or Heir may bring *Appeal*. *Wood* 629. If the Defendant in *Appeal* is attaint, or acquit; or the Plaintiff Non-suit after Appearance, which is peremptory, no other *Appeal* lies. *H. P. C.* 188. But if the *Appeal* is good and well taken, and afterwards fails, the Defendant shall be arraigned at the Suit of the

King: *Contra*, if the *Appeal* was never good; or well taken, as if it abates for Misnomer, &c. *Staundf.* 147, 148. If there be an Indictment and *Appeal* depending at the same Time against the same Person, the *Appeal* shall be tried first, if the Appellant be ready. *Kel.* 107. Where the Appellant doth not prosecute his *Appeal*; or in case he release to the Defendant; the Appellee may be arraigned at the King's Suit. If the Defendant on an Indictment is convicted of Manslaughter, and allowed his Clergy, it will bar an *Appeal*: But some of our Books tells us the Heir may lodge an *Appeal* immediately before Clergy had: Though others say Clergy ought to be granted; and that it is unreasonable an *Appeal* should interpose presently to prevent Judgment. 3 *Inst.* 131. If a Person immediately after the Verdict of Manslaughter, put in an *Appeal* of Murder, and before the *Appeal* is arraigned, the Defendant demands his Benefit of Clergy; this is a good Bar to *Appeal*, and Praying of Clergy, is having of Clergy, tho' the Court delay calling the Party to Judgment, &c. 1 *Salk.* 60, 62. See *Kel.* 93. *Tel.* 204. But formerly it was held, that the Court might delay the Calling a Convict to Judgment, and thereby hinder him from his Clergy, and make him liable to an *Appeal*, especially if the *Appeal* were depending; and where the Record of a Conviction of Manslaughter is erroneous, or insufficient, &c. the Offender cannot plead the Conviction and Clergy had therein, in Bar of an *Appeal* or second Indictment, &c. 2 *Hawk. P. C.* 378, 379. A Charter of Pardon is no Bar of an *Appeal*: And if the Party be outlawed, &c. in *Appeal*, and the King pardon him, a *Scire facias* shall Issue against the Appellant, who may pray Execution, notwithstanding such Pardon; but if returned *Sci. fec.* and he appears not, then the Appellee shall upon the Pardon be discharged. *H. P. C.* 251. When a Person is indicted for murder, and acquitted thereupon, he is to be bailed till the Year and Day is past, allowed for bringing the *Appeal*, if an *Appeal* be intended. 3 *H. 7. c. 1.* A Peer in *Appeal* of Murder, shall not be tried by his Peers, but by a common Jury; though he shall upon an Indictment for Murder. 3 *H. 7.* In Writ of *Appeal*, the Omission of any Word that is material will destroy it. *H. P. C.* 200. No *Essoin* is allowed the Appellant, in *Appeal* of Death. *Stat.* 13 *Ed. 1.* In *Appeal* the Court can grant no *Impar lance*, but it may be adjourned. 1 *Sid.* 325. And where *Appeal* of Death is brought, the Defendant cannot justify *se Defendendo*, but must plead Not guilty, and the Jury are to find the special Matter. *Bro. App.* 122. 3 *Salk.* 37. *Appeal* is the nicest Suit in Law, for any small Matter will abate it; the Process must bear Date the same Day with the Return; if it be a Day afterwards it is a Discontinuance; and it varies from all other Proceedings, for there can be no Amendment of the Writ, nor is the Discontinuance of it helped by any Statute. *Nelf. Abr.* 215. By Statute, an Appellant bringing a false *Appeal*, shall suffer a Year's Imprisonment, yield Damages to the Party grieved, and pay a Fine to the King; and being not able, those that abetted him, shall be punished in like Manner. *Stat.* 13 *Ed. 1. c. 12.* There are not only *Appeals* of Murder, but of *Maim*, *Rape*, *Robbery*, &c.

The Form of an Appeal of Murder.

Wils. ff. **M**emorand. quod ad General. Deliberation. Gaol. Dom. Reg. Com. Wils. tent. pro Com. Wils. præd. apud, &c. in Com. præd. De Luna Duodecimo Die Martii Anno Reg. Dom. Georgii Dei Gra. Magn. Britann. Franc. & Hiber. Regis fidei Defensor. &c. Nono coram, &c. Justic. dict. Dom. Reg. ad Plura, &c. tenend. Assign. Justic. ipsius Dom. Reg. ad Gaol. suam ibidem de Prisonar. in eadem existen. deliberand. Assign. &c. Johannes B. filius & Hares Thomæ B. defunct. in propria Persona sua per Billam sive Brevis instant. Appellabat Richardum D. nuper de, &c. Gen. & Thomam E. &c. in Custod. Will. C. Ar. Vic. Com. præd. ad Barram ibid. duct. in Propriis Personis suis de morte præd. Thomæ B. Patris sui. Et sunt Pleg. ad Prosequend. illam Billam suam scil't Johan. Doe & Richardus Roe que quidam Bika sequitur in hæc verba. Wils. ff. Johannes B. filius & Hares Tho. B. nuper de, &c. in Com. Wils. Arm. in propria Persona sua instant. Appellat Richardum D. nup. de &c. Gen. & Thomam E. nuper de, &c. in Custod. Willi. C. Ar. Vic. Com. Wils. præd. existen. ad Barram duct. in propriis personis de Mort. dicti Tho. B. patris sui præd. de eo quod præd. Richardus D. & Tho. E. Deum præ oculis suis non habent. sed instigation. Diabolica Moti & seducti vi.esimo secundo die Novembr. Anno Reg. Dom. Georgii Dei Gratia Mag. Britann. Franc. & Hibern. Reg. fidei Defensor. &c. Vi & Armis, &c. apud Parochiam de, &c. in Com. Wils. præd. viz. in quodam loco vocat. &c. in alt. Reg. via ibidem in & super præd. Tho. B. in pace Dei & dict. Dom. Reg. adtunc & ibidem existen. felonice voluntarie & ex Malitia sua præcogitata insult' fecer. ac præd. Richardus D. quandam sclopetam (Anglice a Pistol) valor. decem solid. adtunc & ibidem onerat. (Anglice Charged) cum pulvere Bombardico (Anglice Gunpowder) & Globulo plumbeo (Anglice a leaden Bullet) quam sclopetam idem Richardus D. in manu sua dextra adtunc & ibidem felonice voluntarie & ex malitia sua præcogitata direxit sagittavit & exoneravit ac cum Globulo Plumbeo præd. vi pulveris Bombardici præd. ex sclopetæ præd. sicut præfert' direct. sagittat. & emiss. præfat. Thomam B. in & super dextram partem Pector. ipsius Thomæ B. prope dextrum humerum ejusdem Thomæ B. adtunc & ibid' felonice voluntarie & ex malitia sua præcogitata percussit pupugit & contudit & adtunc & ibid' per Percussionem Punctionem & contusionem præd. cum Globulo præd. sic ut præfert. direct. sagittat. & emiss. in & super dictam dextram partem Pectoris ipsius Thomæ B. prope dextrum humerum ejusdem Thomæ B. felonice voluntarie & ex malitia sua præcogitata dedit eidem Thom. B. unum vulnus mortale (Anglice one mortal Wound) latitudin. unius pollic. longitudin. un. pollic. & profunditat. sex pollic. de quo quidem vulnere mortali idem Thomas B. adtunc & ibidem instant. obiit ac præd. Thomas E. eodem vicesimo secundo die Novembr. eodem Anno apud, &c. præd. in loco præd. & in alt. Reg. via præd. ibidem felonice voluntarie & ex Malitia sua præcogitata fuit præsens abettans existens auxilians confortans & manutenens præd. Richardum D. ad feloniam & Murdrum præd. modo & forma præd. faciend. & perpetrand. Et sic præd. Richardus D. & Thomas E. præfat. Thomam B. modo & forma præd. felonice voluntar. & ex malitia sua præcogitata interfecerunt & Murdraverunt contra pacem dict. Dom. Reg. nunc Corop. & Dignitat. suas, &c. Et quam cito idem felones feloniam & Murdrum præd. fecissent fuger. Et quod Johannes B. filius & hares dict. Thomæ B. recens insecut. fuit eosdem felones de villa in villam usque quatuor villas propinquiores &

ulterius quousque, &c. Et si præd. Richardus D. & Thomas E. feloniam & Murdrum præd. sic ut præfert. fact. dedicere volunt tunc præd. Johannes B. parat. est feloniam & Murdrum præd. vers. ipsos Richardum D. & Thomam E. probare prout cur. dict. Dom. Reg. nunc hic Conf. inven. Pleg. de Prosequend. Appellam ill. &c

Appeal of Maihem, Is the Accusing one that hath maimed another: But this being generally no Felony, it is in a Manner but Action of Trespass; and nothing is recovered by it but Damages. In Action of Assault and Maiming, the Court may increase Damages, on View of the Maihem, &c. And though Maihem is not Felony, in Appeals and Indictments of Maihem, the Words felonice Maihemavit are necessary. 3 Inst. 63. Bracton calls Appeal of Maihem Appellum de Plagiis & Mahemio, and writes a whole Chapter of it. Lib. 3, Tract. 2. c. 24. And Appeal of wrong Imprisonment is used by Bracton for an Action of wrong or false Imprisonment. Lib. 3. Tract. 2. c. 25.

Appeal of Rape. This lies where a Rape is committed, viz. where a Man hath carnal Knowledge of the Body of a Woman by Force, and against her Will. 3 Inst. 30. A Feme Covert, without her Husband, may bring Appeal of Rape: And the Stat. 11 H. 4. c. 13. gives Power where a Woman is ravished, and afterwards consents to it, for a Husband, or a Father, or next of Kin, there being no Husband, to bring Appeal of Rape; also the Criminal in such Case, may be attainted at the Suit of the King. 3 Inst. 131. 6 R. 2. c. 6. And if a Woman consent after, she is disabled to challenge any Inheritance, Dower, &c. by Stat. 6 R. 2. The Statute of West. 1 c. 13. Enacts that Appeal of Rape shall be brought within 40 Days: But by Stat. Westm. 2. c. 34. relating to this Offence, no Time is limited for the Prosecution; so that it may be brought in any reasonable Time. H. P. C. 186. Appeal of Rape is to be commenced in the County where committed: And if a Woman be assaulted in one County, and ravished in another, the Appeal of Rape lies in that County where she was ravished. H. P. C. 186.

The Form of an Appeal of Rape.

A. B. de, &c. in propria Persona sua instanter Appellat C. D. nuper de, &c. in Prisona, &c. juxta formam statuti in Parlamento Dom. Richardi Reg. Angl. secundi Anno Regni sui sexto tent. edit. de eo, viz. Quod idem C. D. die & Anno, &c. apud, &c. in Com. præd. M. B. uxorem præd. A. B. felonice Rapuit & eam carnaliter cognovit contra formam statuti præd. &c. Et quam cito, &c. quousque, &c. Et si idem C. D. felon. & Rapt. præd. velit dedicere præd. A. B. hoc parat. est versus eum probare prout Cur. &c.

Appeal of Robbery. A Remedy given by the Common Law, where a Person is robbed of his Goods, &c. to have Restitution of the Goods stolen: As they could not be restored on Indictment at the King's Suit, this Appeal was judged necessary. 3 Inst. 242. If a Man robbed make fresh Pursuit after, and apprehend, and prosecute the Felon, he may bring Appeal of Robbery at any Time afterwards. Staundf. 62. And if one Man robs several Persons, every one of them may have Appeal: Likewise if the Robber be attainted at the Suit of one, he shall be tried at the Suit of the rest, so as their Appeals were commenced before

fore the Attainder. *Danu. Abr. 494.* In *Appeal of Robbery*, the Plaintiff must declare of all Things whereof he is robbed, or they shall be forfeited to the King; for the *Appellant* can have Restitution for no more than is mentioned in his *Appeal*. 3 *Inst. 227.* This *Appeal* is drawn after the following Manner.

The Form of an *Appeal of Robbery.*

A. B. de, &c. in Com. prad. in Propria persona sua instanter Appellat C. D. in Custod. Mar. Marefc. Dom. Regis coram ipso Dom. Reg. existen. de eo quod idem A. B. fuit in pace Dei & dicti Dom. Reg. nunc apud, &c. in Com. prad. die Luna, &c. Anno, &c. prad. C. D. felonice, &c. Et prad. C. D. felonice ut felo dicti Dom. Reg. nunc insidiand. & insultum prameditat. contra pacem dicti Dom. Reg. nunc Coronam & Dignitat. suas die Anno hora loco & Com. prad. Bona & Catalla ipsius A. B. viz. &c. adtunc & ibidem invent. felonice furat. fuit Et quam cito idem C. D. feloniam & Roberiam prad. fecisset fugam fecit dictus A. B. ipsum recent. insecutus fuit de villa in villam usque quatuor vill. propinquiores & ulterius quousque, &c. Et si idem C. D. feloniam prad. velit dedicere prad. A. B. hoc parat. est versus eum probare prout Cur. &c.

Plea and Judgment thereupon.

ET prad. C. D. in propria Persona sua in Custod. &c. ad Barram ductus ven. & Defend. omnem felon. & Quicquid, &c. Et dic. quod ipse in nullo est Culpabilis de Roberia & feloniam prad. prout prad. A. B. superius Appellavit Et de hoc pon. se super Patriam Et prad. A. B. similit. Ideo capiat. inde inter eos Furium. & jur. ven. qui ad hoc electi triari & jurati dic. super Sacram. suum quod prad. C. D. est Culpabilis de feloniam & Roberia prad. prout A. B. eum superius Appellavit & quod null. habet terras tenementa bona neque Catalla jur. prad. questi si prad. C. D. capt. fuit ad recentem sectam ipsius A. B. qui dic. quod sit Ideo Conf. est quod prad. C. D. suspendat. &c. Et quod prad. A. B. rehabeat Catalla prad. &c.

By the Stat. 21 H. 8. c. 11. The like Restitution of stolen Goods may be had on *Indictments* after Attainder, as on *Appeals*: And *Appeals* of Rape and Robbery are now much out of Use; but the *Appeal* of Murder still continues, and is often brought.

Appeal to Rome. This was ever esteemed so great an Interruption to national Justice, that even at the Time the Roman Catholick Religion took Place in this Kingdom it was prohibited. By Statute 24 H. 8. *Appealing to Rome* incurs the Penalty of a *Premunire*: And it is made Treason by the Stat. 13 El. Where an *Appeal* in an Ecclesiastical Cause is made before the Bishop, or his Commissary, it may be removed to the Archbishop; and if before an Archdeacon, to the Court of Arches, and from the Arches to the Archbishop; and when the Cause concerns the King, *Appeal* may be brought in fifteen Days from any of the said Courts to the Prelates in Convocation. 24 H. 8. c. 12. And the Stat. 25 H. 8. c. 19. gives *Appeals* from the Archbishop's Courts to the King in Chancery, who thereupon appoints Commissioners finally to determine the Cause; and this is called the Court of Delegates: There is also a Court of Commissioners of Review; which Commission the King may grant as supreme Head, to review the definitive Sentence given on *Appeal*

in the Court of Delegates. 4 *Inst. 340.* *Wood's Inst. 506.* On taking away the Supremacy of the Pope in this Kingdom, this Power was lodged in the Crown as originally belonging to it.

Appearance, In the Law signifies the Defendant's Filing Common or Special Bail, when he is arrested on any Process out of the Courts at *Westminster*: And there can be no *Appearance* in the Court of B. R. but by Special or Common Bail. There are four Ways for Defendants to appear to Actions; in Person, or by Attorney, by Persons of full Age; and by Guardian, or next Friend, by Infants. *Show. 165.* In all Cases where Process issues forth to take the Person's Body, if an *Appearance* only, and not Special Bail is required, there every such Person may appear in Court in his proper Person, and file Common Bail. 1 *Lill. Abr. 85.* *Hill. 22.* Car. B. R. Persons outlawed in any Case, except for Treason or Felony, may appear by Attorney to reverse the same without Bail, except where Special Bail shall be ordered by the Court. Stat. 4 & 5 W. & M. c. 18. If where a Debt is under the Sum of 10 l. the Action requires only an *Appearance*, the Attorney for the Defendant is to back the Sheriff's Warrant, and indorse thereon that he will appear, and cause Common Bail to be filed for the Defendant; which is an *Appearance* upon Record. 1 *Lill. Abr. 84, 85.* Attornies subscribing Warrants to appear, are liable to a Penalty of 5 l. and Attachment, upon Non-appearance. And where an Attorney promiseth to appear for his Client, the Court will compel him to appear and put in Common Bail, in such Time as is usual by the Course of the Court; and that altho' the Attorney say he hath no Warrant for *Appearance*. Nor shall Repealing a Warrant of Attorney to delay Proceedings, excuse the Attorney for his not appearing, who may be compelled by the Court. 1 *Lill. 83, 84.* The Defendant's Attorney is to file his Warrant the same Term he appears, and the Plaintiff the Term he declares, under Penalties by Stat. 4 & 5 Ann. c. 16. And *Appearances* and Common Bail are to be entered and filed by the Defendant within eight Days after the Return of the Process on which he was arrested, on Pain of forfeiting 5 l. to the Plaintiff, for which the Court shall forthwith award Judgment and Execution. 5 & 6 W. & M. c. 21. If the Defendant does not appear and find Bail, the Plaintiff's Attorney is to call upon the Sheriff for the Return of the Writ, whether the Defendant be arrested, or not; and proceed accordingly. On two *Nihil* returned upon a *Scire & Alias Scire facias*, they amount to a *Scire feci*, and the Plaintiff giving Rule, the Defendant is to appear, or Judgment shall be had against him by Default: And where a Defendant doth not plead after *Appearance*, Judgment may be had against him. *Style 208.* Upon a Party's *Appearing*, Errors in Writs are in many Cases salved, and the Party may be obliged to answer as if there had been no such Errors. 2 *Hawk. 302.* *Appearance* by Guardian, and next Friend. *Vide Infants, &c.*

Appendant, (*Appendens*) Is a Thing of Inheritance belonging to another Inheritance that is more worthy; as *Accessorium principali* with the Civilians, or *Adjunctum subjecto* with the Logicians. An Advowson, Common, Court, &c. may be *Appendant* to a Manor: Common of fishing, *Appendant* to a Freehold: Land *Appendant* to an Office: A Seat in a Church to a House, &c. But Land is not *Appendant* to Land, both being Corporeal,

poreal, and one Thing Corporeal may not be *Appendant* to another that is Corporeal; but an incorporeal Thing may be *Appendant* to it. 1 *Inst.* 121. 4 *Rep.* 86. *Danv. Abr.* 500. Common of Estovers cannot be *Appendant* to Land; but to a House to be spent there. 1 *Inst.* 120. Land is not *Appendant* to a Messuage. 1 *Nels. Abr.* 224. But by the Grant of a Messuage, the Orchard and Garden will pass as *Appendant*. *Appendants* are ever by Prescription.

Appenditia, The *Appendages* or Pertinences of an Estate — *Simon* Earl of *Northampton* gave to the Knights *Templars* his Manor of *Merton* in *Com. Oxon. cum omnibus Appenditiis suis* — *Kennet's* Paroch. *Antiq.* 110. Hence our Penticies, or Pent-Houses are called *Appenditia Domus*, &c.

Appennage, or *Apennage*, (Fr.) Is derived from *Appendendo*, or the German Word *Apanage*, or *Avanage*, signifying a Portion. It is used for a Child's Part or Portion; and is properly the Portion of the King's younger Children in *France*, where by a Fundamental Law called the *Law of Appennages*, the King's younger Sons have Dutchies, Counties, or Baronies granted to them and their Heirs, &c. the Reversion being reserved to the Crown, and all Matters of Regality as to Coinage, and Levying Taxes in such Territories. *Spelman's Gloss.*

Appensura, The Payment of Money at the Scale, or by Weight. — *Dedit Regi prefato Appensuram novem Librarum purissimi auri juxta magnum pondus Normannorum.* *Hist. Elicn. Edit. Gale* l. 2. c. 19.

Appodfare, Is a Word used in our old Historians, and it signifies to lean on, or prop up any Thing, &c. *Walsingham ann.* 1271. *Mat. Paris. Chron. Aula Regie ann.* 1321.

Apponere, To pledge or pawn — *Accepta a fratre Gulielmo summa non Modica Normanniam illi apposuit. Neubrigenfis, Lib.* 1. c. 2.

Apportionment, (*Apportionamentum*) Is a Dividing of a Rent, &c. into two Parts, according as the Land out of which it issues is divided among two or more: As if a Man have a Rent-service issuing out of Land, and he purchaseth Part of the Land, the Rent shall be *apportioned* with Respect to the Value of the Land. *Terms de Ley* 47. And if a Stranger recovers Part of the Lands, a Lessee shall pay, having Regard to that recovered, and what remains in his Hands. Where the Lessor recovers Part of the Land: Or enters for a Forfeiture into Part thereof; the Rent shall be *apportioned*. 1 *Inst.* 148. If a Man leases three Acres rendring Rent, and afterwards grants away one Acre, the Rent shall be *apportioned*. 1 *Inst.* 144. Lessee for Years leases for Years, rendring Rent, and after devises this Rent to three Persons, this Rent may be *apportioned*. *Danv. Abr.* 505. If a Lessee for Life or Years under Rent, surrenders Part of the Land, the Rent shall be *apportioned*: But where the Grantee of a Rent-charge purchaseth Part of the Land, there all is extinct. *Moor* c. 231. A Rent-charge issuing out of Land, may not be *apportioned*: Nor shall Things entire, as if one hold Lands by Service to pay yearly to the Lord, at such a Feast, a Horse, &c. 1 *Inst.* 149. But if Part of the Land out of which a Rent-charge issues descends to the Grantee of the Rent, this shall be *apportioned*. *Danv.* 507. A Grantee of a Rent releases Part of the Rent to the Grantor, this doth not extinguish the Residue, but it shall be *apportioned*; for here the Grantee dealeth not with the

Land, only the Rent. *Co. Lit.* 148. On Partition of Lands out of which a Rent is issuing, the Rent shall be *apportioned*. *Danv. Abr.* 507. And where Lands held by Lease rendring Rent are extended upon Elegit, one Moiety of the Rent shall be *apportioned* to the Lessor. *Ibid.* 509. If Part of Lands leased is surrounded by fresh Water, there shall be no *Apportionment* of the Rent: But if it be surrounded with the Sea, there shall be an *Apportionment* of the Rent. *Dyer* 56. A Man purchases Part of the Land where he hath Common appendant, the Common shall be *apportioned*: Of common appurtenant it is otherwise, and if by the Act of the Party, the Common is extinct. 8 *Rep.* 79. Common appendant and appurtenant may be *apportioned* on Alienation of Part of the Land to which it is appendant or appurtenant. *Wood's Inst.* 199. If where a Person has Common of Pasture *Sans Number*, Part of the Lands descends to him, this being intire and uncertain cannot be *apportioned*: But if it had been common certain, it should have been *apportioned*. 1 *Inst.* 149. Conditions generally are entire, and cannot be *apportioned* by the Act of the Party. 1 *Nels. Abr.* 227. A Contract may not be divided or *apportioned*, so as to subject a Man to two Actions. 1 *Salk.* 65.

Apportum, (from the Fr. *Apport*) Signifies properly the Revenue or Profit which a Thing brings in to the Owner: And it was commonly used for a Corody or Pension. It hath also been applyed to an Augmentation given to an Abbot out of the Profits of a Manor for his better Support. — *Ita quod Proficua Manerii predicti nomine Apporti, quolibet anno prefato A. in subventionem sustentationis sue solverentur, &c.* *Anno* 22 *Ed.* 3.

Appofal of Sheriffs. The Charging them with Money received upon their Accounts in the Exchequer. *Stat.* 22 & 23 *Car.* 2.

Apprendre, (Fr.) A Fee or Profit *Apprendre*, is Fee or Profit to be taken or received. *Anno* 2 & 3 *Ed.* 6. c. 8.

Apprentice, (*Apprenticius*, Fr. *Apprenti* from *Apprendre* to learn) Signifies a young Person bound by Indendures to a Tradesman or Artificer, who upon certain Covenants is to teach him his Mystery or Trade: These *Apprentices* are a Kind of Bond-Men, differing only in that they are Servants by Covenant, and for a certain Term, usually seven Years, and they live for the most Part more reputably. *Smith's Rep. Angl. lib.* 3. cap. 8. Seven Years *Apprenticeship* is required to intitle a Man to use any Trade; but this relates only to such *Apprenticeship* to any Craft or Mystery, and does not extend to getting of a Livelihood by meer Labour, where there is no Craft or Mystery. 1 *Roll. Rep.* 10. By the Statute 5 *El.* c. 4. Aliens and Denizens are restrained to use any Handicraft or Trade therein mentioned, unless they have served seven Years *Apprenticeship* within the Realm. *Hutt.* 132. But it hath been adjudged, that if an *Apprentice* serve seven Years beyond Sea, he shall be excused from the Penalties of the Stat. 5 *El.* And if he serve seven Years, although he was never bound. 1 *Salk.* 76. And *Apprentices* going into the Army in the last Wars might set up their Trades in the County where born, though they did not serve out their Times, *Stat.* 10 & 11 *W.* 3. An Infant above the Age of fourteen Years may bind himself with Covenants to serve as an *Apprentice* by the Custom of *London*: Infants may voluntarily bind themselves *Apprentice*, and continuing seven Years, have the Bene-

fit of their Trades; but a Bond for their Service shall not bind them. *Cro. Car.* 179. By the Custom of the City of London, an Apprentice may be turned over from one Master to another. And if the Master refuse to make the Apprentice Free at the End of the Term, the Chamberlain may make him Free: In other Corporations, there must be a *Mandamus* to the Mayor, &c. to make him Free in such Case. *Danv. Abr.* 421. *Wood's Inst.* 51. No Apprentice or Journeyman shall be restrained by Bond or Oath from keeping of a Shop. 1 *Lill. Abr.* 89. Whatever an Apprentice gains, is for the Use of his Master; and whether he was legally bound or no, is not material, if he was an Apprentice *de facto*. *Salk.* 68. But the Stat. 12. relating to Servants stealing and purloining the Goods of their Masters of the Value of 40 s. which is Felony, extends not to Apprentices under fifteen Years old. For enticing an Apprentice to leave his Service, Action of the Case may be brought: And for enticing to imbezil Goods, Indictment will lie. 1 *Salk.* 380. A Master may be indicted for not providing for, or turning away an Apprentice. If a Master give his Apprentice Licence to leave him, it cannot be afterwards recalled. *Mod. Ca.* 70. As no Apprentice can be made without Writing; so none may be discharged by his Master, but by Writing under his Hand, and with the Allowance of a Justice of Peace. *Dalt.* 121. Justices of Peace in their Sessions may cause disorderly Apprentices to be corrected and punished; or upon Complaint of the Apprentice of ill Usage from his Master, they may discharge him. *Stat.* 5 *Eliz.* When a Master dies, the Apprentice is to go to the Executor or Administrator to be maintained if there be Assets: But the Executor, &c. may bind him over to some other Master for the Remainder of the Time. Serving an Apprenticeship gains a Settlement by Statute in a Place: But a Covenant between a Master and a third Person, the Servant not being Party, makes no Apprenticeship to gain a Settlement. *Salk.* 479. By Stat. 42 *Eliz. c.* 2. Churchwardens and Overseers of the Poor may bind out poor Apprentices, by Assent of two Justices of Peace: And Persons receiving Money with poor Apprentices, where Money is given for placing such out, are to give Security for Re-payment in seven Years, for the Binding out others, &c. 7 *Jac.* 1. *c.* 3. And if any Person refuse to accept a poor Apprentice, he shall forfeit 10 l. 8 s. 9 d. 3. Also Justices of Peace and Churchwardens, &c. may put out poor Boys Apprentice to the Sea-Service. 2 *Ann. c.* 6. A Duty of 6 d. in the Pound under 50 l. and 12 d. in the Pound for Sums exceeding it, given with Apprentices, (except poor Apprentices) is granted by Stat. 8 *Ann. cap.* 9.

An Indenture of Apprenticeship.

THIS Indenture made the Day and Year, &c. Witnesseth that A. B. Son of, &c. Hath of his own free and voluntary Will placed and bound himself Apprentice unto C. D. of, &c. to be taught in the Trade, Science, or Occupation of &c. which he the said C. D. now useth, and with him as an Apprentice to dwell, continue, and serve from the Day of the Date hereof, unto the full End and Term of seven Years from thence next ensuing, and fully to be compleat and ended; during all which Term of seven Years, the said Apprentice his said Master well and faithfully shall serve, his Secrets keep, his lawful Commands eve-

ry where gladly do, Hurt to his said Master he shall not do, nor wilfully suffer to be done by others, but of the same to his Power shall forthwith give Notice to his said Master; the Goods of his said Master he shall not Imbezil or Waste, nor them lend without his Consent to any; at Cards, Dice, or any other unlawful Games, he shall not play; Taverns, or Alehouses he shall not frequent; Fornication he shall not Commit, Matrimony he shall not Contract; from the Service of his said Master he shall not at any Time depart or absent himself, without his said Master's Leave; but in all Things as a good and faithful Apprentice shall and will demean and behave himself towards his said Master, and all his, during his said Term. And the said Master his said Apprentice the said Trade, Science, or Occupation of, &c. which he now useth, with all Things thereunto belonging, shall and will Teach and Instruct, or cause to be well and sufficiently taught and instructed, after the best Way and Manner that he can; and shall and will also find and allow unto his said Apprentice, Meat, Drink, Washing, Lodging, and Apparel, both Linen and Woollen, and all other Necessaries fit and convenient for such an Apprentice, during the Term aforesaid; and at the End of the said Term, shall and will give to the said Apprentice one new Suit of Apparel, &c. In Witness, &c.

Appropriation, (*Appropriatio* from the Fr. *Appropriier*) Is the Annexing of a Benefice, originally *Juris Divini & in Patrimonio nullius*, to the proper and perpetual Use of some Religious House, Bishoprick, College, or Spiritual Person. And when Appropriation is made, the Patron is perpetual Parson, and hath perpetual Institution and Induction; for the Appropriation alone is a sufficient Admission, &c. *Plowd.* 499. To make an Appropriation, the King's Licence is to be obtained in Chancery, the Consent of the Ordinary, Patron and Incumbent, where the Church is full; and of the Diocesan, and Patron, if the Benefice is void. *Plowd.* 496. 15 *R. 2. c.* 6. Appropriation made during the Vacancy of the Benefice, is executed immediately; and when the Church is full, by apt Words, the Patron is constituted Parson after it becomes void. 11 *Rep.* 11. An Appropriation may be by the King alone, where he himself is Patron; as when by Letters Patent he grants the Advowson which he is seised of in Right of his Crown to a Dean and Chapter, &c. *Plowd.* 499. No Appropriation can be made without Licence of the King. 8 *Rep.* 11. Nor may it be properly unless to a Spiritual Person capable of the Cure: It may be to a Bishop, &c. and his Successors. *Danv. Abr.* 511. Where Appropriations are made, a Vicar is to be endowed to serve the Cure: And formerly in Licenses of Appropriation, it was expressed that the Diocesan should also provide a convenient Sum of Money to be yearly paid out of the Fruits, towards the Sustentation of the Poor of the Parish. *Stat.* 15 *R. 2. c.* 6. A Vicarage endowed may not be appropriated; but it may be united to another Church, or to a Dean and Chapter, or College, with the King's Consent. *Hob.* 307. An Appropriation cannot be assigned over, or surrendered to any; nor can it indure longer than the Body Spiritual to which it is at first appropriated: But those to whom granted may make Leases of the Profits. *Plowd.* 499. If after an Appropriation, a Clerk is presented to the Bishop, and instituted and inducted, the Benefice returns to its former Nature, and the Appropriation is dissolved. 7 *Rep.* 13. But if Lessee for Years of an Appropriation, pre-

presents thereto, this *Disappropriation* shall not bind him to the Reversion. *Danv.* 513. If a Feme endowed of an Advowson appropriate presents to it, the *Appropriation* is dissolved. 1 *Inst.* 46. If a Man recovers the Advowson in Writ of Right, this *disappropriates* the Church: And Dissolution of the Spiritual Corporation *disappropriates* an *Appropriation*. Tho' *Appropriation* cannot properly be made, except to Spiritual Persons, and their Successors; yet by the Statute 31 H. 8. the King's Patentees (though Laymen) are rendered capable of Parsonages appropriate of dissolved Monasteries; but these are generally called *Impropriations*. *Appropriations* have been judged an Abuse and Robbery of the Church and Parish-Priests, &c. *Kennet's Paroch. Antiq.* 433.

The Form of a Grant of Appropriation.

SCiatis quod nos Deditimus, &c. Decano & Capitulo Ecclesie Cathedralis, &c. Advocationem Rectorie Ecclesie Parochialis de, &c. Habendam & Tenendam. &c. iisdem Decano & Capitulo & Successoribus suis in perpetuum Et ulterius Sciatis per Præsentes quod nos de Gratia nostra special. ac Autoritate nostr. Regia suprema & Ecclesiastica, qua nunc fungimur, pro nobis Hæredibus & Successoribus nostris Concedimus & Licentiam Damus prædict. Decano & Capitulo & Successoribus suis Rectoriam & Ecclesiam prædict. quando per Mortem, Resignationem, vel Deprivationem, aut per aliquem alium modum quemcunque vacare contigerit, immediate in suos proprios usus Tenere sibi & Successoribus suis in perpetuum possint & valeant absque Molestatione & Impedimento nostro Hæredum aut Successorum nostrorum ac hoc absque aliqua Præsentatione inductione sive Admissionem alicujus Incumbentis ad eandem Rectoriam extunc in posterum fæd. ac ulterius.

An *Appropriation* by the Patron or first Founder, is thus: Ego A. B. de, &c. Concessi Ecclesiam & Advocationem meam de H. cum Terris & Decimis omnibus ad eam pertinentibus, Decano de, &c.

Appropriare Communam, To discommon, or separate, and inclose any Parcel of Land, that was before open Common — *Anno D.* 1299. The Prior and Convent of *Burcester* granted to the Rector of *Asherugge* and the *Bon hommes* of that Place, quod tibi possint *Appropriare*, & includere pro voluntate sua tres Acres de Comuni Pastura in *Blakethorn*, &c. *Paroch. Antiq.* 336.

Approbe, (*Approbare*) To augment a Thing, or rather to examine it to the utmost: To *approve* Land is, to make the best Benefit of it, by increasing the Rent, &c. 2 *Inst.* 474.

Approvement, Is where a Man hath Common in the Lord's Waste, and the Lord makes an Inclosure of Part of the Waste for himself, leaving sufficient Common with Egress and Regress for the Commoners. *Reg. Judg.* 8, 9. If there be not sufficient Common left for the Tenant, he may have a Writ of *Assize*, and shall recover treble Damages. *Stat.* 3 & 4 *Ed.* 6. c. 3. And a Commoner may break down an Inclosure, if the Lord doth inclose Part of the Common, and not leave sufficient Room in the Residue. But if any, upon just Title of *Approvement*, do make a Hedge or Ditch for that Purpose, which afterwards is thrown down in the Night by Persons unknown, the Towns adjoining may be distrained to make such Hedge, &c. for which there is a Writ called the *Noctanter Writ*. *Stat.* 13 *Ed.* 1. c. 46. 2 *Inst.* 474. *Approvement* is to be only by Inclosure; and the Lord may not by the Statutes

of *Approvement* dig Pits for Gravel, or Coal, &c. 1 *Roll. Abr.* 90, 405. 9 *Rep.* 112. *Approvement* may be made between Neighbour and Neighbour, though one of them dwell in another Town, if the Common join together; and if the Lord hath Common in the Tenant's Ground, the Tenant may *approve*. 2 *Inst.* 475. The Common is to be Common appendant or appurtenant, to be subject to *Approvement*, and not Common in gross to a certain Number. The Word *Approvement* is also used for the Profits of Lands themselves. *Crompt. Jurisd.* 152. And the Statute of *Merton* 2 H. 3. makes Mention of Land newly *approved*. *F. N. B.* 71. *Approvement ann.* 43. *Eliz.* c. 11. Is the same with *Improvement* — *Idem* *Approvementum* — Cum omnibus Approvementis & aliis Pertinentis suis. *Mon. Angl.* 607.

Approvers. *Anno* 9 H. 6. Bailiffs of Lords in their Franchises are called their *Approvers*: And *Approvers* in the Marches of *Wales* were such as had Licence *De vendre & a-bater* Beasts, &c. But by the Statute 2 *Ed.* 3. c. 12. *Approvers* are such as are sent into Counties to increase the Farms of Hundreds, &c. held by Sheriffs. Such Persons as have the Letting of the King's Demesnes in small Manors, are called *Approvers* of the King, (*Approbatores Regis*) *Anno* 51 H. 3. And in the Stat. 1 *Ed.* 3. c. 8. Sheriffs are called the King's *Approvers*.

Approver, or *Prover*, (*Approbator*) Is one that confessing Felony committed by himself, appeal-eth or accuseth others to be guilty of the same Crime. He is called *Approver* in this Sense, because he must *prove* what he hath alledged; and that Proof was by Battle, or the Country, at the Election of him appealed. And the Form of this Accusation you may find in *Crompt. Just.* 250. See also *Bracton lib.* 3. *Staundf. Pl. Cor.* 52. If a Person indicted of Treason or Felony, not disabled to accuse, upon his Arraignment, before any Plea pleaded, and before competent Judges, confesseth the Indictment, and takes an Oath to reveal all Treasons and Felonies that he knoweth of; and therefore prays a Coroner to enter his Appeal, or Accusation against those that are Partners in the Crime contained in the Indictment, such a one is an *Approver*. 3 *Inst.* 129. H. P. C. 192. Though the *Approver* is sworn to discover all Treasons and Felonies, yet he is not to be an *Approver*, but of the Offence whereof he is indicted: And this Accusation of himself, and Oath, makes his Accusation of another of the same Crime to amount to an Indictment; and if his Partners are convicted, the King is to pardon him, as to his Life: But he ought not to be suffered to continue in the Kingdom. Coroners may award Process to the Sheriff against Appelles in the same County, on the Discovery of the *Approver*: And the Justices of Gaol-Delivery, &c. have Power to award Process into any County to apprehend and try them. 2 *Hawk. Pl. Cor.* 208. A Man may be an *Approver* against any Person within the Realm, if there be such a Person, and he be named of the County wherein he dwells; but if there be no such Person, the *Approver* shall be hanged for his false Appeal. *Ibid.* 206. When a Person hath once pleaded Not guilty, he cannot be an *Approver*. 3 *Inst.* 129. And Persons attainted of Treason or Felony, shall not be *Approvers*; their Accusation will not then be of such Credit as to put any Man upon his Trial. 2 *Hawk.* 205. Infants under the Age of Discretion, may not be *Approvers*: And it being in the Discretion of the Court

Court to suffer one to be an *Approver*, this Method of late hath been seldom practised. But we have in Cases of Burglary and Robbery on the Highway, what seems to amount to the same, by Statute; it being ordained, that where such a Criminal, out of Prison, discovers two others concerned in the Crime, he shall have his Pardon, &c. Statute 5 Ann. c. 31. &c.

Appuare, To take to his own Use or Profit, viz. *Domini vastorum & Boscorum*, &c. Appuare se possunt de vastis, &c. W. 2. c. 20.

Appurtenances, (*Pertinentia*) Derived from the French *Appartenir*, to belong to; signify Things both Corporeal and Incorporeal appertaining unto another Thing as Principal: As Hamlets to a Chief Manor; and Common of Pasture, Piscary, &c. Also Liberties and Services of Tenants. *Brit. cap. 39.* If a Man grant Common of Estovers to be burnt in his Manor, these are *appurtenant* to the Manor; for Things *appurtenant* may be granted at this Day. *Co. Lit. 121.* Common *appurtenant* may be to a House, Pasture, &c. Outhouses, Yards, Orchards and Gardens are *appurtenant* to a Messuage; but Lands cannot be said to be *appurtenant* to a Messuage. *1 Lill. Abr. 91.* And one Messuage cannot be *appurtenant* to another. *Ibid.* Lands cannot, as to the Right of the Words *cum Pertinentiis*, be *appurtenant* to the House; but the Word *Pertinens* may be taken in the Sense of usually letten or occupied with the House. *Plowd. 170.* Land shall pass in a Lease, or Devise of a House with the *Appurtenances*, as pertaining to the same, when it hath been used and occupied with it ten Years or more; which is judg'd a sufficient Time to make it *appertaining* to the House. *Cro. El. 704.* Lands, a Common, &c. may be *appurtenant* to a House; tho' not a Way. *3 Salk. 40.* Grant of a Manor, without the Words *cum pertinentiis*, 'tis said will pass all Things belonging to the Manor. *Owen's Rep. 51.* Where a Person hath a Messuage, &c. to which Estovers are *appurtenant*, and it is blown down or burnt by the Act of God; if the Owner re-edify it, in the same Place and Manner as before, he shall have the ancient *Appurtenances*. *4 Rep. 86.* A Turbary may be *appurtenant* to a House; so a Seat in a Church, &c. but not to Land; for the Things must agree in Nature and Quality. *3 Salk. 40.*

Aquage, (*Aquagium*, *quasi Aquæ Agium*, i. e. *Aqueductus & Aquægangium*, a Water-course. — *Non liceat alicui de cetero facere Dammas vel Fordas aut alia Impedimenta in aliquibus landeis, Watergangiis, Fossatis sive Aquagiis communibus in Marisco prædicto.* Ordin. Marisc. de Romney fact. temp. Hen. 3. and Ed. 1. p. 72.

Arabant, *ad Curiam Domini*, Was intended of those who held by the Tenure of Ploughing and Tilling the Lords Lands within the Manor. *Spelm. Gloss.*

Arace, (*Angl.*) To raise, from the French *Aracher*, *Evellere*.

Arabe, *In Arabo conjurare*, i. e. To make Oath in the Church, or in some other Holy Place; for according to the *Riparian* Laws, all Oaths were made in the Church upon the Relicks of Saints.

Aratrum Terræ, As much as can be tilled with one Plough. — *Hoc Manerium est 30. Aratrorum.* Thorn. Anno 616. *Aratura Terræ* is the Service which the Tenant is to do for his Lord in Ploughing his Land.

Arbitrator, (*Lat.*) Is a private extraordinary Judge between Party and Party, chosen by their

mutual Consents, to determine Controversies between them. *West. Symb. Sect. 21.* And *Arbitrators* are so called, because they have an *arbitrary* Power; for if they observe the Submission, and keep within due Bounds, their Sentences are definitive, from which their lies no Appeal. *1 Roll. Abr. 251.* 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 Matters in Variance; but their Determination must be certain, and it is to be according to the express Condition of the Bond by which the Parties submit themselves to their Judgment. *1 Nelf. Abr. 234. Dyer 356.* The Chancery will not give Relief against the Award of the *Arbitrators*, except it be for Corruption, &c. *Chanc. Rep. 279.* *Arbitrators* are to award what is equal between the Parties, and not on one Side only; and the Performance of it must be lawful and possible; also the Award must be final. *1 Inst. 206. 1 Roll. Abr. 242, &c.* If the *Arbitrators* make an Award of Money to be paid to a Stranger, &c. unless the Parties have Benefit by it, it will be void. *2 Saund. 122. 1 Lill. 169.* A Party is not to be made a Judge in his own Cause by Award. *1 Salk. 71.* Where a Thing is to be done on Payment of Money, a Tender of the Money is as much as an actual Payment. *Mod. Ca. 33.* Action of Debt may be brought for Money adjudged to be paid by *Arbitrators*, declaring on the Award; and also Action of Debt upon the Bond for not performing the Award. *Brownl. 55.* Sometimes Matters are referred by the Judges at the Assizes to the three Foremen of the Jury, in the Nature of *Arbitrators*; and after their Award is made, the Plaintiff may have Attachment, &c. to oblige Performance. *1 Salk. 84.* When there is but one *Arbitrator*, which happens where the Matter is referred to Two, and they cannot agree, but leave it to be determined by a third Person, it is called an *Umpirage*. *8 Rep. 98.* But the *Arbitrators* are to refuse, and declare they will make no Award, before the Umpire shall proceed: Tho' an Umpire's Award shall be good where the *Arbitrators* make a void Award, which is no Award. *1 Lill. Abr. 170.* *Arbitrators* are generally where the Parties think it more safe to refer the Matters in Variance, to the Determination of Friends, than to venture a Trial at Law. And the Civilians make a Difference between *Arbiter* and *Arbitrator*; an *Arbiter* is tied to proceed and judge according to Law mingled with Equity; but an *Arbitrator* is wholly at his own Discretion, without Solemnity of Process or Course of Judgment, to hear and determine the Controversy referred to him; so as it be *Juxta Arbitrium boni viri*. Cowel.

Arbitrament, (*Arbitrium*) Is the Sentence or Determination pronounced by *Arbitrators*; and published when they have heard all Parties. And *Arbitrament* is either general, of all Actions, Demands, Quarrels, &c. or Special, of some certain Matters in Controversy: It may be also Absolute, or Conditional. *8 Rep. 98.* To every *Arbitrament* five Things are incident, 1. Matter of Controversy. 2. Submission. 3. Parties to the Submission. 4. *Arbitrators*. 5. Giving up the *Arbitrament*. *Hardr. 44.* Submissions to *Arbitrament*, are usually by Bond; and the Parties who bind themselves are obliged to take Notice of the Award, at their Peril. But Things relating to a Frechold;

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Freehold; Debts due on Bond, or on certain Contract; Criminal Offences, &c. are not *arbitrable*. *Danv. Abr.* 513. 9 *Rep.* 78. 1 *Roll. Abr.* 342, 244. *Nullum Arbitrium* is the usual Plea of the Defendant prosecuted on an Award. See *Award*.

Arca Cyrographica, Sive Cyrographorum Judaeorum, This was a common Chest with three Locks and Keys, kept by certain Christians and Jews, wherein all the Contracts, Mortgages and Obligations belonging to the Jews were kept, to prevent Fraud; and this by Order of K. *Rich. 1.* *Hovenden's Annals*, p. 745.

Arceonis, Arcus Ephippiarius, Fr. *Arcon de Selle de Chevalle*; English, a Saddle Bow. — *Prior de Neunham tenet Terram in Surrey de Domino Rege, in capite per Serjantiam, reddendi per Annum unum par Arceonum dealbatum ad Sellam. Tenur.* p. 37. *Archery* was a Service of Keeping a Bow, for the Use of the Lord to defend his Castle. *Johannes de, &c. qui tenet de Dom. Reg. in capite per Serjantiam Archerie. Co. Lit. Sect.* 157.

Archbishop, (Archiepiscopus) Is the Chief of the Clergy in his Province, and is that Spiritual Secular Person, who hath supreme Power under the King in all Ecclesiastical Causes: And the Manner of his Creation and Consecration, by an *Archbishop* and two other Bishops, &c. You may find in the *Stat. 25 H. 8. c. 20.* An *Archbishop* is said to be introned, when a Bishop is said to be installed; and there are four Things to compleat a Bishop or *Archbishop*, as well as a Parson; First, Election, which resembles Presentation; the next is Confirmation, and this resembles Admission; next Consecration, which resembles Institution; and the last is Installation, resembled to Induction. 3 *Salk.* 72. Originally the *Archbishop*, was Bishop over all *England*, as *Austin* was. 1 *Roll. Rep.* 328. The *Archbishop* of *Canterbury* is now styled *Metropolitanus & Primas totius Angliae*; and the *Archbishop* of *York* styled *Primas & Metropolitanus Angliae*. They are called *Archbishops* in Respect of the Bishops under them; and *Metropolitans*, because they were consecrated at first in the Metropolis of the Province. 1 *Inst.* 94. Both the *Archbishops* have distinct Provinces, wherein they have suffragan Bishops of several Dioceses, with Jurisdiction under them. And each hath two concurrent Jurisdictions, one as Ordinary or the Bishop himself within his Diocese; the other as Superintendant throughout his whole Province of all Ecclesiastical Matters, to correct and supply the Defects of other Bishops. The *Archbishop* of *Canterbury* hath the Privilege to Crown all the Kings of *England*; and to have Prelates to be his Officers; as for Instance; the Bishop of *London* is his Provincial Dean, the Bishop of *Winchester* his Chancellor, the Bishop of *Lincoln* his Vice-Chancellor, the Bishop of *Salisbury* his Precentor, the Bishop of *Worcester* his Chaplain, &c. It is the Right of the *Archbishop* to call the Bishops and Clergy of his Province to Convocation, upon the King's Writ: He hath a Jurisdiction in Cases of Appeal, where there is a supposed Default of Justice in the Ordinary; and has a standing Jurisdiction over his Suffragans: He confirms the Election of Bishops, and afterwards consecrates them, &c. And he may appoint Co-adjutors to a Bishop that is grown infirm. He may confer Degrees of all Kinds; and censure and excommunicate, suspend or depose, for any just Cause, &c. 2 *Roll. Abr.* 223. And he hath Power to grant Dispensations in any Case, formerly grant-

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ed by the See of *Rome*, not contrary to the Law of God: But if the Case is new and extraordinary, the King and his Council are to be consulted. *Stat. 25 H. 8.* He may retain eight Chaplains: And during the Vacancy of any See, he is Guardian of the Spiritualities. *Stat. ibid.* and 21 *H. 8.*

Archdeacon, (Archidiaconus) Is 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. *Archdeacons* had antiently a superintendent Power over all the parochial Clergy in every Deanery in their Precincts; they being the Chiefs of the Deacons: Tho' they have no original Jurisdiction, but what they have got is from the Bishop, either by Prescription or Composition; and Sir *Simon Degg* tells us, that it appears an *Archdeacon* is a meer Substitute to the Bishop, and what Authority he hath is derived from him, his chief Office being to visit and enquire, and *Episcopo Nuntiare, &c.* In antient Times, *Archdeacons* were employ'd in servile Duties of collecting and distributing Alms and Offerings; but at length by a personal Attendance on the Bishops, and a Delegation to examine and report some Causes, and Commissions to visit the remoter Part of the Dioceses, they became as it were Overseers of the Church; and by Degrees advanced into considerable Dignity and Power. *Lanfranc*, *Archbishop* of *Canterbury*, was the first Prelate in *England* who instituted an *Archdeacon* in his Diocese, which was about the Year 1075. And an *Archdeacon* is now allowed to be an Ordinary, as he hath a Part of the Episcopal Power lodged with him. He visits his Jurisdiction once every Year: And he hath a Court, where he may inflict Penance, suspend, or excommunicate Persons; prove Wills, grant Administrations, and hear Causes Ecclesiastical, &c. subject to appeal to the Bishop of the Diocese. It is one Part of the Office of an *Archdeacon* to examine Candidates for Holy Orders, and to induct Clerks within his Jurisdiction, upon Receipt of the Bishop's Mandate. 2 *Cro.* 556. 1 *Lev.* 193. *Wood's Inst.* 30.

Archies Court, (Curia de Arcubus) The Chief and most antient Consistory Court belonging to the *Archbishop* of *Canterbury* for the Debating of Spiritual Causes. It is so called from the Church in *London*, commonly called *St. Mary le Bow*, (where it was formerly held) which Church is named *Bow-Church* from the Steeple which is raised by Pillars, built archwise, like so many bent Bows. *Cowel.* The Judge of this Court is styled the Dean of the *Archies*, or Official of the *Archies* Court: He hath extraordinary Jurisdiction in all Ecclesiastical Causes, except what belongs to the Prerogative Court; also all Manner of Appeals from Bishops, or their Chancellors or Commissaries, Deans and Chapters, *Archdeacons*, &c. first or last are directed hither: He hath ordinary Jurisdiction throughout the whole Province of *Canterbury*, in Case of Appeals; so that upon any Appeal made, he, without any farther Examination of the Cause, sends out his Citation to the Appellee, and his Inhibition to the Judge from whom the Appeal was made. Of this see more 4 *Inst.* 337. But he cannot cite any Person out of the Diocese of another, unless it be on Appeal, &c. 23 *H. 8. c. 9.* In another Sense the Dean of the *Archies* has a peculiar Jurisdiction of thirteen Parishes in *London*, called a Deanery, (being exempt from the Authority of the Bishop of *London*) of which the Parish of *Bow* is the Principal.

pal. The Persons concerned in this Court, are the Judge, Advocates, Registers, Proctors, &c. And the Foundation of a Suit in these Courts, is a Citation for the Defendant to appear; then the Libel is exhibited, which contains the Action; to which the Defendant must answer; whereupon the Suit is contested, Proofs are produced, and the Cause determined by the Judge, upon Hearing the Advocates on the Law and Fact; when follows the Sentence or Decree thereupon.

Archives, (*Archiva*, from *Arca*, a Chest) The Rolls, or any Place where antient Records, Charters and Evidences, belonging to the Crown and Kingdom, are kept; also the Chancery, Exchequer-Office, &c. And it hath been sometimes used for private Repositories in Libraries.

Arche, Is an old Word, signifying to divulge; from whence we derive the Word *Reckon*.

Arrestment, Surprise, Affrightment. — To the great *Arrestment* and *Esterment* of the Common Law. *Rot. Parl.* 21 Ed. 3.

Arrestan, The Edict of the King, commanding all his Tenants to come into the Army: If they refuse, then to be deprived of their Estates.

Arentare, To Rent out, or let at a certain Rent. — Richardus de Armestone *Ballivus Manerii de Kingsford*, *malitiose & per violentiam dictos Religiosos de eadem piscaria ejecit, & ipsum Dominum suo Arentari fecit in 12 sol. quos idem Dominus per 6. annos recepit.* *Consuetud. Domus de Farendon*, M. S. f. 53.

Argentum album, Silver Money, or Pieces of Bullion that antiently passed for Money. By *Domesday Tenure*, some Rents to the King were paid in *Argento albo*, common silver Pieces of Money; other Rents in *Libris Urvis & Pensatis*, in Metal of full Weight and Purity: In the next Age, that Rent which was paid in Money, was called *Blanch-fearn*; and afterwards *White Rent*; and what was paid in Provision was termed *Black-Mail*. *Spelm. Gloss.*

Argentum Dei, God's Money; i. e. Money given in Earnest upon the Making of any Bargain: Hence comes *Arles*, Earnest; and it is called *Arles-penny* in *Lincolnshire* and *Yorkshire*; where they likewise call Servants Vails *Arles*. — Adam de Holt *vendit quintam partem Manerii de Berterton Henrico Scot*, & cepit de predicto Henrico *tres Denarios de Argento Dei pra manibus.* *Placit. apud Castr.* 2 Ed. 3.

Argumentosus, A Word which signifies *Ingenious*, mentioned by our Historian *Neubrigenfis*. *In Picturnis quoque opera Argumentosa vocamus.* *Lib.* 1. cap. 14.

Arictum Levatic, An old sportive Exercise, supposed to be the same with Running at the *Quintal*.

Arma dare, To dub or make a Knight. *Anno Dom.* 1144. 10. *Steph. Ego Brientius filius Comitiss, quem bonus Rex Henricus nutrit, & cui Arma dedit & honorem.* A. D. 1278. 31 Ed. 3. *A die quo dictus Comes Arma Militaria a Domino Henrico Rege data nostro cepit.* Here, *Arma capere* is to be made a Knight. *Kenet's Paroch. Antiq.* p. 101, 288. And in *Walsingham*, p. 507. *Die Dominica in Vigilia Purificationis Edwardus juvenis suscepit Arma Militaria.* The Word *Arma* in these Places signifieth only a Sword; but sometimes a Knight was made by giving him the whole Armour. — Lanfrancus Dorobernensis *Episcopus eum lorica induit, & galeam capiti imposuit, eique & Regis filio*

Militie cingulum in nomine Dei cinxit. *Ordericus Vitalis*, lib. 8. de Henrico, &c.

Arma Libera, A Sword and a Lance which were usually given to a Servant when he was made free. *Leg. Will. cap.* 65.

Arma moluta, Sharp Weapons that cut, opposed to such as are blunt, which only break or bruise. *Bract. lib.* 3. *Arma Moluta plagam faciunt, sicut gladii & hujusmodi: Ligna vero & lapides, brusturas, Orbes & ictus, qui judicari non possunt ad plagam, ad hoc ut inde venire possit ad Duelum.* They are called *Arma emolita* by *Fleta*, *Lib.* 1. cap. 33. par. 6.

Arma reversata: This was when a Man was convicted of Treason or Felony: Thus our Historian *Knighton*, speaking of *Hugh Spenser*, tells us, *Primo vestierunt eum uno vestimento cum Armis suis reversatis.* *Lib.* 3. p. 2546.

Armistice, Any Sort of Punishment decreed or imposed by the Judge. *Malmsb. lib.* 3. pag. 97. *Walsingham*, p. 430. At first it was to carry a Saddle at his Back in Token of Subjection, viz. *Nudis vestigiis equestrem sellam ad satisfaciendum humeris ferret.* *Brompton* says, that in the Year 1176. the King of Scots promised *Hen.* 2. at York, *Lanceam & sellam suam super Altare Sancti Petri ad perpetuam hujus subjectionis memoriam offerre.*

Armigeri, A Title of Dignity, belonging to such Gentlemen that bear Arms, who are next below a Knight. These are either by *Curtsey*; as Sons of Noblemen, eldest Sons of Knights, &c. Or by *Creation*, such as the King's Servants, &c. The Word *Armigeri* has also been applied to the higher Servants in Convents. *Paroch. Antiq.* 576. See *Esquire*.

Arms, (*Arma*) In the Understanding of Law, are extended to any Thing that a Man wears for his Defence, or takes into his Hands, or useth in Anger to strike or cast at another. *Crompt. Just.* 65. *Arms* are also what we call in Latin *Insignia*, Ensigns of Honour; as to the Original of which, it was to distinguish Commanders in War; for the antient defensive *Armor* being a Coat of Mail, &c. which covered the Persons, they could not be distinguish'd, and therefore a certain Badge was painted on their Shields, which was call'd *Arms*; but not made hereditary in Families till the Time of King *Rich.* 1. on his Expedition to regain *Jerusalem* from the *Turks*: And besides Shields with *Arms*, they had a silk Coat drawn over their Armour, and afterwards a stiff Coat, on which their *Arms* were painted all over, now the Herald's Coat of *Arms*. *Sid. Rep.* 352.

Arnalia, *Arable Grounds*. This Word is mentioned in *Domesday*, *Tit. Essex*.

Arnaldia, *Arnoldia*; A Sort of Disease that makes the Hair fall off, like the *Alopecia*, or like unto a Distemper in Foxes. — *Deinde uterque Rex incidit in aegritudinem quam Arnaldiam vocant, in qua ipsi ad mortem usque laborantes capillos suos deposuerunt.* *Rog. Hovenden*, p. 693.

Arpens, or *Arpent*, Signifies an Acre or Furlong of Ground: And according to the old *French* Account, in *Domesday-Book*, 100 Perches make an *Arpent*; eighteen Foot a Perch; and twelve Inches a Foot. The most ordinary Acre, call'd *l'Arpent de France*, is One hundred Perches Square: But some account it but Half an Acre. — *Septem acras terrae & unum Arpentum quae me contingebant per Eschaetam.* *Ex Reg. Priorat. de Wormsley*, fol. 7. Where *Arpens* seems to be some Quantity less

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less than an Acre. *Arpentator* is used for a Measurer or Surveyor of Land.

Armatio Pedum, Used in *Pat. 1 Ed. 2.* for the Arraying of Foot Soldiers.

Armatarii (*Armatiores*) Such Officers as had the Care of the Soldiers Armour, and whose Business it was to see them duly accoutred. *Stat. 12 R. 2. c. 6.* In several Reigns Commissioners have been appointed for this Purpose.

Arraign, (from the French *Arranger*, to set a Thing in Order) Hath the same Signification in Law: But the true Derivation is from the French *Arraisonner*, i. e. *Ad rationem ponere*, to call a Man to answer in Form of Law. A Prisoner is *arraigned*, when he is indicted and brought to Trial: And he is said to *arraign* a Writ, that fits and prepares it for Trial; to *arraign* the Assize, is to cause the Demandant to be called to make the Complaint, in such Manner as the Tenant may be obliged to answer. *1 Inst. 262.* But no Man is properly *arraigned* but at the Suit of the King, upon an Indictment found against him, or other Record, wherewith he is to be charged: And this *Arraignment* is to take Care that the Prisoner do appear to be tried, and hold up his Hand at the Bar, for the Certainty of the Person, and plead a sufficient Plea to the Indictment. *1 Inst. 262, 263.* The Prisoner is to hold up his Hand only in Treason and Felony; but this is only a Ceremony: If he owns that he is the Person, it is sufficient without it; and then upon his *Arraignment* his Fetters are to be taken off; and he is to be treated with all the Humanity imaginable. *2 Inst. 315. 3 Inst. 35.* The Pleas upon *Arraignment* are either the General Issue, Not guilty; Plea in Abatement, or in Bar; and the Prisoner may demur to the Indictment; also he may confess the Fact, but then the Court has nothing more to do than to proceed to Judgment against him. If he stands mute, and doth not put himself upon Trial, he shall suffer the Penance *Pain fort & dure*, in Cases of Felony, &c. *3 Inst. 217.* By the Common Law, if a Principal is acquitted, or is pardon'd, or dies, the Accessary shall not be *arraigned*. But *vide Stat. 1 Ann. c. 9.* and Word *Accessary*. For the Solemnity of the *Arraignment* and Trial of a Prisoner, see *Dalt. chap. 185. p. 515.*

Array, (*Arraya*, five *Arraiamentum*) An old Fr. Word signifying the Ranking or Setting forth of a Jury of Men empanelled upon a Cause. *18 H. 6. c. 14.* From hence we say to *Array* a Panel. *F. N. B. 157.* That is, to set forth the Men empanelled one by another. To *challenge the Array* of the Panel, is at once to except against all the Persons *array'd* or empanell'd, in Respect of Partiality, &c. *1 Inst. 156.* If the Sheriff be of Affinity to either of the Parties; or if any one or more of the Jurors are returned at the Denomination of either Party; or for any other Partiality, the *Array* shall be *quashed*. The Word *Array* also relates in a particular Manner to military Order, as to conduct Persons armed, &c. *Stat. 14 Car. 2. c. 3.*

Arrearages, (*Arrearagia*) From the French *Arriere retro*, behind, is taken for Money unpaid at the due Time, as Rent behind; the Remainder due on an Account, or a Sum of Money remaining in the Hands of an Accountant. When *Arrears* of Rent are presumed in Law to be satisfied, *vide Acceptance.*

Arrestatus, One suspected of any Crime. — *Si autem aliquis arrestatus fuerit de morte aliqujus*

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periclitantis capietur & imprisonetur. — Offic. Coronat. Spelm. Gloss.

Arrenatus, *Arraigned*, accused. — *Stephanus Rabaz, Vic. Leicest. arrenatus & ad rationem positus de hoc quod, &c. Rot. Parl. 21 Ed. 1.*

Arrentation, (from the Spanish *Arrendare*) Is as much as *Ad certum redditum dimittere*; and it signifies the Licencing an Owner of Lands in the Forest, to enclose them with a low Hedge and small Ditch, according to the Assize of the Forest, under a yearly Rent. *Saving the Arrentations* is a saving Power to give such Licences for a yearly Rent.

Arrest, (*Arrestum*) Cometh of the French Word *Arrester*, to stop, or stay. It is a Restraint of a Man's Person, obliging him to be obedient to the Law: And is defined to be the Execution of the Command of some Court, or Officer of Justice. None shall be *arrested* for Debt, Trespass, &c. or other Cause of Action, but by Virtue of a Precept or Commandment out of some Court: But for Treason, Felony, or Breach of the Peace, any Man may *arrest* without Warrant or Precept. *Terms de Ley 54.* Persons present at the Committing of a Felony, must use their Endeavours to apprehend the Offender, under Penalty of Fine and Imprisonment. *3 Inst. 117. 4 Inst. 177.* The King cannot command any one by Word of Mouth to be *arrested*; but he must do it by Writ, or Order of his Courts, according to Law: Nor may the King *arrest* any Man for Suspicion of Treason, or Felony, as his Subjects may; because if he doth wrong, the Party cannot have Action against him. *2 Inst. 186.* After Presentment or Indictment found in Felony, &c. the first Process is a *Capias*, to *arrest* and imprison the Offender: And if the Offender cannot be taken, an Exigent is awarded in order to Outlawry. *H. P. C. 209.* By *Magn. Chart. c. 9.* None shall be restrained of his Liberty, but either by Order of a Court of Record, by lawful Warrant, or the King's Writ. *2 Inst. 46. 3 Inst. 209.* When a Person is apprehended for Debt, &c. he is said to be *arrested*: And Writs express *arrest* by two several Words *Capias* and *Attachias*, to take and catch hold of a Man; for an Officer must actually lay hold of a Person, besides saying he *Arrests* him, or it will be no lawful *Arrest*. *1 Lill. Abr. 96.* If a Bailiff be kept off from making an *Arrest*, he shall have an Action of Assault: And where the Person *arrested* makes Resistance, or assaults the Bailiff, he may justify Beating of him. If a Bailiff touches a Man, which is an *Arrest*, and he makes his Escape, it is a Rescous, and Attachment may be had against him. *1 Salk. 79.* If a Bailiff lays hold of one by the Hand (whom he had a Warrant to *arrest*) as he holds it out at the Window; this is such a Taking of him, that the Bailiff may justify the Breaking open of the House to carry him away. *1 Vent. 306.* When a Person has committed Treason, or Felony, &c. Doors may be broke open to *arrest* the Offender; but not in civil Cases, except it be in Pursuit of one *arrested*; or where a House is recovered by Real Action, to deliver Possession to the Person recovering. *Plowd. 5 Rep. 91.* An *Arrest* in the Night, as well as the Day, is lawful. *9 Rep. 66.* And every one is bound by the Common Law to assist not only the Sheriff in the Execution of Writs, and making *Arrests*, &c. but also his Bailiff that hath his Warrant to do it. *2 Inst. 193.* A Bailiff ought to shew his Warrant when the Party submits him-

self to the *Arrest*, if required. 6 *Rep.* 34. But it is said a sworn known Bailiff, need not shew his Warrant. 9 *Rep.* 99. Sheriffs are not to grant Warrants for *Arrests*, before the Receipt of the Writs; if they do, they shall forfeit 10 *l.* and Damages, and pay a Fine to the King. *Stat.* 43 *Eliz.* c. 5. If an Action is entered in one of the *Compters* of London, a City Serjeant may *arrest* the Party without the Sheriff's Warrant. 1 *Lill. Abr.* 94. And by the Custom of London, a Debtor may be *arrested* before the Money is due, to make him find Sureties; but not by the Common Law. 1 *Nelf. Abr.* 258. By *Stat.* 29 *Car.* 2. c. 7. No Writ, Process, Warrant, &c. (except in Cases of Treason, Felony, or for Breach of the Peace) shall be served on a Sunday; on Pain that the Person serving them shall be liable to the Suit of the Party grieved, and answer Damages, as if the same had been done without Writ: An Action of False Imprisonment lies for *Arrest* on a Sunday, and the *Arrest* is void. 1 *Salk.* 78. But a Person may be retaken on a Sunday, where *arrested* the Day before, &c. *Mod. Ca.* 231. And a Man may be taken on a Sunday on an Escape-Warrant; where he goes at large out of the Rules of the *King's Bench* or *Fleet Prison*, &c. *Stat.* 5 *Ann.* c. 9. Also Bail may take the Principal on a Sunday, and confine him 'till Monday, and then render him; tho' a Plaintiff may not *arrest* the Defendant on a Sunday. 1 *Nelf.* 258. If a wrong Person is *arrested*, or one for Felony, where no Felony is done, &c. it will be False Imprisonment, liable to Damages. Attornies, &c. for Vexation, maliciously causing any Person to be *arrested*, where there is no Cause of Suit, &c. the Prosecutors shall suffer six Months Imprisonment, and before discharged pay treble Damages, and forfeit 10 *l.* *Stat.* 8 *Eliz.* c. 2. The Bailiff's Fee by Statute for an *Arrest* is but four Pence; and the Sheriff's twenty Pence: And doing contrary incurs treble Damages to the Party grieved, and a Forfeiture of 40 *l.* by 23 *H.* 6. c. 10. No Bailiff, or other Officer, shall carry any Person under *Arrest* to any Tavern, Alehouse, &c. without his Consent; so as to charge him with any Beer, Ale, Wine, &c. but what he shall freely call for: Nor shall demand or receive more from him for the *Arrest* or Waiting, than by Law ought to be, until an Appearance procured, Bail found, &c. Nor take or exact any more for keeping such Person out of Prison, than what he shall of his own voluntary Accord truly give; nor take more for Lodging than what is reasonable, or shall be adjudged so by the next Justice of Peace. *Stat.* 22 & 23 *Car.* 2. c. 2. Peers of the Realm, Members of Parliament, &c. may not be *arrested*, unless it be in criminal Cases; but the Process against them is to be Summons, Distress infinite, &c. 12 *W.* 3. c. 3. Also Corporations and Companies must be made to appear by *Distringas*, and cannot be *arrested*. *Finch.* 353. 3 *Salk.* 46. Persons attending upon any Courts of Record, on Business there, are to be free from *Arrests*. 3 *Inst.* 141. A Clerk of the Court ought not to be *arrested* for any Thing which is not Criminal, because he is supposed to be always present in Court, to answer the Plaintiff. 1 *Lill.* 94. *Arrests* are not to be made within the Liberty of the King's Palace: Nor may the King's Servants be *arrested* in any Place, without Notice first given to the Lord Chamberlain, that he remove them, or make them pay their Debts. Embassadors Servants, &c. freed from

Arrests; vide *Ambassador*. No *Arrests* are to be generally in *Wales*, the Counties Palatine, &c. by Writs issuing from *Westminster-Hall*. If a Debt be under 10 *l.* on Process out of a superior Court, or 40 *s.* in an inferior Court, the Defendant shall not be *arrested*, but be served with a Copy of the Process, &c. *Stat.* 12 *Geo.*

Arrest of Judgment. To move in *Arrest of Judgment*, is to shew Cause why Judgment should be staid, notwithstanding Verdict given; for in many Cases, tho' there be a Verdict, no Judgment can be had. And 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. And here all Matters of Fact are to be made out by proper Affidavits. *Comp. Attorn.* 329, &c. Judgment may be *arrested* for good Cause in Criminal Cases as well as Civil; if the Indictment be insufficient, &c. 3 *Inst.* 210. and four Days are allow'd to move in *Arrest of Judgment*; and the Defendant hath all the Term wherein the Verdict was given to speak any Thing to *arrest* it, if the Plaintiff hath not given his four Days Rule, and sign'd his Judgment; after which he is put to his Writ of Error. 2 *Lill.* 93. On Motion in *Arrest of Judgment*, if the Court be divided two Judges against Two, the Plaintiff must have his Judgment; unless a Rule be made at first to stay all Proceedings, until the Court otherwise order, &c. 2 *Lill. Abr.* 118. See *Jeofail* and *Judgment*. *Arrest of Enquest* is to plead in Arrest of Taking the Enquest, upon the former Issue, and to shew Cause why an Enquest should not be taken. *Bro. Tit. Replead.*

Arrestandis bonis ne dissipentur, A Writ which lies for a Man whose Cattle or Goods are taken by another, who during the Contest doth or is like to make them away, not being of Ability to make Satisfaction. *Reg. Orig.* 126.

Arrestando ipsum qui mercantiam recepit, &c. Is a Writ that lieth for Apprehending a Person that hath taken the King's Prest-Money to serve in Wars, and hides himself when he should go. *Reg. Orig.* 24.

Arresto facto super bonis Mercatorum Alienigenorum, A Writ which lies for a Denizen against the Goods of Aliens found within this Kingdom, in Recompence of Goods taken from him in a foreign Country, after Denial of Restitution. *Reg. Orig.* 129. This the ancient Civilians called *Clarigatio*, but by the Moderns it is term'd *Reprisalia*.

Arrested, Arrestatus, quasi, ad rectum vocatus, Is where a Man is convened before a Judge, and charged with a Crime. *Staundf. Pl. Co.* 45. And it is sometimes used for Imputed or laid unto; as, no Folly may be *arrested* to one under Age. *Littleton*, cap. Remitter. Chaucer useth the Verb *Arreteth*; that is, lays Blame, as it is interpreted. *Bracton* says, *Ad rectum habere Malefactorem*, i. e. To have the Malefactor forth-coming, so as he may be charged, and put to his Trial. *Bract. lib.* 3. *tract.* 2. cap. 10. And in another Place, *Rectatus de morte hominis*, charged with the Death of a Man. From hence it may with some Reason seem, that that Word is the same with *Rectum*.

Arrura,

Arrura, — In the black Book of Hereford, *De operationibus Arruræ*, signifies Days Works of Ploughing; for antiently Customary Tenants were bound to plough certain Days for their Lord. *Una Arrura*, one Day's Work at the Plough: And in Wiltshire *Earing* is a Day's Ploughing. *Paroch. Antiq.* p. 401.

Arson, (from *Ardeo* to burn) Is House-burning, which is Felony at Common Law. 3 *Inst.* 66. 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 is burn'd; or if the Fire doth burn, and then goeth out of it self, it is Felony. 2 *Inst.* 188. *H. P. C.* 85. The Burning of a Frame of a House, is not accounted House-burning, because the Frame of a House cannot come under the Word *Domus*, which is necessary in every Indictment for *Arson*. And it must be the House of another; for if a Man burns his own House only, tho' with Intention to burn others, it is not Felony, but a great Misdemeanor, punishable with Fine, Pillory, &c. If a House is fired by Negligence or Mischance, it cannot amount to *Arson*. 3 *Inst.* 67. *H. P. C.* 85. By Stat. 23 *H. 8.* c. 11. Burning of Houses, or Barns wherein any Corn is, is Felony without Benefit of Clergy. And the Stat. 22 & 23 *Car. 2.* c. 7. makes it Felony to set Barns, Stables, Stacks of Corn, Hay, &c. on Fire in the Night-time, or any Outhouses or Buildings: But the Offender may be transported for seven Years. By 6 *Anna*, Servants thro' Negligence or Carelessness, setting on Fire any Dwelling house or Outhouse, shall forfeit 100 *l.* or be sent to the House of Correction, and there kept to hard Labour eighteen Months.

Arsum, The Trial of Money by Fire, after it was coined. In Domesday we read, *Reddit 50 l. ad Arsuram*, which is meant of lawful and approved Money, whose Alloy was tried by Fire.

Art and Part, Is a Term used in Scotland and the North of England; when one charged with a Crime, in committing the same was both a Contriver of, and acted his Part in it.

Arthel, A British Word and more truly written *Arddel*, signifying to Avouch; as if a Man were taken with stolen Goods in his Hands, he was to be allowed a lawful *Arddel* (or Vouchee) to clear him of the Felony: It was Part of the Law of *Howel Dda*; according to whose Laws every Tenant holding of any other than of the Prince or Lord of the Fee, paid a Fine *pro defensione Regia*, which was called *Arian Arddel*. The Privilege of *Arddel* occasioning a Delay and Exemption of Criminals from Justice, Provision was made against it by Statute 26 *H. 8.* c. 6.

Articuli Cleri, *Articles of the Clergy*, are Statutes containing certain *Articles* relating to the Church and Clergy, and Causes Ecclesiastical. 9 *E. 2.* and 14 *E. 3.*

Articulus, An *Article*, or Complaint, exhibited by Way of Libel, in a Court Christian. Sometimes the Religious bound themselves to obey the Ordinary, without such formal Process: As *An. Dom.* 1300. The Prior and Convent of *Burcester* submitted themselves to the Official of *Lincoln*, &c. — *Quod possint eos & eorum Successores per omnem transmissam Ecclesiasticam ad omnium & singulorum premissorum observationem absque Articuli seu Libelli petitione, & quocunque strepitu judiciali compellere.* *Paroch. Antiq.* p. 344.

Artillery in Wool, Iron, Steel, Brasses, or other Metal, &c. Persons contracting to go out of

this Kingdom into a foreign Country; shall be fined not exceeding 100 *l.* and be imprison'd three Months: And *Artificers* going abroad, not returning on Warning given by our Embassadors, &c. shall be disabled to hold Lands by Descent or Devise, be incapable to take any Legacy, &c. and be deem'd Aliens. Stat. 5 *Geo. c.* 27.

Arundinetum, A Ground or Place where Reeds grow. 1 *Inst.* 4. And it is mentioned in the Book of Domesday.

Arvil-Supper, A Feast or Entertainment made at Funerals, in the North Part of England: *Arvil-Bread* is the Bread delivered to the Poor at Funeral Solemnities. *Cowel.* And *Arvil*, *Arval*, *Arfal*, are used for the Burial or Funeral Rites; as,

Come bring my Ferkin Tibb, I'll to the Arvil,
Yon Man's dea Seuy Seoun, it makes me Marvil.
Yorkshire Dial. p. 58.

Ascensorium, Steps by which one ascends. — *Brevis est Scala, non laboriosa, tribus tantum distincta ascensoriis.* Petr. Blesensis, Term. 24.

Asceterium, (*Archisterium*, *Arcesterium*, *Acisterium*, *Alysterium*, *Arbitrium*) Is a Greek Word, and signifies a Monastery. It often occurs in our old Histories. *Du Cange.*

Asath, or *Alfath*, Was a Custom of Purgation, used of old in Wales, by which the Party accused did clear himself by the Oaths of 300 Men. It is mentioned in antient MSS. and prevailed till the Time of *Hen. 5.* when it was abrogated. 1 *H. 5.* c. 6.

Assart, (*Assartum*) Fr. *Assartir*, to make plain. *Assartum est quod redactum est ad Culturam.* *Fleta*, lib. 4. cap. 21. And the Word *Assartum* is by *Spelman* derived from *Exertum*, to pull up by the Roots; for sometimes 'tis wrote *Essart*. Others derive it from *Exaratum*, or *Exartum*, which signifies to plough or cut up. *Manwood*, in his *Forest Laws*, says it is an Offence committed in the Forest, by pulling up the Woods by the Roots, that are Thickets and Coverts for the Deer, and making the Ground plain as arable Land: This is esteemed the greatest Trespass that can be done in the Forest to Vert or Venison, as it contains in it Waste and more; for whereas Waste of the Forest is but the Felling down the Coverts, which may grow up again, *Assart* is a Plucking them up by the Roots, and utterly destroying them, so that they can never afterwards spring up again. And this is confirmed out of the Red Book in the Exchequer, in these Words. —

Assarta vero dicuntur que apud Isidorum occisiones nuncupantur, quando Forestæ nemora vel Dumeta, pascuis & latibulis ferarum opportuna, succiduntur: Quibus succisis & radicitus avulsis, terra subvertitur & excolitur. — But this is no Offence if done with Licence; and a Man may by Writ of *Ad quod damnum* sue out a Licence to *assart* Ground in the Forest, and make it several for Tillage. *Reg. Orig.* 257. Hence Lands are called *assarted*: And formerly *Assart Rents* were paid to the Crown for Forest Lands *assarted*. Stat. 22 *Car. 2.* c. 6. *Assartments* seems to be used in the same Sense in *Rot. Parl.* *Assartum* hath been sometimes termed *Disboscatio*. Of *Assart* you may read more in *Crompt. Jurisd.* p. 203. And *Charta de Foresta*, Anno 9 *H. 3.* c. 4. *Manwood*, part 1. p. 171.

Assault, (*Assultus*) From the Fr. Verb *Assayler*, Signifies a violent Injury offered to a Man's Person, of a higher Nature than Battery; for it may be committed by offering a Blow, or by a terrifying

terrifying Speech. *Lamb. Eiren. lib. 1. cap. 3.* The Feudists define *Assault* thus: *Assultus est impetus in Personam aut locum, sive hoc pedibus fiat, vel equo aut machinis aut quacunque alia re assiliatur.* *Zafius de Feud. pag. 10. num. 38.* And *Assilire est vim adferre.* *Lib. Feud. 1. tit. 5. Sect. 1.* Also the Lat. *Assaltus* is used in this Sense in the Laws of *Edw. Conf. cap. 12.* To strike a Man, tho' he be not hurt with the Blow, is an *Assault*: And to strike at a Person, notwithstanding he be neither hit nor hurt, hath been so adjudged. *22 Lib. Ass. pl. 60.* For *Assault* doth not always necessarily imply a Hitting, or Blow; because in *Trespass* for *Assault* and *Battery*, a Man may be found guilty of the *Assault*, and excused of the *Battery*. *25 Ed. 3. c. 24.* If a Person in Anger lift up or stretch forth his Arm, and offer to strike another; or menace any one with any Staff or Weapon, it is *Trespass* and *Assault* in Law: And if a Man threaten to beat another Person, or lie in wait to do it, if the other is hindered in his Business, and receives Loss thereby, Action lies for the Injury. *Lamb. lib. 1. 22 Ass. pl. 60.* Where a Man assaults any Person, beats, or doth him any Manner of Violence, either with Hand, Foot, or Weapon; or throws any Thing at him, Drink in his Face, &c. whereby he is hurt; it is such an *Assault* for which Action may be brought, and Damages recovered. *Comp. Attorn. 133.* But to lay Hands gently upon another, not in Anger, is no Foundation of an Action of *Trespass* and *Assault*: The Defendant may justify *Molliter manus imposuit.* A Man may justify an *Assault* in Defence of his Person, or Goods; or of his Wife, Father, Mother, or Master; or for the Maintenance of Justice. *Bract. 9 E. 4. 35 Hen. 6. c. 51.* And in Cases of *Assault*, for the *Assault* of the Wife, Child, or Servant, the Husband, Father, and Master, may have Action of *Trespass*. Where a Man is assaulted, and he hath no Witnesses to prove the same, or in other Cases, the Party assaulted may bring an Information in the Crown-Office; and not have common Action of *Trespass*. *Vide Stat. 4 & 5 W. & M. c. 18.* which requires Recognizances to be taken to prosecute with Effect, &c. If any Person assault a Privy Councillor, in the Execution of his Office, it is Felony. *Stat. 9 Ann.* And *Assaulting* or Threatning a Counsellor at Law, or Attorney employ'd in a Cause against a Man; or a Juror giving Verdict against him; his Adversary for suing him, &c. is punishable by Fine and Imprisonment, for the Contempt. *1 Hawk. 58.*

Assay of Weights and Measures, (from the Fr. *Essay*, i. e. a Proof or Trial) Is the Examination of Weights and Measures, by Clerks of Markets, &c. *Reg. Orig. 279.* — *Ac Assisam & Assaiam Panis, Vini, & Cervisia.* *Paten. 37 H. 8. Tho. Marrow.*

Assayer of the King, (*Assayator Regis*) An Officer of the Mint, for the Trial of Silver; he is indifferently appointed between the Master of the Mint and the Merchants that bring Silver thither for Exchange. *Anno 2 Hen. 6. cap. 12.* Vessels of Gold shall be assayed. *28 Ed. 1. c. 20.* and *18 Car. 2. c. 5.* — *Mandatum est Will. Har- del Clerico, quod convocatis in presentia sua omnibus Monetariis Assayatoribus, Custodibus, Operariis & aliis Ministris de Cambiis Regis London. & Cantuar. per visum & Testimonium illorum provideat, quod tot & tales Operarii sint in predictis Cambiis, qui sufficiant ad Operationes Regias faciendas, ne Rex pro defectu hujusmodi ministrorum Damnum incurrat.* *Claus. 17 Hen. 3. m. 8.*

Assaynare, To take Confessors or Fellow Judges.

— *Henricus Dei Gratia Rex Angl. &c. Dilecto & fideli suo Nicholao de la Tour, salutem. Sciamus quod constituimus vos Justiciarium nostrum una cum hiis quos vobis duxeritis Assaynandos ad Assisam novae Disseisinæ capiendam.* — *Cartular. Abbat. Glastron. MS. f. 57.*

Asscurare, (*Asscurare*) To make secure by Pledges, or any solemp Interposition of Faith. In the Charter of Peace between *Hen. 2.* and his Sons, this Word is mentioned. *Hovenden, Anno 1174.*

Assembly unlawful, From the Fr. *Assembler*, i. e. *Aggregare*, to flock together. It is the Meeting of Three or more Persons to do an unlawful Act, altho' they do it not: As to assault, or beat any Person; enter into Houses or Lands, &c. *West. Symb. Part 2. Sect. 65.* Their Meeting and Abiding together makes the Crime, where they do not execute their Intentions: If the Intention be to redress publick Grievances, and be executed, it is adjudged *Treason. 3 Inst. 9.* In the Reign of *Ed. 6.* A Law was made declaring it *Treason* for twelve Persons, or more, to assemble together to attempt to kill any of the King's Council, or to alter the Laws, &c. And that it should be Felony to attempt to destroy Parks, pull down Houses, &c. if they continued together an Hour after Proclamation made by a Justice of Peace, Mayor, or Sheriff: But this Law was soon repealed. Tho' it seems to have given Rise to the late Riot-Act; which ordains, that where twelve Persons, or more, unlawfully assembled, continue together an Hour after Proclamation to depart, they shall be guilty of Felony. *Stat. 1 Geo. c. 6. See Riot.*

Assent, or Consent. To a Legacy of Goods, the Assent of the Executor is necessary, before the Legatee may take the same; but to a Devise of Lands that are Freehold, it is not required. *Co. Lit. 111.* The Assent of an Executor to a Devise of a Legacy, or of any personal Thing, is so necessary, that if the Legatee or Devisee take the Thing without the Delivery and Assent of the Executor, he may have an Action of *Trespass* against them. *Keilw. 128. 1 Nels. Abr. 260.* The Common Law takes Notice of the Assent of the Executor to the Legacy, and doth give him Time to consider of the Value of the Goods, and State of the Debts of the Testator, that he may pay a Legacy with Safety; the Executor being to pay Debts before Legacies. *Perk. 570.* No Property can be transferred to the Legatee without the Assent of the Executor: But if the Executor doth once assent to the Legacy, the Legatee hath such a Property vested in him that he may take it, tho' the Executor revokes his Assent afterwards. And there may be an Assent implied, as well as express; as if the Executor offers the Legatee Money for what is bequeathed him; or directs others to the Legatee to buy it, &c. *Plowd. 543. 4 Rep. 28.* When there are many Executors, the Assent of one to a Legacy is sufficient: And one Executor may take a Legacy without the Assent of his Co-Executors. *Perk. 572.* Assent may be before or after Probate of the Will. An Infant Executor, at the Age of seventeen Years, may assent to a Legacy: But it has been doubted, Whether an Administrator durante minori Aetate can assent. *Cro. Eliz. 719.* A Husband is to give Assent where his Wife is Executrix. A Court of Equity, or the Spiritual Court, may compel an Executor to assent to a Legacy. *March 97.* But

an *Assent* to a void Devise, will be also void. *Plowd.* 525. *Assent* of Dean and Chapter in making Leases of Church Lands; *vide* Leases. Of the major Part of Corporations, in making By-Laws, *vide* By-Laws.

Assessors, Those that *assess* Publick Taxes; as two Inhabitants in every Parish were *Assessors* for the Royal Aid, to rate every Person according to the Value of his Estate, *Anno* 16 & 17 *Car.* 2. There are *Assessments* of Parish-Duties, for Repairing of Highways, &c. made and levied by Rate on the Inhabitants; as well as *Assessments* of Publick Taxes. *Vide* Assessors, &c.

Assets, (Fr. *Asses*, i. e. *Satis*) Signifies Goods enough to discharge that Burden which is cast upon the Executor or Heir, in satisfying the Debts and Legacies of the Testator or Ancestor. *Bro. Tit. Assets.* *Assets* are Real or Personal; where a Man hath Lands in Fee-simple, and dies seised thereof, the Lands which come to his Heir, are *Assets* Real: And where he dies possessed of any Personal Estate, the Goods which come to the Executors, are *Assets* Personal: *Assets* are also divided into *Assets per Descent*, and *Assets inter mains*; *Assets* by Descent is where a Person is bound in an Obligation, and dies seised of Lands which descend to the Heir, the Land shall be *Assets*, and the Heir shall be charged as far as the Land to him descended will extend: *Assets inter mains* is when a Man indebted makes Executors, and leaves them sufficient to pay his Debts and Legacies; or where some Commodity or Profit ariseth to them in Right of the Testator, which are called *Assets* in their Hands. *Terms de Ley* 56, 77. By the Common Law, if an Heir had sold or aliened the Lands which were *Assets*, before the Obligation of his Ancestor was put in Suit, he was to be discharged, and the Debt was lost: But by Statute, the Heir is made liable to the Value of the Land by him sold, in Action of Debt brought against him by the Obligee, who shall recover to the Value of the said Land, as if the Debt was the proper Debt of the Heir; but the Land which is sold or aliened *bona fide* before the Action brought, shall not be liable to Execution upon a Judgment recovered against the Heir in any such Action. *Stat.* 3 & 4 *W. & M. cap.* 14. Where a Man binds himself and his Heirs in a Bond, and dies leaving Issue two Sons, if the eldest Son enters on the Lands by Descent as Heir to the Father, and die without Issue, and then the youngest Son enters, he shall be charged with *Assets* as Heir to his Father. *Dyer* 368. Lands which come to the Heir by Purchase, shall not be *Assets*; for 'tis only Lands by Descent that shall be *Assets*. 1. *Danv. Abr.* 577. A Reversion in Fee depending upon an Estate-tail, is not *Assets*; because it lies in the Will of the Tenant in Tail to dock and bar it by Fine, &c. 6 *Rep.* 56. But after the Tail is spent, it is *Assets*. 3 *Mod.* 257. And a Reversion on an Estate for Life or Years is *Assets*. An Advowson is *Assets*; but not a Presentation to a Church actually void, which may not be sold. *Co. Lit.* 374. Lands of *Cestuy que Trust* shall be *Assets* by Descent. *Stat.* 29 *Car.* 2. And Lands by Descent in ancient Demesne shall be *Assets* in Debt. But a Copyhold Estate descending to an Heir, is not *Assets*: Nor is any Right to an Estate *Assets*, without Possession, &c. till recovered and reduced into Possession. *Danv.* 577. Leases are *Assets* to pay Debts, notwithstanding the Assent of the Execu-

tor to the Devise of them. 1 *Lill. Abr.* 99. Where an Executor of Lessee for Years receives the Profits of the Land, they are appropriated to the Use of the Lessor; but what is over and above the Rent shall be *Assets*. 1 *Salk.* 79. If an Executor surrenders a Term of Years, which he had as Executor, to him in Reversion; or if he purchases the Reversion, 'tis not extinct as to him, but shall still remain *Assets* in the Executor to satisfy Debts and Legacies. 1 *Rep.* 87. Equity of Redemption of an Estate mortgaged, and a Term for Years to attend the Inheritance, are *Assets*. 3 *Leon.* 32. Money decreed in a Court of Equity by Reason of Executorship; Money arising by Sale of Lands by Executors; and Damages recovered by Executors; also Interest of the Testator's Money lent by Executors, shall be *Assets*. 2 *Chanc. Rep.* 152. Those Goods and Chattels which belonged to the Testator at the Time of his Death, and which do come to the Hands of the Executor are *Assets*, to make the Executor chargeable to Creditors and Legatees. 6 *Rep.* 47. But such Things as are not valuable, shall not be *Assets*: And Debts, &c. when recovered by the Executor after the Death of the Testator, shall be accounted *Assets*; but not before recovered; for the Executor shall not be charged for a Debt, if he cannot recover it. *Wood's Inst.* 323. If an Obligee or Creditor is made Executor, the Debt is *Assets*; though he may pay himself before any other, in equal Degree. An Obligee or Creditor makes the Obligor or Debtor Executor, it is a Release of the Debt; and yet his Debt shall be *Assets* for so much to the other Creditors, if there is no *Assets* beside. 1 *Inst.* 264. 2 *Roll. Abr.* 920. A Release of a certain Debt due to the Testator, makes it *Assets* in the Executor's Hands; because it shall be intended he would not have made the Release, unless the Money had been paid to him. 1 *Nelf. Abr.* 262. *Assets* in the Hands of an Executor, is *Assets* in the Hands of others; and if one Executor hath Goods of the Testator in any Part of the World, he shall be charged in Respect of them. 6 *Rep.* 47. In Actions against Executors, the Jury must find *Assets* of what Value; for the Plaintiff shall recover only according to the Value of the *Assets* found. 1 *Roll. Rep.* 58. An Heir may plead *Riens per Descent*, but the Plaintiff may reply that he had Lands from his Ancestor; and special Matter may be given in Evidence, &c. *Co. Lit.* 5 *Rep.* 60.

Assewiare, To draw or drain Water from Marsh Grounds. — *Quod ipsi Mariscum prædictum assewiare, & secundum Legem Marisci, Wallis includere & in culturam redigere. — Et Mariscum illum sic assewiatum, inclusum & in culturam redactum tenere.* *Mon. Ang.* 2. Vol. f. 334. **Assidere**, or **Assedare**, To tax equally. *Provisum est generaliter quod prædicta quadragesima hoc modo assideatur & colligatur.* *Mat. Paris.* *Anno* 1232. Sometimes it hath been used to assign an annual Rent, to be paid out of a particular Farm, &c. As, *Manerium Rex Stephanus dedit & assedit eis pro centum Marcis.*

Assign, (*Assignare*) Hath two Significations; one General, as to set over a Right to another, or appoint a Deputy, &c. and the other Special, to set forth or point at, as we say to assign Error, assign false Judgment, false Verdict, Waste, &c. And in assigning of Error, it must be shewed where the Error is committed; in false Judgment, wherein the Judgment is unjust; in Waste,

Waste, wherein especially the Waste is done. *F. N. B.* 19, 112. *Reg. Orig.* 72. Also Justices are said to be assigned to take Assises. *Stat.* 11 *H. 6. cap.* 2.

Assignee, (Assignatus) Is he that is deputed or appointed by another to do any Act, or perform any Business, or enjoy any Commodity. And Assignees may be by Deed, or in Law; Assignee by Deed is when a Lessee of a Term, &c. sells and assigns the same to another, that other is his Assignee by Deed: Assignee in Law is he whom the Law so makes, without any Appointment of the Person; as an Executor is Assignee in Law to the Testator. *Dyer* 6. But if there be Assignee in Deed, Assign in Law is not allowed. He is called Assignee, who hath the whole Estate of the Assignor; and an Assignee, though not named in a Condition, may pay the Money to save the Land; but he shall not receive any Money, unless he be named. 1 *Inst.* 215. Assignees may take Advantage of Forfeitures on Conditions, when they are incident to the Reversion, as for Rent, &c. 1 *And.* 82. And regularly every Assignee of the Land may take Advantage of inherent Covenants; also Assignees are bound by such Covenants, as a Covenant to repair, &c. altho' not named: But if it concerns a Thing not in Being at the Time of the Demise, as to make a new Edifice, &c. the Assignee is not bound, except he be named in express Words; nor is he when named, if the Thing to be done doth not concern the Thing demised; or in Contracts merely personal. 1 *Cro.* 552. 1 *Roll. Abr.* 915. *Plowd.* 284. An Assignee is he that possesses or enjoys a Thing in his own Right; and Deputy is he that does it in the Right of another. *Perkins.*

Assignment, Is the Setting over or Transferring the Interest a Man hath in any Thing to another. And Assignments may be made of Lands in Fee, for Life, or Years; of an Annuity, Rent-Charge, Judgment, Statute, &c. but as to Lands, they are usually of Leases and Estates for Years, &c. And no Estate of Freehold, or Term for Years, shall be assigned but by Deed in Writing signed by the Parties; except by Operation of Law. *Stat.* 29 *Car.* 2. c. 3. A Possibility, Right of Entry, Title for Condition broken, a Trust, or Thing in Action, cannot be granted or assigned over. 1 *Inst.* 214. A Lessee out of Possession cannot make any Assignment of his Term, off from the Land; but must first enter, and recontinue his Possession; or seal and deliver the Deed upon the Land, which puts the Assignee into actual Possession. *Dalif.* 81. If Lessee for Years assigns all his Term in his Lease to another, he cannot reserve a Rent in the Assignment; for he hath no Interest in the Thing by Reason of which the Rent reserved should be paid; and where there is no Reversion there can be no Distress: But Debt may lie upon it, as on a Contract. 1 *Lill. Abr.* 99. Lessee for Term of Years assigns over his Term and dies, his Executors shall not be charged for Rent due after his Decease. *Noy's Max.* 71. Where the Executor of a Lessee assigns the Term, Debt will not lie against him for Rent incurred after the Assignment; because there is neither Privy of Contract, nor Estate between the Lessor and the Executor: But if the Lessee himself assigns his Lease, the Privy of Contract remains between him and the Lessor, although the Privy of Estate is gone by the Assignment, and he shall be chargeable during his Life; but after his Death, the Privy of

Contract is likewise determined. 3 *Rep.* 24. 1 *Nels. Abr.* 271. Although a Lessee make an Assignment over of his Term, yet Debt lies against him by the Lessor or his Heir, (not having accepted Rent from the Assignee): But where a Lessee assigns his Term, and the Lessor his Reversion, the Privy is determined, and Debt doth not lie for the Reversioner against the first Lessee. *Moor, cap.* 472. And as the Rent issues out of the Land, the Assignee generally who has the Land, and is privy in Estate, is Debtor in Respect thereof. 3 *Rep.* 32. If an Assignment is made by an Assignee, the first Assignee is not suable for the Rent; for if he be accepted by the Lessor, the Admission of one Assignee is the Admission of Twenty. *Comp. Attorn.* 491. In case of Action of Debt for Rent by an Assignee of a Reversion, the Defendant may plead that before any Rent became due, he assigned the Term to another; but he must set forth in his Plea that he gave Notice to the Plaintiff of the Assignment made. *Raym.* 163. A Lessee covenanted for himself and his Assigns to rebuild a House before such a Time, which he did not do, but after the Time expired he assigned the Term; adjudged that this Covenant will not bind the Assignee, because it was broken before the Assignment. 1 *Salk.* 199. Where Tenant for Years assigns his Estate, no Consideration is necessary; for the Tenure being subject to Payment of Rent, &c. is sufficient to vest an Estate in the Assignee: In other Cases some Consideration must be paid. 1 *Mod.* 263. The Words required in Assignments, are grant, assign and set over; which may amount to a Grant, Feoffment, Lease, Release, Confirmation, &c. 1 *Inst.* 301. In these Deeds, the Assignor is to covenant to save harmless from former Grants, &c. That he is Owner of the Land; and hath Power to assign; that the Assignee shall quietly enjoy, and to make further Assurance; and the Assignee covenants to pay the Rent, and perform the Covenants, &c. though the last Covenants are usually omitted. Bonds, &c. are assigned by Power of Attorney to receive and sue in the Assignor's Name: But Bills of Exchange are assignable by Indorsement, and the Assignees may recover in their own Names by *Stat.* 3 & 4 *Ann.* c. 9.

An Assignment of Chambers in an Inn of Court.

THIS Indenture made the Day, &c. in the Year of our Lord, &c. Between A. B. of, &c. Esq; of the one Part, and C. D. of, &c. Gent. of the other Part: Whereas in and by a certain Writing made and dated, &c. at Lincoln's Inn, the Benchers of the said Inn did order that the said A. B. should have a Lease of All that Chamber up one Pair of Stairs, Number, &c. belonging to Lincoln's Inn aforesaid, for the Term of Twenty-one Years, to commence at, &c. under the yearly Rent of, &c. as by the said recited Writing or Order may more fully appear. And whereas in Pursuance of the said Order, a Lease of the said Chamber hath been since made and granted to the said A. B. for the said Term of Twenty-one Years, &c. Now this Indenture witnesseth, That the said A. B. for and in Consideration of the Sum of Two hundred Pounds of lawful Money of Great Britain, to him in Hand paid by the said C. D. at and before the Sealing and Delivery hereof, the Receipt whereof he doth hereby acknowledge, Hath granted, bargained, sold, assigned and set over; and by these Presents doth grant, bargain, sell, assign and set

set over unto the said C. D. his Executors, Administrators and Assigns, All that the Chamber aforesaid with the Appurtenances, and all the Estate, Right, Title, Interest, Property, Claim and Demand whatsoever of him the said A. B. of, in and to the same, or any Part thereof: To have and to hold the said Chamber, with the Appurtenances, to the said C. D. his Executors, Administrators and Assigns, from henceforth, for and during all the Rest and Residue of the said Term of Twenty-one Years, therein to come and unexpired. And the said A. B. doth by these Presents, for himself, his Executors and Administrators, covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, in manner following; (that is to say) that he the said A. B. hath good Right, full Power and lawful Authority, to grant and assign the said Chamber and Premises above mentioned, in Manner and Form aforesaid: And that the same is free and clear of all former Grants, Assignments, Incumbrances, Arrears of Rent, and other Duties payable to the said Society of Lincoln's Inn, or any the Officers or Ministers thereof, or otherwise howsoever: And also that he the said C. D. his Executors, Administrators and Assigns, shall and lawfully may at all Times hereafter, during the Rest and Residue now to come and unexpired of the said Term of Twenty-one Years, peaceably and quietly have, hold, occupy, possess and enjoy the said Chamber and Premises above mentioned, and hereby granted and assigned, without any Let, Suit, Trouble, Eviction, Ejection, Claim or Demand, of or by the said A. B. his Executors, Administrators or Assigns, or any other Person or Persons whatsoever: And further, that he the said A. B. his Executors and Administrators, shall and will from Time to Time, and at all Times hereafter upon the reasonable Request, and at the Costs and Charges of the said C. D. make, do and execute, or cause to be made, done and executed, all and every such further Acts and Assurances, for the better Assigning and Assigning of the said Chamber and Premises to the said C. D. as by him the said C. D. or his Counsel, learned in the Law, shall be reasonably devised, advised or required. In Witness whereof the Parties abovenamed have hereunto put their Hands and Seals, the Day and Year above-written.

Form of an Assignment of a Bond.

TO all People to whom these Presents shall come, Greeting: Whereas A. B. of, &c. in and by one Bond or Obligation, bearing Date, &c. became bound to C. D. of, &c. in the penal Sum of, &c. conditioned for the Payment of, &c. and Interest at a Day long since past, as by the said Bond and Condition thereof may appear: And whereas there now remains due to the said C. D. for Principal and Interest on the said Bond, the Sum of, &c. Now know ye, That the said C. D. for and in Consideration of the said Sum of, &c. of lawful British Money to him in Hand paid by E. F. of, &c. the Receipt whereof the said C. D. doth hereby acknowledge; he the said C. D. hath assigned and set over, and by these Presents doth assign and set over unto the said E. F. the said recited Bond or Obligation, and the Money thereupon due and owing, and all his Right and Interest of, in and to the same. And the said C. D. for the Consideration aforesaid, hath made, constituted and appointed; and by these Presents doth make, constitute and appoint the said E. F. his Executors and Administrators, his true and lawful Attorney and Attornies irrevocable, for him and in his Name, and in the Name and Names of his Executors and Administrators, but for the sole and proper Use and

Benefit of the said E. F. his Executors, Administrators and Assigns, to ask, require, demand and receive of the said A. B. his Heirs, Executors and Administrators, the Money due on the said Bond; and on Non-payment thereof, he the said A. B. his Heirs, Executors and Administrators, to sue for, and recover and receive the same; and on Payment thereof to deliver up and cancel the said Bond, and give sufficient Releases and Discharges therefore, and one or more Attorney or Attornies under him to constitute; and whatsoever the said E. F. or his Attorney or Attornies, shall lawfully do in the Premises, the said C. D. doth hereby allow and confirm. And the said C. D. doth covenant with the said E. F. that he the said C. D. hath not received, nor will receive the said Money due on the said Bond, or any Part thereof; neither shall or will release or discharge the same, or any Part thereof; but will own and allow of all lawful Proceedings for Recovery thereof, he the said E. F. saving the said C. D. harmless, of and from any Costs that may happen to him thereby. In Witness, &c.

Assimulare, To put together. 'Tis mentioned in Leg. H. 1. cap. 8. — *De Via Regia*, viz. *Tanta vero debet esse, ut inibi duo carri sibi possint obviari & bubulci de longo stumbli sui possint Assimulare, &c.*

Assisa Cadere. This Word signifies to be non-suited; as when there is such a plain and legal Insufficiency, that the Complainant can proceed no further on it. *Fleta*, lib. 4. cap. 15. *Bracton*, lib. 2. cap. 7.

Assisa cadit in Juratam, Is where the Thing in Controversy is so doubtful, that it must necessarily be tried by a Jury. *Fleta*, lib. 4. c. 15.

Assisa continuanda. A Writ directed to the Justices of Assise for the Continuation of a Cause, where certain Records alledged cannot be produced in Time by the Party that has Occasion to use them. *Reg. Orig.* 217.

Assisa propoganda, Is a Writ directed to the Justices assigned to take Assises, for the Stay of Proceedings, by Reason of the Party's being employed in the King's Business. *Reg. Orig.* 208.

Assise, (Fr. *Assis*) According to our ancient Books is defined to be an Assembly of Knights, and other substantial Men, with the Justice, in a certain Place, and at a certain Time appointed. *Custom. Normand.* cap. 24. This Word is properly derived from the Latin Verb *Assideo*, to sit together; and is also taken for the Court, Place, or Time, when and where the Writs and Process of Assise are handled or taken. And in this Signification, Assise is General; as when the Justices go their several Circuits with Commissions to take all Assises: Or Special, where a special Commission is granted to certain Persons, (formerly oftentimes done) for taking an Assise upon one or two Disseisins only. *Bract.* lib. 3. Concerning the General Assise, all the Counties of England are divided into six Circuits, and two Judges are assign'd 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 Records do sit, and where his Courts for his Counties-Palatine are held) and have five several Commissions. 1. Of *Oyer and Terminer*, directed to them and many other Gentlemen of the County, by which they are empowered to try Treasons, Felonies, &c. and this is the largest Commission they have. 2. Of *Gaol-delivery*, directed to the Judges and the Clerk of Assise associate, which gives them Power to try every Prisoner in the Gaol committed for any Offence whatsoever,

ever, but none but Prisoners in the Gaol ; so that one Way or other they rid the Gaol of all the Prisoners in it. 3. Of *Affise*, directed to themselves only and the Clerk of *Affise*, to take *Affises*, and do Right upon Writs of *Affise* brought before them by such as are wrongfully thrust out of their Lands and Possessions: Which Writs were heretofore frequent, but now Men's Possessions are sooner recovered by Ejectments, &c. 4. Of *Nisi prius*, directed to the Judges and Clerk of *Affise*, by which Civil Causes grown to Issue in the Courts above, are try'd in the Vacation by a Jury of twelve Men of the County where the Cause of Action arises ; and on Return of the Verdict of the Jury to the Court above, the Judges there give Judgment. The Chief Justices, &c. or in their Absence two other Justices, may try Causes upon Writs of *Nisi prius* in the King's Bench, and Common Pleas, &c. for the County of *Middlesex*, in the Term-Time, or four Days after. Stat. 18 Eliz. cap. 12. 5. 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 *Affises* ; and Sheriffs are also to give their Attendance on the Judges, or they shall be fined. Bacon's Elem. 15, 16, &c. There is a Commission of the Peace Oyer and Terminer and Gaol-delivery of *Newgate*, held several Times in a Year, for the City of *London* and County of *Middlesex*, at *Justice-Hall* in the *Old-Baily*, where the Lord Mayor is the Chief Judge. In *Wales* there are but two Circuits, *North* and *South Wales* ; for each of which the King appoints two Persons learned in the Laws to be Judges. Stat. 18 Eliz. cap. 8. If Justices sit by Force of a Commission, and do not adjourn the Commission, it is determined. 4 Inst. 265. The Constitution of the Justices of *Affise*, was begun by Hen. 2. tho' somewhat different from what they now are. And by *Magna Charta* Justices shall be sent through every County once a Year, who with the Knights of the respective Shires, shall take *Affises* of Novel Disseisin, &c. in their proper Shires, and what cannot be determined there, shall be ended by them in some other Place in their Circuit ; and if it be too difficult for them, it shall be referred to the Justices of the Bench, there to be ended. 9 Hen. 3. cap. 12. Justices of *Affise*, &c. are to hold their Sessions in the chief Towns of the County ; and their Records are to be sent into the Exchequer. 6 R. 2. 9 Ed. 3. The Word *Affise* is also used for a *Fury*, where *Affises* of Novel Disseisin are tried : The Panels of *Affises* shall be arrayed, and a Copy indented delivered by the Sheriff, &c. to the Plaintiffs and Defendants six Days before the Sessions, &c. if demanded, on Pain of 40 l. by Stat. 6 H. 6. cap. 2. And *Affise* is taken for a *Writ*, for Recovery of Possession of Things immoveable, whereof any one and his Ancestors have been disseised. Likewise in another Sense, it signifies an Ordinance or Statute. Reg. Orig. 279. The Writs of *Affise* are the four sorts following :

Affise of Novel Disseisin, (*Affisa Nova Disseisina*) Lies where Tenant in Fee-simple, Fee-tail, or for Term of Life, is put out and disseised of his Lands, or Tenements, Rents, Common of Pasture, Common Way, of an Office, Toll, &c. Glanv. lib. 10. Reg. Orig. 197. An *Affise* is to be arraigned in *French*, and first the Plaintiff's Counsel prays the Court that the Defendant may be called ; whereupon he is called, and if the Defendant appears, then his Counsel demand Oyer

of the Writ of *Affise*, and the Return of it ; which is granted ; and then he prays Leave to imparl to a short Time after, and the Jury is adjourned to that Day : At the Day given by the Court, the Defendant is again called, and upon his Appearance, he pleads to the *Affise* in *Latin* ; and upon this an Issue is joined between the Parties, and the Jurors are sworn to try the Issue, the Counsel proceeding to give them their Evidence : After the Trial, the Court gives Judgment, and the Plaintiff recovering is to have Writ of *Seisin*, &c. 1 Lill. Abr. 105, 106. The Trial on *Affise* is *Festinum Remedium*, and there is no such quick Dispatch in other civil Actions ; and in this Action, the Land, Damages and Costs are recovered. The Jurors that are to try the *Affise*, are called *Recognitors* of the *Affise* ; and they are to view the Thing in Demand : By Writ of *Affise*, the Sheriff is commanded, *Quod faciat duodecim liberos & legales homines de vicineto, &c. Videre tenementum illud, & nomina eorum imbrevari, & quod summoveat eos per bonas summonitiones, quod sint coram Jusciariis, &c. parati inde facere recognitionem, &c.* In an *Affise*, the Plaintiff must prove his Title, then his *Seisin* and *Disseisin* : But *Seisin* of Part of a Rent, is sufficient to have *Affise* of the Whole ; and if a Man which hath Title to enter, set his Foot upon the Land and is ousted, that is a sufficient *Seisin*. Comp. Attorn. 267. *Seisin* of an Office may be alleged by taking Money for the Business done, and the Place where the Officer sat be put in View. Dyer 114. An *Affise* must be of an actual Freehold ; not a Freehold in Law. If the Tenant pleads an ill Bar, the Plaintiff is not bound to answer it, but may make a Title at large, and pray the *Affise*, &c. 1 Danv. Abr. 583. In *Affise*, the Defendant shall not essoin, nor cast a Protection, or pray in Aid of any but the King, vouch any Stranger, or Party to the Writ, unless he enter presently into the Warranty. 8 Rep. 50. The Plaint need not be so certain in *Affise* as in other Writs ; the Judgment being to recover per *Visum Recognitorum* ; and if the Plaintiff be but so certain as the Recognitors may put the Demandant in Possession, it is sufficient. Dyer 84. The Demandant in an *Affise* may abridge his Plaint at any Time after the Jury are charged, before Verdict. 1 Danv. 580. For Proceedings in Writ of *Affise* of Novel Disseisin ; see 2 Plowd. 411, 412. If Lessee for Years, or Tenant at Will, be ousted, the Lessor, or he in Remainder, may have *Affise*, because the Freehold was in him at the Time of the Disseisin. Kel. 109. *Affise* lies for Tithes, by Stat. 32 H. 8. cap. 7. Cro. Eliz. 559. And also for Estovers, to be taken in the Woods of another. Stat. Westm. 2. cap. 16. But it lies not for an Annuity, Pension, &c. In some Cases an *Affise* will lie, where Ejectment will not ; for Instance *de uro Crofto*, because it may be put in View to the Jury. 2 Bulst. 214. Ejectment will not lie *de Piscaria*, by Reason the Sheriff cannot deliver Possession of it ; but an *Affise* will lie for it, as it may be viewed by the Recognitors. Cro. Car. 354. *Affise* will lie sometimes where Trespass *Vi & armis* doth not ; as where a Lord enters and distrains his Tenant so often, when nothing is due, that the Tenant is disturbed in manuring his Lands ; in such Case, he may have *Affise de sovent fois Distress*, but he cannot have Trespass *Vi & armis* against his Lord. 3 Rep. 47. 1 Nelf. Abr. 276. Where an *Affise* concerns the King and his Pre-

rogative,

rogative, the Judges may be prohibited to proceed therein, by Writ *De non ulterius Prosequendo Rege inconsulto*. *Ibid.* 277. The Court of Common Pleas or King's Bench may hold Plea of *Affises* of Land in the County of Middlesex, by Writ out of Chancery. 1 *Lill. Abr.* 105. And in Cities and Corporations an *Affise* of fresh Force lies for Recovery of Possession of Lands, within forty Days after the *Disseisin*, as the ordinary *Affise* in the County. *F. N. B.* 7.

Form of a Writ of *Affise* of Novel *Disseisin*.

REX Vic. &c. *Questus est nobis A. quod B. injuste & sine Judio Disseisit eum de Libero Tenemento suo in, &c. Et ideo tibi precipimus quod si præd. A. fecerit te secur. de clamore suo prosequend. tunc facias tenement. illud reseciri de Catal. quæ in ipso capta fuer. & ipsum tenementum cum Catal. esse in pace, usque ad primam Affisam cum Just. nostri in partes illas venerint, & interim fac. duodecim liberos & legales homines, &c. & sum. &c. quod sint coram, &c. & pone per vad. & salvos pleg. præd. B. vel Ballivum suum si ipse inventus non fuerit, quod tunc sit ibi ad aud. ill. recogn. &c. & habeas ibi sum. nomina pleg. & hoc Breve. Teste, &c.*

Affise of Mort d'Ancestor, (*Affisa Mortis Antecessoris*) Is a Writ that lieth where a Man's Father, Mother, Brother, Sister, Uncle, Aunt, &c. died seised of Lands, Tenements, Rents, &c. that were held in Fee, and after their Deaths a Stranger abateth. *Reg. Orig.* 223. It is good as well against the Abator, as any other in Possession of the Land, &c. But it lies not against Brothers or Sisters, &c. where there is Privy of Blood between the Person prosecuting and them. *Co. Lit.* 242. And it must be brought within the Time limited by the Statute of Limitations, or the Right may be lost by Negligence. If the Ancestor were seised, the Day that he died, of any Lands, or other Estate in Fee-simple, although that a Stranger entereth and disseiseth him of that Land the Day that he dieth, so that he dieth not seised of the said Land; yet the Person who is his Heir shall have the *Affise of Mort d'ancestor*, because the Writ doth not suppose that the Ancestor died seised; but saith, *Parati Sacramento recogn. Si. W. B. Pater, &c. fuit seistus die quo obiit, &c.* And the same is sufficient, although he dieth not seised. *New. Nat. Br.* 433. If a Man go beyond Sea in Pilgrimage, and dieth there; or if he enter into Religion, &c. his Heir shall have a Writ of *Affise of Mort d'ancestor*, and it sufficeth that the Ancestor was seised the Day he went out of the Land, although it was not the Day of his Death. *Ibid.* 434, 435. By the Statute of Gloucester, if Tenant by the Curtesy alien his Wife's Inheritance, and dieth, the Heir of the Wife shall have an *Affise of Mort d'ancestor*, if he have not Affets by Descent from the Tenant by the Curtesy; and the same shall be as well where the Wife was not seised of the Land the Day of her Death, as where she was seised thereof. 6 *Ed.* 1. A Warden of a College, &c. shall have *Affise of Mort d'ancestor*, &c. of Rent where his Predecessor was seised. And a Man may have *Affise of Mort d'ancestor* of several Rents, against several Persons in several Counties; having in the End of the Writ several Summons against the Tenants.

Form of a Writ of *Affise* of Mort d'ancestor.

REX Vic. &c. *Si A. fecer. &c. tunc sum. &c. duodec. liberos & legales homines de Visn. de, &c. quod sint coram Justiciar. nostris ad primam Affisam cum in partes illas venerint, vel coram Justiciariis nostris apud Westm. die, &c. tibi Scire fac. parat. Sacramento recognoscere si W. pater præd. A. vel mater, soror, frater, avunculus, vel amita fuit seistus in Dominico suo ut de Feod. de uno Messuagio & una Virgata terræ cum pertin. in, &c. die quo obiit; Et si obiit post coronation. Dom. &c. Regis; Et si idem A. propinquior Hæres ejus sit, & interim præd. Messuag. & terr. videant, & nomina eorum imbrevari fac. & sum. per bonos sum. B. qui præd. messuag. & terras nunc tenet, quod sit ibi ad audiend. illam recogn. Et habeas ibi sum. & hoc Breve. Teste, &c.*

Affise of Darrein Presentment, (*Affisa ultima Presentationis*) A Writ lying where a Man and his Ancestors have presented a Clerk to a Church, and after, the Church being void, a Stranger presents his Clerk to the same Church, whereby the Person having Right is disturb'd. *Reg. Orig.* 30. And a Man shall have *Affise of Darrein Presentment*, although he nor his Ancestors do present to the last Avoidance: As if Tenant for Life or Years, or in Dower, or by the Curtesy, suffer an Usurpation into a Church, &c. and die, he in Reversion who is Heir unto the Ancestor who last presented, shall have *Affise of Darrein Presentment*, if he be disturbed: But if a Man present, and then grant the Advowson unto another for Life, and he suffer one Usurpation, or two, or three Usurpations; now at the next Avoidance, he in the Reversion shall not have an *Affise of Darrein Presentment*, if he be disturbed to present. 10 *Ed.* 3. In this Case he is put to his Writ of Right. If a Disturber present to an Advowson, and the Patron bring an *Affise of Darrein Presentment*, and pendent the Writ, the Incumbent dieth, if the Disturber presenteth again and dies, yet the Patron shall have an *Affise of Darrein Presentment* upon the first Disturbance against the Heir of the Disturber, by Journeys Accounts. *New. Nat. Br.* 71. *Affise of Darrein Presentment* doth not lie for one Coparcener against the other. *Mich.* 15 *Ed.* 3. The Church is never litigious between Parceners; for if they cannot agree, the Ordinary ought to admit the Presentee of the Eldest: *Contra* of Jointenants.

Form of a Writ of *Affise* of Darrein Presentment.

REX Vic. *Salutem. Si A. fecerit te secur. &c. tunc sum. &c. quod sint coram Justic. nostris, &c. parati sacramento recognosc. quis Advocat. tempor. pacis presentavit ultim. Personam quæ mortua est, ad Ecclesiam de, &c. vel ultim. Vicar. qui mortuus est, ad Vicar. de, &c. quæ vacat ut dic. & cujus Advoc. idem A. dic. ad se pertinere, & interim Ecclesiam illam videant, & nomina eorum imbrevari fac. & sum. B. qui Advoc. illam ei deforc. quod tunc sit ibi audit. illam Recogn. Et habeas ibi sum. & hoc Breve. Teste, &c.*

Affise de utrum, (*Affisa Utrum*) lieth for a Parson against a Layman, or for a Layman against a Parson, for Lands or Tenements doubtful, whether they be Lay-fee or free Alms. *Bract. lib.* 4.

These are the four Kinds of Writs of *Affise*, used in Actions possessory; and are called *Petit Affises*, in respect of the Grand *Affise*: For the Law of Fees is grounded upon two Rights, one of *Possession*, the other of *Property*; and as the Grand *Affise* serves for the Right of Property, so the *Petit Affise* serveth for the Right of Possession. *Horn's Mirr.* At the Common Law there are but two Forms of Writs of *Affise*, viz. *Affise de Libero Tenemento*, and *Affise de Communia Pastura*. 8 Rep. 45. And the Reason why they are termed *Affises*, is for that they not only settle the Possession, but are executed at a certain Time and Place; and they were in antient Times most commonly tried by special Courts appointed for that Purpose. The *Affises* of *Novel Disseisin*, &c. and *De Communia Pastura*, were instituted by H. 2. in the Place of Duels: And therefore *Glanville* tells us, That *Magna Affisa est Regale beneficium, clementia principis de Consilio procerum populis indultum, a quo vita hominum & Status integritati tam salubriter consultitur, ut in jure, quod quis in Libero Soli tenemento possidet, retinendo, Duelli casum homines declinare possunt ambiguum, &c.* Glanv. lib. 2. cap. 7.

Affise of the Forest, (*Affisa de Foresta*) Is a Statute touching Orders to be observed in the King's Forest. *Manwood* 35. The *Charta de Foresta*, ordaining Courts of Swainmore to be held for Forests, &c. is the 9 Hen. 3. cap. 1. The Statute of View of Frank-Pledge Anno 18. 1. is also called the *Affise of the King*: And the Statute of Bread and Ale 51 Hen. 3. is termed the *Affise of Bread and Ale*. And these are so called, because they set down and appoint a certain Measure, or Order, in the Things they contain. There is further an *Affise* of Nuisance, *Affisa Nocuenti*, where a Man maketh a Nuisance to the Freehold of another, to redress the same. And besides *Littleton's* Division of *Affises*, there are others mentioned by other Writers, viz. *Affise at Large*, brought by an Infant to enquire of a Disseisin, and whether his Ancestor were of full Age, good Memory, &c. when he made the Deed pleaded, whereby he claims his Right. *Affise in Point of Affise*, (*Affisa in modum Affise*) which is when the Tenant as it were setting Foot to Foot with the Demandant, without any Thing further pleads directly to the Writ, no Wrong, no Disseisin. *Affise out of the Point of Affise*, is when the Tenant pleadeth something by Exception; as a Foreign Release, or Foreign Matter triable in a Foreign County; which must be tried by a Jury, before the principal Cause can proceed. *Affise of Right of Damages* is where the Tenant confesseth an Ouster, and referring it to a Demurrer in Law, whether it were rightly done or not, is adjudged to have done Wrong; whereupon the Demandant shall have a Writ of *Affise* to recover Damages. *Bract. lib. 4. F. N. B. 105.* *Affises* are likewise awarded by Default of Tenants, &c.

Affisors, (*Affisores*) *Sunt qui Affisas condunt, aut Taxationes imponunt.* — In Scotland (according to *Skene*) they are the same with our Jurors; and their Oath is this:

We shall leil suith say,
And na suith conceal, for nathing we may,
So far as we are charg'd upon this Affise,
Be God himself, and be our Part of Paradise,
And as we will answer to God, upon
the dreadful Day of Dome.

Affize, Rented or farmed out for such an *Affise*, or certain assessed Rent in Money or Provisions. *Terra Affisa* was commonly opposed to *Terra Dominica*; this last being held in Demain, and occupied by the Lord, the other let out to inferior Tenants. So among the Lands of the Knights Templars, belonging to their Preceptory of Sandford, Com. Oxon. *Apud Covele de dono Matildis Reginae habentur quatuor hidae, quarum dua sunt in Dominico, & dua Affisae ad hominibus apud, &c.* — *Kennet's Paroch. Antiq.* 141. From hence we have *Redditus Affisus*, the set or standing Rent. And hence comes the Word to *assess* or allot the Proportion and Rates in Taxes and Payments by Assessors.

Affthment, A Wiregeld, or Compensation, by a pecuniary Mulct: From the Preposition *Ad*, and the Sax. *Sithe*, Vice: *Quod vice supplicii ad expiandum delictum solvitur.*

Association, (*Associatio*) Is a Patent sent by the King, either at his own Motion, or at the Suit of a Party Plaintiff, to the Justices appointed to take *Affises*, or of *Oyer* and *Terminer*, &c. to have others associated unto them. And this is usual where a Justice of *Affise* dies; and a Writ is issued to the Justices alive to admit the Person associated: Also where a Justice is disabled, this is practised. *F. N. B. 185. Reg. Orig.* 201, 206, 223. The Clerk of the *Affise* is usually *associate* of Course; in other Cases, some learned Serjeants at Law are appointed. But it has been holden that an *Association* after another *Association* allowed and admitted, doth not lie; nor are the Justices then to admit other *Association* in that Writ afterwards, so long as that Writ and Commission stand in Force. *Br. Affise* 386. *Mich.* 32 H. 6. The King may make an *Association* unto the Sheriff upon a Writ of *Redisseisin*, as well as upon *Affise* of *Novel Disseisin*. And the King may make *Association* not only in *Affises*, but in Juries and Attaints. *New Nat. Br.* 416, 417. There is also an *Association of Parliament*; as the Parliament of King William entered into a solemn *Association* to defend his Majesty's Person and Government against Plots and Conspiracies.

Affoil, (*Absolvere*) To deliver from Excommunication. *Staundf. Pl. Cr.* 72. — The Defendant should remain in Prison 'till the Plaintiff was *affoiled*; that is, delivered from his Excommunication. And in Stat. 1 Hen. 4. c. 10. Mention being made of K. Edw. 3. it is added whom God *affoil*.

Assumpsit, (from the Lat. *Assumo*) Is taken for a voluntary Promise, by which a Man assumes or takes upon him to perform or pay any Thing to another: It comprehends any verbal Promise, made upon Consideration; and the Civilians express it diversly, according to the Nature of the Promise, calling it sometimes *Pactum*, sometimes *Promissionem*, or *Constitutum*, &c. *Terms de Ley* 60. When one becomes legally indebted to another for Goods sold, the Law implies a Promise that he will pay this Debt; and if it be not paid, *Indebitatus Assumpsit* lies. 1 Danv. Abr. 26. And *Indebitatus Assumpsit* lies for Goods sold and delivered to a Stranger *ad requisitionem* of the Defendant. *Ibid.* 27. But on *Indebitatus Assumpsit* for Goods sold, you must prove a Price agreed on, otherwise the Action will not lie; Though this is helped by laying a *Quantum Meruit* with the *Indebitatus Assumpsit*, wherein if you fail in Proof of the Price agreed, you may recover

cover the Value. *Wood. Inst.* 536. And in Actions on Promise, it is usual to lay the Action divers Ways; and for Goods sold and delivered, there are generally three Narr's, viz. *Indebitatus Assumpsit*, *quantum valebant*, and *Infirmul Computassent*, so as to be sure to hit on one of the Promises. *Pract. Attorn.* 72. Where Action is brought upon a Contract, if the Plaintiff mistakes the Sum agreed upon, he fails in his Action; but if he brings it upon the Promise in Law, arising from the Debt, there though he mistakes the Sum he shall recover. *Aleyn.* 29. Every Contract made between Parties, implies a mutual Promise for Performance: And yet an Action may be brought on a reciprocal Promise, by one against the other, although he who brings it hath not performed on his Side. *Dyer* 30, 75. Where an *Assumpsit* or Promise is the Ground of the Action, it must be precisely set forth; but in Actions upon mutual Promise, it is sufficient to say generally that the Defendant hath not performed his Part, without assigning of a Breach. 3 *Lev.* 319. He for whose Benefit a Promise is made, it is said, may have an Action for the Breach of this Promise, although the Promise was not made to him. 2 *Lev.* 210. If a Promise is made without Limitation of Time for its Performance, reasonable Time shall be allowed, if there be an immediate Consideration for it; and not Time during Life. 1 *Lill. Abr.* 112. On Promise to deliver a Thing such a Day, the Party is bound to do it without Request. 1 *Lev.* 284. But if a Promise be to do any Thing upon Request, the Request is necessary to entitle the Action, on which it shall arise. 1 *Lev.* 48. In every Action upon *Assumpsit*, there ought to be a Consideration, Promise, and Breach of Promise. 1 *Leon.* c. 405. Where a Promise begins upon a Consideration, it cannot be discharged by Words, without some other Consideration. *Cro. Jac.* 620. Consideration that if a Person will forbear to sue another upon a Bond, &c. may be a good Consideration to pay the Debt, on Promise to do it. *Ibid.* 683. Two Persons go to an Innkeeper, one hires an Horse, and the other promises that if the Innkeeper will deliver the Horse, he will see it forthcoming; this Promise for another, is not good without Note in Writing: But the Person is chargeable upon the special Bailment, and so good without a Note. 1 *Lill.* 118. There may be Action on a *Non Assumpsit*, when the Law obliged a Person to agree or act; as against a Victualler, for refusing to entertain his Guests. 1 *Vent.* 72, 333. *Assumpsit* lies not for Rent usually reserved on Leases; but if a Man promise to pay, without a Lease, so much a Week as long as *A. B. &c.* permits him to enjoy a Warehouse, &c. which is a special Cause of Promise, Action may lie. 2 *Cro.* 592. And if one receive my Rent on Pretence of Title, *Assumpsit* lies; as it does also for the Receipt of Profits of an Office, &c. 2 *Mod.* 260. If a Man receives Money for the Use of another Person, *Assumpsit* may be had against him as Bailiff or Receiver, which supplies the Place of Action of Account. And where Money was deposited on a Wage, an *Indebitatus* lay for Money received to a Man's Use. *Shoeb.* 117. And special *Indebitatus Assumpsit*, as where one having promised to pay if he won, the other promised to pay if he won, lay for Money won at Gaming, before the Statute 9 *Ann.* which prohibits Gaming, &c. 1 *Danv.* 28. If where a Promise is made, one

Part of it is against Law, and another Part of it lawful, that is Ground sufficient for *Assumpsit*. 4 *Rep.* 94. Vide *Action upon the Case*.

Assumption, The Day of the Death of a Saint, so called, *Quia ejus anima in cælum assumitur*. Du Cange.

*Tandem clara dies, Reginae adsumptio cælis,
Regi parentis adest.* —

Astrarius Hæres, (from *Astre*, the Hearth of a Chimney) Is where the Ancestor by Conveyance hath set his Heir apparent and his Family in a House in his Life-time. — *Dicitur ille cui Antecessor in vita sua per Chartam Hereditatem restituit.* 1 *Inst.* 8.

Astrum, A House or Place of Habitation, also from *Astre*. — *Preceptum fuit vicecom. quod replegiat corpus Williel. J. quod Ricard' de S. Valennio cepit & captum tenuit, Qui Richardus venit & advocat captionem ut de Villano suo, & quod cepit ipsum in Astro suo in quo Natus fuit, &c.* *Placit. Hillar.* 18 Ed. 1.

Ategar, A Weapon among the Saxons, which seems to have been a Hand-dart, from the Sax. *Aeton* to fling or throw, and *Gar* a Weapon. *Spelman*.

Atthe, (*Adaa*) A Privilege of administering an Oath, in some Cases of Right and Property; from the Sax. *Ath*, *Othe*, *Furamentum*. It is mentioned among the Privileges granted by *Hen. 2.* to the Monks of *Glastenbury*. *Carrular. Abbat. Glaston.* M. S. fol. 14, 37.

Atia. See *Odio* & *Atia*, a Writ of Enquiry whether a Person be committed to Prison on just Cause of Suspicion.

Atilia, Utensils, or Country Implements: *Remaneant duo equi caretarii cum carecta & triginta sex boves cum quatuor carucis & atiliis.* *Blount*.

Atrium, Is taken for a Court before the House, and sometimes a Church-yard.

Attach, (*Attachiare*, from the Fr. *Attacher*) Signifies to take or apprehend by Commandment of a Writ or Precept. *Lamb. Eiren. lib. 1. cap. 16.* It differs from Arrest, in that he which arresteth a Man carrieth him to a Person of higher Power to be forthwith disposed of; but he that *attacheth* keepeth the Party *attached*, and presents him in Court at the Day assigned; as appears by these Words of the Writ, *Præcipimus tibi quod Attachias talem & habeas eum coram nobis, &c.* Another Difference there is, that Arrest is only upon the Body of a Man; whereas an *Attachment* is oftentimes upon his Goods. *Kitch.* 279. A *Capias* taketh hold of immoveable Things, as Lands or Tenements, and properly belongs to Real Actions: But *Attachment* hath Place rather in Personal Actions. *Bract. lib. 4. Attachiamantum est Districcio Personalis, & Cape Magnum Districcio Realis. Fleta, lib. 5. cap. 24.* And the Difference between a common *Attachment* and *Distress*, is that the *Attachment* reacheth not the Lands as *Distress* doth; and the *Distress* toucheth not the Body, as an *Attachment* doth. *Glanv. lib. 10.* For *Attachment* in the most common Use of the Word, is an Apprehension of a Man by his Body, to bring him to answer the Action of the Plaintiff. *Attachment* out of Chancery may be had of Course upon Affidavit made that the Defendant was served with a *Subpœna*, and appeared not; or upon Non-performance of any Order or Decree; also after the Return of this *Attachment*, that the Defendant *Non est Inventus, &c.* *Attachment*

with Proclamation issues against him, &c. *West. Symh.* And for Contempts, when a Party appears, he must upon his Oath answer Interrogatories exhibited against him; and if he be found Guilty shall be fined. Generally an *Attachment* doth lie for any Contempt done against the Court at *Westminster*: But the Court of B. R. will not grant *Attachment* against one for disobeying an Order made by Justices of Assize, or a Judge at his Chamber, except it be entered and made a Rule of Court; for it is no Contempt to the Court, but to the Judge that made the Order. 1 *Lill. Abr.* 121. *Attachment* lies against Attornies for Injustice, and base Dealings by their Clients, in delaying Suits, &c. as well as for Contempts to the Court. 2 *Hawk.* 144. Against Sheriffs making false Returns of Writs; and against Bailiffs for Frauds in Arrests, and exceeding their Power, &c. *Attachment* may be had. For Contempts against the King's Writ; taking them out without Right; using them in a vexatious Manner; altering the Teste, or filling them up after sealed, &c. *Attachment* lies. And for Contempts of an enormous Kind, in not obeying Writs, &c. *Attachments* may be issued against Peers. 2 *Hawk.* 152, 153. But in some Cases, the Court doth not usually grant *Attachments* against Persons for Misdemeanors, but will send a Tipstaff for them, if they live near the Town. 21 *Car. B. R.* For persuading Jurors not to appear on a Trial, *Attachment* lies against the Party; for obstructing the Proceedings of the Court. 1 *Lil.* 121. The Court of B. R. may award *Attachments* against any Inferior Courts usurping a Jurisdiction; or acting contrary to Justice. *Salk.* 207. Tho' 'tis usual first to send out a Prohibition. *Attachment* lies for Proceeding in an inferior Court, after a *Habeas Corpus* issued, and a *Superedeas* to stay Proceedings. 21 *Car. B. R.* And *Attachment* may be granted against Justices of Peace, for proceeding on an Indictment after a *Certiorari* delivered to them to remove the Indictment. 1 *Lill.* 121. But it doth not lie against a Corporation. *Attachment* lies against a Lord that refuses to hold his Court, after a Writ issued to him for that Purpose, so that his Tenant cannot have Right done him. *New Nat. Br.* 6, 27. *Attachment* of Privilege is where a Man by Virtue of his Privilege calls another to that Court whereto he himself belongs, and in Respect thereof is privileged, there to answer some Action: Or it is a Power to apprehend a Man in a Place privileged. *Book Entr.* 431. Corporation Courts have sometimes Power by Charter to issue *Attachments*; and some Courts-Baron grant *Attachments* of Debt. *Kitch.* 79. Foreign *Attachment* is an *Attachment* of the Goods of Foreigners, found in some Liberty, to satisfy their Creditors within such Liberty. *Calth. 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. But a Foreign *Attachment* cannot be had when a Suit is depending in any of the Courts at *Westminster*; which makes the Matter not to be meddled with by any other Court. *Cro. Eliz.* 691. And nothing is attachable but for a certain and due Debt: Though by the Custom of *London* Money may be attached before due, as a Debt; but not levied before due. *Sid.* 327. 1 *Nelf. Abr.* 282, 283. Besides these *Attachments*, there is *Attachment* of the Forest issuing out of the Courts of the Forest, against Offenders against the Vert and Venison; and

this *Attachment* is either by the Body, Goods, Pledges and Mainprise, &c. *Manwood* 90, 93.

Foreign *Attachments* in *London*, upon Complaints of Debt, are made after this Manner: A. oweth B. 100 l. and C. is indebted to A. 100 l. B. enters an Action against A. of 200 l. and by Virtue of that Action a Serjeant attacheth 100 l. in the Hands of C. as the Money of A. to the Use of B. which is returned upon that Action. The *Attachment* being made and returned by the Serjeant, the Plaintiff is immediately to see an Attorney before the next Court holden for the Compter; or the Defendant may then put in Bail to the *Attachment*, and nonsuit the Plaintiff: Four Court-Days must pass before the Plaintiff can cause C. the Garnishee, in whose Hands the Money was attached, to shew Cause why B. should not condemn the 100 l. attached in the Hands of C. as the Money of A. the Defendant in the Action (though not in the *Attachment*) to the Use of B. the Plaintiff: And the Garnishee C. may appear in Court by his Attorney, wage his Law, and plead that he hath no Money in his Hands of the Defendant's, or other special Matter; but the Plaintiff may hinder his Waging of Law, by producing two sufficient Citizens to swear that the Garnishee hath either Money or Goods in his Hands of A. at the Time of the *Attachment*, of which Affidavit is to be made before the Lord Mayor; and being filed may be pleaded by Way of Estoppel: Then the Plaintiff must put in Bail, that if the Defendant come within a Year and a Day into Court, and he can discharge himself of the Money condemned in Court, and that he owed nothing to the Plaintiff at the Time in the Plaintiff mentioned, the said Money shall be forth-coming, &c. If the Garnishee fail to appear by his Attorney, being warned by the Officer to come into Court to shew Cause as aforesaid, he is taken by Default for Want of Appearing, and Judgment given against him for the Goods and Money attached in his Hands, and he is without Remedy either at Common Law or in Equity; for if taken in Execution, he must pay the Money condemned, though he hath not one Penny, or go to Prison; But the Garnishee appearing to shew Cause why the Money or Goods attached in his Hands ought not to be condemned to the Use of the Plaintiff; having fee'd an Attorney, may plead as aforesaid, that he hath no Money or Goods in his Hands of the Parties against whom the *Attachment* is made, and it will then be try'd by a Jury, and Judgment awarded, &c. But after Trial, Bail may be put in, whereby the *Attachment* shall be dissolved, but the Garnishee, &c. and his Security will then be liable to what Debt the Plaintiff shall make out to be due, upon the Action: And an *Attachment* is never thoroughly perfected, till there is Bail and Satisfaction upon Record.

Attachiamenta Bonozum, A Distress taken upon Goods or Chattels, where a Man is sued for Personal Estate or Debt, by the legal Attachiators or Bailiffs, as Security to answer an Action. There is likewise *Attachiamenta de Spinis & Bosco*, a Privilege granted to the Officers of a Forest, to take to their own Use, Thorns, Brush, and Wind-fall, within their Precincts. — *John Fitz Nygel Forester of Bernwood, A. D. 1230. Debet habere Feodum in Bosco Domini Regis; videlicet Attachamentum de Spinis de Bosco suo, & de Bosco qui vento profuitur.* Kenner's Paroch. Antiq. pag. 209.

Attaint,

Attaint, (*Attinta*) Is Writ that lieth after Judgment against a Jury that have given false Verdict in any Court of Record, in an Action Real or Personal, where the Debt or Damages amount to above 40*s.* it is called *Attaint*, because the Party that obtains it, endeavours thereby to stain or *taint* the Credit of the Jury with Perjury, by whose Verdict he is grieved: And if the Verdict be found false, then the Punishment by the Common Law was, that the Jurors Meadows should be ploughed up, their Houses broke down, Woods grubbed up, and all their Lands and Tenements be forfeited to the Crown: But if it passed against him that brought the *Attaint*, then he was to be imprisoned and ransomed at the King's Will. *Glanv. lib. 2.* By the Statute 23 H. 8. c. 3. the Severity of the Common Law is mitigated, where a Petty Jury is *attainted*; And now there is a Pecuniary Penalty appointed; and also Fine and Ransom at the Discretion of the Court. *Co. Lit. 294.* The Grand Jury is to try the Verdict of the Petty Jury on the *Attaint*. In the Courts of King's Bench and Common Pleas, and the Court of Hustings of London, *Attaint* may be brought; and the Plaintiff setting aside the Verdict, shall have Restitution, &c. But if the first Verdict be affirmed, the Plaintiff shall be imprisoned and fined. 11 H. 7. c. 21. The Plaintiff in *Attaint*, may not produce more Witnesses, nor give farther Matter in Evidence, than what was deposed in the first Action; but the Defendant in *Attaint*, may give new Matter in Evidence to enforce the first Verdict, and the Plaintiff shall have Time to disprove it. *Dyer 59.* 1 *Nelf. Abr.* 288. *Attaint* lies where a Jury gives Verdict contrary to Evidence; and where a Judge declares the Law erroneously, Judgment may be reversed; but in this Case the Jury shall be excused. *Vaugh. 145.* *Attaint* lies not for that which is not given in Evidence. *Bra. Attaint. 82.* It lies not upon an Inquest of Office, &c. *Co. Lit. 355.* And no *Attaint* lies where the King is sole Party, and the Jury find for him. 4 *Leon.* 46. A Nonsuit in *Attaint* is peremptory: And no *Supersedeas* is grantable upon *Attaint*. *Co. Lit. 227.* Also if the Party for whom the Jury found the false Verdict die before the Writ of *Attaint* brought, the Action is gone. And instead of *Attaint*, where the Verdict is supposed to be given against Evidence, it is now usual to have new Trials granted. But an Issue found by Verdict shall be always intended true until reversed by *Attaint*, according to our old Books. *Co. Lit. 227.*

Attainted, (*Attintus*) Is used particularly for such as are found guilty of some Crime, and especially of Treason or Felony. A Man is *attainted* by Appearance; or by Process: *Attainder* on Appearance is by Confession, or Verdict, &c. Confession, when the Prisoner upon his Indictment being asked whether Guilty or Not guilty, answers Guilty, without putting himself upon his Country; (and formerly Confession was allowed before the Coroner in Sanctuary, whereupon the Offender was to abjure the Realm, and this was called *Attainder* by Abjuration) *Attainder* by Verdict is when the Prisoner at the Bar pleadeth Not guilty, and is found guilty by the Verdict of the Jury of Life and Death. And *Attainder* by Process, (otherwise termed *Attainder* by Default or Outlawry) is when the Party flieth, and is not found, until he have been five Times publicly called or proclaimed in the County, on

the last whereof he is outlawed upon this Default. *Staundf. Pl. Co. 44, 122, 182.* Also Persons may be *attainted* by Act of Parliament. *Attainder* of a Criminal is larger than Conviction; a Man is convicted when he is found guilty by Verdict, or confesses the Crime, before Judgment had; but not *attainted* till Judgment is also passed upon him. 1 *Inst. 390.* A Person *attainted* of High Treason, forfeits all his Lands, Tenements and Hereditaments; and his Children cannot be Heirs to him, or any other Ancestor, and if he were noble before, his Posterity are rendered base and ignoble, and this Corruption of Blood cannot be taken off but by Act of Parliament. *Co. Lit. 391.* But if one commits Treason, and dies before *Attainder*, he forfeits nothing. And one slain in open Rebellion, shall forfeit nothing, if he be not *attainted* by Parliament. 3 *Inst. 12.* And collateral Blood may inherit on an *Attainder*, though the lineal Blood is barred. In Treason for counterfeiting the Coin, though by Statute Corruption of Blood is saved, yet the Lands of the Offender are forfeited immediately to the King, it being a distinct Penalty from Corruption of Blood. 1 *Salk. 85.* And as on *Attainder* there is a Forfeiture of Estate, its not descending is one Consequence of Corruption of Blood. *Salk. ibid.* *Attainders* may be reversed or falsified, (*i. e.* proved to be false) by Writ of Error, or by Plea; if by Writ of Error, it must be by the King's Leave, &c. And when by Plea, it may be a Denying the Treason, Pleading a Pardon by Act of Parliament, &c. 3 *Inst. 232.* By a King's Taking the Crown upon him, all *Attainders* of his Person are *ipso facto* purged, without any Reversal. 1 *Inst. 43.* *Wood 17.*

Attainder, (*Attinta* and *Attintura*) Is when a Man hath committed Treason or Felony, and after Conviction Sentence is passed on him: Or where a Person is *attainted* of Treason, and condemned by Parliament. Acts of *Attainder* of Criminals have been passed in several Reigns, on the Discovery of Plots and Rebellions, from the Reign of King Charles II. when an Act was made for the *Attainder* of several Persons guilty of the Murder of King Charles I. to this Time; among which, that for *attainting* Sir John Fenwick, for conspiring against King William, is the most remarkable; it being made to *attaint* and convict him of High Treason on the Oath of one Witness, just after a Law had been enacted, that no Person should be tried or *attainted* of High Treason where Corruption of Blood is incurred, but by the Oath of two lawful Witnesses, unless the Party confess, stand Mute, &c. *Stat. 7 & 8 W. 3. c. 3.* But in the Case of Sir John Fenwick, there was something extraordinary; for he was indicted of Treason, on the Oaths of two Witnesses; though but one only could be produced against him on his Trial. The 8 *W. 3. c. 5.* requires Sir Geo. Barclay, Major General Holmes, and other Persons to surrender themselves to the Lord Chief Justice, or Secretaries of State; or to be *attainted*. By the 13 *W. 3.* The pretended Prince of Wales is under *Attainder* of Treason, &c. And by 1 *Geo. c. 16.* The late Duke of Ormond and others are *attainted*. And besides these Acts of *Attainder*; we have lately had Bills for inflicting Pains and Penalties, as those against the late Bishop of Rochester, &c. *Stat. 10 Geo.* In passing Bills of *Attainder*, no Evidence is necessary. See *Evidence.*

Attal *Barfin*. The Inhabitants and Miners of Cornwall call an old deserted Mine, that is given over,

over, by this Name of *Attal Savisin*, i. e. the Leavings of the *Sarafins*, or *Sassins*, or *Saxons*. Cowel.

Atregia, (from the Lat. *Atregendo*) A little House. 'Tis mentioned in *Eitelwerd*, lib. 4. *Hist. Angl.* c. 3. — *Pellunt ingenuos passim, Atregias figunt in oppido.*

Attendant, (*Attendens*) Signifies one that owes a Duty or Service to another, or in some sort depends on him. Where a Wife is endowed of Lands by a Guardian, &c. she shall be *attendant* on the Guardian, and on the Heir at his full Age. *Terms de Ley* 63.

Attermining, (from the Fr. *attermine*) Is used for a Time or Term granted for Payment of a Debt. — Also such as will purchase *Attermining* their Debrs. shall be sent into the Exchequer. *Ordinatio de Libertatibus perquirendis*, ann. 27 Ed. 1. And in the Statute *Westm.* 2. it seems to signify the Purchasing or Gaining a longer Time for Payment of a Debt. — *Atterminent querentes usque in proximum Parliamentum.* West. 2. c. 4.

Attile, (*Attilium*, *Attilamentum*) The Rigging or Furniture of a Ship. This Word is mentioned in *Fleta*, lib. 1. c. 25. *Batellus*, (i. e. the Boat) *cum omni onere & Attilamento.*

Attornare Veni, To *attorn* or turn over Money and Goods, viz. to assign or appropriate them to some particular Use and Service. *Kennet's Paroch. Antiq.* p. 283.

Attornato faciendo vel recipiendo, A Writ to command a Sheriff or Steward of a County-Court, or Hundred-Court, to receive and admit an *Attorney*, to appear for the Person that oweth Suit of Court. *F. N. B.* 156. Every Person that owes Suit to the County-Court, Court-Baron, &c. may make an *Attorney* to do his Suit. *Stat.* 20 H. 3. cap. 10.

Attorney, (*Attornatus*) Is he that is appointed by another Man to do any Thing in his Absence. *Westm. Symb. Crompt. Furisd.* 105. In ancient Times those of Authority in Courts, had it in their Power whether they would suffer Men to appear or sue by any other but themselves; and the King's Writs were to be obtained for the Admission of *Attornies*: But since that, *Attornies* have been allowed by several Statutes. As by 20 H. 3. 27 E. 1. &c. *Attornies* may be made in such Pleas whereon Appeal lieth not: In Criminal Cases, there will be no *Attornies* admitted. *Stat.* 6 E. 1. An Infant ought not to appear by *Attorney*, but by Guardian; for he cannot make an *Attorney*, but the Court may assign him a Guardian. 1 *Lill. Abr.* 138. Infants after they come to full Age, may sue by *Attorney*, though admitted before by Guardian, &c. In Action against Baron and Feme, the Feme being within Age, she must appear by Guardian: But if they bring an Action, the Husband shall make *Attorney* for both. 1 *Danv. Abr.* 602. And it is said, that where Baron and Feme are sued, though the Wife cannot make *Attorney*, the Husband may do it for both of them. 2 *Sand.* 213. One *non Compos Mentis* being within Age is to appear by Guardian; but after he is of Age, he must do it by *Attorney*. 1 *Inst.* 135. An Idiot is not to appear by *Attorney*, but in proper Person. A Corporation cannot appear otherwise than by *Attorney*, who is made by Deed under the Seal of the Corporation. *Plowd.* 91.

Attornies at Law, Are those Persons as take upon them the Business of other Men, by whom they are retained. In Respect of the several Courts, there are *Attornies at large*; and *Attornies special*, belonging to this or that Court only. An

Attorney may be Solicitor in other Courts, by a special Retainer: One may be *Attorney on Record*, and another do the Business; and there are *Attornies* who manage Business out of the Courts, &c. *Anno* 4. Hen. 4. it was enacted that the Justices should examine *Attornies*, and remove the unskilful; and *Attornies* shall swear to execute their Offices truly, &c. The Stat. 33 H. 6, 7. was made to restrain the Number of *Attornies*. And by 3 Fac. 1. cap. 7. *Attornies*, &c. shall not be allowed any Fees laid out for Counsel, or otherwise, unless they have Tickets thereof signed by them that receive such Fees; and they shall give in true Bills to their Clients of all the Charges of Suits, under their Hands, before the Clients shall be charged with the Payment thereof; if they delay their Clients Suits for Gain; or demand more than their due Fees and Disbursements, the Clients shall recover Costs and treble Damages; and they shall be for ever after disabled to be *Attornies*: None shall be admitted *Attornies* in Courts of Record, but such as have been brought up in the said Courts, or are well practised and skilled, and of an honest Disposition; and no *Attorney* shall suffer any other to follow a Suit in his Name, on Pain of forfeiting 20 l. to be divided between the King and the Party grieved. *Attornies*, &c. are to take the Oaths to the Government, under Penalties and Disability to Practice. 13 W. 3. c. 6. By a late Order of all the Judges, *Attornies* are to be admitted of some Inn of Court of Chancery, (except Housekeepers in London and Westminster, &c.) And none shall be sworn an *Attorney* until he is thus admitted: No *Attorney* shall put himself out of the Society he is admitted of, till he is admitted of some other Society, and deliver a Certificate thereof. And all *Attornies* are to be in Commons the Times ordered by the Society to which they belong; and offending therein, shall be put out of the Roll of *Attornies*. *Ordin. Mich.* 3 Anne. Attachments have been granted against those who have disobeyed this Order, in not being admitted of some Inn of Court, &c. after Service of the Order. And *Attornies*, &c. may be committed for doing any Thing against the express Rules of the Court, having Notice of such Rules: As they may also for any ill Practices. By Stat. 12 Geo. c. 29. If any who hath been convicted of Forgery, Perjury, &c. shall practice as an *Attorney* or Solicitor in any Suit or Action in any Court, the Judge where such Action shall be brought, hath Power to transport the Offender for seven Years, by such Ways, and under such Penalties as Felons. *Attornies of Courts*, &c. shall not receive or procure any blank Warrant for Arrests from any Sheriff, without Writ first delivered, on Pain of severe Punishment, Expulsion, &c. And no *Attorney* shall make out a Writ with a Clause *ac etiam Bille*, &c. where Special Bail is not required by Law. *Pasch.* 15. Car. 2. *Attornies* are to enter and file Warrants of *Attorney* in every Suit on Pain of 10 l. and Imprisonment. *Stat.* 32 H. 8. And the Plaintiff's *Attorney* is to file his Warrant, the Term he declares, and the Defendant his the Term he appears. 4 & 5 Ann. Action upon the Case lies for a Client against his *Attorney*, if he appear for him without a Warrant; or if he plead a Plea for him, for which he hath not his Warrant. 1 *Lill. Abr.* 140. But if an *Attorney* appear without Warrant, and Judgment is had against his Client, the Judgment shall stand, if the *Attorney* be responsible.

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ponsible : *Contra*, if the *Attorney* be not responsible. 1 *Salk.* 88. Action lies against an *Attorney* for suffering Judgment against his Client by *Nil dicit*, when he had given him a Warrant to plead the General Issue : But this is understood where it is done by *Covin*. 1 *Danv. Abr.* 185. If an *Attorney* makes Default in a Plea of Land, by which the Party loses his Land, he may have a Writ of Deceit against the *Attorney*, and recover all in Damages. *Ibid.* But Action lies not against an *Attorney* retained in a Suit, though he knows the Plaintiff hath no Cause of Action ; he only acting as a Servant in Way of his Profession. 4 *Inst.* 117. 1 *Mod.* 209. He who is *Attorney* at one Time, is *Attorney* at all Times, pending the Plea. 1 *Danv.* 609. And the Plaintiff or Defendant may not change his *Attorney*, while the Suit is depending, without Leave of the Court, which would reflect on the Credit of *Attornies* ; nor until his Fees are paid. *Mich.* 14 *Car.* A Cause is to proceed notwithstanding the Death of an *Attorney* therein, and not be delayed on that Account : If an *Attorney* dieth, the Plaintiff or Defendant may be required to make a new *Attorney*. 2 *Keb.* 275. An *Attorney*, Solicitor, &c. having Fees due to him, may detain Writings until his just Fees are paid : But if there be no Fees due to him, the Court on Motion will compel the Delivery of them, without forcing the Party to an Action. 1 *Lill.* 148. The Court will make a Rule for Delivery of Writings when they come to the *Attorney's* Hands by Way of his Business ; and when they come to him any other Manner, the Party must bring his Action. 1 *Salk.* 87. *Attornies* have the Privilege to sue and be sued only in the Court of *Westminster*, where they practice : They are not obliged to put in Special Bail, when Defendants ; but when they are Plaintiffs, they may insist upon Special Bail in all Cases. 1 *Ventr.* 299. *Wood's Inst.* 450. And they shall not be chosen into Offices, against their Wills. See *Privilege*.

Attorney of the Dutchy Court of Lancaster, (*Attornatus Curie Ducatus Lancastriae*) Is the second Officer in that Court ; and seems for his Skill in Law to be there placed as *Affessor* to the Chancellor of that Court, being for the most Part some Honourable Person, and chosen for some especial Trust reposed in him, to deal between the King and his Tenants. *Cowel.*

Attorney General, Is a Great Officer under the King, made by Letters Patent. It is his Place 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*. His proper Place in Court, upon any special Matters of a Criminal Nature, wherein his Attendance is required, is under the Judges, on the Left-hand of the Clerk of the Crown : But this is only upon solemn and extraordinary Occasions ; for usually he does not sit there, but within the Bar in the Face of the Court. *Mich.* 22 *Car. B. R.*

Attornment, (*Attornamentum*, from the Fr. *Tourner*) Signifies the Tenant's Acknowledgment of a new Lord, on the Sale of Lands, &c. As where there is Tenant for Life, and he in Reversion grants his Right to another ; it is necessary the Tenant for Life agree thereto, which is called *Attornment*. It gives no Interest, but only perfects the Grant of another : And Tenant in Tail

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is not compellable to *attorn*, on the Reversion being granted, he having an Estate of Inheritance. 1 *Inst.* 316, 319. This *Attornment* is in Deed, or in Law ; voluntary and compulsory ; and may be made, as set down by *Littleton*, in these Words, viz. *I attorn to you by Force of the Grant, or I agree to the Grant, or I become your Tenant, &c.* Or by any Words or Act which import an Assent to the Grant. *Litt.* 551. 1 *Danv.* 623. It may be made by Payment of a Penny Rent, &c. to the Grantee ; which is an Acknowledgment of his being his Landlord. 1 *Inst.* 309. Where an Estate is granted to one for Life, Remainder to another in Fee, *Attornment* to Tenant for Life is good to him in Remainder. 1 *Inst.* 312. By Feoffment of a Manor, the Services do not pass without *Attornment*. 1 *Danv. Abr.* 612. But if a Person comes to an Estate by Recovery ; or where a Fine is levied of Lands ; or Deeds of Bargain and Sale inrolled, according to the Statute, there needs no *Attornment*, they being in by the Statute 27 *H. 8. c.* 10. And if a Reversion be devised by Will to another, the Estate passeth without *Attornment*. 8 *H. 6.* This was a large Head in our Common Law ; but now much of this Learning is out of Use : And by a late Statute, it is enacted, That all Grants and Conveyances of Manors, Lands, Rents, Reversions, &c. by Fine, or otherwise, shall be good without the *Attornment* of the Tenants of such Lands, or of the particular Tenant upon whose Estate any such Reversion, &c. shall be expectant or depending : But Notice must be given of the Grant, to the Tenant ; before which he shall not be prejudiced by Payment of any Rent to the Grantor, or for Breach of the Condition for Non-payment. *Stat.* 4 & 5 *Anna.*

Ubage, or Avifage, A Rent or Payment by Tenants of the Manor of *Writtel* in *Essex*, upon *St. Leonard's Day*, 6 November, for the Privilege of Pannage in the Lord's Woods, viz. For every Pig under a Year old, an Half-penny ; for every yearling Pig, one Penny ; and for every Hog above a Year old two-pence.

Avantward, The Van-guard, or Front in an Army — *Cum exercitus in hostem pergit, ipsi per Consuetudinem faciunt Avant-warde, & in Reversione Redre-warde. Domesday.*

Avantagium, Profit or Advantage — *Walterus Cantuar. Archiep. ad feodi-firmam tradidit Johanni de B. terras in, &c. cum omnibus suis utilitatibus ac Avantagiis inde provenientes.* *Regist. Eccl. Christi Cantuar. M. S. ann. 11 Ed. 2.*

Auctionarii, Auxionarii, Sellers, Regrators, or Retailers. *Placit. Parl.* 18 *Ed. 1.* But more properly Brokers.

Audience Court, (*Curia Audiencie Cantuariensis*) Is a Court belonging to the Archbishop of *Canterbury*, having the same Authority with the Court of Arches, though inferior to it in Dignity and Antiquity. It is held in the Archbishop's Palace ; and in former Times, the Archbishops were wont to try and determine a great many Ecclesiastical Causes in their own Palaces, but before they pronounced their definitive Sentence, they committed the Matter to be argued by Men learned in the Law, whom they named their Auditors ; and so in Time it grew to one special Man, who at this Day is called *Causarum negotiorumque audientiae Cantuariensis Auditor Officialis*. And to the Office of Auditor was formerly joined the Chancery of the Archbishop, which meddled not with any Point of contentious Jurisdiction ; that is Deciding

ding of Causes between Party and Party, but only such as are of Office, and especially as are *voluntaria Jurisdictionis*, as the Granting the Custody of Spiritualities, during the Vacancy of Bishopricks, Institutions to Benefices, Dispensations, &c. but this is now distinguished from the *Audience*. The Auditor of this Court anciently by special Commission was *Vicar General* to the Archbishop, in which Capacity he executed Ecclesiastical Jurisdiction of every Diocese becoming vacant within the Province of *Canterbury*. 4 *Inst.* 337.

Audiendo & terminando, A Writ, or rather a Commission directed to certain Persons, when any Insurrection or Great Riot is committed in any Place, for the Appealing and Punishment thereof. *F. N. B.* 110. See *Oyer* and *Terminer*.

Audita Querela, Is a Writ that lies where a Man hath any Thing to plead, but hath not a Day in Court to plead it: It is usually brought where one is bound in a Statute-Merchant, Statute-Staple, or Recognisance, or Judgment is given against him for Debt, and his Body in Execution thereupon, at the Complaint of the Party, upon Suggestion of some just Cause why Execution should not be granted, as a Release, or other Exception. This Writ is granted by the Lord Chancellor to the Justices of either Bench, willing them to grant Summons to the County where the Creditor lives for his Appearance before them at a certain Day. *F. N. B.* 102. To Writs of Execution the Defendant cannot plead; so that if there be any Matter since the Judgment, to discharge him of the Execution, he is to have *Audita Querela*; upon which, the Justices shall hear the Complaint, and do Right. *Audita Querela* cannot be brought on a Release, until Judgment is entered of Record. 1 *Mod.* 111. On a Statute, the Conusor or his Heir may bring *Audita Querela*, before Execution is sued out; but this may not be done by a Stranger to the Statute, or a Purchaser of the Land. 1 *Danv. Abr.* 630. 3 *Rep.* 13. This Writ lies not after Judgment upon a Matter which the Party might have pleaded before. *Cro. El.* 35. A bare Surmise is not sufficient to avoid a Judgment: But generally some Specialty must be shewn. *Cro. Jac.* 579. Upon a Release or other Deed pleaded, no *Superfedeas* will be granted till the Plaintiff in the *Audita Querela* hath brought his Witnesses into Court to prove the Deed: And if Execution be executed before, Bail is to be put in by Allowance of the Court. 1 *Lill. Abr.* 151. On Allowance of *Audita Querela*, Bail must be given in Court; unless in Cases of Necessity, when it may be put in before two Judges. *Palm.* 422. And by Bail the Party is in Custody of the Law, and if he make not out his *Audita Querela*, he must render his Body in Execution again, or pay the Debt for which he is in Execution, or else his Bail must pay it. If after Judgment against Bail, the Judgment against the Principal is reversed, or the Money paid by the Principal; the Bail may have *Audita Querela*. *Cro. Jac.* 645. 8 *Rep.* 143. If one taken in Execution be set at Liberty by the Plaintiff, and afterwards taken again and detained in Prison upon the same Execution, he may bring *Audita Querela* to be enlarged; for by the first Enlargement by the Plaintiff the Execution is discharged, and an Execution once discharged is ever discharged, and supposeth a Satisfaction. 1 *Lill.* 151. Where a Plaintiff in *Audita Querela* gets Judgment, he shall have Restitution of his Goods,

though taken in Execution before the Writ brought. *Sid.* 74. If an *Audita Querela* is founded on a Record, or the Person bringing it is in Custody, the Process upon it is a *Sive facias*; but if founded on Matter of Fact, or the Party is at large, then the Process is a *Venire*. 1 *Salk.* 92. If a Man be nonsuited in an *Audita Querela*, he may have a new Writ. *F. N. B.* 104. Where Lands are extended on a Statute, &c. before the Time, *Audita Querela* lieth. 22, 46 *E.* 3. And in some Cases after a Judgment, the Court will relieve the Party on Motion, without *Audita Querela*. 1 *Salk.* 93.

Auditor, (*Lat.*) Is an Officer of the King, or some other great Person, who examines yearly the Accounts of all Under-Officers, and make up a general Book, which shews the Difference between their Receipts and Charge, and their several Allowances, commonly called *Allocations*: As the *Auditors* of the Exchequer, take the Accounts of those Receivers who collect the Revenues. 4 *Inst.* 106. Receivers General of Fee-Farm Rents, &c. are also termed *Auditors*, and hold their *Audits* for adjusting the Accounts of the said Rents at certain Times and Places appointed. And there are *Auditors* assigned by the Court to audit and settle Accounts in Actions of Account, and other Cases, who are proper Judges of the Cause, and Pleas are made before them, &c. 1 *Brownl.* 24.

Auditor of the Receipts, An Officer of the Exchequer, that files the Tellers Bills, and having made an Entry of them, gives the Lord Treasurer, &c. weekly a Certificate of the Money received: He makes Debentures to the Tellers, before they pay any Money; and takes their Accounts: He also keeps the *Black Book* of Receipts, and the Treasurer's Key of the Treasury, and seeth every Teller's Money locked up in the Treasury. 4 *Inst.* 107.

Auditors of the Imprest, Are Officers in the Exchequer who have the Charge of auditing the Great Accounts of the King's Custom, Naval and Military Expences, of the *Mint*, &c. and any Money *imprest* to Men for his Majesty's Service. *Pract. Excheq.* 83.

Auditor, Is the same with *Audientes*, *i. e.* the Catechumens, or those who were newly instructed in the Mysteries of the Christian Religion before they were admitted to Baptism; and *Auditorium* is that Place in the Church where they stood to hear, and be instructed. 'Tis what we now call *Navis Ecclesie*: And in the Primitive Times, the Church was so strict in keeping the People together in that Place, that the Person who went from thence in Sermon Time was excommunicated. *Blount*.

Avenage (from the *Lat.* *Avena*) A certain Quantity of Oats paid by a Tenant to his Landlord as a Rent, or in lieu of some other Duties.

Avenor, (*Avenarius*, from the *Fr.* *Avoine*, *i. e.* Oats) Is an Officer belonging to the King's Stables, that provides Oats for his Horses: He is mentioned 13 *Car.* 2. c. 8.

Adventure, *Adventures* or Trials of Skill at Arms, and signifies Military Exercises on Horseback — *Affisa de Armis* 36 *Hen.* 3. *Brady's Append. Hist. Eng.* 250. And 'tis mentioned in *Addit. Mat. Paris.* p. 149. *Quod nulli convenient ad tournandum, vel burbandum nec ad alias quasunque Aventuras.*

Adventure (properly *Adventure*) A *Mischance* causing the Death of a Man: As where a Person

son is suddenly drowned, or is killed by any Accident, without Felony. 1 *Inst.* 391. *Adventure* also signifies a Thing sent to Sea, the *Adventure* whereof the Person sending it stands to out and home. *Lex Mercat.*

Abera, (*quasi Overa*, from the Fr. *Oeuvre* and *ouvrage*, *velut Operagium*) Signifies a Day's Work of a Plough-man, formerly valued at 8 d. it is found in *Domesday*. 4 *Inst.* 269.

Average, (*Averagium*) Is said to signify Service which the Tenant owes to his Lord by Horse or Carriage: But it is more commonly used for a Contribution that Merchants and others make towards their Losses, who have their Goods cast into the Sea for the Safeguard of the Ship, or of the other Goods and Lives of those Persons that are in the Ship, during a Tempest. It is in this Sense called *Average*, because it is proportioned and allotted after the Rate of every Man's Goods carried. *Stat.* 32 H. 8. 14 *Car.* 2. By the Laws of the Sea, in a Storm, when there is an extreme Necessity, the Goods, Wares, Guns, or whatsoever else is on Board the Ship, may (by consulting the Mariners) be thrown over Board by the Master, for the Preservation of the Ship; and it shall be made good by *Average* and Contribution. *Stat.* 49 Ed. 3. But if the Master takes in more Goods than he ought, without Leave of the Owners and Freightors, and a Storm ariseth at Sea, and Part of the Freightors Goods are thrown over-board, the remaining Goods are not subject to the *Average*; but the Master is to make good the Loss out of his own Estate: And if the Ship's Gear or Apparel be lost by Storm, the same is not within the *Average*. *Leg. Rhod.* If Goods are cast over-board before Half the Voyage is performed, they are to be estimated at the Price they cost: But if they are ejected afterwards, then at the Price as the rest are sold at the Port of Arrival. *Leg. Oleron.* Where Goods are given to Pirates by way of Composition to save the Rest, there shall be *Average*, by the Civil Law. *Moor* 297. — *Average* is likewise a small Duty, paid to Masters of Ships, when Goods are sent in another Man's Ship, for their Care of the Goods, over and above the Freight — *Paying so much Freight for the said Goods, with Primage and Average accustomed.* Words in Bills of Lading.

Average of Corn Fields, The Stubble or Remainder of Straw and Grass left in Corn Fields after the Harvest is carried in. It is a Word used in the North, for what in Kent is called the *Gratten*, and in other Parts the *Roughings*, &c.

Aber Ton, Is a reserved Rent in Corn, paid by Farmers and Tenants to Religious Houses: And signifies by *Somner* Corn drawn to the Lord's Granary, by the working Cattle of the Tenant. This Custom is supposed to be owing to the Saxon *Cyric Sceat*, Church Seed, a Measure of Corn brought to the Priest annually on St. Martin's Day, as an Oblation for the First Fruits of the Earth: Under which Title, the Religious had Corn Rent paid yearly; as appears by an Inquisition of the Estate of the Abbey of *Glastenbury*. A. D. 1201.

Aber Land, Seems to have been such Lands as the Tenants did plough and manure, *cum Averis suis*, for the proper Use of a Monastery, or the Lords of the Soil. *Mon. Angl.*

Aber Penny, (or *Average Penny*) Money paid towards the King's *Averages* or Carriages, or to be freed thereof. — *Aver penny hoc est, quietum esse*

de diversis Denariis pro Averagiis Domini Regis. Rastal.

Aber Silver, A Custom or Rent formerly so called. *Cowel.*

Aberia, Cattle: *Spelman* deduces the Word from the Fr. *Ovre*, Work, as if chiefly working Cattle: But it seems to be more probably from *Avoir* to have or possess; the Word sometimes including all Personal Estate, as *Catalla* did all Goods and Chattels. This Word is used for Oxen or Horses of the Plough; and in a general Sense any Cattle. — *Homines per Averia sua, viz. Equos & Boves, & Affros graviter distrinxit W. Thorm. in Ed. 2.* 'Tis used in the same Sense in *W. 2. c. 18. Averia Elongata*; see *Elongata*.

Averius 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. *Reg. Orig.* 82. If the Cattle are put into any strong Place in the same County, the Sheriff may take the *Posse Comitatus*, and break into it, to make the Replevin. 1 P. & M. But when they are driven out of the County, he hath no Authority to pursue them.

Averment, (*Verificatio*, from the Fr. *Aoverer*, i. e. *Verificare, Testari*) Is an Offer of the Defendant to make good or justify an Exception pleaded in Abatement or Bar of the Plaintiff's Action: And it signifies the Act, as well as the Offer of justifying the Exception; and not only the Form, but the Matter thereof. *Co. Lit.* 362. *Averment* is either General, or Particular; General, which concludes every Plea, &c. or is in Bar of a Replication, or other Pleadings, containing Matter Affirmative, and ought to be with these Words; *Et hoc paratus est verificare, &c.* Particular *Averment* is when the Life of Tenant for Life, or of Tenant in Tail, &c. is averred. *Ibid.* The Use of *Averment* being to ascertain what is alleged doubtfully, Deeds may sometimes be made good by *Averment*, where a Person is not certainly named; but when the Deed it self is void for Incertainty, it cannot be made good by *Averment*. 5 *Rep.* 155. *Averment* cannot be made against a Record, which imports in it self an uncontrollable Verity. 1 *Inst.* 26. Nor shall it be admitted against a Will concerning Lands, which ought to be in Writing. 5 *Rep.* 68. An *Averment* shall not be allowed where the Intent of the Testator cannot be collected out of the Words of the Will. 4 *Rep.* 44. One may not aver a Thing contrary to the Condition of an Obligation, which is supposed to be made upon good Deliberation, and before Witnesses, and therefore not to be contradicted by a bare *Averment*. 1 *Lit. Abr.* 156. If an Heir is sued on the Bond of his Ancestor, it must be averred that the Heirs of the Obligor were expressly bound. 2 *Saund.* 136. Another Consideration than mentioned in a Deed, may be averred, where it is not repugnant or contrary to the Deed. 3 *Dyer* 146. Where one Thing is to be done in Consideration of another, there must be an *Averment* of Performance of Promise: But where there is Promise against Promise, there needs no *Averment*, for each Party hath his Action. 1 *Lev.* 87. A Person may aver he is not the same Person on Appeal of Death, in Favour of Life. 1 *Nelf. Abr.* 305. But Pleas merely in the Negative, shall not be averred, because they cannot be proved. Nor shall what is against Presumption of Law; or any Thing

Thing apparent to the Court. 1 *Inst.* 362, 373. And by Statute, no Exception or Advantage shall be taken upon a Demurrer, for Want of Averment of *hoc paratus est verificare*, &c. except the same be specially set down for Cause of Demurrer. 4 & 5 *Ann.*

Averrare, To carry Goods in a Waggon, or upon loaded Horses, a Duty required of some customary Tenants. — *Debent fruges Domini metere, prata falcare, & carriare & Averrare.* Cartular. Glaston. M. S. f. 4.

Augea, A Cistern for Water — *Episcopus B. concedit Civibus W. unum caput pro conductu aquatico cum Augeis fupspiralibus, & cateris Machinis, sub & super terraneis.* A. D. 1451. Reg. Eccl. Well. M. S.

Augmentation, (*Augmentatio*) The Name of a Court erected 27 H. 8. for determining Suits and Controversies relating to Monasteries and Abbey Lands. The Intent of this Court was, that the King might be justly dealt with touching the Profits of such Religious Houses, as were given to him by Act of Parliament. It took its Name from the Augmentation of the Revenues of the Crown, by the Suppression of Religious Houses: And the Office of Augmentation, which hath many curious Records, remains to this Day, though the Court has been long since dissolved. *Terms de Ley* 68.

Avifamentum, Advice, Counsel — *De Avifamento & consensu Concilii nostri Concessimus*, &c. was the common Form of our Kings Grants.

Aula, i. e. A Court-Baron. *Aula ibidem tent. die*, &c. *Aula Ecclesiæ* is that which is now termed *Navis Ecclesiæ*: *In medio Aula majoris Ecclesiæ decenter sepultus est.* Eadm. lib. 6. p. 141.

Almone, (*Fr. Almofne*, Alms) Tenure in *Almone* is where Lands are given in Alms to some Church, or Religious House, upon Condition that a Service or Prayers shall be offered at certain Times for the Repose of the Donor's Soul. It is also called Tenure by Divine Service. *Brit.* 164. Vide *Frankalmoign*.

Auncel-Weight, (*quasi*, Hand-Sale Weight, or from *Ansa*, the Handle of the Ballance) An ancient manner of Weighing, by the hanging of Scales or Hooks at each End of a Beam or Staff, which by lifting up in the Middle with one's Finger or Hand, discovered the Equality or Difference between the Weight at one End and the Thing weighed at the other. This Weighing being subject to great Deceit, was prohibited by several Statutes, and the even Ballance committed in its stead. 34 *Ed.* 3. 8 *Hen.* 6. 22 *Car.* 2. &c. But notwithstanding it is still used in some Parts of England; and by some judged to be Meat sold by poising in the Hand, without putting it into the Ballance. What we now call the *Stilliards*, a Sort of Hand-weighing among Butchers, being a small Beam with a Weight at one End, (which shews the Pounds by certain Notches) seems to be near the same with the *Auncel-Weight*.

Aunciatus, A Word signifying Antiquated — *Sicut Charta eorum aunciata est & Libertas anterior.* Brompton lib. 2. cap. 24. par. 6.

Avoidance, In the general Signification is when a Benefice is void of an Incumbent; in which Sense it is opposed to Plenarty. Avoidances are either in Fact, as by Death of the Incumbent; or in Law: And may be by Cession, Plurality, Deprivation, Resignation, &c. In the first Case, the Patron must take Notice of the Avoidance at his Peril, so as to present within six Months to

prevent Lapse to the Bishop; but in the last Case of Avoidances by Law, the Ordinary must give Notice to the Patron, before he can have Title to present by Lapse. *Dyer* 327. There are several Avoidances by Act of Parliament, wherein there must be a judicial Sentence pronounced to make the Living void. If a Man hath one Benefice with Cure, &c. and take another with Cure, without any Dispensation to hold two Benefices, in such Case the first is void by the Act 21 H. 8. c. 13. if it was above the Value of 8 l. during an Avoidance, it is said that the House and Glebe of the Benefice are in Abeyance: But by the Stat. 28 H. 8. cap. 11. The Profits arising during the Avoidance are given to the next Incumbent, towards Payment of the First-fruits; but the Ordinary may receive the Profits to provide for the Service of the Church, and shall be allowed the Charges of supplying the Cure, &c. for which Purpose the Church-wardens of the Parish are usually appointed. The next Avoidance of a Church may be granted by Deed, where the Church is full: If a Grant be made of the next Avoidance when it shall happen, and the Church is void at that Time, this will make the Grant void as to that very Avoidance, but it may be good for the next Turn after that. A Grant of the next Avoidance is no more than a Chattel, and goes to Executors. *Right. Clerg.* 68.

Avoirdupois, or *Averdupois*, (*Fr. Avoir du Poids*, i. e. *Habere pondus, aut just esse ponderis*) Signifies a Weight different from that which is called Troy-Weight, which contains but twelve Ounces in the Pound, whereas this hath sixteen Ounces: And in this Respect it is probably so called, because it is of greater Weight than the other. It also signifieth such Merchandizes as are weighed by this Weight; and is mentioned in divers Statutes, as 9 *Ed.* 3. 27 *Ed.* 3. c. 10. 2 *R.* 2. c. 1. *Averium Ponderis*, full Weight, or *Averdupois*. *Cart.* 3. *Ed.* 2.

Avowee, He to whom the Right of Advowson of any Church appertaineth, so that he may present in his own Name. *Britt.* c. 29. See *Advowee*.

Avowry, (*Fr. Advouerie*) Is where one takes a Distress for Rent or other Thing, and the Party on whom taken sues a *Replevin*, then the Taker shall justify his Plea for what Cause he took it, and if in his own Right, he must shew the same, and avow the Taking; but if he took it in Right of another, when he hath shewed the Cause, he must make Cognizance of the Taking as Bailiff or Servant to the Person in whose Right he took it. *Terms de Ley* 70. If in a *Replevin* a Man justifies the Taking of Cattle in his own Right, he must say *bene avoat captionem averiorum*, &c. which is called an *Avowry*: And where he justifies in the Right of another Person, then he says *bene cognovit captionem*, &c. which is called a *Cognifance*. 2 *Lill.* 454. The *Avowry* must contain sufficient Matter for Judgment to have Return: So much Certainty is not required in an *Avowry*, as in a Declaration; and the *Avowant* is not obliged to alledge Seisin within the Statute of Limitations. Nor shall a Lord be required to avow on any Person in certain; but he must alledge Seisin by the Hands of some Tenant within forty Years. 21 *Hen.* 8. c. 19. 1 *Inst.* 268. In *Avowry* Seisin in Law is sufficient, so that where a Tenant hath done Homage or Fealty, it is a good Seisin of all other Services to make an *Avowry*, though the Lord, &c. had not Seisin of them within 60 Years. 32 H. 8. c. 2. 4 *Rep.* 9. A Man may

may distrain and *avow* for Rent due from a Copyholder to a Lord of a Manor; and also for Heriots, Homage, Fealty, &c. so likewise for an Amercement in a Court-Leet. 1 *Nelf. Abr.* 315. If a Person make an *Avowry* for two Causes, and can maintain his *Avowry*, but for one of them, it is a good *Avowry*. And if an *Avowry* be made for Rent, and it appears that Part of it is not due, yet the *Avowry* is good for the Residue. An *Avowry* may be made upon two several Titles of Land, though it be but for one Rent, for one Rent may depend upon several Titles. 1 *Lill. Abr.* 157. *Saund.* 285. If a Man takes a Distress for Rent reserved upon a Lease for Years, and afterwards accepts a Surrender of the Lands, he may nevertheless *avow*, because he is to have the Rent notwithstanding the Surrender. 1 *Danv. Abr.* 652. Where Tenant in Tail aliens in Fee, the Donor may *avow* upon him, the Reversion being in him, whereunto the Rent is incident. *Ibid.* 650. If there be Tenant for Life, Remainder in Fee, the Tenant for Life may compel the Lord to *avow* upon him: But where there is Tenant in Tail, with such Remainder, and the Tenant in Tail makes a Feoffment, the Feoffee may not compel the Lord to *avow* upon him. 1 *Inst.* 268. If the Tenant enfeoffs another, the Lord ought to *avow* upon the Feoffor for the Arrearages before the Feoffment, and not upon the Feoffee. 1 *Danv.* 650. And where the Tenant makes a Feoffment in Fee, the Lord may *avow* upon him before Notice. The Lord may *avow* upon a Disseisor. 20 *H.* 6. And if a Man's Tenant is disseised, he may be compelled to *avow*, by such Tenant or his Heir. A Defendant in Replevin may *avow*, or justify; but if he justifies he can't have a Return. 3 *Lev.* 204. The Defendant need not *aver* his *Avowry* with an *honoratus est*, &c. And the *Avowant* shall recover his Damages and Costs, by 21 *H.* 8. c. 19. By which Statute it is enacted, That if in any *Replegiare* for Rents, &c. the *Avowry*, Cognizance or Justification be found for the Defendant, or the Plaintiff be Nonsuit, &c. the Defendant shall recover such Damages and Costs as the Plaintiff should have had, if he had recovered. And by 17 *Car.* 2. c. 7. When a Plaintiff shall be Nonsuit before Issue in any Suit of Replevin, &c. removed or depending in any of the Courts at *Westminster*, the Defendant making Suggestion in the Nature of an *Avowry* for Rent, the Court on Prayer shall award a Writ to inquire of the Sum in Arrear, and the Value of the Distress, &c. Upon Return whereof the Defendant shall recover the Arrears, if the Distress amounts to that Value, or else the Value of the Distress with Costs; and where the Distress is not found to the Value of the Arrears, the Party may distrain for the Residue. The Learning of *Avowries* is abridged by the Stat. 21 *H.* 8. and the Intricacies of Process in *Replevin*, &c. much remedied in Cases of Distresses for Rents by the 17 *Car.* 2. and 4 & 5 *Ann.*

Aures, A Punishment by the Saxon Laws of cutting off the Ears, inflicted on those who robbed Churches, or were guilty of any other Theft. *Fleta lib.* 1. cap. 38. par. 10. And this Punishment also extended to many other Crimes as well as Theft. *Upton de Militari Officio pag.* 140.

Auricularius, A Secretary — *Quem sibi Auricularium & Auricularium constituerat.* Mon. Angl. p. 120.

Aurum Regine, The Queen's Gold. *Rot. Parl. ann.* 52. *H.* 3.

Auscultare. Formerly Persons were appointed in Monasteries to hear the Monks read, and direct them how, and in what Manner they should do it with a graceful Tone or Accent, to make an Impression on their Hearers, which was required before they were admitted to read publicly in the Church, and this was called *Auscultare*, viz. to read or recite a Lesson. — *Quiunque Lecturus vel cantaturus est aliquid in Monasterio, si necesse habeat ab eo, (viz. Cantore) priusquam incipiat, debet Auscultare.* *Lanfrancus in Decretis pro ordine Benedicti.* c. 5.

Austurcus and **Osturcus**, A Goshawk; from whence we usually call a Faulconer, who keeps that Kind of Hawks, an *Ostringer*. In ancient Deeds there have been reserved as a Rent to the Lord. *Unum Austurcum.*

Auter Mout, Is where Persons sue, or are sued in another's Right; as Executors, Administrators, &c.

Auterfoits acquit, Is a Plea by a Criminal, that he was heretofore acquitted of the same Treason, or Felony. For one shall not be brought into Danger of his Life, for the same Offence, more than once. 3 *Inst.* 213. There is also Plea of *Auterfoits convict*, and *Auterfoits attain*; that he was heretofore convicted, or attainted, of the same Felony. In Appeal of Death, *Auterfoits acquit*, or *Auterfoits attain*, upon Indictment of the same Death, is no Plea. *H. P. C.* 244. But in other Cases where a Person is attainted, it is to no Purpose that he should be attainted a second Time. And Conviction of Manslaughter, where Clergy is admitted thereon, will bar any subsequent Prosecution for the same Death. 2 *Hawk. P. C.* 377.

Autumn, Is the Decline of the Summer. Some computed the Years by *Autumns*; but the *English-Saxons* by Winters: *Tacitus* says, that the ancient *Germans* knew the other Divisions of the Year, but did not know what was meant by *Autumn*; and *Linwood* tells us, when the several Seasons of the Year begin, in these Lines

Dat Clemens Hiemem, dat Petrus ver Cathedratus, Æstuat Urbanus, Autumat Bartholomæus.

Autumnalis, Those Fruits of the Earth which are ripe in *Autumn* or Harvest.

Auxilium ad filium Militem faciendum & filiam Martandum, A Writ formerly directed to the Sheriff of every County where the King or other Lord had any Tenants, to levy of them an Aid towards the Knighting of a Son, and the Marrying of a Daughter. *F. N. B.* 82. See *Aid*.

Auxilium Curie, A Precept or Order of Court for the Citing or Convening of one Party, at the Suit and Request of another, to warrant some Thing. — *Vocat inde ad Warrantiam Johanne Sutton de Dudley Chevalier, & Isabellam Uxorem, ut habet eos hic in Octabis S. Michaelis, per Auxilium Curie.* *Kennet's Paroch. Antiq.* 477.

Auxilium facere alicui in Curia Regis. To be another's Friend and Solicitor in the King's Court; an Office undertaken by some Courtiers for their Dependents in the Country — *Sciant presentes & futuri, quod Ego Bernadus de S. Walerico concessi Rogero de Berkley & heredibus suis Auxilium & Consilium meum in Curia Domini mei Regis Anglie.* *Paroch. Antiq.* 126.

Murtium Regis, The King's Aid; or Money levied for the King's Use, and the Publick Service, as where Taxes are granted by Parliament.

Murtium vicecomiti. A customary Aid or Duty anciently payable to Sheriffs, out of certain Manors, for the better Support of their Offices. *Prior de Kime Com. Linc. tenet duas carucatas terre in Thorpe per servitium xl. denariorum per annum, ad Auxilium Vicecomitis. Mon. Angl. Tom. 2. pag. 245*: An Exemption from this Duty was sometimes granted by the King: And the Manor of *Stretton in Warwickshire* was freed from it by Charter. 14 H. 3. M. 4.

Await, Seems to signify what we now call *Waylaying*, or lying in *Wait* to execute some Mischief. *Stat. 13 R. 2. c. 1*. It is ordained, that no Charter of Pardon shall be allowed before any Justice for the Death of a Man slain by *Await*, or Malice prepensed, &c.

Award, (from the Fr. *Agarder*) Is the Judgment and Arbitration of one or more Persons, at the Request of two Parties who are at Variance, for ending the Matter in Dispute without publick Authority: And may be called an *Award*, because it is imposed on both Parties to be observed by them. *Distum, quod ad custodiendum seu observandum partibus imponitur. Spelm.* An *Award* may be by Word, or in Writing; but is usually in Writing; and must be exactly according to the Submission. If an *Award* be according to the Submission by Bond, though it is void in Law, if it be not observed, the Obligation will be forfeited. 1 *Danv. Abr.* 515. Where Arbitrators award a Thing against Law, it is void. If more is awarded than submitted, the *Award* will be void: But when an *Award* seems to extend to more than in the Submission, the Words *de & super premissis* restrain it to the Thing submitted. *Cro. Eliz.* 861. On a general Submission, the *Award* may be Part of what is submitted, without the Residue, and be good. 1 *Danv.* 536. An *award* may be void in some Part, and good in another Part, if it makes an End of all the Differences submitted. 2 *Saundf.* 293. And if an *Award* be good in Part, and void in Part, the good shall be performed. 10 *Rep.* 31. An *Award* without a Deed of Submission, will be a good Bar of a Trespass. *Danv.* 548. But Submissions by Infants shall not be binding. By *Stat. 9 & 10 W. 3. cap. 13*. Submissions to *Awards*, by Agreement of the Parties, may be made a Rule of any of his Majesty's Courts of Record; and on a Rule of Court thereupon, the Parties shall be finally concluded by such Arbitrament: And in Case of Disobedience thereto, the Party refusing to perform the same shall be subject to the Penalties of contemning a Rule of Court, &c. unless it appears on Oath that such *Award* was unduly procured, when it shall be set aside: But this Statute extends only to personal Matters, for which there is no other Remedy but by personal Action, or by Suit in Equity. Attachment lies for Non-performance of an *Award* made a Rule of Court; after personal Demand of Performance. 1 *Salk.* 83. Vide *Arbitrator. Arbitrament*.

Form of an Award on a Submission.

TO all People to whom this present Writing indented of Award, shall come, Greeting: Whereas there are several Accounts depending, and

divers Controversies and Disputes have lately arisen between A. B. of, &c. Gent. and C. D. of, &c. all which Controversies and Disputes are chiefly touching and concerning, &c. And whereas for the putting an End to the said Differences and Disputes, they the said A. B. and C. D. by their several Bonds or Obligations bearing Date, &c. are become bound each to the other of them in the penal Sum of, &c. to stand to, and abide the Award and final Determination of us E. F. G. H. &c. so as the said Award be made in Writing, and ready to be delivered to the Parties in Difference on or before, &c. next, as by the said Obligations, and the Conditions thereof may appear. Now know ye, That we the said Arbitrators, whose Names are hereunto subscribed, and Seals affixed, taking upon us the Burthen of the said Award, and having fully examined and duly considered the Proofs and Allegations of both the said Parties, do for the settling Amity and Friendship between them, make and publish this our Award, by and between the said Parties in manner following, that is to say, Imprimis, We do Award and Order, that all Actions, Suits, Quarrels, and Controversies whatsoever had, moved, arisen or depending between the said Parties in Law or Equity for any manner of Cause whatsoever, touching the said, &c. to the Day of the Date hereof, shall cease and be no further prosecuted, and that each of the said Parties shall pay and bear his own Costs and Charges, in any wise relating to, or concerning the same Premises. And we do also Award and Order that the said A. B. shall pay, or cause to be paid to the said C. D. the Sum of, &c. within the Space of, &c. And also at his own Costs and Charges do, &c. And further we do Award and Order that the said C. D. shall pay, or cause to be paid to the said A. B. the Sum of, &c. on or before, &c. or give sufficient Security for the same to the said A. B. &c. And we do Award and Order that, &c. And lastly, we do Award and Order that the said A. B. and C. D. on the Receipt of the several Sums, &c. above-mentioned shall in due Form of Law execute each to the other of them general Releases sufficient for the Releasing by each to the other of them, his Executors and Administrators, of all Actions, Suits, Arrests, Quarrels, Controversies and Demands whatsoever touching or concerning the Premises aforesaid, or any Matter or Thing thereunto relating from the Beginning of the World until the Day of, &c. last. In Witness, &c.

Awm, or *Aume*, (Teut. *Ohm*, i. e. *cadus vel mnsura*) A Measure of Rhenish Wine, containing forty Gallons: It is mentioned in the Statute 1 *Jas.* 1. cap. 33. and 12 *Car.* 2. cap. 4. This Word is otherwise called *Awame*, as you may read in a very old printed Book—The Rood of Rhenish Wine of Dordrecht is ten *Awames*, and every *Awame* is fifty Gallons. The Rood of Antwerp is fourteen *Awames*, and every *Awame* is thirty-five Gallons. And by this Account it contains different Quantities in several Countries.

Are and *Axen*, Comes from the Saxon Verb *Axian*, to demand, and from hence we have our English Word *Ask*. In Somersetshire, and some other Counties of England, in the Country Dialect the Word *Axe* is make Use of for *Ask*.

Apel and *Besaiel*, A Writ that lies for an Heir dispossessed of his Inheritance left by his Grandfather, or Great Grandfather, &c. See *Aile*.

B. Bata.

Bata, A Hook or Link of Iron, or Staple. — *In axibus emptis & carrectis exandis novem denarios in colariis, baxis & sellis ad idem emptis xiii. den.* — Consuetudin. domus de Farendon. M. S. penes Wh. Kenner, f. 20.

Baculum, or Bacina, A Bason, or Vessel to hold Water to wash the Hands. — *Non topeta, non mountergia, non Baccinia, & nil omnino per violentiam exigatur.* Simeon Dunelm. Anno 1126. Mon. Angl. Tom. 3. pa. 191. — *Petrus filius Petri Picot tenet medietatem Heydena per Serjantiam serviendi de Bacinis.* — This was a Service of Holding the Bason, or Waiting at the Bason, on the Day of the King's Coronation. *Lib. Rub. Scaccar. f. 137.*

Bachelor, The Commonalty as distinguished from Baronage. — *Festivitate S. Edmundi Regis & Confessoris, in quindenam S. Michaelis apud Westmonasterium per Dominum Regem regaliter celebrata Communitas Bachelorie Anglie significavit Domino Edwardo filio Regis, &c.* Annal. Burton. p. 426. sub an. 1259.

Bachelor, (Baccalaureus, from the Fr. *Bachelier*, viz. Tyro, a Learner:) In the Universities there are Bachelors of Arts, &c. which is the first Degree taken by Students, before they come to greater Dignity; and those that are called Bachelors of the Companies of London, are such of each Company, as are springing towards the Estate of those that are employed in Council, but as yet are Inferiors; for every of the twelve Companies consists of a Master, two Wardens, the Livery, (which are Assistants in Matters of Council, or such as the Assistants are chosen out of) and the Bachelors. The Word Bachelor is used 13 R. 2. and signifies the same with Knight-Bachelor, and 3 E. 4. c. 5. it is a simple Knight, and not Knight Banneret, or Knight of the Bath. Anno 28 E. 3. a Petition was recorded in the Tower, beginning thus: *A nostre Seigneur le Roy monstrent votre Simple Bachelor, Johan de Bures, &c.* Bachelor was antiently attributed to the Lord Admiral of England, if he were under a Baron. In Pat. 8 R. 2. we read of a *Bacalaris Regis*: And touching the further Etymology of this Word, *Baccalaurei (teste Renano) a Bacillo nominati sunt, quia primi studii Autoritatem qua per exhibitionem baculi concedebatur jam consecuti fuissent, &c.*

Backberinde, (Sax.) Signifieth bearing upon the Back, or about a Man. *Bracton* useth it for a Sign or Circumstance of Theft apparent, which the Civilians call *Furtum manifestum*; for dividing *Furtum* into *Manifestum* & *non Manifestum*, he defineth the former thus; *Furtum vero Manifestum est, ubi latro deprehensus est seistus de aliquo latrocinio scil. Handhabend & Backberind, & insecutus fuerit per aliquem cujus res illa fuerit.* *Bract. lib. 3. tract. 2. cap. 32.* *Manwood* remarks it as one of the four Circumstances or Cases, wherein a Forester may arrest the Body of an Offender against Vert or Venison in the Forest: By the Assise of the Forest of Lancaster (says he) taken with the Manner, is when one is found in the King's Forest in any of these four Degrees, *Stable-stand, Dog-draw, Back-bear, and Bloody-hand.* *Manw. 2. part. Forest Laws.*

Battle, A Candlestick properly so called, when formerly made *ex Baculo* of Wood, or a Stick. *Hugo Episcopus Dunelmensis fecit in Ecclesia*

coram Altari tria ex argento Baſtilia, in quibus lumina die Noſtuque perpetuo ardentia lacerent. Cloddingham Hiſt. Dunelm. apud Wartoni Ang. Sac. P. 1. 723.

Badger, (from the Fr. *Bagage*, a Bundle, and thence is derived *Bagagier*, a Carrier of Goods) Signifies with us one that buys Corn or Victuals in one Place, and carries them to another to sell and make Profit by them: And such a one is exempted in the Stat. 5 & 6 Ed. 6. c. 14. from the Punishment of an Ingrosser within that Statute. But by 5 Eliz. c. 12. *Badgers* are to be licensed by the Justices of Peace in the Sessions; whose Licences will be in Force for one Year, and no longer, and the Persons to whom granted must enter into a Recognizance that they will not by Colour of their Licences forestal, or do any Thing contrary to the Statutes made against Forestallers, Ingrossers and Regrators. If any Person shall act as a *Badger* without Licence, he is to forfeit 5*l.* one Moiety to the King, and the other to the Prosecutor, leviable by Warrant from Justices of Peace, &c.

Bag, An uncertain Quantity of Goods and Merchandize, from three to four Hundred. *Lex Mercat'.*

Baga, A Bag or Purse. — *Carta Decani Ecclesie Litchfield, in Mon. Angl. tom. 3. p. 237. Ducentas Marcas pecunie in quadam Baga de Whalley.* —

Bagavel, The Citizens of Exeter had granted to them by Charter from King Ed. 1. a Collection of a certain Tribute or Toll upon all Manner of Wares brought to that City to be sold, towards the Paving of the Streets, Repairing of the Walls, and Maintenance of the City, which was commonly called in Old English *Bagavel*, *Bethugavel*, and *Chipping-gavel*. *Antiq. of Exeter.*

Bahadum, Signifies a Chest or Coffer; it is mentioned in *Eleta, lib. 2. c. 21.*

Bajardour, (Lat. *Bajulator*) A Bearer of any Weight or Burden. — *Offerebant duos Incisores in sua lapidina, & cariagium petre usque ad Navim, & de Navi usque duos Bajardours Servituros ad Ecclesiam.* Petr. Bles. Contin. Hiſt. Croyland. p. 120.

Bail, *Ballium*, (from the Fr. *Bail*, i. e. a Guardian or Gaoler, *Bailler, tradere*) Is used in our Common Law for the Freeing or Setting at Liberty of one arrested or imprisoned upon any Action, either Civil or Criminal, on Surety taken for his Appearance at a Day and Place certain. *Bract. lib. 3. tract. 2. cap. 8.* The Reason why it is called *Bail*, is because by this Means the Party restrained is delivered into the Hands of those that bind themselves for his forth-coming: And the End of *Bail* is to satisfy the Condemnation and Costs, or render the Defendant to Prison. There is both *Common* and *Special* Bail; *Common* Bail is in Actions of small Concernment, being called *Common*, because any Sureties in that Case are taken; whereas in Causes of greater Weight, as Actions upon Bond, or Specialty, &c. where the Debt amounts to 10*l.* *Special* Bail or Surety must be taken, as *Subsidy-Men* at least, and they according to the Value. 4 *Inst.* 179. By a late Statute, none shall be held to *Special* Bail on Process out of any Superior Court, where the Cause of Action doth not amount to 10*l.* or upwards; nor out of any Inferior Court where it doth not amount to 40*s.* Affidavit is to be made of the Cause of Action, and the Sum specified in the Affidavit indorsed on the Back of the Writ; for which Sum *Bail* shall be taken, and no more;

And

And if there be no such Affidavit, the Defendant shall not be arrested by his Body, &c. *Stat. 12 Geo. c. 29.* To make out Common Bail-Pieces; in the Margin you put the County, as *Midd. ss.* Then you write the Name of the Defendant, and underneath of his Bail, viz: *A. B. de Paroch. in Com. prad. Gen. Traditur in Ballium super Cep. Corp. Johan. Doe de Lond. Yeom. & Richardo Roe de eod. Yeom.* And in the Margin, at the Bottom, you put the Name of the Attorney, as *Edwards Attorn.* and on the Right-hand at Bottom, *Ad sectam C. D.* Herein you are to observe, that the Sureties *John Doe* and *Richard Roe* are taken of Course: And in Special Bail, the Bail and their Additions are to be inserted instead of *John Doe*, &c. which is all the Difference from Common Bail. *Practif. Attorn. Edit. 1.* These Bail-pieces are written on a small square Piece of Parchment, with the Corners cut off at bottom, in Court-hand: And if Common, they are to be filed in the Office with the Clerk of the Common Bails, within six Days after the End of the Term the Attorney appears. And Special Bail, which is taken before a Judge, or by Commissioners in the Country, when accepted, is to be filed; after twenty Days Notice given of putting in Special Bail before a Judge, on a *Cepi Corpus*, if there be no Exception, the Bail shall be filed in four Days. *1 Lill. Abr. 174.* Upon a *Cepi Corpus* twenty Days are allow'd to except against the Bail: So on a Writ of Error; and you need not give Notice, but you cannot take out Execution without giving a four Days Rule to put in better Bail: In all other Cases, Notice must be given. Upon a *Habeas Corpus*, eight and twenty Days are appointed to except against the Bail, and after that, if it be not excepted against, it shall be filed in four Days. *1 Salk. 98.* The Exception to Bail put in before a Judge, must be entered in the Bail-Book, at the Judge's Chamber, at the Side of the Bail there put in, after this Manner: *I do except against this Bail, A. B. Attorn. pro Quer.* And if there be no such Exception, the Defendant's Attorney may take the Bail-piece away from the Judge's Chamber and file it. After the Roll is mark'd in before a Judge, Common Bail may not be filed; but where the Roll is not thus mark'd, or where the Cause of Action is not expressed in the Writ, Common Bail is to be entered. Bail is not properly such until it is filed, when it is of Record: But it shall be accounted good, till the same is questioned and disallowed. When Cognizors of Bail are questioned, they are to justify themselves in open Court, by Oath of their Abilities; or before one of the Judges of the Court; or by Affidavit before Commissioners as took the Bail: And the Court may adjudge Bail sufficient, when the Plaintiff will not accept of it. Also the Court on Motion, or a Judge at his Chamber will order a common Appearance to be taken, when Special Bail is not required, on Affidavit made of the Debt due, &c. The Putting in of a Declaration, and the Acceptance of it by the Defendant's Attorney with the Privy of the Plaintiff's Attorney, is an Acceptance of the Bail. When a Sheriff hath taken good Bail of the Defendant, he will on a Rule return a *Cepi*, and assign the Bail-Bond to the Plaintiff, which may be done by Indorsement without Stamp, so as it be stamp'd before Action brought thereupon; and then the Defendant and Bail may be arrested on the Bond, by the Plaintiff in his own Name. *Stat. 4 & 5 Ann.* But if the

Plaintiff take an Assignment of the Bail-Bond, tho' the Bail is insufficient, the Court will not amerce the Sheriff. *1 Salk. 99.* By the antient Course, a Bail-Bond could not be put in Suit 'till a Rule was had to amerce the Sheriff, for not having the Body at the Return of the Writ; and the Course now is, to stay Proceedings on the Bail-Bond, if there is no Return of a *Cepi Corpus*. *Mod. Ca. 229. 3 Salk. 57.* In Case the Defendant doth not find Common or Special Bail, the Attorney for the Plaintiff is to call on the Sheriff for his Return of the Writ; on Default whereof, a Rule being made for it, the Sheriff shall be amerced, or summoned before a Judge to shew Cause, &c. And if on a *Cepi Corpus* no Bail is returned, a Rule will be made out to bring in the Defendant's Body. Tho' a Defendant, with Leave of the Court, may deposit Money in Court instead of Bail; and in such Case the Plaintiff shall be ordered to waive other Bail. *Lill. Abr. Trin. 23 Car. B. R.* Bail to the Action is to be taken before none but a Judge of the Court; but for Appearance, may be before any Officer. Sheriffs, &c. are to let to Bail Persons by them arrested by Force of any Writ, in any Personal Action, &c. upon reasonable Sureties, having sufficient within the County to keep their Days in such Place, &c. as the Writs require. *Stat. 23 H. 6. c. 10.* and the Statute *1 W. & M.* provides against excessive Bail. No Defendant arrested by Process shall be compelled to put in Bail for a greater Sum than contained in the Writ or Process; and if any Plaintiff shall declare against a Defendant upon any Bail by him put in for a greater Sum than is expressed in the Process upon which the Defendant was arrested, then that Bail shall not be liable to the Action. *1 Lill. 181.* But it is said Bail are liable to all Actions of the Plaintiff the same Term wherein he shall declare against the Defendant. If more Damages, &c. are recovered than mentioned in the Plaint, or than the Sum wherein the Bail is bound, the Bail will not be liable. *1 Salk. 102.* So where a Declaration is laid in another County, when the Original is sued out in London, and Bail put in there upon it. *3 Lev. 235.* In Actions of Battery, Trespass, Slander, &c. tho' the Plaintiff is like to recover large Damages, Special Bail is not to be had, unless by Order of Court: Nor is it required in Actions of Account, or of Covenant, except it be to pay Money; or against Heirs or Executors, &c. for the Debt of the Testator, unless they have wasted the Testator's Goods. *1 Danv. Abr. 681.* In Actions where Damages are uncertain, Bail is to be at the Discretion of the Court: On a dangerous Assault and Battery, upon Affidavit of Special Damages, a Judge's Hand may be procured for Allowance of an *Ac etiam* in the Writ: And in Action of *Scandalum Magnatum* the Court on Motion hath ordered Special Bail. *Raym. 74.* Special Bail is ordered, by Rule of Court, in all Causes of Removal, whether by *Habeas Corpus*, Writ of Privilege, *Certiorari*, &c. except where the Defendant is sued as Executor or Administrator: And a Caveat is to be entered with the Judges for good Bail. Where a Cause is removed out of an Inferior Court by *Habeas Corpus*, if the Bail below offer themselves to be Bail above, they shall be taken, not being excepted against below; unless the Cause comes out of London. *1 Salk. 97.* If a Cause removed from an Inferior Court, be remanded back by *Procedendo* the same Term, the original Bail in the Inferior Court are charge-

chargeable; but not if remanded in another Term. 2 Cro. 363. One in Execution in Custody of the Marshal of B. R. is not compellable to find Bail, if another Action be brought against him: But if he be in the Prison of the Fleet in Execution, on Action brought in B. R. he must be removed into the Custody of the Marshal of that Court, or put in Bail to the Action. Trin. 24 Car. B. R. One taken in Execution, is not *bailable* by Law; except an *Audita Querela* be brought. But where a Writ of Error is brought and allow'd, if the Defendant be not in Execution, there shall not be Execution awarded against him, at the Request of the Bail, tho' he be present in Court. 1 Nelf. Abr. 331. The Bail ought not to join with the Principal, nor the Principal with the Bail, in a Writ of Error to reverse the Judgment against either. 1 Cro. 295. The Bail upon a Writ of Error cannot render the Party in their Discharge; because they are bound that the Party shall prosecute the Writ of Error with Effect, and pay the Money if Judgment be affirmed. 1 Lill. Abr. 173. Before a *Scire facias* taken out against the Bail, the Principal may render his Body in Discharge of the Bail: And if the Bail bring in the Principal before the Return of the second *Sci. fac.* against them; they shall be discharged. 1 Roll. Abr. 250. 1 Lill. 471. On a *Capias ad satisfaciendum* against the Defendant returned *Non est Inventus*, *Scire facias* to issue against the Bail. Where a Defendant renders his Body in Discharge of the Bail, the Plaintiff is by the Rules of the Court to make his Choice of Proceeding in Execution, whether he will charge Body, Goods, or Lands. 1 Lill. 183. And 'tis said, if the Principal after Judgment renders himself in Discharge of his Bail, it is still at the Election of the Plaintiff to take out Execution either against him or his Bail. 1 Nelf. Abr. 329. There must be an *Exoneretur* entered, to discharge the Bail. If the Defendant dies before a *Capias ad satisfaci.* against him returned and filed, the Bail will be discharged. 1 Lill. 177. On the Death of the Principal, 'tis impossible for the Bail to bring in his Body: And the Bail may stand engaged that the Principal shall render himself, which must be intended upon Process awarded against him in his Life-time. 1 Nelf. 328. A Bail cannot be a Witness for the Defendant at the Trial; but the Court, on Motion, will discharge the Bail, upon giving other sufficient Bail. Wood's Inst. 582. In the Court of Common Pleas, when the Plaintiff hath obtained Judgment where Special Bail is given, the Plaintiff may take the Defendant in Execution, or prosecute the Bail. And Part of the Debt may be levied on the Defendant's Goods, and the Remainder on the Bail: But if the Plaintiff take the Defendant's Body in Execution, he may not then meddle with the Bail. Infit. Leg. 91, 229. Execution may be had against the Bail, if the Defendant does not plead: And some of our Books say, that Lands of Bail are bound from the Time of the Recognizance, &c. entered into; and others that they are not but from the Time of the Recovery of the Judgment against the Principal. Cro. 272, 449: If a Defendant puts in Bail by a wrong Name, the Proceedings shall nevertheless be good. 1 Nelf. 333. But if Bail be taken off the File, the Plaintiff is without Remedy; for it cannot be amended. Cro. El. 223. The Judges of the Courts at Westminster have Power by Statute to appoint Commissioners in every County to take Recogni-

zances of Bail, in Causes depending in their Courts; and to make such Rules for justifying the Bail as they shall think fit, &c. Stat. 4 & 5 W. & M. Writs which hold the Defendant to Bail, ought to have the Cause of Action expressed: And where the Cause of Action is not expressed in Writs, &c. Bail are to enter into Bond for the Defendant's Appearance in a Sum not above 40 l. And on Appearance by Attorney, the Bail shall be acquitted. 13 Car. 2. c. 2. When a Man is taken on a *Capias* out of C. B. he shall not be released 'till he give Bond to appear, &c.

Form of a Bail-Bond for Appearance.

Johannem A. & Willielmum B. teneri, &c.
Thome C. Ar. Vicecomiti Com. &c. in Quadragint. libris, &c.

Conditio istius Obligationis talis est quod si super obligat. Johann A. Compareat coram Justic. Dom. Reg. apud Westmonasterium a die Pasche, in Quindecim dies ad respondend. Richardo D. Gen. de placito Transgr. ac etiam ad respond. eid. Richardo secund. Conf. Cur. &c. in quodam placito a Transgr. super Casu. sup. Assumption. &c. ad dampn. ipsius Richardi Decem Libr. &c. Quod tunc hac presens obligatio vacua fuer. & nullius vigoris, alioquin stet & permaneat in suo pleno vigore & effectu. Sigillat. & Deliberat. in presentia nostrum.

As to Bail for Crimes, at Common Law Bail was allow'd for all Offences, except Murder. 2 Inst. 190. And if the Party accused could find sufficient Sureties, he was not to be committed to Prison; for all Persons might be bailed 'till convicted of the Offence. 2 Inst. 186. But by Statute it was after enacted, that in Case of Homicide the Offender should not be bailed: And by our Statutes, Murderers, Outlaws, House-burners, Thieves openly defamed, &c. are not *bailable*; but where Persons are guilty of Larceny, are Accessaries to Felony, or guilty of light Suspicion, they may be admitted to Bail. Stat. 3 Ed. 1. c. 15. This Statute doth not extend to the Judges of B. R. &c. only to Sheriffs and other inferior Officers. H. P. C. 98, 99. By the Common Law the Sheriff might bail Persons arrested on Suspicion of Felony, or for other Offence *bailable*; but he hath lost this Power by the Statute 1 Ed. 4. c. 2. Justices of the Peace may let to Bail Persons suspected of Felony, or others *bailable*, until the next Sessions: But where Persons are arrested for Manslaughter or Felony, being *bailable* by Law, they are not to be let to Bail by Justices of Peace but in open Sessions, or where two Justices (*Quorum unus*) are present; and the same is to be certified with the Examination of the Offender, and the Accusers bound over to prosecute, &c. 3 H. 7. 1 & 2 P. & M. If a Person be dangerously wounded, the Offender may be bailed 'till the Person is dead; but 'tis usual to have Assurance from some skilful Surgeon, that the Party is like to do well. 2 Inst. 186. A Man arrested and imprisoned for Felony, being *bailable*, shall be bailed before it appears whether he is guilty or not; but when convicted, or if on Examination, he confesseth the Felony, he cannot be bailed. 4 Inst. 178. For where in Manslaughter, Felony, &c. it is certainly known that the Party did it, he ought not to be bailed. To refuse Bail where any one is *bailable*; or to admit any to Bail

Bail who ought not by Law to be admitted, is punishable by Fine, &c. 2 *Inst.* 191. *H. P. C.* 97. If where a Felony is committed one is brought before a Justice on Suspicion, the Person suspected is to be *bailed*, or committed to Prison; but if there is no Felony done, he may be discharged. *H. P. C.* 98, 106. The Court of *B. R.* *bails* in all Cases, and may *bail* Murder, &c. If a Man is found guilty of Murder by the Coroner's Inquest, yet *B. R.* may *bail* him; for they may examine into the Depositions taken by the Coroner. 1 *Salk.* 104. But if a Criminal be indicted of Murder, the Court will not *bail* him, tho' upon Affidavits of Evidence which might discharge the Prosecution: Nor when a Person is found guilty by the Grand Jury, because they cannot have Notice of what Evidence was before the Jury, which by their Oath they are obliged to conceal. 1 *Salk.* 104. The Courts of Common Pleas and Exchequer, in Term-time, and the Chancery in the Term or Vacation, may *bail* Persons by the *Habeas Corpus* Act, but not such as are committed for Treason or Felony specially expressed in the Warrant of Commitment; unless it be where a Sessions is past from the Time of Commitment of the Prisoner, without any Prosecution, when he may be *bailed*. But *B. R.* will not admit a Person to *Bail* on the *Habeas Corpus* Statute, on Commitment for Treason or Felony, without four Sureties. The Court of *B. R.* may *bail* Persons committed by the King's Special Command, or by the Privy Council, on the like Circumstances on which it will grant *Bail* on other Commitments: This is where the Crime is specified in the Warrant of Commitment; and wherever any Commitment by the Privy Council hath not expressed with some Certainty the Crime alledged against the Party, it has been usual to admit him to *Bail* on his *Habeas Corpus*. 2 *Hawk. P. C.* 107, 109. See Stat. 16 *Car. I. c.* 10. Formerly Persons committed for Treason, &c. by the King's Command, or Order of Council, were not to be delivered without Trial, &c. Upon a Commitment of either House of Parliament, when it stands indifferent on the Return of the *Habeas Corpus*, whether it be legal, or not, the Court of *B. R.* ought not to *bail* a Prisoner; but when it appears to be illegal, they may do it, as well as on an unwarrantable Commitment of the King and Council. 2 *Hawk.* 110. And a Person committed for a Contempt, by Order of either House of Parliament, may be discharged by *B. R.* after a Dissolution or Prorogation, which determine all Orders of Parliament: Also 'tis said on an Impeachment, when the Parliament is not Sitting, and the Party has been long in Prison, *B. R.* may *bail* him. The Court of *B. R.* hath *bailed* Persons committed to the *Fleet-Prison* by the Lord Chancellor, when the Crime of Commitment hath not been mentioned, or being mentioned in general Terms, &c. 2 *Hawk. P. C.* 111. And *B. R.* having the Control of all inferior Courts, may at their Discretion *bail* any Person unjustly committed by any of those Courts. In admitting a Person to *Bail* in the Court of *B. R.* for Felony, &c. a several Recognizance is entered into to the King in a certain Sum from each of the *Bail*, that the Prisoner shall appear at a certain Day, &c. And also that the *Bail* shall be liable for the Default of such Appearance, &c. Body for Body. And it is at the Discretion of Justices of Peace, in admitting any Person to *Bail* for Felony, to take the Recogni-

zance in a certain Sum, or Body for Body. But where a Person is *bailed* by any Court, &c. for a Crime of an inferior Nature, the Recognizance ought to be only in a certain Sum of Money, and not Body for Body. 2 *Hawk.* 115. And the *Bail* are to be bound in double the Sum of the Criminal. Where Persons are bound Body for Body, if the Offender doth not appear, whereby the Recognizance is forfeited, the *Bail* are not liable to such Punishment to which the Principal would be adjudged if found guilty, but only to be fined, &c. *Wood's Inst.* 618. If *Bail* suspect the Prisoner will fly, they may carry him before a Justice to find new Sureties; or to be committed in their Discharge. 10 *Rep.* 99.

Bailiff, (*Ballivus*) From the *Fr.* Word *Bailiff*, that is *Praefectus Provincia*, and as the Name, so the Office it self was answerable to that of *France*; where there are eight Parliaments, which are high Courts from whence there lies no Appeal, and within the Precincts of the several Parts of that Kingdom which belong to each Parliament there are several Provinces to which Justice is ministred by certain Officers called *Bailiffs*: And in *England* we have several Counties in which Justice hath been administred to the Inhabitants by the Officer whom we now call *Sheriff* or *Viscount*, (one of which Names descends from the *Saxons*, the other from the *Normans*); and tho' the Sheriff is not called *Bailiff*, yet 'tis probable that was one of his Names also, because the County is often called *Balliva*: As in the Return of a Writ, where the Person is not arrested, the Sheriff saith, *Infratominatus A. B. non est Inventus in Balliva mea*, &c. *Kitch. Ret. Brev. fol.* 285. And in the Statute of *Magna Charta*, cap. 28. and 14 *Ed. 3. cap. 9.* the Word *Bailiff* seems to comprise as well Sheriffs, as *Bailiffs* of Hundreds. As the Realm is divided into Counties, so every County is divided into Hundreds; within which in antient Times the People had Justice ministred to them by the several Officers of every Hundred, which were the *Bailiffs*, as those Officers do in *France* and *Normandy*, being chief Officers of Justice within their Precincts. *Custum. of Norm. cap. 1.* And it appears by *Bracton*, (*lib. 3. tract. 2. cap. 34.*) that *Bailiffs* of Hundreds might hold Plea of Appeal and Approvers: But since that Time the Hundred-Courts, except certain Franchises, are by the Statute 14 *Ed. 3.* swallowed in the County-Courts; and now the *Bailiff's* Name and Office is grown into Contempt, they being only Officers to serve Writs, &c. within their Liberties. But in other Respects the Name is still in good Esteem; for the Chief Magistrates in divers Towns, are called *Bailiffs*: And sometimes the Persons to whom the King's Castles are committed are termed *Bailiffs*, as the *Bailiff* of *Dover-Castle*, &c. Of the ordinary *Bailiffs* there are several Sorts, *viz.* *Bailiffs* of Liberties; Sheriffs *Bailiffs*; *Bailiffs* of Lords of Manors; *Bailiffs* of Husbandry, &c. *Bailiffs* of Liberties are those *Bailiffs* who are appointed by every Lord within his Liberty, to execute Process and do such Offices therein, as the *Bailiff* Errant doth at large in the County; but *Bailiffs* errant or itinerant, to go up and down the County to serve Process, are out of Use. These *Bailiffs* of Liberties cannot arrest a Man without a Warrant from the Sheriff of the County: And yet the Sheriff cannot enter the Liberty himself, at the Suit of a Subject, (unless it be on a *Quo minus*, or *Capias utlagatum*) without a Clause in his Writ, *Non amittas*

mittas propter aliquam Libertatem, &c. If the Sheriff, &c. enters the Liberty without such Power, the Lord of the Liberty may have an Action against him; tho' the Execution of the Writ may stand good. 1 *Ventr.* 406. 2 *Inst.* 453. *Sheriff's Bailiffs* are such who are Servants to Sheriffs of Counties to execute Writs, Warrants, &c. Formerly *Bailiffs* of Hundreds were the Officers to execute Writs; but now it is done by Special *Bailiffs*, put in with them by the Sheriff. A *Bailiff* of a Liberty is an Officer which the Court takes Notice of; tho' a Sheriff's *Bailiff* is not an Officer of the Court, but only the Sheriff himself. *Pasch.* 23 *Car.* 1. B. R. The Arrest of the Sheriff's *Bailiff* is the Arrest of the Sheriff; and if any Rescous be made of any Person arrested, it shall be adjudg'd done to the Sheriff: Also if the *Bailiff* permit a Prisoner to escape, Action may be brought against the Sheriff. 1 *Inst.* 61, 168. Sheriffs are answerable for Misdemeanors of their *Bailiffs*; and are to have Remedy over against them. 2 *Inst.* 19. And the Court of B. R. will punish *Bailiffs* that misbehave themselves in executing Process, &c. *Bailiffs of Lords of Manors* are those that collect their Rents, and levy their Fines and Amercements. But such a *Bailiff* cannot distrain for an Amercement without a Special Warrant from the Lord or his Steward. *Cro. El.* 698. He cannot give Licence to commit a Trespass; as to cut down Trees, &c. tho' he may licence one to go over Land, being a Trespass to the Possession only, the Profits whereof are at his Disposal. *Cro. Jac.* 337, 377. A *Bailiff* may himself, or command another to take Cattle Damage-feasant upon the Land. 1 *Danv. Abr.* 685. And yet Amends cannot be tendered to the *Bailiff*, for he may not accept of Amends, nor deliver the Distress when once taken. 5 *Rep.* 76. These *Bailiffs* may do any Thing for the Benefit of their Masters, and it shall stand good 'till the Master disagrees; but they can do nothing to the Prejudice of their Masters. *Litt. Rep.* 70. *Bailiffs of Courts-Baron* summon those Courts, and execute the Process thereof; they present all Poundbreaches, Cattle strayed, &c. *Bailiffs of Husbandry* are belonging to private Men of good Estates, and have the Disposal of the Under-Servants, every Man to his Labour; they also fell Trees, repair Houses, Hedges, &c. and gather up the Profits of the Land for their Lord and Master, for which they render Accounts yearly, &c. Besides these, there are also *Bailiffs of the Forest*, of which you may read *Manwood*, Part 1. pag. 113.

Bailiwick, (*Balliva*) Is not only taken for the County; but signifies generally that Liberty which is exempted from the Sheriff of the County, over which the Lord of the Liberty appointeth a *Bailiff* with such Powers within his Precinct as an Under-Sheriff exerciseth under the Sheriff of the County; such as the *Bailiff of Westminster*, &c. *Stat.* 27 *Eliz.* c. 12. *Wood's Inst.* 206.

Bailment, (from *Bailor*, to deliver) Is a Delivery of Things to another, sometimes to be delivered back to the *Bailor* that delivered them, sometimes to the Use of the *Bailee* to whom delivered, and sometimes to a third Person. This Delivery is called a *Bailment*; which may be simple, as to keep for my Use; or conditional, to be redelivered when Money is paid, &c. Upon *Bailment* or Delivery of Goods, these Things are to be observed: If they are delivered to a Man to be safely kept, and after these Goods are

stolen from him, as he undertook to keep them safely, this shall not excuse him; but if he undertook to keep them as his own, he shall be excused. 1 *Inst.* 89. 4 *Rep.* 83. 1 *Roll. Abr.* 338. If where Goods are delivered to one as a Pledge, they are stolen from him, Action lieth not against him; because he hath a Property in them, and therefore ought to keep them no otherwise than as his own. *Co. Lit.* 89. A Man leaves a Chest locked up with another to be kept, and doth not make known to him what is therein; if the Chest and Goods in it are stolen, the Person who receiv'd them shall not be charged for the same, for he was not trusted with them. *Ibid.* And what is said as to Stealing, is to be understood of all other inevitable Accidents: But it is necessary for a Man that receives Goods to be kept, to receive them in a special Manner, viz. To be kept as his own, or at the Peril of the Owner. 1 *Litt. Abr.* 193, 194. The Case of a Carrier, Inn-keeper, &c. is different; for as they have their Hire, and thereby implicitly undertake the safe Delivery of the Goods entrusted with them, they shall answer the Value if they are stolen from them. 1 *Roll. Abr.* 338.

Bairman, A poor insolvent Debtor left bare and naked. — *Bairman qui debet fieri, jurabit in Curia quod nihil habet ultra 5. solidos & 5. denarios.* *Stat. Will. Reg. Scot.* cap. 17.

Balkanifer, or *Baldakinifer*, i. e. A Standard-Bearer; 'tis mentioned in *Matt. Paris.* Anno 1237. — *Ea die Balkanifer, qui ut alii, qui ceciderunt, cruentissimam de se reliquit hostibus victoriam, &c.*

Bale, (*Fr.*) A Pack, or certain Quantity of Goods or Merchandize; as a *Bale* of Silk, Cloth, &c. This Word is used in the Statute 16 R. 2. and is still in Use.

Balenger, By the Stat. 28 H. 6. cap. 5. seems to have been a Kind of Barge, or Water Vessel. But elsewhere it rather signifies a Man of War, — *Tandem pene solus fugiens in Balingario.* *Walsingham* in R. 2. *Hostes armaverunt quinque vasa bellica qualia Balingarias appellamus.* *Ibid.*

Baleuga, A Territory or Precinct. — *Cum tali Libertate, quod per totam Baleugam possit capere forisfactum suum.* *Charta Hen. 2.* See *Bannum & Banleuga.*

Balistarius, A *Balister* or Cross-bow Man. *Gerrard de la Warr* is recorded to have been *Balistarius Domini Regis*, &c. 28 & 29 Hen. 3.

Balivo amobendo, A Writ to remove a *Bailiff* from his Office, for Want of sufficient Land in the Bailiwick. *Reg. Orig.* 78. For if a Sheriff chuse one to be *Bailiff* of a Hundred; or if the Lord of a Liberty elect one to be *Bailiff* of the Liberty, who hath not Land sufficient in the County to answer the King and his People, according to the Statute of *Westm.* 2. then this Writ shall be sent to the Sheriff to discharge such *Bailiff*, and chuse another in his Place.

Ballance of Trade, A Computation of the Value of all Commodities which we buy from Foreigners, and on the other Side the Value of our own native Products, with the Overplus of foreign Goods which we export into neighbouring Kingdoms; and the Difference or Excess between the one Side and the other of such Account or Computation, is called the *Ballance of Trade*: Which Excess can be answered by Us in nothing but our Coin or Bullion. The Overplus of Goods brought from our Colonies in *America*, and other foreign Parts, with which we supply our Neighbours,

bours, is computed in Time of Peace at least to *ballance our Trade*.

Ballare, Signifies *Scopis expurgare*. 'Tis mentioned in *Fleta*, lib. 2. cap. 87.

Ballum, A Sort of Fortrefs or Bulwark. — *Eam Civitatem cum exteriori Ballio castri Bellatorum suorum insultibus occupavit*. Matt. Westm. Anno 1265.

Ban, or **Bans**, (*Bannum*, from the Brit. *Ban*, i. e. *Clamor*) Is a Proclamation, or publick Notice given of any Thing; any publick Summons or Edict, whereby a Thing is commanded or forbidden. It is a Word ordinary among the Feudists; and there is both *Bannus* and *Bannum*, which signify Two several Things. This Word *Bans* we use here in *England*, especially in publishing matrimonial Contracts, which is done in the Church before Marriage, to the End that if any Man can speak against the Intention of the Parties, either in Respect of Kindred, Precontract, or for other just Cause, they may take their Exception in Time, before the Marriage is consummated: And in the Canon Law, *Bannæ sunt Proclamationes sponsi & sponse in Ecclesiis fieri solita*. But there may be a Faculty or Licence for the Marriage, and then this Ceremony may be omitted; and Ministers are not to celebrate Matrimony between any Persons without a Licence, except the *Bans* have been first published three several Times, upon Pain of Suspension, &c. *Can. 62*. See the Stat. 7 & 8 W. 3. c. 35.

Bancalt, A Covering of Ease and Ornament for a Bench, or other Seat; it is mentioned in several Places in the *Monasticon*, Tom. 1. pag. 222. *Septem Scamnorum tegmina vulgo Bancalia*, &c.

Bane, (from the Sax. *Bana*, a Murderer) Signifies the Destruction or Overthrow of any Thing: As, I will be the *Bane* of such a Man, is a common Saying; so when a Person receives a mortal Injury by any Thing, we say, it was his *Bane*: And he who is the Cause of another Man's Death, is said to be *Le Bane*, i. e. *Malcfactor*. *Braff. lib. 2. tract. 8. cap. 1*.

Baneret, (*Banerettus*, *Eques Vexillarius*, or *Miles Vexilliferus*) Sir Tho. Smith, in his *Repub. Angl.* cap. 18. says, is a Knight made in the Field, with the Ceremony of cutting off the Point of his Standard, and making it as it were a *Banner*; and accounted so honourable, that they are allowed to display their Arms in the King's Army as Barons do, and may bear Arms with Supporters. *Camden*, in his *Britan.* fol. 109. hath these Words, *Baneretti, cum Vassalorum nomen jam desierat, a Baronibus secundi erant; quibus inditum nomen a Vexillo; Concessum illis erat Militaris Virtutis ergo quadrato Vexillo (perinde ac Barones) uti, unde & Equites Vexillarii a nonnullis vocantur*, &c. 'Tis said that they were antiently called by Summons to Parliament: And that they are next to the Barons in Dignity, appears by the Statute 14 R. 2. c. 11. and 5 R. 2. Stat. 2. cap. 4. *William de la Pole* was created *Baneret* by K. Edward the Third, by Letters Patent, Anno Regni sui 13. And those *Banerets* who are created *sub vexillis Regiis, in exercitu Regali, in aperto Bello, & ipso Rege personaliter presente, explicatis*, take Place of all Barons; as we may learn by the Letters Patents for Creation of Barons. 4 *Inst.* 6. Some maintain that Knights *Banerets* ought to be made in a Civil War: But *Hen. 7.* made divers *Banerets* upon the *Cornish Commotion*, in the Year 1495. See *Selden's Titles of Honour*, f. 799.

Banishment, (*Fr. Bannissement*) *Exilium*, *Abjuratio*, is a Forfaking or Quitting of the Realm; and a Kind of Civil Death, inflicted on an Offender for some Crime. There are two Kinds of it, one voluntary and upon Oath, whereof you may read *Abjuration*; and the other upon Compulsion, for some Offence. *Staundf. Pl. Cr. f. 117*. By *Magna Charta*, None shall be outlawed or banished his Country, but by lawful Judgment of his Peers, or according to the Law of the Land. 9 *Hen. 3. c. 29*. And by the Common Law, no Person shall be banish'd, but by Authority of Parliament; or in Case of Abjuration for Felony, &c. but this is taken away by Statute. 3 *Inst.* 115. Stat. 21 Jac. 1. c. 28. See *Abjuration*.

Bank, (*Lat. Bancus, Fr. Banque*) In our Common Law, is usually taken for a Seat or Bench of Judgment; as *Bank le Roy*, the King's Bench, *Bank de Common Plees*, the Bench of Common Pleas, or the Common Bench; called also in Latin *Bancus Regis*, and *Bancus Communium Placitorum*. *Crompt. Just. 67, 91*. *Fus Banci*, or the Privilege of the Bench, was antiently allowed only to the King's Judges, *qui summam administrant justitiam*; for inferior Courts were not allowed that Privilege. There is another Sort of *Bank*, which signifies a Place where a great Sum of Money is let out to Use, returned by Exchange, or otherwise disposed of to Profit: And a *Bank of England* establish'd by Parliament, with Funds for maintaining thereof, appropriated to such Persons as were Subscribers; and the Capital Stock, which is enlarged by divers Statutes, is exempted from Taxes, accounted a Personal Estate assignable over, not subject to Forfeiture; and the Company make Dividends of the Profits half-yearly, &c. The Funds are redeemable by the Parliament, on paying the Money borrowed. *Vide* the Statutes 5 & 6, and 8 & 9 W. 3. and 7 *Anna*, &c. See 1 *Geo. c. 12*. and 3 *Geo. c. 8*.

Bankers, The mony'd Goldsmiths first got the Name of *Bankers* in the Reign of K. Charles the Second, as by the Words of an Act of Parliament, Anno 22 & 23 Car. 2. appears, — *Whereas several Persons, being Goldsmiths, and others, by taking up or borrowing great Sums of Money, and lending out the same again for extraordinary Hire and Profit, have gain'd and acquir'd to themselves the Reputation and Name of Bankers, &c.* thus runs the Statute: But *Bankers* of late are those Goldsmiths and private Persons in whose Hands Money is lodged and deposited, to be drawn out again as the Owners have Occasion for it; and the *Bankers*, instead of lending abroad the Money thus deposited, usually traffick with it in *Exchange-Alley* on the Stocks, &c. oftentimes to their great Advantage, they being generally Men of great Estates.

Bankrupt, (*Bancus ruptus*) Is so called, because when the Bank or Stock is broken or exhausted, the Owner is said to be a *Bankrupt*. And this Word *Bankrupt* is derived from the *Fr. Banqueroute*, which signifies a Breaking or Failing in the World: *Banque* in French is as much as *Mensa* in Latin, and *route* is the same as *Vestigium*; and this Term is said to be taken originally from the Roman *Mensarii*, which were set in publick Places, and when a Tradesman slipp'd away, with an Intention to deceive his Creditors, he left only some *Vestigia* or Signs of his Table or Shop behind him. *Cowel*. But a *Bankrupt* with us signifieth generally either Man or Woman that living by Buying and Selling hath gotten other

other Men's Goods into his or her Hands, and hideth himself in Places unknown, or in his own House, in order to deceive and defraud his Creditors. 4 *Inst.* 277. And by Statute 1 *Fac.* 1. *cap.* 15. a *Bankrupt* is thus described, *viz.* All and every Person who shall use the Trade of Merchandize, by Way of Bargaining, Exchange, Bartering, or otherwise in Gross, or by Seeking his or her Living by Buying and Selling, who shall depart his House, or absent himself, or suffer himself to be arrested for any Debt, or other Thing not grown due, for Money delivered, Wares sold, or other good Consideration; or shall suffer himself to be outlawed, or go to Prison, or fraudulently procure himself to be arrested, or his Money or Goods attached; or make any fraudulent Conveyance of his Lands, Goods, or Chattels, whereby his Creditors may be defeated in the Recovery of their just Debts; or being arrested for Debt, shall lie in Prison six Months, or more, upon such Arrest or Detention, shall be adjudged a *Bankrupt*. The 21 *Fac.* 1. *c.* 19. hath other Descriptions of a *Bankrupt*; but they are declared void by a late Statute. It is not Buying and Selling of Land, but of Personal Things, that will make a Man liable to be a *Bankrupt*; nor is it Buying only, or Selling only, but both Buying and Selling. Every one that gets his Living by Buying and Selling in Trade and Merchandize, may come under the Denomination of a *Bankrupt*, upon his Failing therein. But Adventurers in the *East-India* Company, Members of the *Bank of England*, of the *South-Sea* Company, and of other Societies, shall not be adjudged *Bankrupts*, in Respect of their Stock, &c. Also no Person concerned as Receiver General of Taxes, &c. shall be a *Bankrupt*: And Farmers, Graziers, &c. are excepted out of the Statutes; as Buying and Selling is not their only or principal Means of Livelihood. 14 *Car.* 2. 9 & 10 *W.* 3. 7 *Annæ*, &c. An Inn-keeper is not within the Statutes, for tho' he buys Provision to be spent in his House, yet he doth not properly sell it, but utters it to his Guests at no certain Price. *Cro. Car.* 395. And a Taylor is not within the Statutes of *Bankrupts*, because he lives by Making of Garments, and not by Buying and Selling. A Shoemaker hath been adjudged within the Statutes, as he lives by his Credit in buying Leather, and Selling it again in Shoes, &c. And Carpenters in London, Weavers, Dyers, Tanners, Bakers, Brewers, Vintners, &c. may be *Bankrupts*: But Handicraftsmen, Husbandmen, Labourers, &c. are not within the Statutes. *Cro. Car.* 21. *Cro. Fac.* 585. 3 *Mod.* 330. A Feme sole Merchant in London may be a *Bankrupt*. If a Merchant gives over his Trade, and some Years after becomes nonsolvent for Money he owed while a Merchant, he is a *Bankrupt*: But if it be for new Debts, or old Debts continued on new Security, it is otherwise. 1 *Ventr.* 5. 29. If after a plain Act of *Bankruptcy*, one goes abroad and is a great Dealer, yet this will not purge the first Act of *Bankruptcy*; tho' if he pays off or compounds with his Creditors, he is become a new Man. *Trin.* 2 *Ann.* 1 *Salk.* 110. A Man born in England goes over to Ireland, and there trades and buys Goods in England, and sells them in Ireland, and being indebted in England becomes *Bankrupt*, adjudg'd a *Bankrupt* in England. *Raym.* 375. A Gentleman of the Temple went to Lisbon, and traded to England and broke; it was adjudged he was a *Bankrupt* by Reason of his Trading hither and back again, which gain'd

him Credit here, tho' he was out of the Realm. *Salk.* 110. Where there are two Partners in Trade, and one breaks, you shall not charge the other with the Whole; but the Estate belonging to the joint Trade ought to be divided, &c. *Mod. Rep.* 45. Acts discharging *Bankrupts*, shall not discharge any Partner in Trade, or one jointly bound with the *Bankrupt*. 1 *Danv. Abr.* 686. A Merchant Trader indebted, keeps in another Man's House, or on Ship-board, adjudged a Keeping in his House: But a Withdrawing must be on Purpose to defraud Creditors; and if a Man goes sometimes at large, so as he may be met with one Time or other, it will excuse him. The Commissioners of *Bankrupt* have the Power to adjudge a Man a *Bankrupt*; yet in an Action the Jury must find whether he was so, or not. 1 *Danv.* 687. He that is a *Bankrupt* to one Creditor, is accounted in Law a *Bankrupt* to all the Creditors; and being once adjudged so, is always so to the Rest of the Creditors. 22 *Car.* 1. *B. R.* Commissioners may commit a *Bankrupt* refusing to be examined, &c. till he submit himself to be examined. 1 *Salk.* 151. But the Commissioners are not to commit a *Bankrupt* for not discovering his Estate, without Examining him on Interrogatories. 1 *Lill. Abr.* 202. They are to examine the *Bankrupt* upon Interrogatories; and they have Power to examine others, as to what they know of any Person's carrying away any Part of the *Bankrupt's* Estate. 5 *Mod.* 309. Commissioners of *Bankrupt* have Power to sell, grant, and assign, but they cannot bring an Action; for their Assignees must bring all Actions. 1 *Mod.* 30. The Creditors have a Right to the *Bankrupt's* Goods, by the Act of *Bankruptcy*, and thereby they are bound: Tho' until Assignment by the Commissioners, the Property is not transferred out of the *Bankrupt*. 1 *Salk.* 108. The Commissioners are to sell all the *Bankrupt's* Lands in Fee, for Life, or Years, &c. and it will be binding against the *Bankrupt* and his Issue, &c. 1 *Lill. Abr.* 204. They may sell all entailed Lands in Possession, Reversion, or Remainder, except entailed in the Crown, of the Gift of the King; and this shall bind the Issue in Tail, and all others, which a Common Recovery might cut off. *Ibid.* 205. But Sales of the *Bankrupt's* Lands by Commissioners, are to be by Deed inrolled. If a *Bankrupt* grant his Lands or Goods in the Names of other Persons, the Commissioners notwithstanding may make Sale of them: But not Lands, &c. conveyed *Bona fide* before the Party became a *Bankrupt*. *Wood's Inst.* 310. And no Purchase of Lands shall be impeached, unless the Commission of *Bankrupt* be sued out within five Years after a Man becomes *Bankrupt*. Lands held by a *Bankrupt* in Jointenancy, may be sold as to the Moiety: Also Lands which a Person hath in Right of his Wife, (but not her Dower) Lands devised to a *Bankrupt*, the Commissioners may sell. The Commissioners have Power to sell Lands mortgaged, on Tender and Payment of the Mortgage-Money. 2 *Rep.* 25. And Assignees of the Commissioners have the Benefit of Covenants of Re-entry, &c. on Lands. If a *Bankrupt* commits Felony, it is said his Land shall not escheat, but the Commissioners may sell it: And his Creditors shall have his Goods, not the King. *Stone* 126, 130. All the Goods and Chattels of the *Bankrupt*, which he was possessed of at the Time of his becoming *Bankrupt*, may be sold by the Commissioners; and notwithstanding the *Bankrupt* sell them in

Market overt. Sale of Goods by a *Bankrupt*, after an Act of *Bankruptcy*, may be avoided by the Commissioners of *Bankruptcy*; and they may bring Trover for the Goods, or Debt, or *Assumpsit* for the Value, &c. 3 *Salk.* 60. Offices of Inheritance may be sold; but not Offices of Trust, annexed to the Person for Life. Assignees may bring Actions for Debts due to the *Bankrupt* in their own Names, &c. But if the Commission be not taken out within six Years, directed by Law for suing of Debts, and the Assignment made within that Time, a Defendant in an Action may plead the Statute of Limitations: If the Commission be taken out in six Years, the Statute preserves the Debt, being to relieve Creditors against Fraud, &c. 1 *Saund.* 37. When Money is obtained by Judgment in Action of Debt, and the Plaintiff becomes *Bankrupt*, and a Commission of *Bankruptcy* is taken out against him, tho' the Sheriff may bring the Money into Court, it shall be delivered to the Plaintiff, and not the Assignee of the Commission; unless he take out a *Scire facias* against the Defendant, in order to try the *Bankruptcy*. 1 *Ventr.* 193. A Plaintiff that hath a Defendant's Body in Execution, who becomes *Bankrupt*, shall not come in to be relieved by the Statutes: But if the Plaintiff recover Damages, &c. against the Defendant, and hath Judgment, and then the Defendant becomes *Bankrupt*, the Plaintiff is a Creditor, for it is a Debt due to him, and Action of Debt lies on the Judgment. 1 *Cro.* 166. If a Debtor to a *Bankrupt* pays him his Debt voluntarily, he must pay it over again; but 'tis otherwise in Case of Payment by Compulsion of Law. 2 *Ventr.* 258. Where one trusts a *Bankrupt* after he becomes such, he shall not be relieved as a Creditor. Sureties or Bail, when they have paid the Debt, may come in as Creditors: But Mortgagees, or Persons that have a Pledge of the *Bankrupt's* Goods, having Security for their Debts in their Hands, are not Creditors within the Statutes. Those that attach Goods of the *Bankrupt*, are to come in as Creditors. If an Executor becomes *Bankrupt*, a Legatee is to be Creditor. And Aliens as well as Denizens may come in as Creditors; for all Statutes concerning *Bankrupts* extend to Aliens, who shall be subject to the Laws against *Bankrupts*, &c. *Hob.* 287. *Stat.* 21 *Fac.* 1. The Commissioners, after Sale of the *Bankrupt's* Estate, are to make Distribution among the Creditors contributing to the Commission, first making the *Bankrupt* his Allowance, &c. And in the Distribution of the *Bankrupt's* Estate, no Respect is to be had to Debts upon Judgment, Recognizances, or Specialties, beyond other Debts. After four Months, and Distribution made, no Creditor can come in to disturb it; but he may come in for the Residue, of which no Distribution is made. 1 *Danv.* 693. And the Court of Chancery hath sometimes allowed Creditors to come in after Distribution, upon particular Circumstances which have happened; and the Lord Chancellor order'd the Execution of the Commission to be suspended. *Chan. Rep.* 307. If Commissioners refuse to pay a Creditor his proportionable Part, he may bring Action of Debt, or be more properly relieved in Chancery: Where the Commissioners do not pursue the Acts of their Commission, the Party injured must bring his Action, and set forth the Finding of the Commissioners, that the Debtor is a *Bankrupt*. But if a Commission is not duly obtained against a Person, he may traverse, by

Saying he is not a *Bankrupt*. 8 *Rep.* 121. By 1 *Fac.* 1. c. 15. In Actions against Commissioners, or others under them, executing any Matter by Force of the 13 *Eliz.* or that Statute, the Defendants may plead Not guilty, or justify that it was done by the Authority of those Acts, &c. without shewing forth the Commission; to which the Plaintiff may reply, that the Defendant did the Fact of his Wrong, &c. 1 *Danv.* 694. The Statutes concerning *Bankrupts* are 34 *H.* 8. 13 *Eliz.* 1 *Fac.* 1. 21 *Fac.* 1. 4 & 5 *Ann.* 5, 6 & 7 *Geo.* By the 34 *H.* 8. c. 4. The Lord Chancellor, Treasurer, &c. is to take Order with the *Bankrupt's* Body, Lands and Goods. The 13 *Eliz.* c. 7. gives Power to the Lord Chancellor, upon Complaint in Writing against a *Bankrupt*, to appoint Commissioners to sell the *Bankrupt's* Lands, as well Copy as Free, Annuities, Goods, Chattels, Debts, &c. By 1 *Fac.* 1. c. 15. Commissioners may assign Debts, &c. to the Creditors, and proceed to Execution, tho' the *Bankrupt* dies; Persons suspected to detain any of the *Bankrupt's* Estate may be arrested, and still refusing to deliver them, shall be committed; Creditors shall be received if they come in within four Months: And the Commissioners are to render the *Bankrupt* an Account, &c. The 21 *Fac.* 1. c. 19. inflicts a Punishment of Pillory on *Bankrupts* fraudulently concealing their Effects; and gives the Commissioners Power to break open the *Bankrupt's* House, Chests, &c. for Discovery of Goods; and another Person's Goods in the *Bankrupt's* Possession, as his own to sell, &c. shall be disposed of by the Commissioners. The 4 & 5 *Ann.* enacts, that *Bankrupts* are to surrender themselves to be examined in thirty Days, and discover and deliver up to the Commissioners all their Goods, Papers, and Estate, or suffer as Felons; but the Lord Chancellor may enlarge the Time to sixty Days. Upon the Certificate of the Commissioners, the *Bankrupt* is to be apprehended: And the Commissioners are to assign the *Bankrupt's* Effects to such Persons as shall be chosen by a major Part of the Creditors; who may compound with Debtors, &c. By the 5 *Geo.* c. 24. it is ordained, that *Bankrupts*, within thirty Days after Notice, (which is to be given in the *Gazette*) shall surrender themselves to the Commissioners, and conform to the Acts, or they will be guilty of Felony: Also their Concealing Goods to the Value of 20 *l.* is made Felony. The Commissioners are to call before them Persons as can give an Account of Acts of *Bankruptcy*: And Trustees for the *Bankrupt*, and others concealing his Estate, are to discover Trusts, &c. or forfeit 100 *l.* and double Value. But Persons discovering the *Bankrupt's* Estate are allow'd 3 *l.* per Cent. for such Discovery. There shall be three several Meetings appointed by the Commissioners; and the Commissioners are to certify to the Lord Chancellor, that the *Bankrupt* hath conform'd, and four Parts in Five in Number and Value, of the Creditors must sign the *Bankrupt's* Certificate. None are to vote for the Choice of Assignees, whose Debt doth not amount to 10 *l.* and no Commission shall issue, except the Debt of one Creditor petitioning amounts to 100 *l.* of two Creditors 150 *l.* or of three Creditors to 200 *l.* And Bond is to be given of 200 *l.* Penalty for proving the Party a *Bankrupt*. *Bankrupts* conforming are to have an Allowance of 5 *l.* per Cent. not exceeding 200 *l.* where their Estates pay 8 *s.* in the Pound, &c. The 6 *Geo.* c. 21. empowers any Judge

Judge of the Court wherein Judgment has been obtained against a *Bankrupt*, for any Debt owing before he became a *Bankrupt*, the *Bankrupt* being in Prison in Execution on such Judgment, to discharge such *Bankrupt* on producing his Certificate. And by 7 Geo. cap. 31. Persons having Bills, Notes, &c. upon *Bankrupts*, payable at a Day to come, shall be admitted to prove them as if due presently, and be entitled to a Dividend of the *Bankrupt's* Estate, allowing a Discount of 5 l. per Cent. and *Bankrupts* shall be discharged from such Notes: But no Creditor in Respect of such Debt shall join in any Petition for suing forth any Commission of *Bankruptcy*, till the Debt is actually due. In Order to the Taking out a Commission of *Bankrupt*, it is usual first for a Creditor to make Affidavit before a Master in Chancery, that the Party is indebted in a Sum sufficient to make him a *Bankrupt*; then to petition the Lord Chancellor for the Commission; give Bond to prove the Person a *Bankrupt*, &c. And next follows the Commission, directed to five Commissioners, (whereof two are to be Esquires of the Quorum): And when the Commission is executed, and the Party hath conformed to the Statutes, his Certificate is granted and allowed, &c. If where there are two Joint Traders, one of them becomes a *Bankrupt*, it shall not affect his Companion. 3 Salk. 61.

Affidavit of a Debt to make the Party a Bankrupt.

A. B. of, &c. maketh Oath that C. D. of, &c. is truly and justly indebted to him this Deponent (one of the Creditors) in the Sum of 100 l. and upwards; and that he is become a *Bankrupt* within the Meaning of one or some of the Statutes made against *Bankrupts*, as this Deponent believes.
Jurat' die, &c. coram, &c. A. B.

A Petition to the Lord Chancellor for a Commission.

Humbly Complaining, Sheweth unto your Lordship, your Orator A. B. of, &c. as well for himself, as all other the Creditors of C. D. of, &c. That whereas the said C. D. using and exercising the Trade of, &c. by Way of Bargaining, Selling, Exchanging and Bartering, &c. and seeking his Living by Buying and Selling, upon just and good Causes, for Wares and Merchandizes to him sold and delivered, and also for ready Money to him lent, &c. being indebted to your Orator in the Sum of 100 l. and upwards, of late, that is to say, on or about, &c. last past, to the Intent to defraud and hinder your said Orator, and other his Creditors of their just Debts and Duties to them due and owing, did become *Bankrupt* within the several Statutes made against *Bankrupts*, viz. within the Statute made in the Parliament begun and holden at Westminster, the Day, &c. in the thirteenth Year of the Reign of Queen Elizabeth concerning *Bankrupts*; and within the Statute made in the Parliament, begun and holden, &c. (here set forth all the Statutes of *Bankrupts*) or within some or one of them: In tender Consideration whereof, may it please your Lordship to grant unto your Orator his Majesty's most gracious Commission, to be directed to such and so many honest and discreet Persons, as to your Lordship shall seem meet, authorizing them thereby not only concerning the said *Bankrupt*, his Body, Lands and Tenements, Goods and Chattels, Debts and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim, or otherwise, do or

shall offend touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the said Statutes, or any of them: And also to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Direction and Provision of the said Statutes.

And your Orator shall ever pray, &c.

A Bond to the Lord Chancellor on granting the Commission.

Overint universi per presentes me A. B. de, &c. teneri & firmiter obligari prebonorabili Petro Dom. King Baron. de, &c. Domino Cancellario Magn. Britann. in Ducent. libris bonæ & legalis Monete hujus Regni Solvend. eidem Domino Cancellario aut suo certo Attornato Executoribus Administratoribus vel Assignatis suis ad quam quidem solutionem bene & fideliter faciend. obligo me Hæredes Executores & Administratores meos firmiter per presentes Sigillo meo Sigillat. Dat. Die, &c. Anno Regni Dom. Georgii, &c. Annoq. Dom. &c.

The Condition of this Obligation is such, That if the above bound A. B. do and shall before the major Part of the Commissioners to be appointed in a Commission of *Bankrupt* against C. D. of, &c. prove that the said C. D. is justly indebted unto the said A. B. in the Sum of 100 l. And in like Manner prove that the said C. D. is become a *Bankrupt* within some or one of the Statutes made against *Bankrupts*; then this Obligation to be void, or else to remain, &c.

Form of a Commission of Bankrupt.

George by the Grace of God, King of Great Britain, &c. To our Trusty and well-beloved G. C. H. S. H. B. J. T. J. C. &c. Greeting: Whereas we are informed that C. D. of, &c. using and exercising the Trade of, &c. by Way of Bargaining, Exchange, Bartery, &c. seeking his Living by Buying and Selling, did about six Months since become *Bankrupt* within the several Statutes made against *Bankrupts*, to the Intent to defraud and hinder A. B. of, &c. and other his Creditors of their just Debts and Duties to them due and owing: We therefore minding the due Execution as well of the Statute touching Orders for *Bankrupts* made in the Parliament, begun and holden at Westminster, the Day, &c. in the thirteenth Year of the Reign of Elizabeth Queen of England made and provided, as of the Statute made in the Parliament, begun and holden at Westminster, the Day, &c. in the first Year of King James of England, &c. intituled, An Act, &c. And also of the Statute made in the Parliament, begun and holden, &c. in the twenty-first Year of the said King James of England, &c. And also of the Statute made in the Parliament, holden, &c. in the fourth Year of the Reign of her late Majesty Queen Anne, intituled, &c. And also of the Statute made, &c. in the fifth Year of our Reign, &c. Upon Trust of and in the Wisdom and Fidelity which we have conceived in you, do by these Presents assign, appoint, constitute and ordain you our special Commissioners for the Purpose aforesaid, giving full Power and Authority unto you, or four or three of you to proceed according to the said Statutes, and every or any of them, not only concerning the said *Bankrupt*, his Body, Lands and Tenements, Goods, Chattels, Debts, and other Things whatsoever; but also concerning all other Persons, who by Concealment, Claim or otherwise do or shall offend touching the Premises,

misses, or any Part thereof, contrary to the Intent and Meaning of the said Statutes, or any of them : And to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Ordinances and Provisions of the same Statutes ; willing and commanding you four or three of you to proceed to the Execution of this our Commission, according to the true Intent and Meaning of the said Statutes, with all Diligence and Effect. Witness our self at Westminster, the Day, &c. in the, &c. Year of our Reign.

Form of a Bankrupt's Certificate.

To the Right Honourable Peter Lord King,
Lord Chancellor of Great Britain.

WE G. C. H. S. H. B. &c. the major Part of the Commissioners assigned and authorized in and by a Commission of Bankrupt awarded against C. D. of, &c. bearing Date at Westminster, the Day of, &c. last past, having begun to execute the said Commission, and found that the said C. D. became a Bankrupt before the Date and Suing out of the said Commission, within the true Intent and Meaning of one or some of the Statutes made against Bankrupts, do humbly certify to your Lordship that the said C. D. did on, &c. surrender himself to us, and submit himself to be examined on Oath before us, from Time to Time, and in all Things to conform himself to an Act made in the fourth and fifth Years of her late Majesty Queen Anne, intituled, An Act to prevent Frauds frequently committed by Bankrupts, &c. And to the several other Statutes made against Bankrupts : Whereupon and for the better Discovery of the said Bankrupt's Estate, and putting in Execution the said Acts, We the said G. C. H. S. H. B. &c. have had several Meetings for the Examination of the said C. D. and caused due Notice to be published in the Gazette of the Time and Place when and where we intended to finish his said Examination, to the Intent that the Creditors of the said C. D. might be heard against the Making this present Certificate, and also admitted to prove their Debts : And several Creditors having proved their Debts, and none shewn any Cause against the Making of this Certificate : We do therefore further certify to your Lordship, that the said C. D. hath upon such Examination made a Discovery of his Estate and Effects, and in all Things conformed himself according to the Direction of the said late Acts ; and that there doth not appear to us any Reason to doubt the Truth of such Discovery, or that the same is not a full Discovery of all the Estate and Effects of the said C. D. And the rather, for that the Persons who have signed this Certificate, testifying their Consents to the same, are full four Parts in Five, in Number and Value, of the Creditors of the said C. D. who have duly proved their said Debts. Witness our Hands and Seals, &c.

Bannimus, The Form of Expulsion of any Member from the University of Oxford, by affixing the Sentence in some publick Places, as a Denunciation or Promulgation of it. The Word Banning is taken for an Exclamation against, or cursing of another.

Bannitus, An Outlaw, or banished Man. — *Vobis Præcipimus quod eidem Cancellario ad insequendum, arrestandum & capiendum dictos Malefactores & Bannitos, &c.* Pat. 15 Ed. 3.

Bannitus fortis, Is used in the same Sense as **Bannitus**, signifying one outlawed or judi-

ally banished. Pat. 25 H. 3. Brady's Hist. Angl. Append. p. 196.

Bannum vel Banleuga, The utmost Bounds of a Manor or Town, so used 47 H. 3. Rot. 44. &c. — *Notum facio, me elemosynam nostram Christo concessisse & omnibus Sanctis suis, &c. viz. primo Terram illam a Twiwella usque Thorney ubi Bannum nostrum cessat. Carta Canuti Regis Cænobio Thorneiæ. Banleuga de Arundel* is taken for all that is comprehended within the Limits or Lands adjoining, and so belonging to the Castle or Town. Seld. Hist. of Titbes, p. 75.

Barbican, (*Barbicanum*) A Watch-Tower, or Bulwark. *Mandatum est Johanni de Kilmynghon Custodi Castri Regis & Honoris de Pickering, quoddam Barbicanum ante portam Castri Regis prædicti muro lapideo, & in eodem Barbicano quandam Portam cum ponte versatili, &c. de novo facere, &c.* T. Rege 10 Aug. Claus. 17 Ed. 2. m. 39. *Fontem etiam duplici muro circumdatum habentem Barbicanum novem turribus circumseptum.* Rand. de Diceto, Ann. 1188.

Barbicanage, (*Barbicanagium*) Money given for the Maintenance of a Barbican, or Watch-Tower ; or a Tribute towards the Repairing or Building a Bulwark. *Carta 17 Ed. 3. Monasticon Tom. 1. pag. 976.*

Barca, A Barque : *Navis mercatorum & qua merces exportat.* Gloss. Sax. Ælfrici, a Flotship.

Barcarium, *Barcaria*, A Sheep-coat, and sometimes used for a Sheep-walk. *M. S. de Placit. Ed. 3. Sec Bercaria.*

Bargain and Sale, Is an Instrument whereby the Property of Lands or Tenements is for valuable Consideration granted and transferred from one Person to another : It is called a Real Contract, upon a valuable Consideration, for passing of Lands, Tenements and Hereditaments, by Deed indented and inrolled. 2 Inst. 612. *Accomp. Conv. 1 Vol. 62.* And it is also where a Recompence is given by both the Parties to the Bargain ; as if one bargains and sells his Land to another for Money ; here the Land is a Recompence to him for the Money, and the Money a Recompence to the other for the Land. 1 Lill. Abr. 206. *Bargains and Sales* of Lands are to be in Writing indented, and inrolled in one of the Courts at Westminster, or in the County where the Lands lie, before the *Custos Rotulorum*, Justices of the Peace, &c. And the Inrollment shall be made within six Months after the Date of the Deeds. Stat. 27 H. 8. cap. 16. But this Statute extends to *Bargains and Sales* of Inheritance and Freehold only ; and not to *Bargains and Sales* for Years, &c. for they are good though not inrolled, nor by Deed indented, &c. 2 Rep. 36. Houses and Lands in London, and any City, &c. are exempted out of the Statute of Inrollments. 2 Inst. 676. 1 Nels. Abr. 342. If two *Bargains and Sales* are made of the same Land to two several Persons, and the last Deed is first inrolled ; if afterwards the first Deed is also inrolled within six Months, the first Buyer shall have the Land ; for when the Deed is inrolled, the Bargainee is seised of the Land from the Delivery of the Deed, and the Inrollment shall relate to it. Wood's Inst. 259. Neither the Death of the Bargainor or Bargainee, before the Inrollment of the Deed of *Bargain and Sale*, will hinder the Passing of the Estate to the Bargainee : But the Estate of Freehold is in the Bargainor, until the Deed is inrolled ; so that the Bargainee cannot bring any Action of Trespass

pass before Entry had ; though 'tis said he may surrender, assign, alien, &c. 2 Cro. 52. 1 Inst. 147. A Bargainee shall have Rent which incurs after the *Bargain and Sale*, and before the Inrollment. Sid. 310. Upon the Inrollment of the Deed, the Estate settles *ab initio*, by the Stat. 27 H. 8. And the Statute of Inrollments says, that it shall not vest, except the Deed be inrolled ; and when it is inrolled, the Estate vests presently, by the Statute of Uses. 1 Danv. Abr. 696. Every Deed may be inrolled at Common Law, for its Security. If several seal a Deed of *Bargain and Sale*, and but one acknowledge it, and thereupon the Deed is inrolled ; this is a good Inrollment within the Statute. Style 462. None can make a *Bargain and Sale* of Lands that hath not the actual Possession thereof at the Time of the Sale ; if he hath not the actual Possession, the Deed must be sealed upon the Land, to make it good. 2 Inst. 672. 1 Lill. 209. *Bargain and Sale* of Lands, passes the Freehold, and likewise Reversions and Remainders, without Livery and Seisin. 8 Rep. 93. But a *Bargain and Sale* of Lands for Money, may not be made to one Man, to the Use of another, but only to the Bargainee. A Man *bargains and sells* his Land for Money by Deed inrolled to another, to hold to the Bargainee in Fee, to the Use of the Bargainor for Life, &c. or to the Use of any other, this Limitation of the Uses is void, and it shall be to the Use of the Bargainee in Fee, because the Consideration and Sale implies the Use to be to him only. Benl. Rep. 61. There must be a good Consideration given, or at least said to be given for Lands in these Deeds ; and for a competent Sum of Money, is a good Consideration ; but not the general Words for divers Considerations, &c. Mod. Ca. 777. Where Money is mentioned to be paid in a *Bargain and Sale*, and in Truth no Money is paid, some of our Books tell us this may be a good *Bargain and Sale* ; because no Averment will lie against that which is expressly affirmed by the Deed, except it comes to be questioned whether fraudulent or no, upon the Statute against fraudulent Deeds. Dyer 90. If no Consideration of Money is expressed in a Deed of *Bargain and Sale*, it may be supplied by an Averment that it was made for Money. And after a Verdict on a Trial, it shall be intended that Evidence was given at the Trial of Money paid. 1 Ventr. 108. If Lands are *bargained and sold* for Money only, the Deed is to be inrolled according to the Statute ; but if it be in Consideration of Money, and natural Affection, &c. the Estate will pass without it. 2 Inst. 672. 1 Lev. 56. All Things, for the most Part, that are grantable by Deed in any other Way, are grantable by *Bargain and Sale* ; and Lands, Rents, Advowsons, Tithes, &c. may be granted by it, in Fee-simple, Fee-tail, for Life, &c. 1 Rep. 176. 11 Rep. 25. But if Tenant for Life *bargains and sells* his Land by Deed inrolled, it will be a Forfeiture of his Estate. 4 Leon. 251. The very Words *Bargain and Sell* are not of absolute Necessity in this Deed ; for other Words equivalent will suffice, as if a Man seized of Land in Fee by the Words *Alien or Grant*, sell the same to another, the Deed being made in Consideration of Money, and indented and inrolled, will be an effectual *Bargain and Sale*. 9 Rep. 94. 7 Rep. 40. And the Words *Demise and Grant*, in Consideration of Money paid, amount to a *Bargain and Sale*. Warranty and Covenants may be in-

serted in a *Bargain and Sale* ; but the Deed is good without any such Addition. In pleading these Deeds, the Deed it self must be shewn under Seal. 1 Inst. 225. And it must be set forth that the Inrollment was within six Months, or *secundum formam Statuti*, &c.

Form of a Bargain and Sale of Lands.

THIS Indenture made the Day and Year, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That the said A. B. for and in Consideration of the Sum of, &c. to him in Hand paid by the said C. D. the Receipt whereof the said A. B. doth hereby acknowledge, He the said A. B. hath granted, bargained and sold, aliened and confirmed, and by these Presents doth grant, bargain and sell, alien and confirm unto the said C. D. his Heirs and Assigns for ever, All that Messuage or Tenement, situate, &c. and also all Lands, Trees, Woods, Underwoods, Tithes, Commons, Common of Pasture, Profits, Commodities, Advantages, Hereditaments, Ways, Waters, and Appurtenances whatsoever to the said Messuage or Tenement, Lands and Premises above-mentioned, belonging or any wise appertaining : And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises, and of every Part thereof ; And all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said A. B. of, in and to the said Messuage, Tenement and Premises, and every Part thereof ; To have and to hold the said Messuage or Tenement, and all and singular the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the said C. D. his Heirs and Assigns, to the only proper Use and behoof of the said C. D. his Heirs and Assigns for ever : And the said A. B. for him and his Heirs, the said Messuage or Tenement, and Premises, and every Part thereof against him and his Heirs, and against all and every other Person and Persons whatsoever, to the said C. D. his Heirs and Assigns, shall and will warrant, and for ever defend by these Presents. In Witness, &c.

The Manner of Inrolling a Bargain and Sale.

Memorandum, Quod die, &c. isto eodem Termino coram Domino Rege apud Westm. venit A. B. de, &c. in Com. Midd. Gen. in propria Persona sua & protulit hic in Cur. dicti Domini Regis nunc coram ipso Rege apud Westm. quandam Indenturam quam Coenovit esse Factum suum Et petiit quod Indentura illa in Curia Domini Regis nunc coram dicto Domino Rege apud Westm. de Recordo Irrotuletur Et Irrotuletur in hac qua sequitur forma. ff. This Indenture, &c. And so inrol it verbatim.

Afterwards is indorsed on the Back of the Deed,

Irrotulatur in Curia Domini Regis coram ipso Rege apud Westm. de Termino Sancte Trinitatis, &c. Anno Regni Dom. Georgii nunc Regis Magn. Britann. &c. 11 Rotulo. —

If acknowledged before a Judge, it is thus :

Cognit. die, &c. Anno 11 Georgii Regis coram me, &c.

There is a *Bargain and Sale* of Goods, for which vide Contract, &c.

Barkary,

Barkary, (*Barkaria, corticulus*) A Tan-house, or Place to keep Bark in for the Use of Tanners. *New Book Entr. Tit. Assise Corp. Polit. 2.*

Baron, (*Baro*) Is a French Word, and hath divers Significations here in England. First it is taken for a Degree of Nobility next to a Viscount. *Bracton lib. 1. cap. 8.* says, they are called *Barones, quasi robur Belli*. In which Signification it agrees with other Nations, where *Baronia* are as much as *Provincia*: So that *Barons* are such as have the Government of Provinces, as their Fee holden of the King, some having greater, and others less Authority within their Territories. It is probable, that of Old in this Kingdom, all those were called *Barons* that had such Seigniories or Lordships as we now call *Courts-Baron*; as they are at this Day called *Seigneurs* in France, who have any such Manor or Lordship: And soon after the Conquest, all such came to Parliament, and sat as Peers in the Lords House. But when by Experience it appeared that the Parliament was too much thronged by these *Barons*, who were very numerous, it was in the Reign of King *John* ordained that none but the *Barones Majores* should come to Parliament, who for their extraordinary Wisdom, Interest or Quality, should be summoned by Writ. After this, Men observing the Estate of Nobility to be but casual, and depending merely upon the King's Will, they obtained of the King Letters Patent of this Dignity to them and their Heirs Male, who were called *Barons by Letters Patent*, or by Creation, whose Posterity are now by Inheritance those *Barons* that are called Lords of the Parliament; of which Kind the King may create at his Pleasure. Nevertheless there are still *Barons* by Writ, as well as *Barons* by Letters Patent: And those *Barons* who were first by Writ, may now justly also be called *Barons by Prescription*, for that they and their Ancestors have continued *Barons* beyond the Memory of Man. The Calling up by Writ is at this Day seldom practised, unless it be to summon the Son of some Lord to Parliament, in the Life-time of his Ancestor; for Creation by Letters Patent is almost altogether in Use. 2 *Inst.* 48. The Original of *Barons* by Writ, *Camden* refers to King *Hen. 3.* and *Barons* by Letters Patent, or Creation, commenced 11 *Rich. 2. Camd. Britain. p. 109.* To these are added a third Kind of *Baron*, called *Barons by Tenure*, which are some of our antient *Barons*; and likewise the Bishops, who by Virtue of *Baronies* annexed to their Bishopricks, always had Place in the Lords House of Parliament, as *Barons* by Succession. *Seager of Honour, lib. 4. cap. 13.* There are also *Barons* by Office; as the *Barons of the Exchequer*, *Barons of the Cinque Ports*, &c. of which you may read under their proper Heads. In antient Records, the Word *Baron* included all the Nobility of England, because regularly all Noblemen were *Barons*, though they had a higher Dignity; and therefore the Charter of King *Ed. 1.* which is an Exposition of what relates to *Barons* in *Magna Charta*, concludes *Testibus Archiepiscopis, Episcopis, Baronibus, &c.* And the Great Council of the Nobility, when they consisted of besides Earls, and *Barons*, Dukes, Marquesses, &c. were all comprehended under the Name *De la Councell de Baronage. Glanv. cap. 4.* These *Barons* have given them two Ensigns to remind them of their Duties; first a long Robe of Scarlet, in Respect whereof they are accounted *De Magno Concilio Regis*; and secondly, they are girt

with a Sword, that they should ever be ready to defend their King and Country. 2 *Inst.* 5. A *Baron* is *Vir Notabilis & Principalis*: And the Chief Burgeesses of London were in former Times *Barons*, before there was a Lord Mayor, as appears by the City Seal, and their ancient Charters.

— *Henricus 3. Rex. Sciatis nos concessisse & hac presenti Charta nostra confirmasse Baronibus nostris de Civitate nostra London quod Eligant sibi Mayor de seipsis singulis annis, &c. Spelm. Gloss.* The Earl Palatines and Marches of England, had antiently their *Barons* under them; but no *Barons* but those as held immediately of the King, were Peers of the Realm. 'Tis certain the King's Tenants were called *Barons*; as we may find in *Mat. Paris.* and other Writers: And in Days of old, all Men were stiled *Barons*; but this, I take it, was only a Term in our Law, not a Title of Nobility.

Barony, (*Baronia*) Is that Honour and Territory which gives Title to a *Baron*: And under this Notion are comprehended not only the Fees and Lands of Temporal *Barons*, but of Bishops also who have two Estates; one as they are spiritual Persons, by Reason of their spiritual Revenues and Promotions; the other grew from the Bounty of our English Kings, whereby they have *Baronies* and Lands added to their spiritual Livings and Preferments. The *Baronies* belonging to Bishops are by some called *Regalia*, because *ex sola liberalitate Regum eis olim concessa & a Regibus in feudum tenentur*. Blount. *Barony*, *Bracton* says, (*lib. 2. cap. 34.*) is a Right indivisible; and therefore, if an Inheritance be to be divided among Coparceners, though some capital Messuages may be divided, yet *si capitale Messuagium sit caput Comitatus vel caput Baronie*, they may not be parcelled. In some Cases a *Barony* may be aliened, or entailed, and the Honour pass accordingly. In antient Times thirteen Knights-Fees and a Quarter made a Tenure *per Baroniam*, which amounted to 400 Marks *per Annum*.

Baronet, (*Baronetus*) Is a Dignity or Degree of Honour, which hath Precedency before all Knights, as Knights of the Bath, Knights-Bachelors, &c. except *Bannerets*, made *Sub vexillis Regis in exercitu Regali, in aperto Bello, & ipso Rege personaliter presente*. This Order of *Baronets* was instituted by King *James 1.* in the Year 1611. with such Precedency as aforesaid, and other Privileges, &c. Their Number at first was but two Hundred; but now they are without Limitation: They are created by Patent, with an *Habendum sibi & Hæredibus masculis, &c.* And their Dignity on its first Institution, was a Kind of purchased Honour, by Men of great Estates qualified for Titles.

Baron and feme, Are Husband and Wife, by our Law; and they are adjudged but one Person: *Bracton* saith, *Vir & Uxor sunt quasi unica persona, quia caro una & sanguis unus.* *Bract. lib. 5. fol. 416.* A Wife cannot be a Witness against or for her Husband, nor he against or for her, (except in Case of High Treason) because they are *due animæ in una Carne.* 1 *Nels. Abr.* 349. At Common Law a Man could neither in Possession, Reversion or Remainder, limit an Estate to his Wife; but by *Stat. 27 H. 8.* A Man may covenant with other Persons to stand seised to the Use of his Wife; or may make any other Conveyance to her Use; but he may not covenant with his Wife to stand seised to her Use, for

for they are one Person in Law. A Man may devise Lands by Will to his Wife, because the Devise doth not take Effect till after his Death. *Co. Lit.* 112. Agreements between *Baron and Feme* before Marriage, are by the Marriage generally extinguished: But if a Person, in Consideration of Marriage, promise to leave his Wife worth so much at his Death, this being no Duty in the Life-time of the Husband, is not extinguished by the Marriage. *Cro. Jac.* 571, 623. A Wife cannot devise Lands to her Husband: For a *Feme Covert* cannot make a Will, as she is so entirely under the Power of her Husband, that what she doth cannot be called her Will. *Nelf. Abr.* 347. A Wife is *sub Potestate viri*, and therefore her Acts shall not bind her, unless she levy a Fine, &c. when she is examined in Private whether she doth it freely or by Compulsion of the Husband: If *Baron and Feme* levy a Fine, this will bar the *Feme*: And where the *Feme* is examined by Writ, she shall be bound; else not. *1 Lant. Abr.* 708. Therefore where *Baron and Feme* acknowledge a Deed to be inrolled, or a Statute, &c. this will not bind the *Feme*, because she is not examined by Writ. A Wife is disabled to make Contradictions, &c. *3 Inst.* 110. And if a married Woman enters into Bond as *Feme sole*, if she is sued as *Feme sole*, she may plead *Non est factum*, and the Coverture will avoid her Bond. *1 Lill. Abr.* 217. By Marriage, the Husband hath Power over his Wife's Person; and he may correct his Wife. *Dalt.* 284. But if he threaten to kill her, &c. she may make him find Surety of the Peace. *F. N. B.* 80. He hath likewise Power over the Wife's Estate; and if she have Fee, he gaineth a Freehold in her Right; he also gaineth her Chattels Real, as Terms for Years, &c. and all Chattels Personal, in Possession of the Wife, are the Husband's: But where the Wife is out of Possession, or is possessed only as Executrix, or the Chattels are Debts and Things in Action, if they are not recovered by him and his Wife, the Husband shall not have them. *1 Inst.* 299, 351. Though Money charged on Lands, is not in Nature of a *Chose in Action*, but of Rent, and is given to the Husband by the Inter-marriage. *1 Chan. Rep.* 189. If Lands be given to a Man, and such a Woman who shall be his Wife, the Man shall have the Whole: But if a Feoffment be made to the Use of the Feoffee, and his Wife that shall be, the Wife he afterwards marries shall take jointly with him. *1 Rep.* 101. If *Baron and Feme* are Jointenants for Years, the *Baron* may dispose of the Whole: And if the *Baron* hath a Term in the Right of his *Feme*, he may grant over the Whole. *1 Danv.* 702. But he cannot dispose of it by Will, if he doth not survive her. *1 Inst.* 46, 184. And as the Husband surviving the Wife, shall enjoy her Term, against her Executors: So if the Wife survive her Husband, she shall have her Term for Years, or other Chattels Real again, if the Husband hath not alter'd the Property. *1 Inst.* 351. And if the Husband charges the Chattel Real of his Wife with a Rent, &c. if he survives him, it will not bind her; for she shall hold it discharg'd, as she comes in Paramount to the Charge. A Husband possessed of a Term in his Wife's Right, may make a Lease for Years of the Land, rendering Rent to his Executors or Assigns, to commence after his Death. *1 Nelf. Abr.* 344. But if a Lease be conveyed by a *Feme sole* in Trust for the Use of her self, if she afterwards marries,

it cannot be disposed of by the Husband: If she dies, he shall not have it, but the Executors of the Wife. *Mar. b.* 44. A Husband cannot alien the Wife's Lands, but by Fine wherein she joins; if he doth, she may recover them after his Death by *Cui in vita*. And by Statute, where a Husband makes Leases of his Wife's Lands, for twenty-one Years, &c. she is to be made a Party, and the Rent reserved to Husband and Wife, and the Heirs of the Wife, &c. This is of Leases of Lands of the Wife's Inheritance. *Stat.* 32 H. 8. cap. 28. If a *Feme* having a Rent for Life takes Husband, the *Baron* shall have Action of Debt for the Rent incurred during the Coverture, after the Death of the *Feme*. *1 Danv.* 719. And Arrears due in the Life-time of the Husband, after his Death, shall survive to the Wife, if she outlives him, and her Administrators after her Death. *2 Lutw.* 1151. A *Feme* Lessee for Life, rendering Rent, takes Husband and dies, the *Baron* shall be charged in Action of Debt, for the Rent which was grown due during the Coverture, because he took the Profits out of which the Rent ought to issue. *Keilw.* 125. *Raym.* 6. But if such a *Feme* Lessee takes *Baron* and dies, 'tis said the *Baron* shall not be charged for Waste during the Coverture; for he was never Lessee. *1 Danv.* 718. The *Baron* may have an Action alone upon the Stat. 5 R. 2. for Entering into the Land of the *Feme*; Trespass and taking Charters of the Inheritance of the *Feme*; *Quare Impedit*, &c. But for personal Torts, they must join, though the *Baron* is to have the Damages. *1 Danv.* 709. *1 Roll. Rep.* 360. The Husband is to join in Actions for Battery to the Wife: And a Wife may not bring any Action for Wrong to her, without her Husband; though when they join in Action, Damage is to be laid only to the Husband. *1 Inst.* 326, 132. For an Injury done to the Wife alone, Action cannot be maintained by the Husband alone, without her; but for a Loss and Injury done to the Husband, in depriving him of the Conversation and Service of his Wife, he alone may bring an Action; and these Actions are laid for Assault, and detaining the Wife, *Per quod Consortium amisit*, &c. *2 Cro.* 538. For taking any Thing from the Wife, the Husband only is to bring the Action, who has the Property; for the Wife hath not the Property. In all Cases where the *Feme* shall not have the Thing recovered but the Husband only, he alone is to bring the Action. *1 Roll. Rep.* 360. And where an Action will survive to the Wife, and she may recover Damages, she must join with the Husband in the Action. *2 Mod.* 269. For a Promise or personal Duty to the Wife, the *Baron* only may bring the Action: And the Husband is entitled to the Fruits of his Wife's Labour, for which he may bring *Quantum Meruit*. *1 Lill. Abr.* 227. *1 Salk.* 114. *Baron and Feme* ought to join in Actions for Debt due to the *Feme* before Coverture. By the Custom of London, a *Feme Covert* trading there, may sue and be sued as a *Feme sole Merchant*. *2 Inst.* 236. And where a Husband is an Alien Enemy, the Wife may be charged as a *Feme sole*. *1 Salk.* 116. A Man must answer for the Trespases of his Wife; and if a *Feme Covert* slander any Person, &c. the Husband and Wife must be sued for it; and Execution is to be awarded against him. *11 Rep.* 62. But a Wife for her own Crime, may be indicted without her Husband; and she may sue and be sued without her Husband, in the Spiritual Court.

9 Rep. 72. 2 Roll. Abr. 298. A *Feme sole* indebted takes Husband; it is then the Debt of the Husband and Wife, and both are to be sued for it; but the Husband is not liable after the Death of the Wife, unless there be a Judgment against both during the Coverture. 1 Roll. Abr. 351. Where there is Judgment against a *Feme sole*, who marries and dies, the Baron shall not be charged therewith. 3 Mod. 186. Though if the Judgment be had upon *Sive facias* against Baron and Feme, and then the Feme dies, he shall be charged. In Action brought against a *Feme sole*, if pending the Action she marries, this shall not abate the Action; but the Plaintiff may proceed to Judgment and Execution against her, according as the Action was commenced. 1 Lill. 217. Trin. 12 W. 3. B. R. And if a *Habeas Corpus* be brought to remove the Cause, the Plaintiff is to move for a *Procedendo* on the Return of the *Habeas Corpus*. And the Court of B. R. may refuse it, where brought to abate a just Action. 1 Salk. 8. But if a *Feme sole* gives a Warrant of Attorney to confess Judgment, and before entered she marries, it is a Countermand of the Warrant, and Judgment shall not be had against Husband and Wife, to charge him. 1 Salk. 399. When Baron and Feme are sued, the Husband must make an Attorney for himself and Wife. 2 Saurd. If a Wife be arrested, she shall be discharged on Common Bail, let the Cause of Action be what it will: But if Baron and Feme be arrested, the Husband shall not be discharged, unless he give Bail for his Wife as well as himself. Mod. Caf. 17. Both Husband and Wife may be taken in Execution. 1 Nelf. Abr. 365. The Baron in an Account shall not be charged by the Receipt of his Wife, except it came to his Use. 1 Danv. 707. For Goods sold to a Wife, to the Use of the Husband, the Husband shall be charged, and be obliged to pay for the same. S.d. 425. If a Woman buys Things for her necessary Apparel, tho' without the Consent of the Husband, yet her Husband shall be bound to pay for it. Brownl. 47. And if the Wife buys any Thing for her self, Children, or Family, and the Baron does any Act precedent or subsequent whereby he shews his Consent, he may be charged thereupon. 1 Sid. 120. The Husband is obliged to maintain his Wife in Necessaries: But they must be according to his Degree and Estate, to charge the Husband; and Necessaries may be suitable to a Husband's Degree of Quality, but not to his Estate; also they may be Necessaries, but not *ex Necessitate* to charge her Husband. 1 Mod. 129. 1 Nelf. Abr. 354. Though a Wife is very lewd, if she cohabits with her Husband, he is chargeable for all Necessaries for her, because he took her for better for worse; and so he is if he runs away from her, or turns her away: But if she goes away from her Husband, then as soon as such Separation is notorious, whoever gives her Credit doth it at his Peril, and the Husband is not liable, unless he take her again. 1 Salk. 119. Where there is a Separation by Consent, and the Wife hath a separate Allowance, those who trust her do it upon her own Credit, where 'tis notorious. Ibid. 116. If a Husband makes his Wife an Allowance for Clothes, &c. which is constantly paid her, 'tis said he shall not be charged. 1 Sid. 109. And if he forbids particular Persons not to trust her, he will not be chargeable to them: But a Prohibition in general, by putting her in the News-Papers, is no legal Notice not

to trust her. 1 Ventr. 42. Although a Wife may use the Goods of her Husband, yet she may not dispose of them: But if she takes them away, it is not Felony, for she cannot by our Law steal the Goods of the Husband; but if she delivers them to an Adulterer, and he receives them, it will be Felony in him. 3 Inst. 308, 310. If Baron and Feme are divorced *Causa Adulterii*, which is a Divorce *a Mensa & Thoro*, they continue Baron and Feme: But 'tis otherwise in Divorce *a Vinculo Matrimonii*, which dissolves the Marriage. A Man within the Age of Fourteen, (his Age of Consent to marry) takes a Woman to Wife, they are Baron and Feme, so that he may have *Trespass de muliere abducta cum bonis viri*, &c.

Bar, {Lat. *Barra*, Fr. *Barre* or *Barriere*) In a legal Sense is a Plea or peremptory Exception of a Defendant, sufficient to destroy the Plaintiff's Action. And it is divided into *Bar* to common Intendment, and *Bar* Special, *Bar* Temporary, and Perpetual: *Bar* to a common Intendment is an Ordinary or General *Bar*, which usually disableth the Declaration of the Plaintiff: *Bar* Special is that which is more than Ordinary, and falls out upon some special Circumstances of the Fact, as to the Case in Hand. *Terms de Ley* 77. *Bar* Temporary is such a *Bar* that is good for the Present, but may afterwards fail: And *Bar* Perpetual is that which overthrows the Action of the Plaintiff for ever. *Plowd.* 26. But a Plea in *Bar*, not giving a full Answer to all the Matter contained in the Plaintiff's Declaration, is not good. 1 Lill. Abr. 211. If one be *barred* by Plea to the Writ, or to the Action of the Writ, he may have the same Writ again, or his right Action: But if the Plea in *Bar* be to the Action it self, and the Plaintiff is *barred* by Judgment, &c. it is a *Bar* for ever in Personal Actions. 6 Rep. 7. And a Recovery in Debt is a good *Bar* to Action on the Case for the same Thing: Also a Recovery on *Assumpsit* in Case, is a good *Bar* in Debt, &c. *Cro. Jac.* 110. 4 Rep. 94. In all Actions Personal, as Debt, Account, &c. a *Bar* is perpetual, and in such Case the Party hath no Remedy, but by Writ of Error or Attaint; but if a Man is *barred* in a Real Action by Judgment, yet he may have an Action of as high a Nature, because it concerns his Inheritance; as for Instance, if he is *barred* in a Formedon in Descender, yet he may have a Formedon in the Remainder, &c. 6 Rep. 7. *Bar* to a common Intent is good: And if an Executor be sued for his Testator's Debt, and he pleadeth that he had no Goods left in his Hands, at the Day the Writ was taken out against him, this is a good *Bar* to a common Intendment, till it is shewn that there are Goods: But if the Plaintiff can shew by Way of Replication that more Goods have fallen into his Hands since that Time, then except the Defendant alledge a better *Bar*, he shall be condemned in the Action. *Plowd.* 26. *Kitch.* 215. *Bro. Tit. Barre.* There is a *Bar* Material, and *Bar* at Large: *Bar* Material may be also called *Special Bar*, as when one in Stay of the Plaintiff's Action, pleadeth some particular Matter, as a Descent from him that was Owner of the Land, &c. a Feoffment made by the Ancestor of the Plaintiff, or the like: A *Bar* at Large is, when the Defendant by Way of Exception, doth not traverse the Plaintiff's Title, by Pleading, nor confess, or avoid it, but only makes to himself a Title in his *Bar*. *Kitch.* 68. 5 H. 7. 29. This Word *Bar* is likewise used for

for the Place where Serjeants and Counsellors at Law stand to plead the Causes in Court; and Prisoners are brought to answer their Indictments, &c. whence our Lawyers, that are called to the Bar, are termed Barristers. 24 H. 8. cap. 24.

Barrister, or **Barrister**, (*Barristerius*) Is a Counsellor learned in the Law admitted to plead at the Bar, and there to take upon him the Protection and Defence of Clients. They are termed *Jurisconsulti*; and in other Countries called *Licenciati in Jure*: And anciently *Barristers* at Law were called *Apprentices* of the Law, in Lat. *Apprenticii Juris Nobiliores*. Fortesc. The Time before any ought to be called to the Bar, by the ancient Orders, was eight Years, now reduced to seven; and the Exercises done by them (if they were not called *Ex gratia*) was twelve Grand Moors, performed in the Inns of Chancery in the Time of the Grand Readings, and twenty-four Petty Moors in the Term-Times, before the Readers of the respective Inns: And a *Barrister* newly called is to attend the six next long Vacations the Exercise of the House, viz. in Lent and Summer, and is thereupon for those three Years stiled a Vacation *Barrister*. Also they are called *Utter-Barristers*, i. e. Pleaders *Ouster* the Bar, to distinguish them from Benchers, or those who have been Readers, who are sometimes admitted to plead within the Bar, as the King, Queen, or Prince's Counsel are. *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 doth lie for their Fees, unless it be upon special Retainer; for a Counsellor's Fee is *Honorarium quiddam*, not *Mercenarium*, as that of an Attorney or Solicitor. 2 Inst. 213, 214, &c. Wood's Inst. 448.

Barrator, or **Barretor**, (Lat. *Barrator*, Fr. *Barrateur*) Is a common Mover of Suits and Quarrels, either in Courts, or elsewhere in the Country, and is himself never quiet, but at Variance with one or other. *Lambert* derives the Word *Barretor* from the Lat. *Balatro*, a vile Knave; but the proper Derivation is from the Fr. *Barrateur*, i. e. a Deceiver, and this agrees with the Description of a common *Barretor* in my Lord's Coke's Reports, viz. That he is a common Mover and Maintainer of Suits in Disturbance of the Peace, and in taking and detaining the Possession of Houses and Lands, or Goods by false Inventions, &c. And therefore it was adjudged, that the Indictment against him ought to be in these Words, viz. That he is *Communis Malefactor, calumniator & seminator litium & discordiarum inter vicinos suos, & pacis Regis perturbator*, &c. And there it is said that a common *Barretor* is the most dangerous Oppressor in the Law; for he oppresseth the Innocent by Colour of Law, which was made to protect them from Oppression. 8 Rep. 37. No one can be a *Barrator* in Respect of one Act only; for every Indictment for such Crime must charge the Defendant with being *Communis Barrator*, and conclude *Contra Pacem*, &c. And it hath been holden, that a Man shall not be adjudged a *Barrator* for bringing any Number of Suits in his own Right, tho' they are vexatious; especially if there be any Colour for them: For if they prove false, he shall pay the Defendant Costs. 1 Roll. Abr. 355. 3 Mod. 98. A *Barrister* at Law entertaining a Person in his House, and bringing several Actions in

his Name, where nothing was due, was found guilty of *Barretry*. 3 Mod. 97. An Attorney is in no Danger of being convicted of *Barretry*, in Respect of his maintaining another in a groundless Action, to the Commencing whereof he was no way Privy. *Ibid.* A common Solicitor who solicits Suits, is a common *Barrator*, and may be indicted thereof, because it is no Profession in Law. 1 Danv. Abr. 725. *Barretors* are punished by Fine and Imprisonment, bound to the good Behaviour, &c. And belonging to the Profession of the Law, they ought to be further punished by Disability to practice. 34 Ed. 3. c. 1. Hawk. P. C. 244.

Barrel, (*Barillum*) Is a Measure of Wine, Ale, Oil, &c. Of Wine it contains the eighth Part of a Tun, the fourth Part of a Pipe, and the Moiety of a Hogshead, that is thirty-one Gallons and a Half. 1 R. 3. c. 13. Of Beer, it contains thirty-six Gallons; and of Ale, thirty-two Gallons. Anno 23 H. 8. c. 4. and 12 Car. 2. c. 23. It is declared that the *Assise* of Herring-Barrels is thirty-two Gallons Wine Measure, which is about twenty-eight Gallons of old Standard, well packed, and containing in every *Barrel* usually a Thousand full Herrings. Anno 13 El. c. 11. The *Eel Barrel* contains thirty Gallons. 2 H. 6. c. 13.

Barriers, (Fr. *Barrieres*) Signifies that which the French call *Feu de Barres*, i. e. *Palæstra*, a Martial Exercise of Men, armed and fighting together with short Swords within certain Bars or Rails, which separated them from the Spectators: It is now disused here in England. There are likewise *Barrier Towns*, or Places of Defence on the Frontiers of Kingdoms.

Barter, (from the Fr. *Barator*, *Circumvenire*) Signifieth in our Books to exchange one Commodity for another, or truck Wares for Wares. Anno 1 R. 3. c. 9. And the Reason may be, because they that exchange in this Manner, do endeavour for the most Part one to over-reach and circumvent the other.

Barton, Is a Word used in *Devonshire*, for the Demesne Lands of a Manor; sometimes for the Manor-House it self; and in some Places for Outhouses, and Fold-Yards. In the Stat. 2 & 3 Ed. 6. c. 12. *Barton* Lands, and Demesne Lands, are used as *Synonyma*'s. See *Berton*.

Bas Chevaliers, Low or inferior Knights by Tenure of a bare Military Fee, as distinguished from *Bancrets* the Chief or Superior Knights: Hence we call our simple Knights, viz. *Knights-Bachelors*, *Bas Chevaliers*. In France they call the Suburbs the *Bas ville*, or the inferior Town. *Kennet's Gloss.* to *Paroch. Antiq.*

Base Court, (Fr. *Cour Basse*) Is any inferior Court, that is not of Record, as the Court-Baron, &c. *Kitch. fol.* 95, 96.

Base Estate, (Fr. *Bas Estat*) Is that Estate which *Base Tenants* have in their Lands. And *Base Tenants*, according to *Lambert*, are those who perform villanous Services to their Lords, *Kitch. fol.* 41. makes *Base Tenure* and *Frank Tenure* to be Contraries, and puts Copyholders in the Number of *Base Tenants*; where it may be gathered that every *Base Tenant* holds at the Will of the Lord: But there is a Difference between a *Base Estate* and Villenage; for to hold in pure Villenage is to do all that the Lord will command him; and if a Copyholder have but a *Base Estate*, he not holding by the Performance of every Commandment of his Lord, cannot be said to hold in Villenage: And Copyholders are

by the Customs of Mancrs, and Continuance of Time, grown out of that extream Servitude wherein they were at first created.

Base Fee, Is a Tenure in Fee at the Will of the Lord, distinguished from Socage free Tenure. *Bassa Tenura*, or *Base Tenure*, is a holding by Villenage, or other customary Service, opposed to *Alta Tenura*, the higher Tenure in *Capite*, or by Military Service, &c. — *Manerium de Cheping Farendon cum pertinentiis est de antiquo Dominico corone Domini Regis, unde omnia prædicta tenementa sunt parcella, & de Bassa Tenura ejusdem manerii.* Conſuetud. Domus de Farendon, M. S. 44.

Basels (*Baseli*) A Kind of Coin abolished by King Hen. 2. Anno 1158. Holinshed's Chron. p. 67.

Baselard, or **Basillard**, In the Stat. 12 Ri. 2. c. 6. Signifies a Weapon, which Mr. Speight in his Exposition upon Chaucer, calls *Pugionem vel fcam*, a Poniard; *Arrepto Basillardo transfixit, &c. Cum alio Basillardo penetravit latera ejus, &c.* Knighton, lib. 5. pag. 2731.

Basileus, A Word mentioned in several of our Historians signifying King, and seems peculiar to the Kings of England. *Monasticon*, Tom. 1. pag. 65. *Ego Edgar totius Angliæ Basileus Confirmavi.* — In many Places of the *Monasticon* this Word occurs; and also in *Ingulphus*, *Malmesbury*, *Mat. Paris*, *Hovenden*, &c.

Basnetum, A *Basnet*, or Helmet. By Inqu. 22 Ed. 3. After the Death of Laurence de Hastings Earl of Pembroke it was found thus — *Quod quidam Manerium, (i. e. de Aston Cantlore) per se tenetur de Domino Rege in Capite, per servitium interveniendi unum Hominem peditem, cum Arcu sine chorda, cum uno Basneto, sive Cappa, per xl. dies sumptibus suis propriis, quotiens fuerit guerra in Wallia.*

Basinet, A Skin with which the Soldiers covered themselves. Blount.

Bastard, (*Bastardus*) From the Brit. *Bastaerd*, i. e. *Nothus* or *Spurius*, is one that is born of any Woman not married, so that his Father is not known by the Order of Law, and therefore is called *Filius Populi*, the Child of the People.

Cui Pater est Populus, pater est sibi nullus & omnis: Cui Pater est Populus, non habet ipse Patrem.

The learned *Spelman* very rationally derives the opprobrious Name of *Bastard* from the Norman *Bas*, and Saxon *Steort*, Rife or Original; as a Person of a base and vile Birth: Such *Bastards* cannot inherit Land as Heir to his Father; nor can any Person inherit Land as Heir to him, but one that is Heir of his Body. *Litt. Sect. 401.* *Bastard* is *Terminus a quo*, he is the first of his Family; for he hath no Relation of which the Law takes any Notice; but this must be understood as to Civil Purposes, there being a Relation as to Moral Purposes, and therefore he cannot marry his own Mother, or *Bastard* Sister. 3 *Salk.* 66, 67. If a Woman be with Child by a Man, who afterwards marries her, and then the Child is born, this Child is no *Bastard*: But if a Man hath Issue by a Woman before Marriage, and after they marry, the Issue is a *Bastard* by our Law; but Legitimate by the Civil Law. 2 *Inst.* 96, 97. If a Man marries a Woman grossly big with Child by another, and within three Days after she is delivered, in our Law the Issue is no *Bastard*; but it is a *Bastard* by the Spiritual Law. 1 *Danv. Abr.* 729. And where a Child is 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 not a *Bastard*, but supposed to be the Child of the Husband. 1 *Roll. Abr.* 358. But if the Husband be but eight or nine Years of Age, or if he be within the Age of fourteen, the Issue is a *Bastard*: So where a Husband is Gelt, or hath lost his Genitals, &c. which shews an Impossibility to get a Child, the Issue of his Wife though born within Marriage, is a *Bastard*. 1 *Inst.* 244. 1 *Danv.* 278. But by the Law of the Land, a Person cannot be a *Bastard* who is born after Espousals, unless it be by special Matter. If a Woman elope from her Husband, so as he be within the four Seas, her Issue shall not be a *Bastard* by our Law, though by the Spiritual Law he shall: And if the Wife continues in Adultery, and hath Issue, this is a *Bastard* in our Law. 1 *Danv.* 730. By the Common Law, if the Husband be *infra quatuor maria*, so that by Intendment he may converse with his Wife, and the Wife hath Issue, the Child will not be a *Bastard*: But he is a *Bastard* who is born of a Woman when her Husband, at and from the Time of the Begetting to the Birth, is *extra quatuor maria*. 1 *Inst.* 244. 2 *Salk.* 483. If a Woman hath Issue, the Husband being over Sea so long before the Birth of the Issue, which his Wife hath in his Absence, that the Issue cannot be his, this is a *Bastard*. 1 *Danv.* 729. If the Husband be only over in Ireland, it is otherwise. A Divorce *causa Pracontractus, causa Affinitatis, causa Frigiditatis, &c.* bastardizes the Issue; not for Cause subsequent to the Marriage: But if the Man and Woman continue Husband and Wife for all their Lives, the Issue cannot be a *Bastard* by Divorce after their Death. 1 *Danv.* Where a Woman on Divorce a *Mensa & Thoro*, lives in Adultery with another, her Children by such other are *Bastards*; for Children born in Adultery, are born out of the Limits of Matrimony. Though if Husband and Wife consent to live separate, the Children born after such Separation shall be taken to be Legitimate, because the Access of the Husband shall be presumed; but if it be found there was no Access, then they are *Bastards*. 1 *Salk.* 122. If a Woman hath a Child forty Weeks and eight Days after the Death of her Husband it shall be Legitimate; the Law having appointed no exact certain Time for Birth of Legitimate Issues. 1 *Danv.* 726. 1 *Lill. Abr.* 236. If a Man or Woman marry a second Wife or Husband, the first being living, and have Issue by such second Wife or Husband, the Issue is a *Bastard*. 39 *Ed.* 3. cap. 14. &c. Before the Statute 2 & 3 *Ed.* 6. cap. 21. One was adjudged a *Bastard*, *Quia filius sacerdotis*. He that gets a *Bastard* in the Hundred of Middleton, in the County of Kent, forfeits all his Goods and Chattels to the King. *M. S. de temp. Ed.* 3. By Statute, the two next Justices of Peace (one being of the *Quorum*) are to make Orders for punishing the Mother and Father of a *Bastard* Child, and for Relief of the Parish where born: And by Order of the Justices, the Church-wardens and Overseers of the Poor may seize Goods, &c. of the Father and Mother to discharge the Parish: Also Justices of the Peace have Power to send lewd Women having *Bastards* to the House of Correction, for one Year, &c. But Persons able to keep them, are not within the Statute. It is adjudged Murder to conceal the Death of a *Bastard* Child when born, unless there be Proof to the contrary, that it was still-born. 18 *Eliz.* cap. 3. 13 & 14 *Car.* 2, 7. and 21 *Jac.* 1. If any one conspire

to charge another to be the Father of a *Bastard* Child, he may be indicted and punished, with publick Whipping, &c. It is only in the Power of the King and Parliament to make a *Bastard* Legitimate. *Dav. Rep.* 37.

Bastardy, (*Bastardia*) Signifies a Defect of Birth, objected to one born out of Wedlock. The Stat. 9 H. 6. cap. 11. And *Kitch. fol.* 64. mention *Bastardy* General and Special; the Difference whereof is, that *Bastardy* General is a Certificate from the Bishop of the Diocese to the King's Justices, after Inquiry made, that the Party enquired of is a *Bastard*, or not a *Bastard*, upon some Question of Inheritance: *Bastardy* Special is a Suit commenced in the King's Court, against him that calls another *Bastard*, so termed, because *Bastardy* is the Principal Case in Trial, and no Inheritance contended for. And by this it appears that in both these Significations, *Bastardy* is an Examination or Trial, whether a Man's Birth be defective or legitimate. *Bastardy* is of Ecclesiastical Jurisdiction; but it must be intended General *Bastardy*, as whether he that is charged with *Bastardy* were born in lawful Matrimony, and his Father and Mother were ever joined in lawful Marriage, which is triable by the Bishop's Certificate: Special *Bastardy*, as whether the Defendant was born before Marriage, &c. where the Matrimony is confessed; and where an Action is brought for calling a Man *Bastard*, &c. is triable in the Temporal Courts, by the Country. 1 *Inst.* 134. 1 *Nels. Abr.* 367. *Hob.* 117. The Question of *Bastardy* ought to be first moved in the Temporal Courts; and after Issue joined thereupon, the same is transmitted by Writ to the Ecclesiastical Court, to be examined and certified. *Dav. Rep.* 52. But the Judges shall not award a Writ to the Ordinary to certify whether a Person be *Bastard* or not, till Proclamation is issued for all Persons having Interest therein to make their Objections before the Ordinary against the Party; and any Certificate of the Ordinary concerning *Bastardy* without such Proclamation shall be void. Stat. 9. H. 6. A Certificate by the Bishop duly made, the Law gives entire Credit to: And if a Man be certified a *Bastard* by the Ordinary, he shall be perpetually bound, because it is the highest Trial thereof. Doctor and Student 68. But if a Person be certified to be a *Bastard*, this doth not bind before Judgment in the Action between him and the other Party; neither doth it bind if the Plaintiff be after nonsuited. 18 E. 3. 34. 1 *Danv. Abr.* 733. A *Bastard* is a good Name of Purchase; for *Bastards* having gotten Names by Reputation, may purchase by such Names to them and their Heirs: And a Limitation to them when *in esse*, and known, is good; but not before they are born. Likewise a Remainder may be made to such by the Name of Son of the reputed Father; though not by the Name of Issue, which must be lawful, nor may a Use be raised to such a reputed Son; but a Man may devise all his Estate by Will to a *Bastard*, by his reputed Name. 1 *Inst.* 3. 6 *Rep.* 65. *Dyer* 374.

Baston, (*Fr.*) A Staff, or Club; and by our Statutes it signifies one of the Warden of the Fleet's Servants or Officers, who attends the King's Courts with a red Staff for taking such into Custody who are committed by the Court. 1 R. 2. c. 12. 5 *Eliz. c.* 23. See *Tipstaff*.

Basus, *Per Basum tolnetum capere*, To take Toll by Strike, and not by Heap; *per basum*,

being opposed to *in cumulo vel cantello*——*Tolnetus ad molendinum fit secundum consuetudinem regni; mensura per quas tolnetus capi debet sint concordantes mensuris Domini Regis, & capiatur tolnetus per Basum, & nichil in cumulo vel cantello*——*Consuetud. Domus de Farendon M. S. f.* 42.

Batable Ground, Is taken for the Land that lay between England and Scotland, heretofore in Question, when they were distinct Kingdoms, to which it belonged. Anno 23 H. 8. c. 6. and 32 H. 8. c. 6. It seems to mean as if we should say, litigious or *Debatable Ground*, i. e. Land about which there is Debate; and by that Name *Skene* calls Ground that is in Debate or Controversy. *Camb. Britan. Tit. Cumberland.*

Battoria, A Felling Mill. 'Tis mentioned in the *Monasticon*, Tom. 2. pag. 832. *Usque ad stagnum Molendini ipsius Willielmi cum Batitoria & agardino suo ubique, &c.*

Battel (*Fr. Bataille*) Signifies a Trial by Combat, which was anciently allowed of in our Laws, where the Defendant in Appeal of Murder or Felony may fight with the Appellant, and make Proof thereby whether he be culpable or innocent of the Crime. *Glaro. lib.* 14. c. 1. When an Appellee of Felony wages *Battel*, he pleads that he is *Not guilty*, and that he is ready to defend the same by his Body, and then flings down his Glove; and if the Appellant will join *Battel*, he replies, That he is ready to make good his Appeal by his Body upon the Body of the Appellee, and takes up the Glove: And then the Appellee lays his right Hand on the Book, and with his left Hand takes the Appellant by the Right, and swears thus: *Hear this thou who callest thy self John by the Name of Baptism, that I who call my self Thomas by the Name of Baptism, did not feloniously Murder thy Father W. by Name on the Day and Year of, &c. at B. as you surmise, nor am any Way guilty of the said Felony; so help me God.* And then he shall kiss the Book, and say; *And this I will defend against thee by my Body, as this Court shall award.* Then the Appellant lays his right Hand on the Book, and with his left Hand takes the Appellee by the Right, and swears to this Effect: *Hear this thou who callest thy self Thomas by the Name of Baptism, that thou didst feloniously on the Day, and in the Year, &c. at B. Murder my Father W. by Name; so help me God.* And then he shall kiss the Book, and say; *And this I will prove against thee by my Body, as this Court shall award.* This being done, the Court shall appoint a Day and Place for the *Battel*, and in the mean while the Appellee shall be kept in Custody of the Marshal, and the Appellant find Sureties to be ready to fight at the Time and Place, unless he be an Approver, in which Case he shall also be kept by the Marshal: And the Night before the Day of *Battel*, both Parties shall be arraigned by the Marshal, and shall be brought into the Field before the Justices of the Court wherethe Appeal is depending, at the Rising of the Sun, bare headed, and bare legged from the Knees downwards, and bare in the Arms to the Elbows, armed only with Bastons an Ell long, and four cornered Targets, and before they engage, they shall both make Oath, *That they have neither eat nor drunk, nor done any Thing else by which the Law of God may be depressed, and the Law of the Devil exalted:* And then after Proclamation for Silence under Pain of Imprisonment, they shall begin the Combat, wherein if the Appellee be so far vanquished that he cannot or will not fight

fight any longer, he may be adjudged to be hanged immediately; but if he can maintain the Fight till the Stars appear, he shall have Judgment to be quit of the Appeal: And if the Appellant become a crying Coward, the Appellee shall recover his Damages, and may plead his Acquittal in Bar of a subsequent Indictment or Appeal; and the Appellant shall for his Perjury lose his *Liberam legem*. If an Appellant become blind by the A& of God after he has waged *Battel*, the Court will discharge him of the *Battel*; and in such Case it is said that the Appellee shall go free. This Trial by *Battel* is at the Defendant's Choice; but if the Plaintiff be under an apparent Disability of fighting, as under Age, maimed, &c. he may counterplead the Wager of *Battel*, and compel the Defendant to put himself upon his Country: Also any Plaintiff may counterplead a Wager of *Battel*, by alledging such Matters against the Defendant as induce a violent Presumption of Guilt; as in Appeal of Death, that he was found lying upon the deceased with a bloody Knife in his Hand, &c. for here the Law will not oblige the Plaintiff to make good his Accusation in so extraordinary a Manner, when in all Appearance he may prove it in the ordinary Way. It is a good Counterplea of *Battel* that the Defendant hath been indicted for the same Fact; when if Appeal be brought, the Defendant shall not wage *Battel*. And if a Peer of the Realm bring an Appeal, the Defendant shall not be admitted to wage *Battel*, by Reason of the Dignity of the Appellant. 2 *Hawk. P. C.* 426, 427. This Trial by *Battel* is before the Constable and Marshal; but with all its Ceremonies is now disused. See *Glanv. lib. 14. Bracton lib. 3. Britton cap. 22. Smith de Rep. Angl. lib. 2. Co. Lit. 294, &c. Vide Combat*.

Battery, (from the Fr. *Batre* to strike, or Sax. *Batte*, a Club) Is any Injury done to another in a violent Manner; as by striking or beating of a Man, pushing, jolting, filliping upon the Nose, &c. The Civilians call it *Injuriam Personalem*, &c. And it is also defined by our Law to be a Trespass committed by one Man upon another *Vi & Armis, & contra Pacem*, &c. This Offence is punishable by Action and Indictment; on Action for the Injury at the Suit of the Party, the Offender shall render Damages, &c. And on Indictment at the Suit of the King, for a Breach of the Peace, he shall be fined according to the Heinousness of the Offence. *Dalt. 282. 1 Hawk. P. C. 134*. For here the Person offending is subject to a twofold Punishment, *viz.* a Fine to the King, and Damages to the Party; though it is usual only to bring an Action for Damages, which in *Battery* and Maihem the Court may increase upon View of the Record and the Person. 2 *Roll. Abr. 572*. But a Man may beat another who first assaults him, in his own Defence, and justify in an Action by Special Pleading, or that the *Battery* was occasioned by his own Assault; or the Defendant may give that in Evidence upon *Not guilty* to an Indictment: And the Record of the Conviction of the Offender by Indictment, may serve afterwards for Evidence in Action of Trespas for the same Assault and *Battery*. *Terms de Ley 81, 82. 2 Roll. Abr. 546*. A Man may lawfully beat a Person, to defend his Goods or Possession; but if in this Case he kills him, it will be Felony. 2 *Inst. 316*. And in other Cases the Beating of another, in a moderate Manner, is justifiable; as the Parent of his Child, a

Master his Servant, or Apprentice, &c. See *Assault*.

Batus, (*Lat.* from the Sax. *Bat*, and the old Brit. *Bad*) a Boat, and *Batellus* A little Boat—*Concessit etiam eidem Hugo Wake pro se & Hared. suis, quod predictus Abbas & successores sui & Ecclesia sua de Croyland habeant tres Batellos in Har-nolt, &c. Chart. Ed. 1. 20 Julii 18 Regni*. Hence we have an old Word *Batswain*, for such as we now call *Boatswain* of a Ship.

Baubella, (*Baubles*) A Word mention'd in *Hovedon*, in R. 1. and signifies Jewels or precious Stones. — *Tres partes Theauri sui & omnia Baubella sua divisit*.

Baudekin, (*Baldicum*, and *Baldeckinum*) Cloth of *Bandeikin*, or Gold; or Tissue upon which Figures in Silk, &c. were imbroidered. *Anno 4 H. 8. 6. Erat pannus auro rigidus, plumatoque opere intextus*: But some Writers account it only Cloth of Silk.

Bawdy-House, (*Lupanar, Fornix*) A House of ill Fame, kept for the Resort and Commerce of lewd People of both Sexes. The Keeping of a *Bawdy-House* comes under the Cognizance of the Temporal Law, as a Common Nuisance, not only in Respect of its endangering the Publick Peace, by drawing together dissolute and debauched Persons, and promoting Quarrels, but also in Respect of its Tendency to corrupt the Manners of the People, by an open Profession of Lewdness. 3 *Inst. 205. 1 Hawk. P. C. 196*. Those who keep *Bawdy-Houses* are punishable with Fine and Imprisonment; and also such infamous Punishment, as Pillory, &c. as the Court in Discretion shall inflict: A Lodger who keeps only a single Room for the Use of *Bawdry*, is indictable for keeping a *Bawdy-House*. 1 *Salk. 382*. Persons resorting to a *Bawdy-House*, are punishable, and they may be bound to the good Behaviour, &c. But if one be indicted for keeping or frequenting a *Bawdy-House*, it must be expressly alledged to be such a *House*, and that the Party knew it; and not by Suspicion only. *Poph. 208*. A Constable upon Information, that a Man and Woman are gone to a lewd *House*, or about to commit Fornication or Adultery, may if he finds them together, carry them before a Justice of Peace without any Warrant, and the Justice may bind them over to the Sessions. *Dalt. 214*. Constables in these Cases may call others to their Assistance, enter *Bawdy-Houses*, and arrest the Offenders for a Breach of the Peace: In *London* they may carry them to Prison; and by the Custom of the City, Whores and *Bawds* may be carted. 3 *Inst. 206*. It was always held infamous to keep a *Bawdy-House*; yet some of our Historians mention *Bawdy-Houses*, publickly allowed here in former Times till the Reign of *H. 8.* and assign the Number to be 18 thus allowed on the Bankside in *Southwark*. *Mod. Just. 227*. See *Stews and Brothel-Houses*.

Form of an Indictment for keeping a *Bawdy-House*.

J U R. &c. quod A. B. de, &c. die & anno, &c. & diversis temporibus antea & postea apud, &c. tenent & custodiunt, occupant, & frequentant in Domibus suis ibid. communia Hospitia Lupan. luxur. & fornication. & permittunt homines & alias personas suspectas, & non boni gestus nec fame, cum metreticibus carnaliter incubare, ad magnum nocumentum totius Populi Domini Regis, ibidem prope commorantium, & in malum Exemplum omnium aliorum in tali casu delinquent. ac contra pacem, &c. Bay,

Bay, or *Pen*, Is a Pond-Head made up of a great Height, to keep in Water for the Supply of a Mill, &c. so that the Wheel of the Mill may be driven by the Water coming thence through a Passage or Floodgate. A Harbour where Ships ride at Sea near some Port, is also called a Bay: And this Word is mentioned anno 27 Eliz. c. 19. Buchanan in his History of Scotland, writes it *Bei*, and expounds it by *Sinus Maris*.

Beacon, (from the Sax. *Beacer*, i. e. *signum*) A Signal well known; being a Fire maintained on some Eminence near the Coasts of the Sea, to prevent Invasions, &c. 4 Inst. 148. 8 Eliz. c. 13. Hence *Beaconage* (*Beaconagium*) Money paid towards the Maintenance of *Beacons*; and we still use the Word *Beckon* to give Notice unto. See Stat. 5 H. 4. &c.

Bead, or *Bede* (Sax. *Bead*, *Oratio*) A Prayer; so that to say over *Beads*, is to say over one's Prayers. They were most in Use before Printing, when poor Persons could not go to the Charge of a Manuscript Book: Though they are still used in many Parts of the World, where the Roman Catholick Religion prevails. They are not allowed to be brought into England, or any superstitious Things, to be used here, under the Penalty of a *Præmunire*, by Statute 13 El. c. 2.

Beam, Is that Part of the Head of a Stag where the Horns grow, from the Sax. *Beam*, i. e. *Arbor*; because they grown out of the Head as Branches out of a Tree. *Beam* is likewise used for a common Balance of Weights in Cities and Towns.

Bearers, Signifies such as bear down or oppress others, and is said to be all one with Maintainers — Justices of Assize shall inquire of, hear and determine Maintainers, Bearers, and Conspirators, &c. Stat. 4 Ed. 3. c. 11.

Beasts of Chase (*Ferae Campestres*) Are five, viz. The Buck, Doe, Fox, Marten and Roe. *Manu. part 1. pag. 342.* *Beasts of the Forests*, (*Ferae Silvestres*) otherwise called *Beasts of Venery*, are the Hart, Hind, Boar and Wolf. *Ibid. par. 2. cap. 4.* *Beasts and Fowls of the Warren* are the Hare, Coney, Pheasant, and Partridge. *Ibid. Reg. Orig. 95, 86. &c. Co. Litt. 233.*

Beau-pleader, (*Pulchre Placitando*, Fr. *Beauplaider*, i. e. to plead fairly) Is a Writ upon the Statute of *Marlbridge*, 52 Hen. 3. cap. 11. whereby it is enacted, That neither in the Circuit of Justices, nor in Counties, Hundreds, or Courts-Baron, any Fines shall be taken for Fair Pleading, viz. for not Pleading fairly or aptly to the Purpose; upon which Statute, this Writ was ordained, directed to the Sheriff, Bailiff, or him who shall demand such Fine, and it is a Prohibition not to do it; whereupon an *Alias*, and *Pluries*, and *Attachment* may be had, &c. but then the Party ought to be distrained for the Fine; for if the Sheriff or other Officer demand such Fine, and do not distrain for the same; then he cannot have a Writ of Attachment for such Demand made, because he is not damnified by the Demand. *New Nat. Br. 596, 597.* *Beau-pleader* is as well in Respect of vicious Pleading, as of the fair Pleading, by way of Amendment. 2 Inst. 122.

Bedel, (*Be.ellus* Sax. *Bydel*) A Cryer or Messenger of a Court, that cites Men to appear and answer: And it is an inferior Officer of a Parish or Liberty, very well known in London, and the Suburbs. There are likewise University *Bedles*, and Church *Bedels*; now called Summoners and

Apparators: And *Manwood* in his *Forest Law*, saith there are Forest *Beadles*, that make all manner of Garnishments for the Courts of the Forest, and all Proclamations, and also execute the Process of the Forest, like unto Bailiffs Errant of a Sheriff in his County. — *Edgarus interdicit omnibus Ministris, id est, vicomitibus, Bedellis & Balivis, &c. Ne introeant fines & limites disti Marisci.* Ingulph. Hist. Croyl.

Bedelary, (*Bedelaria*) Is the same to a *Bedel*, as *Bailiwick* to a *Bailiff*. *Lit. lib. 3. c. 5.* — *Will. filius Adæ tenet Bedelariam Hundredi de Macclesfield, &c.* Ex Rot. Antiq.

Bederepe, alias *Bidrepe* (Sax.) Is a Service which some Tenants were anciently bound to perform, viz. To reap their Landlord's Corn at Harvest, as some yet are tied to give them one, two, or three Days Work, when commanded. This customary Service of inferior Tenants, was called in the Latin *Præcaria*, *Bedrepium*, &c. — *Debent venire in Autumno ad Præariam quæ vocatur a le Bederepe. Plac. in Craft. Pur. 10 H. 3. Rot. 8. Surrey.* See *Magna Præcaria*.

Bedeweri, Those which we now call *Banditi*, profligate and excommunicated Persons. The Word is mentioned in *Mat. Paris. ann. 1258.*

Beggars, Pretending to be blind, lame, &c. found begging in the Streets, are to be removed by the Constables, and refusing to be removed, shall be whipped, &c. Stat. 12 Ann. See *Rogue*.

Welgæ, The Inhabitants of *Somersetshire*, *Wiltshire*, and *Hampshire*. *Blount.*

Benefice, (*Beneficium*) Is generally taken for any Ecclesiastical Living or Promotion; and *Benefices* are divided into elective and donative: So also it is used in the Canon Law. 3 Inst. 155. *Duarenus de Beneficiis, lib. 2. cap. 3.* All Church Preferments, Dignities, &c. are *Benefices*; but they must be given for Life, not for Years, or at Will. *Deaneries*, *Prebendaries*, &c. are *Benefices* with Cure of Souls, though not comprehended as such within the Statute 21 H. 8. cap. 13. of Residency: But according to a more strict and proper Acceptation, *Benefices* are only Rectories, and Vicarages. *Beneficia* were formerly Portions of Land, &c. given by Lords to their Followers, for their Maintenance; but afterwards as these Tenures became Perpetual and Hereditary, they left their Name of *Beneficia* to the Livings of the Clergy, and retained to themselves the Names of *Feuds*: And *Beneficium* was an Estate in Land at first granted for Life only, so called, because it was held *ex mero Beneficio* of the Donor; and the Tenants were bound to swear Fealty to the Lord, and to serve him in the Wars, those Estates being commonly given to Military Men: But at Length by the Consent of the Donor, or his Heirs, they were continued for the Lives of the Sons of the Possessors, and by Degrees past into an Inheritance; and sometimes such *Benefices* were given to Bishops, and Abbots, subject to the like Services, viz. to provide Men to serve in the Wars; and when they as well as the Laity had obtained a Property of these Lands, they were called *Regalia* when given by the King; and on the Death of a Bishop, &c. returned to the King till another was chosen. *Selm. of Feuds, cap. 2. Blount. Verb. Beneficium.* Lands were anciently held in *Beneficio*; and then granted in *Alodium perpetuo jure*, &c.

Beneficio primo Ecclesiastico habendo, A Writ directed from the King to the Chancellor, to bestow the *Benefice* that shall first fall in the King's Gift.

Gift, above or under such a Value, upon such a particular Person. *Reg. Orig.* 307.

Benerch, An ancient Service which the Tenant rendered to his Lord with his Plough and Cart. *Lamb. Itin.* p. 222. *Co. Lit.* 86.

Benevolence, (*Benevolentia*) Is used in the Chronicles and Statutes of this Realm for a voluntary Gratuity, given by the Subjects to the King. *Stow's Annals* pag. 701. And *Stow* saith, that it grew from *Edward the Fourth's* Days: You may find it also *Anno 11 Hen. 7. cap. 10.* yielded to that Prince in regard of his great Expences in Wars, and otherwise. *12 Rep.* 119. And by Act of Parliament *13 Car. 2. cap. 4.* it was given to his Majesty K. *Cha. 2.* but with a Proviso that it should not be drawn into future Example: So that all Supplies of this Nature are now by way of Taxes. In other Nations *Benevolences* are given sometimes to Lords of the Fee, by their Tenants, &c. *Cassan. de Consuet. Burg.* p. 134, 136.

Benevolentia Regis habenda, The Form of Purchasing the King's Pardon and Favour, in ancient Fines and Submissions, to be restored to Estate, Title, or Place——*Thomas de S. Walerico dat Regi mille marcas, pro habenda Benevolentia Regis, & pro habendis Terris suis unde Disseisitus fuit.* *Paroch. Antiq.* p. 172.

Berbiage, (*Berbiagium*) *Nativi Tenentes Manerii de Calistoke reddunt per An. de certo redditu vocat. Berbiag. ad le Hokeday xix s. M. S.* Survey of the Dutchy of Cornwall.

Berbicaria, A Sheep-Down, or Ground to feed Sheep. *Leg. Alfredi c. 9. Et quod de Berbicaria, &c. Monasticon Tom. 1. p. 308.*

Bercaria, *Berchery*, (from the Fr. *Bergeria*) A Sheep-Fold, or other Inclosure for the keeping of Sheep: In *Domesday* it is written *Berquarium.* *2 Inst.* 476. ——— *Mandatum est Roberto de Lexington, quod Abbati de Miraval faciat unam Bercariam in pastura de Fairfield ad oves suas Custodiendas. Claus. 9 Hen. 3. m. 12. — Dedi sexaginta*

- 3 E. 6. Art. And Suit for Oar must be in Berghmote Court.
9. Thither for Justice Miners must resort:
16 Ed. 1. c. 2. And two great Courts of Berghmote ought to be,
3 E. 6. Art. 10. In every Year upon the Minery:
3 & 4 P. & M. To punish Miners that Transgress the Law,
Art. 19. To curb Offences, and keep all in aw:
26 Ed. 1. c. 1. To fine Offenders that do break the Peace,
&c. Or shed Man's Blood, or any Tumults raise:
To swear Berghmasters that they faithfully
Perform their Duty on the Minery;
And make Arrests, and eke Impartially
Impannel Jurors, Causes for to try;
And see that Right be done from Time to Time
Both to the Lord, and Farmers on the Mine.

Beria, *Berie*, *Berry*, A large open Field; and those Cities and Town in England which end with that Word, are built in plain and open Places, and do not derive their Names from Boroughs as *Sir Hen. Spelman* imagines. Most of our Glossographers in the Names of Places have confounded the Word *Berie*, with that of *Bury*, and *Borough*, as if the Appellative of ancient Towns; whereas the true Sense of the Word *Berie* is a flat wide Campaign, as is proved from sufficient Authorities by the learned *Du Fresne*, who observes that *Beria Sancti Edmundi* mentioned by *Mat. Paris. sub an. 1174.* is not to be taken for the Town, but for the adjoining Plain. To this may be added that many flat and wide Meads, and other open Grounds, are called by the Name of *Beries*, and

acras terre ad unam Bercariam faciendam.——
Mon. Angl. Tom. 2. pag. 599. *Bercarium* is taken for a Shepherd: And *Bercaria* is said to be abbreviated from *Barbicaria*, from *Berbex*; hence comes *Berbicus* a Ram, *Berbica* an Ewe, *Caro Berbicina*, Mutton: *Cowel.*

Berefellarii: There were seven Churchmen so called, anciently belonging to the Church of *St. John of Beverley*——*Sed quia eorum turpe nomen Berefellarium patens risui remanebat, dictos septem de cetero non Berefellarios sed Personas volumus nuncupari.* *Pat. 21 R. 2. par. 3. m. 10. per Inspex.*

Berefreit, *Berefreid*, A large wooden Tower. *Simeon Dunelm. ann. 1123.*

Berewicha, or *Berwica*, Villages or Hamlets belonging to some Town or Manor. This Word often occurs in *Domesday*: *Iste sunt Berewicha ejusdem Manerii*——

Berghmaster, (from the Sax. *Berg* a Hill, *Mons*, *quasi* Master of the Mountain) Is a chief Officer among the *Derbyshire* Miners, who also executes the Office of a Coroner——*Furatores dicunt, quod in Principio quando Mineratores veniunt in Campum Mineras quarentes, inventa Minera, veniunt ad Balicium, qui dicitur Berghmayster, & petunt ab eo duas Metas, &c.*——*Esc. de An. 16 Ed. 1. num. 34. in Turri London.* The Germans call a Mountaineer, or Miner, a *Bergman*: And *Berghmaster*, is vulgarly called *Barmaster*, and *Barmer*.

Berghmote or *Berghmote*, Comes from the Sax. *Berg*, a Hill, and *Gemote* an Assembly; and is as much as to say an Assembly or Court upon a Hill, which is held in *Derbyshire* for deciding Pleas and Controversies among the Miners——*Furatores etiam dicunt quod Placita del Berghmote debent teneri de tribus septimanis in tres septimanas super Mineram de Pecco.* *Esc. 16 Ed. 1.* And on this Court of *Berghmote*, *Mr. Manlove* in his *Treatise of the Customs of the Miners*, hath a Copy of *Verses*, with *References* to Statutes, &c.

Beryfields: The spacious Meadow between *Oxford* and *Isley* was in the Reign of King *Athelstan* called *Bery*. *B. Twine M. S.* As is now the largest Pasture Ground in *Quarendon* in the County of *Buckingham*, known by the Name of *Beryfield*. And though these Meads have been interpreted *Demefne* or *Manor Meadows*, yet were they truly any flat open Meadows, that lay adjoining to any Vill or Farm.

Berra, A plain open Heath. *Berras assartare*, to grub up such barren Heaths.

Bernet, *Incendium*, comes from the Sax. *Byran*, to burn: It is one of those Crimes which by the *Laws of H. 1. cap. 13. Emendari non possunt.* Sometimes it is used to signify any capital Offence. *Leges Canuti apud Brompt. cap. 90. Leg. Hen. 1. c. 12, 47.*

Bereithatch, In the Court-Rolls of the Manor of *Chuton* in *Somerſetſhire* is taken for Litter for Horſes.

Berſa, (Fr. *Bers*) A Limit or Bound — *Paſturam duorum Taurorum per totam Berſam in foreſta noſtra de Chipenham, &c.* Mon. Angl. Tom. 2. p. 210. A Park Pale.

Berſart, (Germ. *Berſen*, to ſhoot) *Berſare* in *foreſta mea ad tres Arcus*. Chart. Ranulf. Comit. Ceſtr. ann. 1218. viz. To hunt or ſhoot with three Arrows in my Foreſt. *Berſarii* were properly thoſe that hunted the Wolf.

Berſelet, (*Berſeleta*) A Hound. — *Ad Berſandum in foreſta cum novem arcubus & ſex Berſeletis*. Chart. Rog. de Quincy.

Berton, or *Barton*, (*Bertona*) Is that Part of a Country Farm where the Barns and other inferior Offices ſtand, and wherein the Cattle are foddered, and other Buſineſs is managed. See *Clauf. 32 Ed. 1. m. 17*. It alſo ſignifieth a Farm, diſtinct from a Manor: In ſome Parts of the *Weſt of England*, they call a great Farm a *Berton*, and a ſmall Farm a *Living* — *Bertonarii* were ſuch as we now call Farmers or Tenants of *Bertons*; Husbandmen, that held Lands at the Will of the Lord — *Cum Bertona terris & tenementis, que Bertonarii modo tenent ad voluntatem*. Chart. Johan. Epiſc. Exon 24 Dec. ann. 1337.

Bery, or *Bury*, The Vill or Seat of Habitation of a Nobleman; a Dwelling or Manſion-Houſe, being the chief of a Manor, ſtill ſo called in ſome Places; as in *Herefordſhire* there is *Stocktonbury, &c.* And it is made out in the Name of Places, as *St. Edmunds-bury, &c.* It was anciently taken for a Sanctuary.

Befaille, (Fr. *Bifayeu*, *Proavus*) The Father of the Grandfather: And in the Common Law it ſignifies a Writ that lies where the great Grandfather was ſeiſed the Day that he died of any Lands or Tenements in Fee-ſimple; and after his Death a Stranger entereth the ſame Day upon him, and keeps out the Heir. *F. N. B. 222*.

Befca, (from the Fr. *Befcher*, *fodere*, to dig) A Spade or Shovel. — *In communi Paſtura turbas, cum una ſola Befca, fodient & nihil dabunt*. Prior. Lew. Cuſtumar. de Hecham pag. 15. Hence perhaps, *una Befcata terra incluſa* — Mon. Angl. Tom. 2. f. 642. may ſignify a Piece of Land uſually turned up with a Spade, as Gardiners fit and prepare their Grounds; or may be taken for as much Land as one Man can dig with a Spade in a Day.

Beſtials, (Fr. *Beſtials*) Beasts or Cattle of any Sort: *Anno 4 Ed. 3. cap. 3*. it is written *Beſtail*; and is generally uſed for all Kind of Cattle, tho' it has been refrained to thoſe purveyed for the King's Proviſion. *12 Car. 2. cap. 4*.

Beverches, Bed-works, or Cuſtomary Services, done at bidding of the Lord by his inferior Tenants — *Inter ſervitia Cuſtumaria Tenentium in Blebury, de Dominio Abbatis & Conventus* Reading . . . *predictus Abbas habebit de eis duas precarias carrucarum per Annum, que vocantur Beverches, & cum qualibet carruca duos homines qualibet die ad Prandium Abbatis*. Cartular. Reading. M. S. fol. 223.

Bewared, An old Saxon Word ſignifying expended; for before the Britons and Saxons had Plenty of Money, they traded wholly in Exchange of Wares.

Bidall, or *Bidale*, (*Precaria potaria*, from the Sax. *Biddan*, to pray or ſuppligate) Is the Invitation of Friends to drink *Ale* at the Houſe of ſome

poor Man, who thereby hopes a charitable Contribution for his Relief: It is ſtill in Uſe in the *Weſt of England*; and is mentioned *26 H. 8. c. 6*. And ſomething like this ſeems to be what we commonly call *House warming*, when Perſons are invited and viſited in this Manner on their firſt beginning Houſe-keeping.

Bidding of the Beads, *Bidding* from the Sax. *Biddan*, To pray or deſire; and *Bead* from the Sax. *Bead* a Prayer; was anciently an Invitation or Warning given by the Pariſh-Prieſt to his Pariſhioners at ſome ſpecial Times to come to Prayers, either for the Soul of ſome Friend departed, or upon ſome other particular Occaſion. And at this Day our Miniſters, on the *Sunday* preceding any Feſtival or Holiday in the following Week, give Notice of them, and deſire and exhort their Pariſhioners to obſerve them as they ought; which is required by our Canons. See *Stat. 27 H. 8. c. 26*.

Bidentes, Two Yearlings, or Sheep of the ſecond Year — *Will. Longſpe A. D. 1234*. granted to the Prior and Canons of *Burceſter*, *Paſturam ad quinquaginta Bidentes, cum Dominicis Bidentibus meis ibidem paſcendis*. Paroch. Antiq. p. 216.

Biga, *Bigata*; A Cart, or Chariot drawn with two Horſes, coupled Side to Side; but it is ſaid to be properly a Cart with two Wheels, ſometimes drawn by one Horſe, and in our ancient Records it is uſed for any Cart, Wain, or Waggon. — *Et quod eant cum Bigis & Carris cum cæteris phaleris ſuper Tenementum ſuum, &c.* Mon. Angl. Tom. 2. fol. 256.

Bigamus, Is a Perſon that hath married two or more Wives, ſucceſſively after each other, or a Widow; for the Canoniſts account a Man that hath married a Widow, to have been twice married. It is mentioned in the Statutes, *18 Ed. 3. cap. 2. 1 Ed. 6. cap. 12. And 2 Inſt. 273*.

Bigamy, (*Bigamia*) Signifies a double Marriage, or Marriage of two Wives; it is uſed in our Law, for an Impediment to be a Clerk, by Reaſon he hath been twice married. *4 Ed. 1. cap. 5*. Which ſeems to be grounded upon the Words of *St. Paul to Timothy, Epiſt. 1. cap. 5. verſ. 2. Oportet ergo Episcopum irreprehensibilem eſſe & unius uxoris virum*: Upon which, it is ſaid the Canoniſts have founded their Doctrine, that he that hath been twice married, may not be a Clerk; ſo that they do not only exclude ſuch from Holy Orders; but alſo deny them all Privileges, that belong to Clerks: But this Law is aboliſhed by *1 Ed. 6.* and ſee the *Stat. 18 Eliz. cap. 7*. The Statute called the *Statute de Bigamis*, is the *4 Ed. 1.* and the *1 Fac. 1. cap. 11.* calls it *Bigamy*, where a Perſon marries a ſecond Wife, &c. the firſt being living, which is Felony; but this is properly *Polygamy*, and not *Bigamy*, which laſt is not where a Perſon hath two Wives together, but where he hath two Wives one after another. *2 Inſt. 273*.

Bigot, Is a Compound of ſeveral old *Engliſh* Words, and ſignifies an obſtinate Perſon; or one that is wedded to an Opinion, in Matters of Religion, &c. It is recorded that when *Rollo* the firſt Duke of *Normandy* reſuſed to Kiſs the King's Foot, unleſs he held it ought to him, it being a Ceremony required in Token of Subjection for that Dukedom, with which the King inveſted him; thoſe who were preſent taking Notice of the Duke's Reſuſal, adviſed him to comply with the King's Deſire, who answered them *Ne ſe Bigot*, whereupon he was in Deriſion called *Bigot*, and the *Normans* are ſo called to this Day.

Billancius deferendis, A Writ directed to a Corporation, for the carrying of Weights to such a Haven, there to weigh the Wool that Persons by our ancient Laws were licensed to transport. *Reg. Orig.* 270.

Bilinguis, Signifies generally a double tongued Man; or one that can speak two Languages: But it is used in our Law for a Jury that passeth between an *Englishman* and a Foreigner, whereof Part ought to be *English*, and Part Strangers. Though this is properly a *Jury e medietate Linguae*. 28 Ed. 3: c. 13.

Bill, (*Billa*) Is diversly used: In Law Proceedings, it is a Declaration in Writing, expressing either the Wrong the Complainant hath suffered by the Party complained of, or else some Fault committed against some Law or Statute of the Realm: And this *Bill* is sometimes addressed to the Lord Chancellor of England, 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 Damage thereby sustained, and Petition of Process against the Defendant for Redress: And it is used as well in Criminal, as Civil Matters. In Criminal Cases, when a Grand Jury upon a Presentment or Indictment find the same to be true, they indorse on it *Billa vera*; and thereupon the Offender is said to stand indicted of the Crime, and is bound to make Answer unto it: And if the Crime touch the Life of the Person indicted, it is then referred to the Jury of Life and Death, *viz.* the Petty Jury, by whom if he be found guilty, then he shall stand convicted of the Crime, and is by the Judge condemned to Death. *Terms de Ley* 86. 3 *Inst.* 30. See *Ignoramus* and Indictment.

Bill is also a common Engagement for Money given by one Man to another: These *Bills* are sometimes with a Penalty, and then they are called *Penal Bills*; and sometimes without a Penalty, though the latter is most frequently used. A *Bill* is likewise defined to be a Writing, wherein one Man is bound to another, to pay a Sum of Money on a Day that is Future, or presently on Demand, according to the Agreement of the Parties at the Time it is entered into, and the Dealings between them: And is divided into several Sorts, as a *Bill* that is *single*, a *Bill* that is *Penal*, &c. Where there is a *Bill* of 100*l.* to be paid on Demand, it is a Duty presently, and there needs no actual Demand. *Cro. Eliz.* 548. And in other Cases a single Obligation or *Bill*, upon the Scaling and Delivery, is *Debitum in presenti*, though *Solvendum in futuro*. On a collateral Promise to pay Money on Demand, there must be a special Demand; but between the Parties it is a Debt, and said to be sufficiently demanded by the Action. It is otherwise where the Money is to be paid to a third Person; or where there is a Penalty. 3 *Keb.* 176. If a Person acknowledge himself by *Bill* obligatory to be indebted to another in the Sum of 50*l.* and by the same *Bill* binds him and his Heirs in 100*l.* and says not to whom he is bound, it shall be intended he is bound to the Person to whom the *Bill* is made. *Roll. Abr.* 148. A *Bill* obligatory written in a Book, with the Party's Hand and Seal to it, is good. *Cro. Eliz.* 613. And if a Man makes a *Bill* thus: *I do owe and promise to pay to A. B. 50*l.* &c. for Payment whereof, I bind my self to C. D. &c.* another Person; it is good by the Words of the first Part, and the Words obligatory to another

Person are void. A Man says by his Deed: *Memorandum, That I A. B. have received of C. D. the Sum of 20*l.* which I Promise to pay to E. F. In Witness whereof I have hereunto set my Seal, &c.* Or if the *Bill* be, *I shall pay to C. D. 20*l.* In Witness, &c.* and the same be sealed: Or if it runs as follows, *I owe to C. D. 20*l.* to be paid at, &c.* Or, *I had of C. D. 20*l.* &c. to be repaid him again: Or, I A. B. do bind my self to C. D. that he shall receive 20*l.* &c.* All these are said to be obligatory. 2 *Roll.* 146. 22 *E. 4. c.* 22.

Form of a single Bill for Money.

K Now all Men by these presents, That I A. B. of, &c. do owe and am indebted to C. D. of, &c. the Sum of Fifty Pounds of lawful Money of Great Britain, which I Promise to pay unto the said C. D. his Executors, Administrators or Assigns, at and upon the first Day of October next ensuing the Date of these Presents. In Witness whereof I have hereunto set my Hand and Seal the 10th Day of August, Anno Domini 1726.

A Penal Bill for Payment of Money.

K Now all Men by these Presents, That I A. B. of, &c. do owe unto C. D. of, &c. the Sum of One hundred Pounds of lawful Money of Great Britain, to be paid unto the said C. D. his Executors, Administrators or Assigns, on, &c. next ensuing the Date hereof; for which Payment well and truly to be made, I bind my self, my Heirs, Executors and Administrators, to the said C. D. his Executors, Administrators and Assigns in Two hundred Pounds of like lawful Money firmly by these Presents. In Witness, &c.

Bill of Exchange, Is a Security among Merchants given for Money, and by the Credit of the Drawer generally passeth as Money: These *Bills* are drawn either payable at Sight; at so many Days, Weeks, or Months; one or two Usances, &c. And the Space of one Month from the Date of the *Bill* is called *Usance*, and two or three Months double or treble *Usance*. There is an *Inland Bill of Exchange*, and a *Foreign Bill*; an *Inland Bill* has been said to be only in the Nature of a Letter, but an *Outland Bill* is more regarded in the Eye of the Law, because it is for the Advantage of Commerce with other Countries, which makes it of a more publick Concern: And a *Foreign Bill* being refused to be accepted, by the Law of Merchants Action lies against the Drawer; and if the Person to whom directed subscribes the *Bill*, it is *Assumpsit* to pay it. 1 *Roll. Abr.* 6. 1 *Ventr.* 152. 2 *Cro.* 307. Every Indorser of a *Bill* is liable as the first Drawer; the Indorser is answerable, because the Indorsement is in Nature of a new *Bill*. 1 *Salk.* 125. But by the Custom of Merchants, the Indorsee is to receive the Money of the first Drawer if he can; and if he cannot, then the Indorser is to answer. The Indorser of a *Bill* is not liable to pay it, till Endeavour has been used to find the Drawer. *Salk.* 126. But an Indorser is not discharged without actual Payment of the *Bill*; unless there be some Neglect or Default in the Indorsee, as where he doth not endeavour to receive the Money in convenient Time, and then the first Drawer becomes insolvent. *Ibid.* 132. An Indorser charges himself in the same Manner as if he had originally drawn the *Bill*: And a Plaintiff need not prove the

the Drawer's Hand, as the Indorfor is a new Drawer; but he must prove that he demanded the Money of the Drawer or Drawee, or that he sought and could not find them, in convenient Time, which is three Days after the Indorsement, &c. 1 Salk. 127. A blank Indorsement doth not transfer the Property of a *Bill of Exchange*; tho' the Person to whom indorsed may fill up the Indorsement, so as to charge the Indorfor; for where one indorses his Name on a *Bill*, the Indorsee may make what Use of it he pleases, by Way of Assignment, Acquittance, &c. *Ibid.* 126. A *Bill of Exchange* payable to a Person, or Bearer, is not assignable to enable the Indorsee to bring an Action, if the Drawer refuse Payment: But by *Bill* to a Person, or Order, an express Power is given to the Party to assign, and the Indorsee may maintain an Action: And the first is a good *Bill* between Indorfor and Indorsee. *Ibid.* 125. Where a *Bill* is drawn payable to A. B. or Bearer, an Assignee must sue in the Name of him to whom it was made payable, and not in his own Name; otherwise a Stranger finding the *Bill*, might recover: If it be made payable to A. B. or Order, there an Assignee may sue in his own Name, because the Order must be made by Indorsement, &c. Also the latter is within the Custom of Merchants and may be negotiated and assign'd by Custom; but the former is not. 3 Salk. 67. If a Bank-Bill payable to A. B. or Bearer be lost, and it is found by a Stranger, Payment to him would indemnify the Bank; yet A. B. may have Trover against the Finder, tho' not against his Assignee for valuable Consideration, which creates a Property. 3 Salk. 71. When a *Bill of Exchange* is accepted, it is a good Ground for a Special Action upon the Case, but it doth not make a Debt, &c. 3 Show. 1. *Indebitatus Assumpsit* will not lie against the Acceptor of a *Bill of Exchange*, because his Acceptance is a collateral Engagement; tho' it will lie against the Drawer. 1 Salk. 23. A general *Indebitatus Assumpsit* will not lie on a *Bill of Exchange*, for Want of a Consideration; and therefore there must be a Special Action upon the Custom of Merchants, or a general *Indebitatus Assumpsit* against the Drawer for Money by him received to the Plaintiff's Use. *Ibid.* 125. A *Bill* once accepted, cannot be revoked by the Party that accepted it, tho' immediately after and before the *Bill* becomes due, he hath Advice that the Drawer is broke. The Servant of a Merchant cannot accept a *Bill of Exchange* for his Master, without plain Evidence that he hath Authority to do it; as where the Master allows the Payment of *Bills* drawn by his Servant, &c. *Lex Mercat.* 265. *Mod. Ca.* 36. But another Person may accept the *Bill* for the Honour of the Drawer; and if he pays the Money in Default of the Party, he is to make a Protest with Declaration that he hath paid the same for the Drawer's Honour. If one Merchant having a right Understanding with another, says, *Leave your Bill with me, and I will accept it*, by the Custom of Merchants it obliges him as effectually as if he had signed it. If a *Bill* be accepted, and the Person who accepted the same happens to die before the Time of Payment, there must be a Demand made of his Executors or Administrators; and on Non-payment, a Protest is to be made, altho' the Money becomes due before there can be Administration, &c. A *Bill* may be accepted for

Part, the Party on whom drawn having no more Effects in his Hands; and there may be a Protest for the Residue. And Acceptance of a *Bill* after the Time of Payment is past, it is said amounts to a Promise to pay the Money. If a Man be not to be found, or being found, is not to be met with afterwards, it is Cause sufficient for a *Protest*: Which is a Sort of Summons to a Person to accept or pay a *Bill*, with Protestation against the Refuser for Exchange, Interest, and all Charges, Damages and Losses that may be sustained or occasioned by such Refusal. *Lex Mercat.* Before the Statute 9 W. 3. if a *Bill* was Foreign, one could not resort to the Drawer to charge him for Non-acceptance or Non-payment, without a Protest, and reasonable Notice thereof; but in Case of an Inland *Bill* it was otherwise. The Protest was ordered for the Benefit of the Drawer, to give Notice that the *Bill* is not accepted, &c. tho' it is to subject to answer. *Mod. Ca.* 80.

Form of a Protest of a Bill of Exchange.

K Now all Men, That I A. B. on the Day, &c. at the usual Place of Abode of C. D. have demanded Payment of the *Bill* of which the above is a Copy, which the said C. D. did not pay, wherefore I the said A. B. do hereby protest the said *Bill*. Dated, &c.

In Drawing *Bills of Exchange*, the Signing of one Partner in Merchandize for Self and Company, obliges the others. A Gentleman travelling for Education, &c. draws a *Bill of Exchange*, this is negotiating the *Bill*, and makes him a Merchant, &c. *Show.* 127. A *Bill of Exchange* directed to one to pay so much for Value received, shall be a good Discharge of the Debt, if the *Bill* be not return'd back to the Drawer in Time, altho' it be not paid; for Keeping the *Bill* long, is Evidence that he agreed to take the Merchant as Debtor. *Ibid.* 126. If a Man pays a *Bill of Exchange* before due, and the Person to whom paid fails before the Time of Payment, he shall be obliged to pay it again to the Deliverer; because the Drawer might have countermanded the same, or ordered the *Bill* to be made payable to another Person. Interest upon a *Bill of Exchange* commences from the Time of Demand. If a Possessor of a *Bill of Exchange* by any Accident loses it, he must cause Intimation to be made by a Notary Publick before Witnesses, that the *Bill* is lost or mislaid, requiring that Payment be not made of the same to any Person without his Privy. And if any *Bill of Exchange* drawn in, or dated at and from any Place of this Kingdom, shall be lost, the Drawer of the *Bill* shall give another *Bill* of the same Tenor, Security being given to indemnify him in Case the *Bill* so lost be found again. 9 & 10 W. 3. c. 17. There are not only *Bills of Exchange*, but *Bills of Credit* between Merchants, the Forms whereof are as follow:

Form of a Bill of Exchange.

250 l. Sterling. London, 10 August, 1726.

A double Usance pay this my first *Bill* of Exchange to Mr. C. D. Merchant, or Order, the Sum of Two hundred and fifty Pounds Sterling, for the

B I

the Value here received of the said C. D. And place it to Account, as by Advice from,

Yours, &c. A. B.

To Mr. E. F. Merchant,
in Amsterdam.

Form of a Bill of Credit.

THis present Writing witnesseth, That I A. B. of London, Merchant, do undertake, to and with C. D. of, &c. Merchant, his Executors and Administrators, that if he the said C. D. do deliver, or cause to be delivered unto E. F. of, &c. or to his Use, any Sum or Sums of Money amounting to the Sum of, &c. of lawful British Money, and shall take a Bill under the Hand and Seal of the said E. F. confessing and shewing the Certainty thereof; that then I, my Executors or Administrators having the same Bill delivered to me or them, shall and will immediately, upon the Receipt of the same, pay, or cause to be paid unto the said C. D. his Executors or Assigns, all such Sums of Money as shall be contained in the said Bill, at, &c. For which Payment in Manner and Form aforesaid, I bind my self, my Executors, Administrators and Assigns by these Presents. In Witness, &c.

By the Statute 9 & 10 W. 3. c. 17. All Bills of Exchange dated at, or from any Place in England, of the Sum of 5 l. or upwards, upon any Person in London, or other trading City, Town or Place, drawn payable at a certain Time after the Date thereof, and in which Bills the Value shall be expressed to be received, may, after their Acceptance in Writing, and the Expiration of three Days after the same shall be due, be protested by a Notary Publick, or if there be none such, by any other substantial Person of the Place before Two Witnesses, on a Refusal or Neglect of Payment; which Protest shall be made under a Copy of the said Bill, and shall be notified within fourteen Days after to the Party from whom the Bills were received, who (upon producing the said Protest) is to repay the Bills with Interest and Charges from the Protesting: And in Default of such Protest, or Notice to be given as aforesaid, the Person failing shall be liable to all Costs, Damages and Interest thereupon. And by 3 & 4 Ann. c. 9. All Notes sign'd by any Person, &c. whereby such Person shall promise to pay any other Person or Order, &c. any Sum of Money; the Money mentioned in such Note shall be due and payable to the Person to whom made; and the Note shall be assignable over as inland Bills of Exchange; whereupon the Person to whom such Note is payable or assign'd, may maintain an Action for the same, against the Person who sign'd, or any who indorsed the Note, as in Cases of inland Bills, and recover Damages and Costs of Suit, &c. If the Party on whom any Inland Bill of Exchange shall be drawn, refuses to accept it by Under-writing under his Hand, the Person to whom payable is to cause such Bill to be protested, as foreign Bills: But no Acceptance shall charge any Person, unless the Bill be under-written or indorsed; and if it be not so under-written or indorsed, no Drawer shall be obliged to pay Costs, Damages, or Interest thereon, unless Protest be made for Non-acceptance, and within fourteen Days after the same be sent, or Notice thereof given to the Party from whom the Bill is received, or left in Writing at his usual Place of Residence. The Bill being accepted, and not paid within three Days after due,

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Protest must be made, and Notice given as aforesaid, to charge the Drawer, &c. Tho' no Protest shall be necessary, except the Value shall be expressed to be received in such Bill; and the Bill be drawn for 20 l. at least. And there is a Proviso in the Act, that nothing therein shall discharge any Remedy any Person may have against the Drawer, Acceptor or Indorser of any Bill. A Paper Bill or Note, is no Payment where there was an original and precedent Debt due, but shall be intended to be taken upon Condition that the Money be paid in convenient Time; but the Taking a Note in Writing for Goods sold, may amount to Payment of the Money, because 'tis Part of the original Contract. Mich. 2 Ann. 3 Salk. 118.

A Note for Payment of Money.

I Promise to pay to Mr. C. D. or Order, the Sum of One hundred Pounds (Value received) within twenty-one Days after Date hereof, or on Demand, &c. Witness my Hand this twentieth Day of August, 1728.

100 l. os. od.

A. B.

Bill of Lading, Is a Memorandum sign'd by Masters of Ships, acknowledging the Receipt of the Merchant's Goods, &c.

Bill of Store, Is a Kind of 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** is a Licence granted to a Merchant, to suffer him to trade from one English Port to another, without paying Custom. An. 14 Car. 2. c. 11.

Billets of Gold, (Fr. *Billot*) Are Wedges or Ingots of Gold, mentioned in the Statute 27 E. 3. c. 14. *Billot*, *Billo* and *Billionis*, is said to be Bullion of Gold or Silver, in the Mass, before it is coined. *Billets* are also small Wood for Fuel, for regulating the Assize whereof there are several Statutes, 43 Eliz. &c. See the 9 Ann. c. 15.

Billus, A Stick or Staff, which in former Times was the only Weapon for Servants. — *Si quis in servum transeat, in signum hujus transactionis Billum vel Strubulum vel deinceps ad hunc modum Servitutis arma suscipiat, & in manum Domini mittat.* Leg. H. 1. c. 78.

Binnarium, *Binna*, *Benna*. Stews or Water penn'd up for Feeding and preserving of Fish. — *Expense in Pise ad instaurandum Binnarium empto XII s.* Confectud. Dom. de Farend. M. S. f. 29. Vide Stat. 3 Ed. 1.

Biohanetus, One who deserves to come to an untimely End. *Ordericus Vitalis*, writing of the Death of *William Rufus*, who was shot by *Walter Tyrrell*, tells us, that the Bishops considering his wicked Life, and bad Exit, adjudg'd him *Eclesiastica veluti Biohanetum absolutione indignum.* Lib. 10. p. 782.

Birritum, A thin Cap fitted close to the Shape of the Head: And is also used for the Cap or Coif of a Judge, or Serjeant at Law. *Spelm.*

Bisacutus, An iron Weapon double-edged, so as to cut on both Sides. *Fecit eidem unam plagam mortalem de quadam Bisacuta. Fleta, Lib. 1. cap. 33.*

Bisantium, *Besantine*, or *Besant*, An ancient Coin so called, because first coined by the Western Emperors at *Bizantium* or *Constantinople*. It was of two Sorts, Gold and Silver, both which were current in England: *Chaucer* represents the Gold *Besantine* to have been equivalent to a Ducket;

Ducket; and the Silver *Besantine* was computed generally at two Shillings. In some old Leases of Land, there have been reserved by Way of Rent, *unum Bisantium, vel duos solidos*.

Bico, At a Session of Sewers held at *Wigenhale* in *Norfolk*, 9 Ed. 3. it was decreed, That if any one should not repair his Proportion of the Banks, Ditches and Causeys by a Day assign'd, XII d. for every Perch unrepair'd should be levied upon him, which is called a *Bilaw*: And if he should not by a second Day given him, accomplish the same, then he should pay for every Perch 2 s. which is called *Bi-scot*. Hist. of Imbanking and Draining, f. 254.

Bishop, (*Episcopus*) Is the Chief of the Clergy in his Diocese, and the Archbishop's Suffragan or Assistant. — He is elected by the King's *Conseil d'Esclire*, or Licence to elect the Person named by the King, directed to the Dean and Chapter; and if they fail to make Election in twenty Days, they incur the Penalty of a *Premunire*, and the King may nominate, &c. by Letters Patent. The Dean and Chapter having made their Election, certify it to the King and the Archbishop, &c. And then the King gives the Royal Assent under the Great Seal directed to the Archbishop, commanding him to confirm and consecrate the Bishop elect: And on Confirmation a Bishop hath Jurisdiction in his Diocese, but he hath not a Right to his Temporalties till Consecration. A Bishop hath his Consistory-Court to hear Ecclesiastical Causes, and to visit the Clergy, &c. He consecrates Churches, ordains, admits, and institutes Priests; confirms, suspends, excommunicates, grants Licenses for Marriage, makes Probate of Wills, &c. 1 Inst. 96. 2 Roll. Abr. 230. He hath his Archdeacon, Dean and Chapter, Chancellor and Vicar General, &c. to assist him: May grant Leases for three Lives, or twenty one Years, of Lands usually letten, reserving the accustomed yearly Rents. Stat. 32 H. 8. And make concurrent Leases for twenty-one Years, upon Leases for the like Term, with Confirmation of Dean and Chapter. Bishops are Barons and Lords of Parliament.

Bissa, (*Fr. Biche*) *Cerva Major*, a Hind. — *Decimam venationis nostra, scil. de Cervis, Bissis, damis, porcis & lais*. Mon. Angl. Vol. 1. f. 648.

Bisextile, (*Bisextilis*) Leap-Year, so called, because the sixth Day before the Calends of March is twice reckon'd, viz. on the 24th and 25th of February; so that the Bisextile Year hath one Day more than the others, and happens every fourth Year; being first invented by *Julius Caesar*, to make the Year agree with the Course of the Sun. And to prevent all Doubt and Ambiguity that might arise thereupon, it is enacted by the Statute *De anno Bisextili*, 21 H. 3. That the Day increasing in the Leap-Year, and the Day next before, shall be accounted but one Day. Brit. 209. Dyer 17.

Bisus, *Bisius*, *Mica Bifa*, *Panis Bisius*, (*Fr. Pain bis*) Brown-bread, a brown Loaf. Cowel.

Black-Mail, (*Fr. Maille*, a Link of Mail, or small Piece of Metal or Money) Signifies in the North of England, in the Counties of Cumberland, Northumberland, &c. a certain Rent of Money, Corn, or other Thing antiently paid to Persons inhabiting upon or near the Borders, being Men of Name and Power, ally'd with certain Robbers within the said Counties; to be freed and protected from the Devastations of those Rob-

bers. Anno 43 Eliz. c. 13. These Robbers were called *Moss Troopers*, and several Statutes have been made against them. The 9 Ed. 3. c. 4. mentions *Black Money*. And *Black-Rents* are the same with *Black-Mail*; being Rents formerly paid in Provisions and Flesh.

Blacks of Waltham, A Set of desperate Deerslayers. See *Waltham-blacks*.

Black-Rod, The Gentleman Usher of the Black-Rod, is chief Gentleman Usher to the King: He belongs to the Garter, and hath his Name from the Black Rod, on the Top whereof sits a Lion in Gold, which he carrieth in his Hand. He is called in the *Black-book*, fol. 255. *Lat. r. Virga nigra, & Hostiarius*; and in other Places *Viroi bajulus*. His Duty is *Ad portandam Virgam coram Domino Rege, ad Festum Sancti Georgii infra Castrum de Windfore*: And he hath the Keeping of the Chapter-house Door, when a Chapter of the Order of the Garter is sitting; and in the Time of Parliament, he attends on the House of Peers. His Habit is like to that of the Register of the Order, and Garter King at Arms; but this he wears only at the solemn Times of the Festival of *St. George*, and on the Holding of Chapters. The Black Rod he bears, is instead of a Mace, and hath the same Authority; and this Officer hath antiently been made by Letters Patent under the Great Seal, he having great Power; for to his Custody all Peers, called in Question for any Crime, are first committed.

Bladarius, A Cornmonger, Meal Man, or Corn-Chandler. It is used in our Records for such a Retailer of Corn. Pat. 1 Ed. 3. par. 3. m. 13.

Blade, (*Bladum*). *Spelman* says, *Nostro foro, de segete tantum intelligitur, presertim etiam in herba*. But in the Saxon it signifies more generally Fruit, Corn, Hemp, Flax, Herbs, &c. *Will. de Moben* released to his Brother all the Manor of *T.* — *Salvo instauro suo & Blado*, &c. excepting his Stock and Corn on the Ground. Hence *Bladier* is taken for an Ingrosser of Corn or Grain.

Sciant quod Ego Willielmus Alreton, consensu & voluntate Beatricis Uxoris mee, Dedi Agatnæ Gille pro duabus Maris Argenti & una mensura Bladi, duas solidatas Redditus in Villa Leominstr. &c. Ex libro Chartar. Priorat. Leominstræ.

Blanch Firmes, In antient Times the Crown-Rents were many Times reserved in *Libris Albis*, or *Blanch Firmes*: In which Case the Buyer was holden *Dealbare firmam*, viz. his base Money or Coin, worse than Standard, was molten down in the Exchequer, and reduced to the Fineness of Standard Silver; or instead thereof, he paid to the King 12 d. in the Pound, by Way of Addition. *Lowndes's Essay upon Coin*, p. 5. *Blank-Farm*, *Blount* says, was a White Farm; that is, where the Rent was paid in Silver, and not in Cattle. *Blanks*, a Kind of White Money coin'd by Hen 5. in those Parts of France which were then subject to England, the Value whereof was 8 d. *Stow's Annals*, pag. 586. These were forbidden to be current in this Realm. 2 Hen. 6. c. 9.

Blanhornum, A little Bell, or rather *Ticinium* — *Pecoris ticinium, & Canis oppa & Blanhornum, horum trium singulum est unum solidum valens*. Leg. Adestan. cap. 8.

Blank-Bar, Is used for the same with what we call a *Common Bar*, and is the Name of a Plea in Bar, which in an Action of Trespass is put in to oblige the Plaintiff to assign the certain Place where

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where the Trespass was committed. It is most in Practice in C. B. for in the Court of B. R. the Place is usually ascertained in the Declaration.

Blasphemy, Is a Word used to signify an Incendiary. *Blount*.

Blasphemy, (*Blasphemia*) Is an Injury offered to God, by Denying that which is due and belonging to him, or attributing to him what is not agreeable to his Nature. *Lyndw. c. i.* And *Blasphemies* of God, as Denying his Being, or Providence, and all contumelious Reproaches of *Jesus Christ*, &c. are Offences by the Common Law, punish'd by Fine, Imprisonment, Pillory, &c. *1 Hawk. P. C. 87.* And by Statute, if any one shall by Writing, Speaking, &c. deny any of the Persons in the *Trinity* to be God; assert there are more Gods than one, &c. he shall be incapable of any Office; and for the second Offence, be disabled to sue any Action, to be Executor, &c. and suffer three Years Imprisonment: But retracting Opinions in open Court, discharges the Penalties for the first Offence. *9 & 10 W. 3. c. 32.*

Ble, Signifies Sight, Colour, &c. And *Blee* is taken for Corn: As at *Boughton* under the *Blee*, &c.

Blench, A Sort of Tenure of Land; as to hold Land in *Blench*, is by Payment of a Sugar Loaf, a Couple of Capons, a Bever-Hat, &c. if the same be demanded in the Name of *Blench*, i. e. *Nomine Albe fime*.

Bleta, (*Fr. Bleche*) *Pete*, or combustible Earth, dug up and dry'd for Burning. — *Minister & Fratres de Knaresborough, petunt quod ipsi & eorum Tenentes fodiant Turbas & Bletas, in Foresta de Knaresborough. Rot. Parl. 35 E. 1.*

Blinks, Boughs broken down from Trees, and thrown in a Way where Deer are likely to pass.

Blissen, Corruptly called *Blossom*, is when a Ram goes to the Ewe, from the *Teuton*. *Bletz*, the Bowels; or from *Bletzen* to accommodate.

Bloated Fish or *Herring*, Are those which are Half dried. *Anno 18 Car. 2. cap. 2.*

Blodous, (*Sax. Blod*) Deep red Colour; from whence comes *Bloat* and *bloated*, w. *Sanguine* and high coloured, which in *Kent* is called a *Bloufeng* Colour, and a *Blouse* is there a red-fac'd *Wench*. The Prior of *Burcester*, *A. D. 1425.* gave his Liveries of this Colour. *Paroch. Antiq. p. 576.*

Bloodwit, or *Bloudwit*, (compounded of the *Sax. Blod*, i. e. *Sanguis* and *Wyte*, an old *English* Word signifying *Misericordia*) Is often used in ancient Charters of Liberties for an Amercement for Bloodshed. *Skene* writes it *Bloudveit*, and says *Veit* in *English* is *Injuria*; and that *Bloudveit* is an Amerciament or *Unlaw* (as the *Scotch* call it) for Wrong or Injury, as Bloodshed is: For he that hath *Bloodveit* granted him, hath free Liberty to take all Amerciaments of Courts for Effusion of Blood. *Fleta* saith, *Quod significat quietantiam Misericordie pro Effusione sanguinis. Lib. 1. cap. 47.* And according to some Writers, *Blodwite* was a customary Fine paid as a Composition and Attone-ment for shedding or drawing of Blood; for which the Place was answerable, if the Party were not discovered: And therefore a Privilege or Exemption from this Fine or Penalty, was granted by the King, or supreme Lord, as a special Favour. So *K. Henry II.* granted to all Tenants within the Honour of *Wallingford*, *Ut quieti*

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sent de Hidagio, & Blodewite, &c. — *Paroch. Antiq. p. 114.*

Blood-hand, Is one of the four Kinds of Circumstances by which an Offender is supposed to have killed Deer in the King's Forest: And it is where a Trespasser is apprehended in the Forest, with his Hands or other Parts *Bloody*, tho he be not found chasing or hunting of the Deer. *Manwood*. In *Scotland*, in such like Crimes, they say taken in the Fact, or with the *Red-hand*. See *Backberind*.

Blubber, Is Whale Oil, before it is thoroughly boiled and brought to Perfection. It is mentioned *Stat. 12 Car. 2. cap. 18.*

Book-board, or *Book board*, (*Librorum torreum*) A Place where Books, Evidences or Writings are kept.

Bookland, (*Sax. quasi Bookland*) A Possession or Inheritance held by Evidence in Writing. *Bookland vero ea possidendi transferendique lege coerceretur, ut nec dari licuit nec vendi, sed heredibus r. linquenda erat, in scriptis aliter permitteretur; Terra inde Hæreditaria nuncupata. LL. Aluredi, cap. 36.* *Bookland* signifies *Deed-Land*; and it commonly carried with it the absolute Property of the *Land*, wherefore it was preserved in Writing, and possessed by the *Thanes* or nobler Sort, as *Prædium, nobile, liberum & immune a servitibus vulgaribus & servilibus*, and was the same as *Allodium*, descendable unto all the Sons, according to the common Course of Nations, and of Nature, and therefore called *Gavel-kind*; devisable also by Will, and thereupon termed *Terra Testamentales*. *Spelm. of Feuds*. This was one of the Titles which the *English-Saxons* had to their *Lands*, and was always in Writing. There was but one more, and that was *Folkland*, i. e. *Terra Popularis*, which passed from one to another without any Writing. See *Charterland*.

Boia, Chains, or Fetters, properly what we call *Bernicles*. *Quidam a dolore capitis liberatus est, adjungens gene sue Boias, quibus S. Britstanus ligatus fuit. Hist. Elien. apud Whartoni Angl. Sac. part. 1. pag. 618.*

Bolhagium, or *Boldagium*, A little House or Cottage. *Blount*.

Bolt, A Bolt of Silk or Stuff, seems to have been a long narrow Piece. In the Accounts of the Priory of *Burcester* *A. D. 1425.* it is mentioned. *Paroch. Antiq. p. 574.*

Bolting, Is a Term of Art used in our *Inns* of Court, whereby is intended a private arguing of Cases. The Manner of it at *Grays Inn* is thus: An Ancient and two Barristers sit as Judges, three Students bring each a Case, out of which the Judges chuse one to be argued, which done, the Students first argue it, and after them the Barristers. It is inferior to *Mooting*, and may be derived from the *Sax. Bolt*, a House, because done privately in the House for Instruction. In *Lincolns Inn*, *Mondays* and *Wednesdays* are the *Bolting Days*, in Vacation-Time; and *Tuesdays* and *Thursdays* the *Moot-Days*.

Bona fide. That we say is done *Bona fide*, which is done really, with a good Faith, without any Fraud or Deceit. *Stat. 13 El. c. 5. 12 Car. 2. cap. 18. &c.*

Bona gestura, Good Abearing, or good Behaviour — *Et si per furorem vel aliquos manutentores renuerit invenire sufficientem securitatem de sua Bona gestura erga Balivos & Comburgenses, &c. a prædicto Burgo ejiciatur. M. S. Codex de LL. Statutis*

tis & Consuetud. Burgi villæ Montgomer. fol. 15.

Bonaght, or *Bonaghty*, Was an Exaction in Ireland, imposed on the People at the Will of the Lord, for Relief of the Knights called *Bonaghti* who served in the Wars. *Antiq. Hibern. p. 60.*

Bona Notabilia. Where a Person dies having at the Time of his Death Goods in any other Diocese, besides his Goods in the Diocese where he dieth, amounting to the Value of 5 l. at least, he is said to have *Bona Notabilia*, and then Probate of his Will, or Granting Administration belongs to the Archbishop of the Province: But this doth not prejudice those Dioceses where, by Composition or Custom, *Bona Notabilia* are rated at a greater Sum. *Can. 92, 93. Perkins, Sect. 489.* And in the City of London *Bona Notabilia* are 10 l. by Composition. *4 Inst. 335.* Where one hath a Debt upon Specialty, &c. in another Diocese, he hath *Bona Notabilia*. *1 Roll. Abr. 908.* But if a Person happens to die in another Diocese, than that wherein he lives, on a Journey, what he hath about him above the Value of 5 l. &c. shall not be *Bona Notabilia*. *Can. 93.* There must be several Administrations, where a Person dies leaving *Bona Notabilia* in each Province of *Canterbury* and *York*; for Administration granted in one Province, doth not extend to Goods in the other, because the Archbishops have distinct supreme Jurisdictions; but then there must be *Bona Notabilia* in several Dioceses in each Province. *Dyer 305. 2 Lev. 86.* Where a Man dies in one Diocese, without any Goods, and leaves to the Value of 5 l. in another Diocese, the Archbishop of that Province may grant Administration, as he hath a general Jurisdiction there; though such Administration is voidable by Sentence. *Cro. Eliz. 457.* But where a Bishop grants Administration, and there are *Bona Notabilia*, such Administration is merely void, for he had no Jurisdiction out of his Diocese. *5 Rep. 30. 1 Nels. Abr. 381.*

Bona Patria, An Assise of Country-men or good Neighbours: It is sometimes called *Assisa bona Patriæ*, when twelve or more Men are chosen out of any Part of the Country to pass upon an Assise; otherwise called *Juratores*, because they are to swear judicially in the Presence of the Party, &c. according to the Practice of Scotland. *Skene. Sec. Assisors.*

Bona Peritura, Goods that are perishable. The Stat. 13 E. 1. c. 4. which enacts, That where any Thing escapes alive out of a Ship cast away, the Ship shall not be adjudged Wreck, but the Cargo shall be saved and kept by the View of the Sheriff, &c. in the Hands of those of the Town where the same was found, so that if any one within a Year and a Day can make Proof that the Goods are his, they shall be restored to him, &c. Ordains that if the Goods within the Ship be *Bona Peritura*, such Things as will not endure for a Year and a Day, the Sheriff shall sell them, and deliver the Money received to answer it.

Boncha, A Bunch; is derived from the old Lat. *Bonna* or *Buuna*, a rising Bank, for the Bound of Fields: And hence *Bown* is used in *Norfolk*, for Swelling or Rising up in a Bunch, or Tumour, &c.

Bond, Is a Deed in Writing obligatory, whereby one doth bind himself to another, to pay a Sum of Money, or do some other Act: It contains an Obligation, with a Penalty, &c. And a Condition, which expressly mentions what Money is to be paid, or other Thing to be performed,

and the limited Time for the Performance thereof; for which the Obligation is peremptorily binding. It may be made upon Parchment or Paper, tho' it is usually on Paper; and be either in the first or third Person; and the Condition may be either in the same Deed, or in another, and sometimes it is included within, and sometimes indorsed upon the Obligation: But it is commonly at the Foot of the Obligation. *Bro. Obl. 67.* A Memorandum on the Back of a Bond may restrain the same, by way of Exception. *Moor 675.* The Condition of a Bond must be to do a Thing lawful; and Bonds not to use Trades, till or sow Ground, &c. are unlawful, for they are against the Good of the Publick and the Liberty of a Freeman; and therefore void: And a Condition of a Bond to do any Act *Malum in se*, as to kill a Person, &c. is void; so also Bonds made by Duress; by Infants, Feme Coverts, &c. And if a Woman through Threats, Flattery, &c. be prevailed upon to enter into a Bond, she may be relieved in Chancery. *11 Rep. 53.* If an Infant seal a Bond, and be sued thereon, he is not to plead *Non est factum*, but must avoid the Bond by special Pleading, for this Bond is only voidable, and not in it self void. *5 Rep. 119.* But if a Bond be made by a Feme Covert, she may plead her Coverture, and conclude *Non est factum*, &c. her Bond being void. *10 Rep. 119.* If a Bond depends upon some other Deed, and the Deed becomes void, the Bond is also void. A Bond made with Condition not to give Evidence against a Felon, &c. is void; but the Defendant must plead the Special Matter. *1 Leon. Condition of a Bond to indemnify a Person from any legal Prosecution, is against Law, and void, 1 Lutw. 667.* And if a Sheriff takes a Bond as a Reward for doing of a Thing, it is void. *3 Salk. 75.* Conditions of Bonds are to be not only lawful, but possible; and when the Matter or Thing to be done, or not to be done by a Condition, is unlawful or impossible, or the Condition it self repugnant, insensible or uncertain, the Condition is void, and in some Cases the Obligation also. *10 Rep. 120.* But sometimes an Obligation may be single, to pay the Money, where the Condition is impossible, repugnant, &c. *2 Mod. 285.* If a Thing be possible at the Time of entering into the Bond, and afterwards becomes impossible by the Act of God, the Act of the Law, or of the Obligee, it is become void; as if a Man be bound to appear next Term, and dies before, &c. the Obligation is saved. And when a Condition is doubtful, it is always taken most favourably for the Obligor, and against the Obligee; but so as a reasonable Construction be made as near as can be according to the Intention of the Parties. *Dyer 51.* If no Time is limited in a Bond for Payment of the Money, it is due presently, and payable on Demand. *1 Brownl. 53.* But the Judges have sometimes appointed a convenient Time for Payment, having Regard to the Distance of Place, and the Time wherein the Thing may be performed. And if a Condition be made impossible in Respect to Time, as to make Payment of Money on the thirtieth of February, &c. it shall be paid presently; and here the Obligation stands single. *Jones 140.* Though if the Act be to be done at a certain Place, where the Obligor is to go to Rome, &c. And he is to do the sole Act without Limitation of Time, he hath Time during Life to perform the same; But if the Concurrence of the Obligor and Obligee is requisite, it may be hastened by Request of the Obligee,

6 Rep. 30. 1 Roll. Abr. 437. If no Place is mentioned for Performance of a Condition, the Obligor is obliged to find out the Person of the Obligee, if he be in England, and tender the Money, otherwise the Bond will be forfeited: But where a Place is appointed, he need seek no further. 1 Inst. 210. Lit. 340. And if where no Place is limited for Payment of Money due on a Bond, the Obligor at or after the Day of Payment meets with the Obligee, and tenders him the Money, but he goes away to prevent it, the Obligor shall be excused. 8 Ed. 4. The Obligor, or his Servant, &c. may tender the Money to save the Forfeiture of the Bond, and it shall be a good Performance of the Condition, if made to the Obligee, though refused by him: But if the Obligor be afterwards sued, he must plead that he is still ready to pay it, and tender the Money in Court. Co. Lit. 208. Where the Condition of a Bond is for Payment of Money, it may be performed by giving any other Thing in Satisfaction, because the Value of Money is certain, and therefore may be satisfied by a collateral Thing, if he accepts it; but where the Condition is to do a collateral Thing, there 'tis otherwise, and paying Money is no good Satisfaction. 3 Bulst. 148. One Bond cannot be given in Satisfaction of another; but this is where given by the Obligor himself, for it may be by others. 1 Mod. 221. If a Bond be to pay Money on such a Time, &c. It is no Plea for the Obligor to say that he did pay it; but he must shew at what Time, or else it may be taken that the Performance was after the Time limited. Noy's Max. 15. If a Bond be of twenty Years Standing, and no Demand be proved thereon, or good Cause of so long Forbearance shewn to the Court, upon pleading *Solvit ad Diem*, it shall be intended paid. Mod. Ca. 22. Payment of Money, without Acquittance, is an ill Plea to Action of Debt upon a single Bill; but 'tis otherwise upon a Bond with Condition. Dyer 25. If several Days are mentioned for Payment of Money on a Bond, the Obligation is not forfeit, nor can be sued until all the Days are past: But in some Cases, the Obligee may prosecute for the Money due by the Bond presently, though it be not forfeit; and by special wording, the Condition, the Obligee may be able to sue the Penalty on the first Default. 1 Inst. 292. In a Bond where several are bound severally, the Obligee is at his Election to sue all the Obligors together, or all of them apart, and have several Judgments and Executions; but he shall have Satisfaction but once, for if it be of one only, that shall discharge the Rest. But if an Obligation be joint, and not several, all the Obligors must be sued that are bound; and if one be prosecuted, he is not obliged to answer, unless the rest are sued likewise. Dyer 19, 310. Where two or more are bound in a joint Bond, and only one is sued, he must plead in Abatement, that two more sealed the Bond, &c. and aver that they are living, and so pray Judgment *de Billa*, &c. And not demur to the Declaration. Sid. 420. If a Bond is made to three, to pay Money to one of them, they must all join in the Action, because they are but as one Obligee. Yelv. 177. An Heir is not bound, unless he be named expressly in the Bond; but the Executors, and Administrators are. And if an Obligation be made to Man, his Heirs or Successors, the Executors and Administrators shall have the Advantage of it, and not the Heir or Successor, by

Reason it is a Chattel. Dyer 14, 271. A Declaration need not be according to the Letter of the Bond, where there is any Omission, &c. but according to the Operation of Law upon it. Mod. Ca. 228. In Bonds to save Harmless, the Defendant being prosecuted is to plead *non Damnificatus*, &c. A Bond may be from one to one, one to two, three, or more Persons; or from two or more Persons to one, two, three &c. And may be to pay Money, make a Release, surrender an Estate, for quiet Enjoyment, to perform a Will, stand to an Award, save Harmless, &c. And the Name of the Obligor subscribed, 'tis said, is sufficient, though there is a Blank for his Christian Name in the Bond. 2 Cro. 261. But where another Christian Name is in the Bond, and the Bond signed by the right Name, though the Jury find it to be his Deed, the Obligee cannot have Judgment; for the Name subscribed is no Part of the Obligation. 2 Cro. 558. 1 Mod. 107. In these Cases, though there be a Verdict, there shall not be Judgment. If a Bond has no Date, or a false Date, if it be sealed and delivered, it is good. A Plaintiff may suggest a Date in a Bond, where there is none, or it is impossible, &c. where the Parties and Sum are sufficiently expressed. 5 Mod. 282. A Bond dated on the same Day on which a Release is made of all Things *usque Diem datus*, &c. is not thereby discharged. 2 Roll. Rep. 255. A Person shall not be charged by a Bond, though signed and sealed, without Delivery, or Words, or other Thing, amounting to a Delivery. 1 Leon. 140. A Bond may be good, though it contains false Latin, or false English, if the Intent appears: If *Johannes* is put for *Johannem*, *Ostogesimo* for *Ostaginta*, *Septunginta* for *Septinginta*, *Trigintate* for *Triginta*, *Wiginti* for *Viginti*, &c. these Mistakes do not make the Bond void, where the Condition is to pay Money. 2 Roll. Abr. 146. Moor 864. *Quinginta Libris* hath been adjudged the same with *Quinquaginta*. Cro. Car. 301. And so *Quinquagesimis*. 2 Cro. 29. *Sexgintis* for *Sexcentis* is ill; because *Sexgintis* is no Latin Word: But *Sexigint* for *Sexaginta*, or *Sexingent* for *Sexcent* is good. 2 Bulst. 24. By the Condition of a Bond, the Intent of what Sum was in the Obligation, may be more easily known, and explained. 2 Roll. 146. And the Condition of the Bond may be recorded, and then the Plaintiff demur, &c. 1 Lutw. 422. Likewise the Condition of Bonds may expound to whom an Obligor is bound to pay Money; as if A. binds himself to B. to be paid to A. whereas it should be to B. which Obligation is good, and the *Solvendum* void. 1 Inst. 108, 209. Interlineation in a Bond in a Place not material, will not make the Bond void; but if it be altered in a Part material, it shall be void. 1 Nels. Abr. 391. And a Bond may be void by Rasure, &c. As where the Date, &c. is rased after Delivery; which goes through the Whole. 5 Rep. 23. If the Words at the End of the Condition, *That then this Obligation to be void*, are omitted, the Condition will be void; but not the Obligation: But if the Words *or else shall stand in Force* be left out, it has no Effect to hurt either the Condition or the Obligation.

Form of a Bond for Payment of Money.

N Overint universi per presentes me Johannem A. de, &c. in Com. &c. Gen. teneri & firmiter Obligari Willielmo B. de, &c. Gen. in centum libris bone & legalis Monete Magnæ Britannię solvend. eid. Willielmo

Willielmo B. aut suo certo Attornat. Executoribus Administratores vel Assignat. suis ad quam quidem solutionem bene & fidelit. faciend. Obligo me Heredes Executors & Administratores meos firmiter per presentes sigillo meo sigillat. Dat. sexto die Junii Anno Regni Dom. Georgii Dei Gratia Magnæ Britannix, Francix & Hibernix Regis fidei Defensor, &c. Duodecimo, annoque Dom. 1726.

The Condition of this Obligation is such, That if the above bound *J. A.* his Heirs, Executors or Administrators, do and shall well and truly pay, or cause to be paid unto the above named *W. B.* his Executors, Administrators or Assigns the full Sum of Fifty-two Pounds and ten Shillings of lawful Money of Great Britain, on or before the sixth Day of December next ensuing the Date hereof, then this Obligation shall be void, otherwise it shall remain in full Force and Virtue.

In this Condition, the Interest is added to the Principal; instead of which, you may say, if the said *J. A. &c.* do pay the said *W. B. &c.* the full Sum of Fifty Pounds, with Interest for the same after the Rate of five Pounds per Centum per Ann. (or with lawful Interest) on the Day, &c.

Bondage, and **Bondmen**. *Bondage* is Slavery; and *Bondmen* in *Domesday* are called *Servi*, but rendered different from *Villani*——*Et de toto Tenemento, quod de ipso tenet in Bondagio in foca de Nortone cum pertin.* Mon. Angl. 2. par. fol. 609. *Bonda* is said to be a Master of a Family. See *Nativus*.

Bonis non Amovendis, A Writ directed to the Sheriff of London, &c. where a Writ of Error is brought, to charge them that the Person against whom Judgment is obtained, be not suffered to remove his Goods, till the Error is tried and determined. *Reg. Orig.* 131.

Book of Bates, A small Book, declaring the Value of Goods that pay Custom of Poundage. 12 Car. 2.

Booting or Boting Corn, Rent-Corn anciently so called. The Tenants of the Manor of *Haddenham* in *Com. Bucks*, formerly paid *Booting Corn* to the Prior of *Rochester*. *Antiq. of Purveyance*, fol. 418. It is thought to be so called, as being paid by the Tenants by Way of Bote, or Boot, viz. as a Compensation to the Lord for his making them Leases, &c.

Bonagium, The Tenure called *Bordlands*. See *Ordin. Just. Itin. in insula de Jersey*

Bordaria, a Cottage, from the Sax. *Bord*, *Domus*.——*Cum 18 Servis, 16 Villanis, 10 Bordis, & 60 Acris prati, &c.*

Bordarii, or **Bordbanni**. These Words often occur in *Domesday*, and some think they mean Boors, Husbandmen, or Cottagers. In the *Domesday* Inquisition they were distinct from the *Servi* and *Villani*; and seemed to be those of a less servile Condition, who had a *Bord* or Cottage, with a small Parcel of Land allowed to them, on Condition they should supply the Lord with Poultry and Eggs, and other small Provisions for his Board or Entertainment. Some derive the Word *Bordarii* from the old Gall. *Bords*, the Limits or extreme Parts of any Extent; as the *Borders* of a Country, and the *Borderers* Inhabitants in those Parts.——*Dicuntur Bordarii, vel quod in tuguriis (que Cottagia vocant) habitabant; seu villarum limitibus, quasi Borderers.* *Spelm.*

Bord-halfpeny, Signifies a small Toll, by Custom paid to the Lord of the Town for setting up

Boards, Tables, Booths, &c. in Fairs or Markets; It is derived from three Saxon Words, *Bræd*, i. e. Board, *helve*, in Behalf of, and *penning*, a Toll; which in the Whole makes a Toll for, or in Behalf of *Boards*.

Bordlands, The Demesnes which Lords keep in their Hands for the Maintenance of their Board or Table. *Et Dominicum quod quis habet ad mensam suam & proprie, sicut sunt Bordlands, i. e. Dominicum ad mensam.* *Bract. lib. 4. Tract. 3. c. 9.* Which Possession was anciently termed *Bordage*: And the *Bordarii* were such as held those Lands which we now call *Demain Lands*.

Bordlode, Was a Service required of Tenants to carry Timber out of the Woods of the Lord to his House: Or it is said to be the Quantity of Food or Provision, which the *Bordary*, or *Bordmen* paid for their *Bord-Lands*. The old Scots had the Term of *Burd*, and *Meet-burd* for Viſuals, and Provisions; and *Burden-sack*, for a Sack full of Provender: From whence 'tis probable comes our *Burden* at first.

Bord-service, A Tenure of *Bord-lands*; by which some Lands in the Manor of *Fulham* in *Com. Mid.* and elsewhere, are held of the Bishop of London, and the Tenants do now pay Six-pence per Acre in lieu of finding Provision, anciently for their Lord's Board or Table. *Blount.*

Borgbrych, *Borg-bryce*, or *Burgh-brych*, (*Sax.*) A Breach or Violation of Suretyship, Pledge-breach, or of mutual Fidelity.

Borough, (*Fr. Burg*, *Lat. Burgus*, *Sax. Borhoe*) Signifies a Corporate Town, which is not a City; and also such a Town or Place as sends Burgesſes to Parliament, the Number whereof you may find in *Crompt. Jurisd. f. 24.* *Verſegan* ſaith, that *Burg* or *Burgh*, whereof we take our *Borough*, metaphorically ſignifies a Town having a Wall, or ſome Kind of Incloſure about it: And all Places that in old Time had among our Anceſtors the Name of *Borough*, were one Way or other fenced or fortified. *Lit. Seſſ. 164.* But ſometimes it is uſed for *Villa inſignior*, or a Country-Town of more than ordinary Note, not walled. *Linwood* upon the Provincial, (*ut ſingula de ſenſibus*) ſays to this Effect, *Aliqui interpretantur Burgum eſſe Caſtrum, vel locum ubi ſunt crebra caſtra, vel dicitur Burgus ubi ſunt per limites habitacula plura conſtituta*: But he afterwards defines it thus, *Burgus dicitur poteſt villa quæcunque alia a Civitate in qua eſt Univerſitas approbata*. A *Borough* is a Place of Safety, Protection and Privilege, according to *Somner*; and in the Reign of King *Hen. 2.* *Burghs* had ſo great Privileges, that if a Bondman or Servant remained in a *Borough* a Year and a Day, he was by that Reſidence made a Freeman. *Glanville*. And why theſe were called *Free Burghs*, and the Tradeſmen in them *Free Burgeſſes*, was from a Freedom to buy and ſell, without Diſturbance, exempt from Toll, &c. granted by Charter: And *Parliament Burghs* are ſaid to be either by Charter, or Towns holden of the King in ancient *Demeſne*. *Brady*. It is conjectured that *Burhoe* or *Borough*, was alſo formerly taken for thoſe Companies conſiſting of ten Families, which were to be Pledges for one another; and we are told by ſome Writers that it is a Street or Row of Houſes cloſe to one another. *Bract. lib. 3. Tract. 2. cap. 10.* *Lamb. Duty of Conſt. p. 8.*

Boroughholders, or **Burtholders**, *quasi Borhoe-calders*, Are the ſame Officers with *Borough-heads*, or *Head-Boroughs*; who (according to *Lambert*) were the Head Men, or Chief Pledges of

Boroughs, chosen by the rest to speak and act in their Names in those Things that concerned them. See *Headborough*.

Borough English, (Sax. *Borhoe Englife*) Is a customary Descent of Lands, in some ancient *Boroughs*, and Copyhold Manors, that Estates shall descend to the youngest Son; or if the Owner hath no Issue, to his younger Brother, as in *Edmunton*, &c. *Kitch.* 102. And the Reason of this Custom (*Littleton* says) is because the youngest is presumed in Law to be least able to provide for himself. *Lit.* 165. This Custom goes with the Land, and guides the Descent to the youngest Son, although there be a Devise to the contrary. 2 *Lev.* 138. If a Man seised in Fee of Lands in *Borough English*, make a Feoffment to the Use of himself and the Heirs Males of his Body, according to the Course of the Common Law, and afterwards died seised having Issue two Sons, the youngest Son shall have the Lands by Virtue of the Custom, notwithstanding the Feoffment. *Dyer* 179. If a Copyhold in *Borough English* be surrendered to the Use of a Person and his Heirs, the Right will descend to the youngest Son, according to the Custom. 1 *Mod.* 102. And a youngest Son shall inherit an Estate in Tail in *Borough English*. *Noy* 106. But an Heir at Common Law shall take Advantage of a Condition annexed to *Borough English* Land; tho' the youngest Son shall be intitled to all Actions in Right of the Land, &c. 1 *Nels. Abr.* 396. And the eldest Son shall have Tithes arising out of Land *Borough English*, for Tithes do not arise naturally from the Land, but by the Industry of Man; and of Common Right Tithes are not Inheritances descendable to an Heir, but come in Succession from one Clergyman to another. *Ibid.* 347. *Borough English* Land being descendable to the youngest Son, if a younger Son dies without Issue Male leaving a Daughter, such Daughter shall inherit *Jure representationis*, before any other Son; because by the Custom the youngest Son is put in the Place of the Eldest, and at Common Law the Issue of the Eldest is preferred *Jure representationis*. 1 *Salk.* 243. But where a youngest Son dies without any Issue, the eldest Son or Brother is Heir to him. 1 *Lill. Abr.* 239. Though it hath been adjudged that where a Man hath several Brothers, the youngest may inherit Lands in *Borough English*: Yet it is said where the Custom is that Land shall go to the youngest Son, it doth not give it to the youngest Uncle, for Customs shall be taken strictly. *Dyer* 179. 4 *Leon.* 384.

Borough Goods devisable. In the Statute of *Aston Burnel* 11 Ed. 1. there are these Words: As before the Statutes of 32 & 34 Hen. 8. no Lands were devisable at the Common Law, but in ancient Baronies; so at the Making of the Statute of *Aston Burnel*, it was doubted whether Goods were devisable but in ancient *Boroughs*: For by the Writ *De Rationabili parte bonorum*, anciently the Goods of a Man were partible between his Wife and Children. By the Common Law Lands could not be devised from the Heir; and here it seems as if Goods were also not devisable from the Wife and Children, before the Statute 11 Ed. 1.

Boftage, (*Bofcagium*) Is that Food which Wood and Trees yield to Cattle, as Mast, &c. from the Ital. *Bofco*, *Silva*: But *Manwood* observes, to be quit *de Bofcagio*, is to be discharged of paying any Duty of Wind-fall Wood in the Forest.

Bofcaria, Wood-Houfes from *Bofcus*; or Ox-Houfes from *Bos* — *Ut ipfe poffunt Domos & Bofcaria fatis competentia adificare.* Mon. Angl. Tom. 2. fol. 302.

Bofcus, An ancient Word used in our Law, fignifying all Manner of Wood: The *Italians* make Use of *Bofco* in the same Sense; as the French do *Bois*. *Bofcus* is divided into High Wood or Timber, *Haut bois*, and Coppice or Under-Woods, *Sub bois*: But the High Wood is properly called *Saltus*; and in *Fleta* we read it *Maeremium*. — Cum una Carecta de mortuo *Bofco*. Pat. 10 H. 6.

Bofimus, A certain rustical Pipe, mentioned in ancient Tenures. By Inquisition after the Death of *Laurence Hastings* Earl of *Pembroke*, 22 E. 3. The Manor of *Afton Cantlow* in *Com. Warw.* is returned to be held of the King in *Capite* by these Words; *Quod quidem manerium per se tenetur de Domino Rege in Capite per servitium inveniendi unum hominem Peditem, cum quodam Arcu sine Corda, cum uno Bosinno sine cappa, &c.* Ex Record. Tur. Lond.

Boftar, An Ox-Stall. This Word occurs in *Mat. Paris.* Anno 1234. And in *Ingulphus*. — *Fecit tum borrea, Bofcaria, ovilia, &c.*

Bot, (Sax.) Signifies a Compensation, Remittance, or Amends: Hence comes *Manbote*, Compensation or Amends for a Man slain, &c. In King *Ina's* Laws is declared what Rate was ordained for Expiation of this Offence, according to the Quality of the Person slain. *Lamb. cap.* 96. From hence likewise we have our common Phrase *To Boot*, i. e. *Compensationis gratia*. There are *House-bote*, *Plough-bote*, &c. Privileges to Tenants in cutting of Wood, &c. on the Lands leased. *Vide* those Words, and *Skene verbo Bote*.

Botelless, *sine remedio*. In the Charter of H. 1. to *Tho.* Archbishop of *York*, it is said, that no Judgment or Sum of Money shall acquit him that commits Sacrilege; but he is in *English* called *Botelless*, viz. without Emendation. *Lib. Albus penes Cap. de Suthnet. Int. Plac. Trin.* 12 Ed. 2. *Ebor.* 48. We retain the Word still in common Speech; as it is *Bootless* to attempt such a Thing; that it is in vain to attempt it.

Botellaria, A Buttery or Cellar, in which the Butts and Bottles of Wine, and other Liquors are repositied. — *Veniet ad Palatium Regis, & ibit in Botellarium, & extrahet a quocunque vase in dicta Botellaria invento, vinum quantum viderit necessarium pro factura unius picberi claretti.* Anno 31 Ed. 1.

Botha, A Booth, Stall, or Standing in a Fair or Market. — *Et duas mensuras liberas ad Bothas suas faciendas.* Mon. Angl. 2 par. fol. 132.

Bothagium, *Boothage*, or customary dues paid to the Lord of the Manor or Soil, for the pitching and standing of Booths in Fairs or Markets. — *Picagium, Stallagium, Bothagium & Tollagium.* &c. *de novo Mercato infra villam de Burcester, Com. Oxon. Paroch. Antiq.* p. 680.

Bothna, or *Buthna*, Seems to be a Park where Cattle are inclosed and fed. *Hector Boetius lib.* 7. cap. 123. *Bothena* also signifies a Barony, Lordship, &c. And *Domini Bothena* are Lords of the Barony, Manor, &c. *Skene*.

Botiler of the King, (*Pincerna Regis*) Is an Officer that provides the King's Wines, who (according to *Fleta*) may by Virtue of his Office take out of every Ship laden with Sale Wines, *Unum dolium eligere in prora navis ad opus Regis, & aliud*

in puppe, & pro qualibet pecia reddere tantum 20. solid. Mercatori. Si autem plura inde habere voluerit, bene licebit, dum tamen pretium fide dignorum iudicio pro Rege apponatur. *Flcta, Lib. 2. cap. 21. Stat. 43 Ed. 3. cap. 3.*

Bottomry, (*Fœnus Nauticum*) Is when the Master of a Ship borrows Money upon the Keel or Bottom of his Ship, and binds the Ship it self; that if the Money be not paid by the Day assigned, the Creditor shall have the Ship. But it is generally where a Person lends Money to a Merchant, who wants it to traffick, and is to be paid a greater Sum at the Return of the Ship, standing to the Hazard of the Voyage; in Regard to which, though the Interest be greater than five per Cent, or what is allowed by Law, it is not Usury. For Money lent to Sea is allowed a larger Interest than Money advanced on Land, by Reason 'tis furnished at the Hazard of the Lender, and if the Ship perishes, the Lender shares in the Loss; so that there is no real Security, as in Case of Lands, &c. And the Greater the Danger is, the greater may be the Profit reasonably required for the Money advanced. *Lex Mercat. 122.* Money lent on *Bottomry* is either on the bare Ship, (the usual Way) or upon the Person of the Borrower, and sometimes upon both: The first is where a Man takes up Money, and obliges himself, that if such a Ship shall arrive at such a Port, then to repay perhaps in long Voyages near double the Sum lent; but if the Ship happens to miscarry, then nothing. But when Money is lent at Interest, it is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the Loan; whereas the Profit of the other, is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon himself, and makes the Interest lawful. *Sea Laws 206, 207.* Then there is *usura Marina*, joining the advanced Money, and the Danger of the Sea together; and this is obligatory sometimes to the Borrower's Ship, Goods and Person. Where Bonds or Bills of *Bottomry* are sealed, and the Money is paid, if the Ship receives Injury by Storm, Fire, &c. before the Beginning of the Voyage, then the Person borrowing only runs the Hazard, unless it be otherwise provided; as that if the Ship shall not arrive at such a Place, at such a Time, &c. there the Contract hath its Beginning from the Time of the Sealing: But if the Condition be, that if such a Ship shall sail from London to any Port abroad, and shall not arrive there, &c. then, &c. there the Contingency hath not its Beginning till the Departure. A Master of a Ship may not take up Money on *Bottomry*, in Places where his Owners reside, except he be a Part-Owner, and then he may only take up so much as his Part will answer in the Ship; for if he exceeds that, his own Estate is liable to make Satisfaction; but when a Master is in a strange Country, where there are no Owners, nor any Goods of theirs, nor of his own; and for Want of Money he cannot perform his Voyage, there he may take up Money upon *Bottomry*, and all the Owners are chargeable thereto; but this is understood where Money cannot be procured by Exchange, or any other Means: And in the first Case the Owners are liable by their Vessel, tho' not in their Persons; but they have their Remedy against the Master of the Ship. *Leg. Oleron. l. 4.* Some Masters of Ships who had insured or taken up Money upon *Bottomry* to a greater

Value than their Adventure, having made it a Practice to cast away and destroy the Ships under their Charge; by Stat. 10 Car. 2. cap. 6. it is made Felony, and the Offenders shall suffer Death. Vide 1 Ann.

Form of a Bill of Bottomry.

TO all People to whom these Presents shall come, I A. B. of, &c. Owner and Master of the Ship called, &c. of the Burthen of two hundred Tons, now riding at, &c. and bound for, &c. in the West-Indies, send Greeting: Whereas I the said A. B. am at this Time necessitated to take up upon the Adventure of the said Ship, called, &c. the Sum of 100 l. for setting forth the said Ship to Sea, and furnishing her with Provisions for the said Voyage, which C. D. of, &c. Merchant, hath on Request lent unto me, and supplied me with at the Rate of 20 l. for the said 100 l. during the said Voyage: Now know ye, that I the said A. B. do by these Presents, for me, my Executors and Administrators, covenant and grant to and with the said C. D. that the said Ship shall with the first fair Wind after the Day, &c. depart from the River of Thames, and shall as Wind and Weather, shall serve, proceed in her Voyage to, &c. in the West-Indies; and having there tarried until, &c. and the Opportunity of a Convoy, or being sooner dispatched (which shall first happen) shall return from thence, and shall as Wind and Weather shall serve, directly sail back to the River of Thames to finish her said Voyage: And I the said A. B. in Consideration of the said Sum of 100 l. to me in Hand paid by the said C. D. at and before the Sealing and Delivery of these Presents, do hereby bind my self, my Heirs, Executors and Administrators, my Goods and Chattels, and particularly the said Ship, with the Freight, Tackle, and Apparel of the same, to pay unto the said C. D. his Executors, Administrators or Assigns, the Sum of 120 l. of lawful British Money, within one and twenty Days next after the Return and safe Arrival of the said Ship, in the said River of Thames, from the said intended Voyage: And I the said A. B. do for me, my Executors and Administrators, covenant and grant, to and with the said C. D. his Executors and Administrators by these Presents, That I the said A. B. at the Time of the Sealing and Delivery of these Presents, am true and lawful Owner and Master of the said Ship, and have Power and Authority to charge and engage the said Ship as aforesaid; and that the said Ship shall at all Times after the said Voyage, be liable and chargeable for the Payment of the said 120 l. according to the true Intent and Meaning of these Presents: And lastly, it is hereby declared and agreed, by and between the said Parties to these Presents, that in Case the said Ship shall be lost, miscarry, or be cast away before her next Arrival in the said River of Thames, from the said intended Voyage, that then the said Payment of the said 120 l. shall not be demanded, or be recoverable by the said C. D. his Executors, Administrators or Assigns, but shall cease and determine, and the Loss thereby be wholly born and sustained by the said C. D. his Executors and Administrators: And that then and from thenceforth every Act, Matter and Thing herein contained on the Part and Behalf of the said A. B. shall be void, any Thing herein contained to the contrary notwithstanding. In Witnesses, &c.

Bovata Terra, An Oxgate of Land, being as much as one Ox can plough. — *Cujus singula Bovata sunt quindecim acra terra.* Mon. Angl. par. 3. fol. 91. See Oxgang.

Bouche of Court, Commonly called *Budge of Court*, was a certain Allowance of Provision from the King, to his Knights and Servants, that attended him in any military Expedition. The French *Avoir bouche a Court* is to have an Allowance at Court, of Meat and Drink: From *Bouche*, a Mouth. But sometimes it extended only to Bread, Beer, and Wine. And this was anciently in Use as well in the Houses of Noblemen, as in the King's Court, as appears by the following Indenture. — *Ceste Endenture fait parentre Lui Nobles Hommes Monsieur Tho. Beauchamp, Comte de Warwick, d'une part, & Monsieur Johan. Russell de Strengesham Chevalier, de autre part, tesmoigne que le dit Johan. est, &c. Et Avera pur la pees, &c. Bouche au Court pur lui mesme, &c. Donne a Nostre Chastel de Warwick le 29 jour del Moys de March, l'an du regne le Roy Richard le Second, puis le Conquest, &c.*

Boberium, or *Boveria*, An Ox-house or Stall. — *Loca ubi Stabulantur Boves. Gloss. in 10. Script.* And in the *Monasticon*, *Ad faciendum ibi Boverias suas & alias Domos usibus necessarias, &c. Mon. Angl. par. 2. fol. 210.*

Bobettus, A young Steer, or castrated Bullock. — *Unus Bovetrus mas, quatuor Boviculæ fœmina. Paroch. Antiq. p. 287.*

Bobicula, An Heifer, or young Cow; which in the East-Riding of *Yorkshire* is called a *Whee*, or *Whey*.

Bound, or *Boundary*, (*Bunda*) The utmost Limits of Lands, whereby the same is known and ascertained. — *Secundum metas, Meras, Bundas, & Marchias Forestæ. 18 Ed. 3. Itin. Pick. fol. 6. See 4 Inst. 318.*

Bow-bearer, An under Officer of the *Forest*, whose Office is to oversee, and true Inquisition make, as well of sworn Men as unsworn in every Bailiwick of the *Forest*; and of all Manner of Trespasses done, either to Vert or Venison, and cause them to be presented, without any Concealment in the next Court of Attachment, &c. *Crompt. Jurisd. fol. 201.*

Bracelets, Hounds, or rather Beagles of the smaller and slower Kind. — *Rex constituit J. L. Magistrum canum suorum vocatorum Bracelets, &c. Pat. 1 Rich. 2. p. 2. m. 1.*

Bracenarius, (*Fr. Braconnier*) A Huntsman, or Master of the Hounds. — *Rex mandat Baronibus quod alloquent Rob. de Chadeworth Vicecom. Lincoln ius. vii d. quos per præceptum Regis liberavit Johan. de Bellovento pro putura septem Leporariorum & trium Falconum & Lanerar. & pro vadiis unius Bracenarii a die, &c. usque, &c. prox. sequen. utroque die computato, viz. pro putura cujuslibet Leporarii & Falconis 1 d. ob. & pro vadiis prædicti Bracenarii per diem 11 d. Anno 26 Ed. 1. Rot. 10. in Dorso.*

Bracetu, A Hound: *Brachetus* is in *Fr. Brachet. Braco Canis sagax, indagator Leporum*: So as *Braco* was properly the large Fleet Hound; and *Brachetus*, the smaller Hound; and *Bracheta* the Bitch in that Kind. — *Concedo eis duos Leporarios & quatuor Bracetos ad Leporem capiendum. Monastic. Angl. Tom. 2. pag. 283. — Et duos Leporarios & quatuor Brachetas ad capiend. Leporem & Vulpem. Chart. 11 Ed. 2.*

Bratinum, A Brewing: The whole Quantity of Ale brewed at one Time, for which *Tolsester* was paid in some Manors. *Bracina* a Brew-house. *M. S. penes Will. Dugdale, Mil.*

Brandr, A Liquor well known, made chiefly in *France*, and extracted from the Lees of Wine.

In the Stat. 20 Car. 2. cap. 1. upon an Argument in the Exchequer Anno 1668. whether Brandy were a *Strong-water* or *Spirit*, it was resolved to be a *Spirit*: But in the Year 1669. by a Grand Committee of the whole House of Commons, it was voted to be a *Strong-water* perfectly made. See the Stat. 22 Car. 2. cap. 4.

Brasfiare, To brew. *Cujusunque Uxor Brasfiabat intus & extra Civitatem Heref. dabat 10. Denarios. Domesday. Brasfiatrix*, a She-Brewer. *Siqua Brasfiatrix brasfaverit Cervisiam, &c. Reg. Priorat. de Thurgarton. M. S.*

Brasium, Signifies Malt: In the antient Statutes *Brasfiator* is taken for a Brewer, from the *Fr. Brasseur*; and at this Day is used for a Maltster or Malt-maker. It was resolved 18 Ed. 2. *Quod venditio Brasii non est venditio victualium, nec debet puniri sicut venditio Panis, Vini & Cervisia, & hujusmodi contra formam Statuti.* To make Malt, was a Service paid by some Tenants to their Lords. — *In Manevio de Pidington quilibet virgatarius preparabit Domino unum quarterium Brasii per Annum, si Dominus inveniet Boscum ad siccandum. Paroch. Antiq. p. 496.*

Brass, Is to be sold in open Fairs and Markets, on Pain of 10*l.* and to be worked according to the Goodness of Metal wrought in *London*, or be forfeited; and Searchers of *Brass* and Pewter are to be appointed in every City, &c. *Stat. 19 Hen. 7. cap. 6. Brass and Pewter Wares, &c. are not to be sent out of the Realm, upon Pain of Forfeiture, &c. 25 & 33 Hen. 8. 2 & 3 Ed. 6.*

Breach of Promise, (*Violatio fidei*) A Breaking or Violating a Man's Word: And *Breach* signifies where a Person commits any *Breach* of the Condition of a Bond, or his Covenant, &c. entered into, on Action upon which the *Breach* must be assigned. In Debt on Bond, conditioned to give Account of Goods, &c. a *Breach* must be alledged, or the Plaintiff will have no Cause of Action. 1 *Saund. 102.* And when a *Breach* is assigned it must not be general, but must be particular; as in Action of Covenant for not repairing of Houses, the *Breach* ought to be assigned particularly, what is the Want of Reparation: If one covenants he was seised, and *Breach* is assigned that he was not seised, it must be set forth who is seised, &c. *Cro. Jac. 369.* But on mutual *Promise* for one to do an Act, and in Consideration thereof another to do some Act, as to sell Goods, &c. for so much Money, a general *Breach* that the Defendant hath not performed his Part, is well assigned. 3 *Lev. 319.* If the Condition of a Bond consists of several Parts, the Defendant in Pleading is to shew that he hath performed the several Matters contained in the Condition: But where a Covenant consists of several Parts in the Affirmative, Performance generally is a good Plea. *Sid. 215.* In Case of a Bond for Performance of an Award, if the Defendant pleads any Matter by which he admits a Non-performance, and excuses it, the Plaintiff in his Replication must shew the Award, and assign the *Breach*, that the Court may see an Award was made, and judge whether it was good or not; for if it should be of a void Part thereof, it need not be performed. 1 *Salk. 138.* *Breaches* assigned ought to be according to the very Words of the Condition or Covenant; when they may be well enough though too general. 1 *Lutw. 326.* Where a Thing is to be done by a Person or his Assigns, the *Breach* is to be

be that it was done neither by the one or the other. 5 *Mod.* 133. If a Person is to tender a Conveyance, &c. to another, his Heirs or Assigns, *Breach* assigned that the Defendant did not tender a Conveyance to the Plaintiff, without the Words his Heirs or Assigns, is good: But if the Tender be to be made by the Plaintiff, his Heirs, &c. and not to him, it is otherwise. 1 *Salk.* 139. Where a Lessee for Years is to leave all the Timber on the Land, which was growing there at the Time of the Lease, and he cuts down the Trees, though he leaves the Timber on the Land at the End of his Lease, this is a *Breach* of Covenant: For in Contracts the Intention of Parties is chiefly to be considered. *Raym.* 464. If Lands are only excepted out of a Lease, and a Person is disturbed in enjoying them by the Lessee, this is no *Breach* of Covenant; though it is said it might be otherwise if a Way, Common, &c. be excepted. *Moor* 553. Where one brings an Action for a Covenant broken, he ought to assign the *Breach* of it in such a Manner, that the Defendant may take an Issue. 1 *Lill. Abr.* 240. If several *Breaches* are assigned, and the Defendant demurs upon the whole Declaration, the Plaintiff shall have Judgment for all that are well assigned, for they are as several Actions. *Cro. Jac.* 557. Where a Declaration assigns no particular *Breach* of Covenant, it is cured by Verdict; though ill upon Demurrer. 1 *Ventr.* 114, 126. Formerly a Plaintiff could assign but one *Breach* in Action of Debt upon a Bond for Performance of Covenants, tho' several Things were broken; for one *Breach* being proved, was a Forfeiture of the Bond: But in Action of Covenant, as many *Breaches* might be assigned as the Plaintiff would, because the Plaintiff might have a particular Damage upon each Covenant broken; and a several Issue must be taken upon every *Breach*. 1 *Nelf. Abr.* 406. And now by Statute, in Action on Bond for Performance of Covenants, the Plaintiff may assign as many *Breaches* as he pleases, and the Jury shall assess Damages and Costs for such Covenants as are proved to be broken. *Stat.* 8 & 9 *W.* 3. *cap.* 10. And where Judgment shall be given for the Plaintiff in such Action on a Demurrer, *Nil dicit*, &c. he may suggest on the Roll as many *Breaches* as he thinks fit; upon which a Writ of Enquiry shall go, &c. And if before Execution executed, the Defendant brings the Costs and Damages into Court, Execution shall be stayed; and the Plaintiff shall acknowledge Satisfaction, if the Execution be executed: But the Judgment shall still stand as a Security to answer the future *Breach* of any Covenant in the Deed; for which the Plaintiff or his Executors, &c. may have a *Scire facias* upon such Judgment against the Defendant. *Stat. Ibid.*

Bread of Treet, or Trite, (Panis Tritici) Is Bread mentioned in the Statute 51 *Hen.* 3. of Assise of Bread and Ale; wherein is particularized *Wafel Bread*, *Cocket Bread*, and *Bread of Treet*, which answer to the three Sorts of Bread now in Use, called White, Wheaten, and Household Bread. In religious Houses they heretofore distinguished Bread by these several Names, *Panis Armigerorum*, *Panis Conventualis*, *Panis Puerorum*, & *Panis Famulorum*. *Antiq. Not.*

Breach, (From the Fr. *Breche*) A Breach or Decay. In some ancient Deeds there have been Covenants for repairing *Muros* & *Breccas*, *portas* & *Fossata*, &c. — *De Brecca Aquæ inter Wool-*

wich & *Greenwich supervidend.* *Pat.* 16 *Ric.* 2. **Brede**, A Word used by *Brañon* for Broad; as too large and too *brede*, is proverbially too long and too broad. *Brañ. lib.* 3. *tract.* 2. *c.* 15. There is also a Sax. Word *Brede*, signifying Deceit. *Leg. Canut. cap.* 44.

Bredwite, (Sax. *Bread and Wite*) A Fine or Penalty, imposed for Defaults in the Assise of Bread: To be exempt from which, was a special Privilege granted to the Tenants of the Honour of *Wallingford* by King *Hen.* 2. *Paroch. Antiq.* 114.

Brehon. In *Ireland* the Judges and Lawyers were antiently stiled *Brehones*; and thereupon the *Irish* Law called the *Brehon-Law*. 4 *Inst.* 358.

Breisna, Whether-Sheep. — *Concedo Deo & Monachis* 30. *Breisnas singulis Annis.* *Mon. Angl.* *Tom.* 1. *cap.* 406.

Brenagium, A Payment in Bran, which Tenants antiently made to feed their Lords Hounds. *Blount.*

Bretoysse, or Bretois, The Law of the Marches of *Wales*, in Practice among the ancient *Britains*. — *Ego Henricus de Penebrugge dedi omnibus liberis Burgensibus meis Burgi mei de Penebrugge omnes Libertates & liberas consuetudines secundum Legem de Bretoysse, &c.* *Pat. sine dat.* Here *Legem de Bretoysse* is said to signify *Legem Marchiarum*; for *Penebrugge*, now called *Pembridge*, is a Town in *Heresfordshire* which borders upon *Wales*.

Breve, Is any Writ by which a Man is summoned or attached to answer an Action, or whereby any Thing is commanded to be done in the King's Courts, in Order to Justice, &c. It is called *Breve* from the Brevity of it; and is directed either to the Chancellor, Judges, Sheriffs, or other Officers, whose various Forms you may see in the Register. — *Breve, quia breviter & paucis Verbis intentionem proferentis exponit & explanat, &c.* *Brañ. lib.* 5. *Tract.* 5. *c.* 17. Not only Writs, but Letters Patent of the King, or Licences to make a Collection for any publick or private Loss sustained by the Subject, are commonly stiled *Breve* or *Briefs*. See *Skene de verb. Breve. Vide Writ.*

Breve perquirere, To purchase a Writ or Licence of Trial, in the King's Courts, by the Plaintiff, *qui Breve perquisivit*: And hence comes the Usage of paying 6 *s.* 8 *d.* Fine to the King, where the Debt is 40 *l.* and of 10 *s.* where the Debt is 100 *l.* &c. in Suits and Trials for Money due upon Bond.

Breve de Recto, A Writ of Right, or Licence for a Person ejected out of an Estate, to sue for the Possession of it when detained from him. *Vide Recto.*

Brevibus & Rotulis liberandis, A Writ or Mandat to a Sheriff to deliver unto his Successor the County, and the Appurtenances, with the Rolls, Briefs, Remembrances, and all other Things belonging to that Office. *Reg. Orig. fol.* 295.

Brewers, Are to put their Drink in Vessels mark'd by a Cooper, or forfeit 3 *s.* 4 *d.* a Barrel; and not selling it at reasonable Rates appointed by Justices, incur a Forfeiture of 3 *s.* 6 *d.* for every Barrel, *Kilderkin* 3 *s.* 4 *d.* &c. by *Stat.* 23 *H.* 8. *cap.* 4. And *Brewers* are to make an Entry at the Excise-Office once a Week of Liquors brewed, under Penalties, &c. 12 & 15 *Car.* 2. 7 & 8 *W.* 3. See *Excise*.

Bribery, (from the Fr. *Briber*, to devour or eat greedily) Is a high Offence, where a Person in

in a judicial Place takes any Fee, Gift, Reward, or Brocage, for doing his Office, but of the King only. 3 *Inst.* 145. But taken largely it signifies the Receiving, or Offering, any undue Reward, to or by any Person concerned in the Administration of publick Justice, whether Judge, Officer, &c. to act contrary to his Duty: And sometimes it signifies the Taking or giving a Reward for a publick Office. 3 *Inst.* 149. *Hob.* 9. A Bribe of Money though small, the Fault is great; and Judges Servants, may be punished for receiving *Bribes*. And if a Judge refuses a Bribe offered him, the Offerer is punishable. *Fortescue*, cap. 51. *Bribery* in judicial or ministerial Officers, is punished by Fine and Imprisonment. Before the Statute 23 *Ed.* 3. *Bribery* in a Judge was looked upon as so heinous an Offence, that it was sometimes punished as High Treason; and it is at this Day punishable, with Forfeiture of Office, Fine and Imprisonment. In the Reign of King *Jam.* 1. the Earl of *M.* Lord Treasurer of *England*, being impeached by the Commons, for refusing to hear Petitions referred to him by the King, till he had received great *Bribes*, &c. was by Sentence of the Lords, deprived of all his Offices, and disabled to hold any for the Future, or to sit in Parliament; also he was fined fifty thousand Pounds, and imprisoned during the King's Pleasure. 1 *Hawk.* P. C. 170. In the eleventh Year of King *George*, the Lord Chancellor *M*—— had a milder Punishment: He was impeached by the Commons, with great Zeal, for *Bribery*, in selling the Places of Masters in Chancery, for exorbitant Sums, and other corrupt Practices, tending to the great Loss and Ruin of the Suitors of that Court; and the Charge being made good against him, being before deposed of his Office, he was sentenced by the Lords to pay a Fine of Thirty thousand Pounds, and imprisoned till it was paid. *Vide* the Trial. By Statute, the Chancellor, Treasurer, Justices of both Benches, Barons of the Exchequer, &c. shall be sworn not to ordain or nominate any Person in any Office, for any Gift, Brocage, &c. 12 *R.* 2. cap. 2. And the Sale of Offices concerning the Administration of publick Justice, &c. is prohibited on Pain of Forfeiture and Disability, &c. By 5 & 6 *Ed.* 6. cap. 16. In the Construction of the last mentioned Statute, it has been resolved that the Offices of the Ecclesiastical Courts, are within the Meaning of that Act, as well as the Offices in the Courts of Common Law; and it has been adjudged, that one who contracts for an Office, contrary to the Purport of the said Statute 5 & 6 *Ed.* 6. is so disabled to hold the same, that he cannot be restored to a Capacity of holding it by any Grant or Dispensation whatsoever. *Cro. Jac.* 269, 386. *Hawk.* P. C. 171. Officers of the Customs, &c. taking any Bribe, or Reward, whereby the Crown shall be defrauded, shall forfeit 100*l.* and be rendered incapable of any Office. *Stat.* 14 *Car.* 2. cap. 11. But there is a saving Clause for the first Offence, acknowledging it in two Months. No Person setting up for Member of Parliament, shall after the Teste of the Writ of Election, or after any Place becomes vacant, give any Bribe of Money, Meat, Drink, Gift, Reward, &c. in order to be elected, on Pain of Disability to serve in Parliament. 7 *W.* 3. cap. 4.

Bribeur, (Fr. *Br. beur*) A Beggar; and seems to signify, in some of our old Statutes, one that pilfers other Men's Goods. 28 *Ed.* 2. cap. 1.

Bitolls; An Engine mentioned in *Blount*, by which Walls were beat down.

Bridge; (*Pons*) A Building of Stone or Wood erected across a River; for the common Ease and Benefit of Travellers. At Common Law those who are bound to repair publick Bridges, must make them of such Height and Strength, as shall be answerable to the Course of the Water; and they are not Trespassers if they enter on any Land adjoining to repair them, or lay the Materials necessary for the Repairs thereon. *Dalt.* cap. 16. Common Bridges being built for the common Ease of the People, of common Right ought to be repaired by the County; but a particular Person, Town, &c. may be bound to repair them by Tenure, or Prescription. 6 *Mod.* 307. And if a Man erects a Bridge for his own Use, and the People travel over it as a common Bridge, he shall notwithstanding repair it: Though a Person shall not be bound to repair a Bridge, built by himself for the common Good and publick Convenience, but the County must repair it. 2 *Inst.* 701. 1 *Salk.* 359. Where Inhabitants of a County are indicted for not repairing a Bridge, they must set forth who ought to repair the same, and traverse that they ought. 1 *Ventr.* 256. A Vill may be indicted for a Neglect in not repairing of a Bridge; and the Justices of Peace in their Sessions may impose a Fine for Defaults. And any particular Inhabitant of a County, or Tenant of Land charged to Repairs of a Bridge, may be made Defendants to an Indictment for not repairing it, and be liable to pay the Fine assessed by the Court for the Default of the Repairs; who are to have their Remedy at Law for a Contribution from those who are bound to bear a proportionable Share of the Charge. 6 *Mod.* 307. If a Manor is held by Tenure of repairing a Bridge, or Highway, which Manor afterwards comes into several Hands, in such Case every Tenant of any Parcel of the Demesnes and Services, (not ancient Copyholders, &c.) is liable to the whole Charge, but shall have Contribution of the Rest; and this though the Lord may agree with the Purchasers to discharge them of such Repairs, which only binds the Lord, and doth not alter the Remedy which the Publick hath. 1 *Dant.* *Abr.* 744. 1 *Salk.* 358. Indictments for not repairing of Bridges, will not lie but in the Case of Common Bridges on Highways; tho' it hath been adjudged they will lie for a Bridge on a common Footway. *Mod. Ca.* 256. Not keeping up a Ferry, or not permitting Persons to pass over it, being a common Passage for all the King's People, is indictable, as well as not keeping up Bridges. 1 *Salk.* 12. All Householders dwelling in any County or Town, whether they occupy Lands or not; and all Persons who have Land in their own Possession, whether they dwell in the same County or not, are liable to be taxed as Inhabitants, towards the Repairs of a publick Bridge, by the Statute 22 *H.* 8. cap. 5. Where it cannot be discovered who ought to repair a Bridge, it must be presented by the Grand Jury in Quarter-Sessions; and after their Inquiry, and the Order of Sessions upon it, the Justices may send for the Constables of every Parish, to appear at a fixed Time and Place, to make a Tax upon every Inhabitant, &c. But it has been usual, in the Levying of Money for Repairs of Bridges, to charge every Hundred with a Sum in Gross, and to send such Charge to the High Con-

Constables of each Hundred, who send their Warrants to the Petty Constables, to gather it, by Virtue whereof they assess the Inhabitants in particular Sums, according to a fixed Rate, and collect it; and then they pay the same to the High Constables, who bring it to the Sessions. This Method of raising Money, though it be contrary to the Statute 22 Hen. 8. has been observed some Years past; but by the 1 Ann. c. 18. Justices in Sessions, upon Presentment made, are to assess every Town, Parish, &c. in Proportion towards the Repairs of a Bridge; and the Money assessed is to be levied by the Constables of such Parishes, &c. and being demanded, and not paid in ten Days, the Inhabitants shall be distrained; and when the Tax is levied, the Constables are to pay it to the High Constable of the Hundred; who is to pay the same to such Persons as the Justices shall appoint, to be employed according to the Order of the Justices, towards repairing of the Bridge: And the Justices may allow any Person concerned in the Execution of the Act 3 d. per Pound out of the Money collected. All Matters relating to the Repairing and Amending of Bridges, are to be determined in the County where they lie, and no Presentment or Indictment shall be removed by *Certiorari*. And by this Statute, the Evidence of the Inhabitants of those Places where the Bridges are in Decay, shall be admitted at any Trial upon an Information or Indictment, &c. No Persons are compellable to make a new Bridge but by Act of Parliament: And the Inhabitants of the whole County cannot of their own Authority change a Bridge from one Place to another. If a Man has Toll for Men and Cattle passing over a Bridge, he is to repair it; and Toll may be paid in these Cases, by Prescription, or Statute. Indictments of Bridges out of Repair must say, that the Bridge is *Pons Publicus & communis, situs in Alta Regia via super flumen, &c.*

Brief, (*Brevi*) An Abridgment of the Client's Case, made out for the Instruction of Counsel, on a Trial at Law; wherein the Case of both Plaintiff and Defendant is to be briefly but fully stated, the Proofs must be placed in due Order, and proper Answers made to whatever may be objected against the Client's Cause, by the opposite Side; and herein great Care is requisite, that nothing be omitted to endanger the Cause. *Form of a Brief*, see *Pract. Solic.* pag. 311.

Brig, (*Fr. Brigue*) Debate, or Contention. — *Et posuit terram illam in Brigam & intricavit terram, scilicet, per diversa fraudulenta Feoffamenta; Ideo committitur Marefc.* Ebor. Hill. 18 Ed. 3. Rot. 28.

Brigandine, (*Fr. in Lat. Lorica*) Is a Coat of Mail, or antient Armour, consisting of many jointed and scale-like Plates, very pliant and easy for the Body. This Word is mentioned in 4 & 5 P. & M. cap. 2. And some confound it with *Haubergeon*; and others with *Brigantine*, which is very different from it, being a long but low built Vessel, swift in sailing, used at Sea.

Brigantes, A Word used for *Yorkshire, Lancashire, Bishoprick of Durham, Westmorland and Cumberland*. Blount.

Brig-bote, or **Brug-bote**, Signifies to be freed from the Reparation of Bridges. It is compounded of the Sax. *Brig*, a Bridge, and *Bote*, which is a Yielding of Amends, or Supplying a Defect: But this is more properly *Bruck bote*, from the Germ. *Bruck*, i. e. a Bridge, and *Bote* a Compensa-

tion; and it is used for the Liberty or Exemption of being free from Tribute or Contribution towards the Mending or Re-edifying of Bridges. *Flota, lib. 1. cap. 47. Selden's Titles of Honour, fol. 622.*

Broccage, (*Broccagium*) The Wages or Hire of a Broker; which is also termed *Brokerage*. 12 R. 2. c. 2. and 11 H. 4. — *Ex Broccagio, vel alio sinistro pacto.* Rot. Stat. 31 Ed. 3.

Broccella. This Word, as interpreted by Dr. *Thoresen*, signifieth a Wood; and it is said to be a Thicket or Covert of Bushes, and Brush-wood, from the obsolete Lat. *Brusca, terra Bruscosa, & Brocia*, Fr. *Broce, Brocelle*: And hence is our *Broome* of Wood, and *Brousing* of Cattle. — *Dedi unam Brocellam vocat.* &c. Reg. de Thurgaton. M. S.

Brocha, (*From the Fr. Broche*) An Awl, or large Packing Needle, the Use whereof is very well known. A Spit in some Parts of England is called a *Broche*; and from this Word comes to pierce or *broach* a Barrel. That it was an Iron Instrument, you may learn from the following Authority. — *Henricus de Havering tenet Manerium de Norton in Com. Essex, per Serjeantiam inveniendi unum hominem, cum uno equo, &c. & uno sacco de corio, & una Brochia ferrea.* Anno 13 Ed. 1.

Brochia, A great Can or Pitcher. *Bract. lib. 2. tract. 1. cap. 6.* Where it seems that he intends *Saccus* to carry dry, and *Brochia* liquid Things.

Brodehalpenny, or **Broadhalspenny**. See *Bord-halspenny*.

Brokers, (*Broccatores, Broccarii & Auxionarii*) Are those that contrive, make and conclude Bargains and Contracts between Merchants and Trademen, in Matters of Money and Merchandize, for which they have a Fee or Reward. These are *Exchange Brokers*; and by the Statute 10 R. 2. cap. 1. they are called *Brooggers*; also *Brooggers of Corn* is used in a Proclamation of Queen Elizabeth for Badgers. *Baker's Chron. fol. 411.* The Original of the Word is from a Trader broken, and that from the Sax. *Broc*, which signifies Misfortune, which is often the true Reason of a Man's Breaking; so that the *Broker* came from one who was a broken Trader by Misfortune, and none but such were formerly admitted to that Employment; and they were to be Freemen of the City of London, and allowed and approved by the Lord Mayor and Aldermen, for their Ability and Honesty. By the Stat. 8 & 9 W. 3. cap. 20. they are to be licensed in London by the Lord Mayor, who gives them an Oath, and takes Bond for the faithful Execution of their Offices: And if any Persons shall act as *Brokers*, without being thus licensed and admitted, they shall forfeit the Sum of 500 l. Also the like Penalty is inflicted on lawful *Brokers* selling Shares of Stock not authorized by Act of Parliament. Stat. 6 Geo. cap. 18. There are likewise *Pawn-Brokers*, who commonly keep Shops, and let out Money to poor necessitous People upon Pawns, for the most Part on Extortion; but these are more properly *Pawn-takers*, and are not of that Antiquity or Credit as the former; nor do the Statutes allow them to be *Brokers*, though now commonly so called. These *Brokers* often deal in stolen Goods, as they buy them cheap, and are a great Nuisance: Notwithstanding there is a Law declaring that wrongful Sale of Goods stolen, &c. to and by *Brokers*, shall not alter the Property; and if they do not

not discover such Goods at the Request of the Owner, they are to forfeit double Value. 1 *Fac. 1. cap. 21.* Brokers generally stay no longer than a Year for their Money lent on Pawns, at the End whereof they sell the Goods if not redeemed; and the Reason of exorbitant Interest being taken by Brokers, is the Want of Witnesses to prove the Contract, or other Proof of the Money taken but the Party's own Evidence. See *Pawn.*

Brok, An old Sword or Dagger. — *Furati dicunt super sacramentum, quod Johannes de Monemne Miles per Robertum Armigerum suum, percussit Adam Gilbert Capellanum de Wilton, in gutture quodam Gladio, qui dicitur Brok, per quod propinquior erat Morti, &c.* Rot. Parl. 35 E. 1.

Brofus, Bruised or injured with Blows, Wounds, or other Casualty. *Cowel.*

Brothel-houses, Lewd Places or Stews, being the common Habitations of Prostitutes. King Hen. 8. by Proclamation, in the 37th Year of his Reign, suppressed all the Stews or Brothel-houses, which had long continued on the Bank-side in Southwark, contrary to the Law of God and of the Land. 3 *Inst.* 205. A Brothelman was a loose idle Fellow; and a *Feme Bordelier* or Brothelier, a common Whore. *Borel-man* is a Contraction of Brothelman; and hence Borel-folks, Drunkards and Epicures, which the Scotch now call *Bureil folk.* *Chaucer.* See *Bawdy-house.*

Buere. This the Latines call *Erica*, and signifies Heath-Ground. *Domesday.* And *Brueria*, Briars, Thorns, or Heath, from the Sax. *Brær*, *Briar.* — *Humphry Duke of Gloucester grants the Forester of Shotore and Stowode, tantum de Arboribus & Brueriis, quantum pro vestura indiguerit, habeat.* Paroch. Antiq. 620.

Buillus, Brogillus, A Wood or Grove; Fr. *Breil*, *Breuil*, a Thicket or Clump of Trees in a Park or Forest. Hence the Abby of Bruer, in the Forest of Wichwood in Com. Oxon: And *Bruel* or *Brehul*, a Hunting Seat of our antient Kings in the Forest of Bernwood, Com. Bucks.

Builletus, A small Copice or Wood. — *De dimis Willielmo B. Licentiam claudendi duos Bruilletos, qui sunt extra regardam Foresta nostra quorum unus est inter Swinburn & Eftorbrig.* Cart. Ric. 1. *Bruella* seems likewise to signify a little Wood, or heathy Ground. — *In Dominicis Boscis Domini Episcopi, scil. in Bruellis ex parte australi Regii itineris.* Reg. Priorat. de Wermley, fol. 24.

Bruscia, Sometimes signifies a Wood: And in *Mon. Angl. Charta nostra confirmamus centum acras tam de terra quam de Bruscia de Manerio de Riveria.* Monast. Tom. 1. pag. 773.

Brusua and **Brusula,** Brouse or Brushwood. *Mon. Angl. Tom. 1. fol. 773.*

Bucklarium, A Buckler. — *Et quod Malefactores noctanter cum Gladiis & Bucklariis, ac aliis Armis, &c.* Claus. 26 Ed. 1. m. 8. intus.

Buckfall, A Toil to take Deer; which by the Statute 19 H. 7. is not to be kept by any Person that hath not a Park of his own, under Penalties. There is a Privilege of being quit of *Buckfalls.* — *Et sint quieti de Chevagio, Hondpeny, Buckfall, &c. & de omnibus Misericordiis, &c.* Privileg. de Semplingham. See 4 *Inst.* 306.

Buckwheat, Is the same with French Wheat, and well known in many Counties of this Kingdom: In *Essex* it is called *Brank*; and in *Worcestershire*, *Crap.* It is mentioned in the Statute 15 Car. 2. cap. 5.

Bucinus, A military Weapon for a Footman.

— Petrus de Chetwood tenet — per Ser-jantiam inveniend. unum hominem peditem, cum una lancea, & uno Bucino ferro, &c. Tenures, pag. 74.

Buggery, or **Sodomy,** comes from the Italian *Buggerare*, to bugger; and is defined to be *Carnalis copula contra Naturam, & hoc vel per confusionem Specierum, sc. a Man or Woman with a brute Beast; vel Sexuum, a Man with a Man, or Man with a Woman.* 12 Rep. 36. This Sin against God, Nature, and the Law, 'tis said was brought into England by the Lombards. Rot. Parl. 50 Ed. 3. numb. 58. Stat. 25 H. 8. cap. 6. And in antient Times, according to some Authors, it was punished with Burning, though others say with burying alive: But at this Day it is Felony excluded Clergy, and punished as other Felonies. 25 Hen. 8. cap. 6. and 5 Eliz. 17. And it is Felony both in the Agent and Patient consenting, except the Person on whom committed be a Boy under the Age of Discretion; when 'tis Felony only in the Agent. For many Years past, the Crime of *Buggery* has been greatly practised in this Kingdom, without any exemplary Punishments of the Committers of it; till Anno 12 Geo. a great Number of these Wretches were detected of the most abominable Practices, and three of them put to Death; which seasonable Justice seems to have given a Check to the before growing Evil. In every Indictment for this Offence, there must be the Words, *Rem habuit veneream & carnaliter cognovit, &c.* and of Consequence some Kind of Penetration and Emission must be proved; but any the least Degree is sufficient. 1 Hawk. 6. This Sin is excepted out of our Acts of general Pardon.

Bull, (*Bulla*) A Brief or Mandate of the Pope or Bishop of Rome, from the Lead, or sometimes Gold Seal affixed thereto; which *Mat. Paris*, Anno 1237. thus describes: *In Bulla Domini Papae Stat Imago Pauli a dextris Crucis in medio Bullae figurata, & Petri a Sinistris.* These Decrees of the Pope are often mentioned in our Statutes, as 25 Ed. 3. 28 H. 8. cap. 16. 1 & 2 R. & M. c. 8. and 13 Eliz. cap. 2. And have been heretofore used, and of Force in this Land: But by the Statute 28 Hen. 8. it was enacted, That all *Bulls*, Briefs and Dispensations had or obtained from the Bishop of Rome, should be void. And by 13 & 23 Eliz. If any Person shall obtain from Rome any Bull or Writing to absolve or reconcile such as shall forsake their due Allegiance, or shall give or receive Absolution by Colour of such Bull, or use or publish such Bull, &c. it is made High Treason.

Bullion, (Fr. *Billon*) the Ore or Metal whereof Gold is made; and signifies with us Gold or Silver in Billet. Anno 9 Ed. 3. cap. 2.

Bultel, Is the Bran or Refuse of Meal after dressed by the Baker; also the Bag wherein it is dressed is called a *Bulter* or rather *Boulter.* The Word is mentioned in the Statute *de Assisa panis & Cervisie*, Anno 51 Hen. 3. Hence comes *Bulted* or *Boulterd Bread*, being the coarsest Bread.

Burcheta, (From the Fr. *Berche*) A Kind of Gun used in Forests.

Burifer Regis, Purse-bearer, or Keeper of the King's Privy Purse. Pat. 17 H. 8.

Burdare, To jest or trifle. — *Quod nulli veniant ad turniandum vel Burdandum, nec ad alias quascunque Aventuras, &c.* Mat. Paris, Addit. pag. 149.

Burgage, (*Burgagium*) An antient Tenure proper to Boroughs, whereby the Inhabitants by Custom hold their Lands or Tenements of the King, or other Lord of the Borough, at a certain yearly Rent. *Old Tenures*. It is a Kind of Socage Tenure, and signifieth the Service whereby the Borough is holden, 1 *Inst.* 109. *Swinburn* ranks it *inter ignobiles Tenuras*. And 37 *H. 8. c. 20. Item non Utimur facere fidelitatem vel Servitium forinsecum Dominis Feodorum pro terris & Tenementis nostris, nisi tantummodo redditus nostros de eisdem terris ex-euntes; quia tenemus terras & tenementa nostra per Servitium Burgagii, ita quod non habemus Medium inter nos & Dominum Regem.* M. S. Codex de L. L. Statutis & Consuetud. Burgi-villæ Montgomer. à temp. Hen. 2. — Antiently a Dwelling-house in a Borough Town, was called a *Burgage*. — *Sciant Quod Ego Editha, &c. Dedi. — In liberam, puram & perpetuam Eleemosynam totum illud Burgagium cum Edificiis & pertin. suis quod jacet in Villa Leominstr. Ex libro Chartarum Priorat. Leom.*

Burgagium liberum, Was when Tenants having paid their Rent to the Superior Lord, they were free from other Services.

Burgh, A small walled Town, or Place of Privilege, &c. See *Borough*.

Burg-bote, (from *Burg*, *Castellum* and *Bote*, *Compensatio*) Is a Tribute or Contribution towards the Building or Repairing of Castles, or Walls of a Borough or City: From which divers had Exemption by the antient Charters of the Saxon Kings. *Rastal. Burgh-bote significat quietantiam Reparationis murorum Civitatis vel Burgi. Fleta, lib. 1. cap. 47.*

Burgesses, (*Burgarii & Burgeses*) Are properly Men of Trade, or the Inhabitants of a Borough or walled Town; but we usually apply this Name to the Magistrates of such a Town, as the Bailiff and Burgesses of *Leominster*, &c. In Germany, and other Countries, they confound *Burgess* and *Citizen*; but we distinguish them, as appears by the Stat. 5 *R. 2. cap. 4.* where the Classes of the Commonwealth are thus enumerated, *Count, Baron, Banneret, Chevalier de Countee; Citizein de Citee; Burgess de Burgh.* See *Co. Lit.* 80. We now also call those *Burgesses*, who serve in Parliament, for any Borough or Corporation: And no Man is qualified to be a *Burgess* in Parliament, that hath not an Estate of 300 *l.* a Year, clear of all Incumbrances. *Stat. 9 Ann. cap. 7. Vide Borough.*

Burghbreche, A Fine imposed on the Community of a Town, for the Breach of Peace, &c. *Angli omnes decemvirali olim fidejussione pacem Regiam stipulati sunt, quod autem in hanc Commissum est, Burghbrech dicitur, &c. Leg. Canuti, cap. 55. Burghbrech est Latio Libertatis aut Septi. Gallice, blefmure de Courte ou de clofe. Polychron, lib. 1. cap. 50.*

Burgheristhe, or *Burgheriche*, Is a Word used in *Domesday*, signifying *Violatio Pacis in Villa*. — *Iste consuetudines pertinent ad Taunton Burgheristh. Latrones, Pacis infractio, Hanifare, Denarii de Hund. & Denarii S. Petri, &c. M. S. Cambdeni, penes Will. Dugdale Armig. Quere. Blount.*

Burghmote, A Court of a Borough. — *Et habeatur in Anno ter Burgesmotus, &c. nisi sapius sit, & interfit Episcopus & Aldermannus, & doceant ibi Dei rectum & Saculi. L. L. Canuti, M. S. cap. 44.*

Burghware, (*quasi Burgivir*) A Citizen or Burgess. — *Willielmus Rex Salut. Willielmum Epif-*

copum, & Godfredum Portgrefum, & omnem Burghware infra London. Charta Willielmi sen. Londinensibus concessa.

Burglary, (*Burglaria*, from the Sax. *Burgh*, *Domus*, or *Arx*, & *Laron*, *furtum*) Is where a Man breaketh and entereth the House of another, wherein some Person is, in the Night-time, to the Intent to commit some Felony, whether the Intention be executed or not. 4 *Co.* 39. In the natural Signification *Burglary* is nothing but the Robbing of a House; but our Law restrains it to Robbing a House by Night, or Breaking in with an Intent to rob, or do some other Felony: And the like Offence committed by Day is called *House-breaking*, to distinguish it from *Burglary*. It is an Offence excluded the Benefit of Clergy, and may be committed a great many Ways: And if a Man hath two Houses, and resides sometimes in one of the Houses, and sometimes in the other, if the House he doth not inhabit is broken in the Night, it is *Burglary*. *Poph.* 52. If Thieves pretend Business to get into a House by Night, and thereupon the Owner of the House opens his Door, and they enter and rob the House, this is *Burglary*. *Kel.* 42. Also if a Person be within a House, and steal Goods, and then open the House on the Inside, and go out with the Goods, this is *Burglary*, tho' the Thief do not break the House. 3 *Inst.* 64. If a Thief unlocks a Door, or draws the Latch of a Room, to rob, &c. If one comes down a Chimney, open a Window, break a Hole in the Wall, &c. all these are a Breaking: And if the Thief set his Foot over the Threshold of the Door of the House, or put his Hand, Pistol, &c. within the Door or Window, it is an Entry sufficient to make it *Burglary*. *H. P. C.* 80, 81. Though the House is to be a Mansion-house, and the Out-houses adjoining to the Mansion-house are Part thereof, wherein this Crime may be committed; but not a Barn, Stable, &c. at any Distance from the House. 4 *Rep.* 40. Part of a House divided from the Rest, having a Door of its own to the Street, this is a Mansion-house of him who hires it. *Kel.* 84. A Chamber in an Inn of Court, where one usually lodges is a Mansion-house; for every one hath a several Property there. But a Chamber where any Person doth lodge as an Inmate, cannot be called his Mansion; tho' 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. *Kel.* 83. If the Owner of the House breaks into the Rooms of his Lodgers, and steals their Goods, it cannot be *Burglary* to break into his own House; but it is Felony to steal their Goods. *Wood's Inst.* 378. When several come with a Design to commit *Burglary*, and one does it while the Rest watch near the House, here the Act of one is by Interpretation the Act of all of them. *Ibid.* 377. Taking away Goods from a Dwelling-house, where any Person is therein; and breaking any Shop, Warehouse, &c. and taking away Goods to the Value of 5 *s.* though no Person be therein, is *Burglary*, by Stat. 3 & 4 *W. & M.* cap. 9. 10 & 11 *W.* 3. cap. 23. And a Reward of 40 *l.* is given by Statute for apprehending a Burglar, and prosecuting him to Conviction. 5 *Ann.* cap. 31. The Indictment for *Burglary* must set forth that *Fregit & Intrauit Domum Mansionalem, &c.*

Buri, A Word signifying Husbandmen. — In Upton *sunt* 18 Villani, 11 Bordarii, & duo Buri, &c. Mon. Angl. Tom. 3. p. 183.

Burneta, Cloth made of dy'd Wool. A Burnet Colour must be dyed; but *Brunus Color* may be made with Wool without Dying, which we call Medleys or Russets. *Differentia inter Brunum Colorem & Burnetam*; *Brunus enim color potest fieri ex lana absque tinctura, viz. Russelum: Burnetum vero requirit tincturam & artificium hominis quoad colorem.* Lyndewood. Thus much is mentioned because this Word is sometimes wrote *Bruneta*.

Burrochium, A Burrock, or small Wear over a River, where Wheels are laid for the taking of Fish.

Burfa, A Purse. *Reddendo inde ad Bursam Abbatibus vid. ad Festum Sancti Michaelis, &c.* Ex lib. Chart. Priorat. Leominstr.

Bursaria, The Bursery, or Exchequer of Collegiate and Conventual Bodies, or Place of Receiving and Paying, and accounting by the *Bursarii*, or *Bursers*. A. D. 1277. *Computaverunt Patres Radulphus de Meriton, & Stephanus de Oxon. de Bursaria Domus Bercestre coram Auditoribus.* Paroch. Antiq. pag. 288. But the Word *Bursarii* did not only signify the *Bursars* of a Convent or College; but formerly Stipendiary Scholars were called by the Name of *Bursarii*, as they lived on the *Burse* or Fund, or publick Stock of the University. At Paris, and among the *Cistercian Monks*, they were particularly termed by this Name: And — *In ea Universitate (scil. Oxon.) sunt clava Collegia a Regibus, Reginis, Episcopis, & Principibus fundata, & ex Stipendiis eorum Scholastici plurimi utuntur, quos Parisiis Bursarios vocamus.* Johan. Major, Gest. Scot. lib. 1. cap. 5.

Burse, (*Bursa, cambium, Basilica*) An Exchange or Place of Meeting of Merchants.

Busones Comitatus: They are mentioned in *Bracton*. — *Iusticiarii vocatis ad se quatuor vel sex, vel pluribus de Majoribus comitatus, qui dicuntur Busones Comitatus. & ad quorum nutum dependent vota aliorum, &c.* Bract. lib. 3. tract. 2. c. 1. Mr. Blount says *Busones* is used for *Barones*.

Busia, An old Word signifying a great Ship. *Blount's Dict.*

Bussellus, A Bushel; from *Buxa, Butta, Buttis*, a standing Measure: And hence *Butticella, Butticellus, Bussellus*, a less Measure. Some derive it from the old Fr. *Bouts*, Leather Containers of Wine; whence comes our Leather Boots, Budget and Bottles. Sax. *Bytta* was used for Leather Bottles, and from thence they were called *Byttes*. *Kenet's Gloss.*

Busca and Bussus, *Busca and Buscus, &c.* The same with *Bruscia* and *Brusula*.

Butt, (*Butticum*) A Measure of Wine, &c. well known among Merchants, and containing 126 Gallons of Malmsey Wine, by Stat. 1 R. 3. cap. 13.

Butter and Cheese. Justices of Peace in Sessions may restrain Retailing *Butter and Cheese*; which is to be sold in open Shop, &c. under Penalties. Stat. 3 & 4 Ed. 6. cap. 21. 21 Jac. 1. cap. 22. Corrupt *Butter* is not to be mix'd with good, &c. on Pain to forfeit double Value, &c. and Repacking *Butter* for Sale, incurs the like Forfeiture. 13 & 14 Car. 2. cap. 26. *Butter and Cheese* may be transported; and Buyers of *Butter* are to set their Marks on Casks, &c. 22 Car. cap. 13. 4 & 5 W. & M. cap. 7.

Butts, The Place where Archers meet with

their Bows and Arrows to shoot at a Mark, which we call Shooting at the *Butts*. Also *Butts* are the Ends or short Pieces of Land in arable Ridges and Furrows: *Buttum terræ*, a Butt of Land. — *Dedi decem acras & unum Buttum terræ, &c.* Cart. M. de Sibbeford, penes Will. Dugdale, Mil. See *Abbuttave*.

Butlerage of Wines, Signifies that Imposition upon Wine brought into the Kingdom, which the King's Butler may take of every Ship, viz. 2 s. of every Ton of Wine imported by Strangers. Rot. Pavl. 11 Hen. 4. Anno 1 H. 8. c. 5. See *Botiler of the King and Prifage*.

Butthscarle, Butsecarl, Buscarles, (Buscarli & Buthecarli) *Sunt qui portus nauticos custodiunt: Mariners or Seamen.* Selden's *Mare Clausum*, fol. 184.

Buzonis, Seems to be the Shaft of an Arrow, before it is fledged or feathered. — *Radulphus de Stopham tenet Maner. de Brianstan. Com. Dorset. per Serjeantiam inveniend' Domino Regi garcionem deferentem unum arcum sine corda, & unum Buzonem sine pennis.* S. Ed. 1.

Buzones Judiciozum. *Placita de temp. Johan. Regis. Gloc. 139.* See *Busones Comitatus*.

Bye. Words ending in *Bye* or *Bee*, signify a Dwelling Place or Habitation, from the Saxon *Bye*.

By-Laws, (*Bilagines*, from the Goth. *By, pagus*, and *Lagen*, Lex.) Are Laws made *obiter*, or by the *By*; such as Orders and Constitutions of Corporations, for the Governing of their Members; of Courts-Leet and Courts-Baron; Commoners or Inhabitants in Villages, &c. made by common Assent, for the Good of those that make them, in particular Cases whereunto the publick Law doth not extend; so that they bind farther than the Common or Statute Law. Guilds and Fraternities of Trades, by Letters Patent of Incorporation, may likewise make *By-Laws*, for the better Regulation of Trade among themselves, or with others. *Kitch. 45, 79. 6 Rep. 63.* In Scotland these Laws are called *Laws of Birlaw* or *Burlaw*; which are made by Neighbours elected by common Consent in the *Birlaw Courts*, wherein Knowledge is taken of Complaints betwixt Neighbour and Neighbour; which Men so chosen are Judges and Arbitrators, and stiled *Birlaw-men*: And *Birlaw* or *Burlaw*, according to *Skene*, are *Leges Rusticorum*, Laws made by Husbandmen, or Townships, concerning Neighbourhood amongst them. *Skene, p. 33.* The Inhabitants of a Town, without any Custom, may make Ordinances or *By-Laws* for repairing of a Church, or Highway, or any such Thing which is for the general Good of the Publick; and in such Cases the greater Part shall bind all: But if it be for their own private Profit, as for the well Ordering of their Common, or the like, they cannot make *By-Laws* without a Custom to warrant it; and if there be a Custom, the greater Part shall not bind the Rest in these Cases, unless it be warranted by the Custom. 5 Rep. 63. Every City and Town Corporate, have Power to make *By-Laws*, for the better Government of the Body Politick. *Hob. 211. 5 Mod. 429.* But a Corporation cannot make a *By-Law* to bind Strangers which are not of their Body, or to extend to Places out of the Jurisdiction of the Makers: Nor may *By-Laws* be made in the Form of Acts of Parliament. 1 Nelf. Abr. 411. Also *By-Laws* may not be made to restrain a Person from setting up his Trade, it being against the

the Common Law to restrain Men from Trades. A *By-Law* that no Person who is not a Freeman of a Corporation shall set up a Trade under a Penalty, hath been adjudged void and against Law; as it excludes those who have served Apprenticeships in the Corporation, who by Law may use Trades. 1 *Lutw.* 562. A *By-Law* by a Corporation may inflict a Penalty, recoverable by Distress, or Action of Debt, and be good. 1 *Danv. Abr.* 738. But 'tis said it cannot be made under a certain Penalty to be levied by Distress, and Sale of the Offender's Goods. 2 *Ventr.* 182. For a *By-Law* may not be made on Pain of Forfeiture of Goods: Nor may it inflict Imprisonment, being contrary to *Magna Charta*. 2 *Inst.* 54. A *By-Law* may be good to disfranchise a Freeman for Contempt to a Mayor, &c. but not to imprison. *Moor* 411. Where *By-Laws* are good, Notice of them is not necessary, because they are presumed for the better Government and Benefit of all Persons living in those particular Limits where made; and therefore all Persons therein are bound to take Notice of them. 1 *Lutw.* 404. The Freeholders in a Court-Leet, may make *By-Laws* relating to the Publick Good, which shall bind every one within the Leet. 2 *Danv.* 457. And a Court-Baron may make *By-Laws*, by Custom, and add a Penalty for the Non-performance of them. But all *By-Laws* are to be reasonable; and ought to be for the common Benefit, and not private Profit of any particular Persons; and must be consonant to the Publick Laws and Statutes, as subordinate to them. *Goldsb.* 79. And by Stat. 19 *H. 7. c. 7.* *By-Laws* made by Corporations, are to be approv'd by the Lord Chancellor, or Chief Justices, if against the Publick Good, &c. on Pain of 40*l.* Vide the Statute.

C.

Cabal, (*Cabala*) A *Junto* or private Meeting; from a Doctrine or Science practis'd by the *Jews*, in fetching out Mysteries and Expositions, from the Numbers that Letters of Words make.

Caballa, (from the Lat. *Caballus*) Belonging to a Horse. *Domesday*.

Cablith, (*Cablicium*) Signifies Brushwood or Browewood, according to the Writers of the Forest-Laws: But Sir *Hen. Spelman* thinks it more properly Windfall-wood, because it was written of old *Cadibulum*, from *Cadere*: Or if derived from the Fr. *Chablis*, it also must be Windfall-wood. — *Item dicunt, quod Cepppeg. & Cablicia vento prostrat. valenc. &c.* *Inq. de an.* 47 *H.* 3.

Cachepolus, or **Cacherellus**, An inferior Bailiff, a Catchpole. — *In stipendiis Ballivi XIII s. IV d. in stipendiis unius Cachepolli IX s. VIII d. per Ann. &c.* — *Consuetud. Domus de Farendon.* *M. S.* f. 23. — And in *Thorn*, *Cacherellos* are mentioned, viz. *Seneschallus & Castodes nostri diligenter inquirant de Injuriis per Cacherellos Vicecomitis, &c.*

Cade, Of Herrings is 500, of Sprats 1000, *Book of Rates, fol.* 45. But it is said, that antiently 600 made the *Cade* of Herrings, and six Score to the Hundred, which is called *Magnum Centum*.

Cadet, The younger Son of a Gentleman; particularly applied to a Volunteer in the Army, waiting for some Post.

Cacp Gildum, The Restoring Goods or Cattle. *Blount.* See *Ceapgild*.

Cagia, A Cage or Coop for Birds. — *Mandatum est Vicecom. Wilts. quod emat in Baliva sua 300 Gallinas, &c. cum Cagiis, in quibus eadem Galline poni possunt.* *Ex Rot. Claus.* 38 *H.* 3.

Calamus, A Cane, Reed, or Quill; comprised among Merchandize and Drugs to be garbled. 1 *Fac. 1. cap.* 19.

Calangium and Calangia, A Challenge, Claim, or Dispute. — *Sciant quod Ego Godfridus, &c. Dedi, &c. Sine aliqua reclamazione seu Calangio, &c.* *Mon. Angl. Tom.* 2. fol. 252.

Calcetum, Calcea, A Causey or common hard Way, maintain'd and repair'd with Stones and Rubbish; from the Lat. *Calx*, Chalk, Fr. *Chaux*, whence their *Chaussee* and our *Causeway*, or Path raised with Earth, and pay'd with Chalk-stones, or Gravel. *Calcearum operationes* were the Work and Labour done by the adjoining Tenants: And *Calcagium*, was the Tax or Contribution paid by the neighbouring Inhabitants towards the Making and Repairing such common Roads; from which some Persons were especially exempted by Royal Charter. *Kennet's Gloss.*

Calefagium, A Word signifying a Right to take Fuel yearly. — *Confirmamus panagium, Herbajum & Calefagium in Foresta nostra.* *Blount.*

Calends, (*Calende*) Among the Romans was the first Day of every Month, being spoken of it by it self; or the very Day of the New Moon, which usually happen together: And if *Fridie*, the Day before, be added to it, then it is the last Day of the foregoing Month; as *Fridie Calend. Septemb.* is the last Day of *August*. If any Number be placed with it, it signifies that Day in the former Month, which comes so much before the Month named; as the tenth *Calends* of *October* is the 20th Day of *September*, for if one reckon backwards, beginning at *October*, that 20th Day of *September*, makes the 10th Day before *October*. In *March*, *May*, *July*, and *October*, the *Calends* begin at the sixteenth Day, but in other Months at the Fourteenth; which *Calends* must ever bear the Name of the Month following, and be numbered backwards from the first Day of the said following Months. *Distum de Kenelworth* is dated the Day before the *Calends* of *November*, *An.* 1256. In the Dates of Deeds, the Day of the Month, by *Nones*, *Ides*, or *Calends*, is sufficient. 2 *Inst.* 675. See *Hopton's Concordance*, pag. 69. And see *Ides*.

Caliburne, The famous Sword of the great King *Arthur*: Hoveden & Brompton in *Vita R.*

Callis, The King's Highway, mentioned in some of our antient Authors. — *Tanta autem gratie inhabitantibus fuit Britanniae, quod quatuor in ea Calles a fine in finem construxerunt Regia sublimatos auctoritate, &c.* *Huntingdon, Lib.* 1.

Camera, From the old Germ. *Cam*, *Cammer*, crooked; whence comes our English *Kembo*, Arms in *Kembo*. But *Camera* at first signified any winding or crooked Plat of Ground; as *unam Cameram terrae, i. e.* A Nook of Land. *Du Fresno*. Afterwards the Word was apply'd to any vaulted or arched Building; and by Degrees more particularly restrained to an upper Room or Chamber: And it is now often used in the Law, in the Business of a Judge, where Persons are to be brought before him *apud Cameram suam situat. in Serjeants-Inn, &c.* The present Irish use *Cama* for a Bed. See *Kennet's Gloss.*

Camisia, A Garment belonging to Priests, called the *Alb*. — *Inditus Camisia linea qua communi nomine dicitur Alb. Pet. Blesensis.*

Camoca, A Word used to signify a Garment made of Silk, or something better: *Unum Vestimentum pro serialibus diebus album de Camoca. Mon. Angl. Tom. 3. pag. 81.*

Campana bajula, A small Hand-Bell, much in Use in the Ceremonies of the Roman Church; and retained among us by Sextons, Parish-Clerks, and Criers. — *Quatuor eas muneribus Patriarcha donavit, Altari videlicet portatili consecrata, Campana bajula, baculo Insigni, & tunica ex auro contexta. Reversus in Patriam sua quisque dona miraculose percepit, &c. Girald. Camb. apud Whar-ton. Angl. Sacr. Par. 2. pa. 637.*

Campartum, Any Part or Portion of a larger Field or Ground; which would otherwise be in Gros or Common. — *Rex custodi Insularum de Gernsey, &c. in perpetuum reddantur decima de Camparto nostro in eadem Insula. Prinne Histor. Collect. Vol. 3. p. 89.*

Campertum, Is used for a Corn Field: *Pet. in Parl. 30 Ed. 1.*

Campfight, The Fighting of two Champions or Combatants in the Field. 3 *Inft.* 221. See *Champion*.

Campus Martii, or *Martii*, Was an Assembly of the People every Year upon *May-Day*, where they confederated together to defend the Country against all Enemies. *Leges Edw. Confessor*, cap. 35. *Denuo in Campo Martii convenere, ubi illi qui Sacramentis inter illos pacem confirmavere, Regi omnem culpam imposuere. Sim. Dunelm. Anno 1094.*

Candlemas-Day, The Feast of the Purification of the Blessed Virgin Mary, being the second Day of February, instituted in Memory and Honour of the Purification of the said Virgin, the fortieth Day after her happy Child-birth, according to the Law of *Moses*, and the Presentation of our Blessed Lord. It is called *Candlemas*, or a *Mass of Candles*, because before *Mas* was said that Day, the Church consecrated and set apart for sacred Use, *Candles* for the whole Year, and made a Procession with hallowed *Candles* in Remembrance of the Divine Light, wherewith Christ illuminated the whole Church at his Presentation in the Temple, when by old *Simeon* stilled, *A Light to lighten the Gentiles, and to be the Glory of his People Israel. St. Luke, cap. 2. ver. 32.* This Festival is no Day in Court, for the Judges sit not; and it is the Grand Day in that Term of all the Inns of Court, whereon the Judges usually observe many antient Ceremonies, and the Societies which seem to vie with each other, have sumptuous Entertainments, accommodated with Musick and almost all Kinds of Diversions.

Canes opertiæ, Dogs with whole Feet, not lawed. — *Et debent habere Canes opertiæ ex omni genere Canum, & non impediatis. Antiq. Customar. de Sutton Colfield.*

Canestellus, A Basket. In the Inquisition of Serjeancies, and Knights Fees, anno 12 & 13 of K. *John*, for *Essex* and *Hertford*, it appears that one *John* of *Liston* held a Manor by the Service of Making the King's Baskets. — *Johannes de Listone tenet, &c. per Serjeantiam faciendi Canestellos, &c. Ex Libro Rub. Scacc. fol. 137.*

Canfara, A Trial by hot Iron, formerly used in this Kingdom. *Si inculpatio sit, & se purgare velit, eat ad ferrum calidum, & adlegiet manum ad canfaram quod non falsum fecit. See Ordeal.*

Canipulus, This Word hath been taken for a short Knife or Sword. *Blount.*

Canna, A Rod or Distance in the Measure of Ground. — *Papa Clem. IV. concedit, &c. ut nulli Religioso, &c. infra spacium 300 Cannarum ab ipsorum Ecclesiis mensurandarum — Volumus quamlibet ipsarum cannarum octo Palmorum longitudinem continere. Ex Registr. Walt. Giffard Archiepisc. Ebor. f. 45.*

Canon, Is a Law or Ordinance of the Church; and the Greek Word *Canon*, from whence is deriv'd the *Canon-Law*, signifies a Rule, because it leads a Man straight, neither Drawing him from one Side or other, but rather correcting him. The *Canon Law* consists partly of certain Rules taken out of the Scripture; partly of the Writings of the antient Fathers of the Church; partly of the Ordinances of general and provincial Councils; and partly of the Decrees of the Popes in former Ages. And it is contained in two principal Parts, the *Decrees* and the *Decretals*: The *Decrees* are Ecclesiastical Constitutions made by the Pope and Cardinals, and were first gathered by *Ivo* Bishop of *Carnat*, who lived about the Year 1114, but afterwards perfected by *Gratian*, a *Benedictine* Monk, in the Year 1149, and allowed by Pope *Eugenius* to be read in Schools and alledged for Law. They are the most Antient, as having their Beginning from the Time of *Constantine* the Great, the first Christian Emperor of *Rome*. The *Decretals* are *Canonical Epistles* written by the Pope, or by the Pope and Cardinals, at the Suit of some or more Persons for the Ordering and Determining of some Matter of Controversy, and have the Authority of a Law; and of these there are three Volumes, the First whereof was compiled by *Raymundus Barcinus*, Chaplain to *Gregory* the Ninth, and at his Command, about the Year 1231. The second Volume is the Work of *Boniface* the Eighth, collected in the Year 1298. And the third Volume, called the *Clementines*, was made by Pope *Clement* the Fifth, and published by him in the Council of *Vienna*, about the Year 1308. And to these may be added some novel Constitutions of *John* the 22d, and some other Bishops of *Rome*. As the *Decrees* set out the Origin of the *Canon Law*, and the Rights, Dignities and Degrees of Ecclesiastical Persons, with their Manner of Election, Ordination, &c. So the *Decretals* contain the Law to be used in the Ecclesiastical Courts; and the first Title in every of them, is the Title of the Blessed Trinity, and of the Catholick Faith, which is followed with Constitutions and Customs, Judgments and Determinations in such Matters and Causes as are liable to Ecclesiastical Cognizance, the Lives and Conversation of the Clergy, of Marrimony and Divorces, Inquisition of criminal Matters, Purgation, Penance, Excommunication, &c. But some of the Titles of the *Canon Law* are now out of Use, and belong to the Common Law: And others are introduc'd, such as Trials of Wills, Bastardy, Defamation, &c. Yet Trials of Tithes were antiently in all Cases had by the Ecclesiastical Law; tho' at this Time the Law only takes Place in some particular Cases. Thus much for the *Canon Law* in General; and as to the *Canon Laws* of this Kingdom, by the Statute 25 *H. 8. c. 19.* it is declared, that all *Canons* not repugnant to the King's Prerogative, nor to the Laws, Statutes, and Customs of the Realm, shall be used and executed. By this Statute, *Canons* made in Convocation, are to be confirm'd by the King, and have the Royal Assent: And it has been adjudg'd that *Canons* made in Convocation, and

and confirmed by the King, do bind as firmly in all Ecclesiastical Causes, as Acts of Parliament do in other Cases; for by the Common Law, every Bishop in his Diocese, and each Archbishop in his Province, and the Convocation may make *Canons*, which shall be binding within their Jurisdictions. The Convocation for the Province of Canterbury was held at London, Anno 1603, in the first Year of the Reign of King James I. by the King's Writ, and they had a Licence under the Great Seal, to consult and agree to such *Canons* as they should think fit; whereupon they made several *Canons* concerning the Government of the Church, Religion, the Clergy, &c. which had the Royal Assent, and were ratified and confirmed by that King, for him, his Heirs and Successors, pursuant to the Statute 25 Hen. 8. which *Canons* thus warranted by Act of Parliament, are the Laws of the Land to this Day. See my *Treatise of Laws*, p. 402, &c. 1 Nels. Abr. 416. The general Canon Law is no farther in Force in this Kingdom than it hath been receiv'd, and is consistent with the Common or Statute Law.

Canon Religioforum, A Book wherein the Religious of Convents had a fair Transcript of the Rules of their Order, which were frequently read among them as their local Statutes; and this Book was therefore called *Regula* and *Canon*. The publick Books of the Religious were the Four following: 1. *Missale*, which contained all their Offices of Devotion. 2. *Martyrologium*, a Register of their peculiar Saints and Martyrs, with the Place and Time of Passion. 3. *Canon or Regula*, the Institution and Rules of their Order. 4. *Necrologium or Obituarium*, in which they entered the Death of their Founders and Benefactors, to observe the Days of Commemoration of them. *Kennet's Gloss.*

Cantel, (*Cantellum*) Seems to signify the same with what we now call Lump, as to buy by Measure, or by the Lump: But according to *Blount* it is, that which is added above Measure. —

Nullum genus bladi vendatur per cumulum seu Cantellum, præter Avenam, Brasium & farinam. Stat. de Pistor. cap. 9. It also signifies a Piece of any Thing, as a *Cantel* of Bread, and the like.

Cantred, (*Cantredus*) A British Word from *Cant*, or *Cantre*, which in the British Tongue signifies *Centum*, and *Tret*, a Town or Village, is in Wales an hundred Villages: For the Welsh divide their Counties into *Cantreds*, as the English do into Hundreds. This Word is used 28 H. 8. c. 3.

Capacity, (*Capacitas*) An Ability, or Fitness to receive: And in Law it is where a Man or Body Politick, is able to give or take Lands, or other Things, or to sue Actions. Our Law allows the King two Capacities, a Natural and a Politick: In the First, he may purchase Lands to him and his Heirs; in the latter, to him and his Successors. An Alien born hath sufficient Capacity to sue in any Personal Actions, and is capable of Personal Estate; but he is not capable of Lands of Inheritance; and in a Real Action, it is a good Plea of the Defendant to say, the Plaintiff is an Alien born, and pray if he shall be answered. *Dyer* 3. Persons attainted of Treason or Felony, Idiot, Lunatics, Infants, Feme Coverts without their Husbands, &c. are not capable to make any Deed of Gift, Grant, or Conveyance, unless it be in some special Cases. But all other Persons, void of Impediments, are capable of making Grants and Conveyances, sue and be sued, being twenty-one Years of Age;

and at Fourteen, their Age of Discretion, they are capable by Law to marry, be a Witness, &c. 1 Inst. 171, 172.

Cape, (*Lat.*) Is a Writ judicial, touching Plea of Lands or Tenements; so termed, as most Writs are, of that Word in it, which carries the chief Intention or End thereof: And this Writ is divided into *Cape Magnum*, and *Cape Parvum*, both of which take hold of Things immoveable.

Cape Magnum, or the *Grand Cape*, Is a Writ that lies before Appearance, to summon the Tenant to answer the Default, and also over to the Demandant: And in the *Old Nat. Brev.* it is defined to be; where a Man hath brought a *Præcipe quod reddat* of a Thing touching Plea of Land, and the Tenant makes Default at the Day to him given in the Original Writ, then this Writ shall go for the King to take the Land into his Hands; and if the Tenant come not at the Day given him thereby, he loseth his Land, &c. See *Reg. Jud. fol. 1. Bract. lib. 3. tract. 3. cap. 1.*

Cape Parvum, or *Petit Cape*, Is where the Tenant is summoned in Plea of Land, and comes at the Summons, and his Appearance is recorded; if at the Day given him he prays the View, and having it granted, makes Default; then shall issue this Writ for the King, &c. *Old Nat. Br. 162.* The Difference between the *Grand Cape* and *Petit Cape* is, that the *Grand Cape* is awarded upon the Tenant's not Appearing or Demanding the View in such Real Actions, where the original Writ does not mention the Particulars demanded; and the *Petit Cape* is after Appearance or View granted: And whereas the *Grand Cape* summons the Tenant to answer the Default, and also over to the Demandant; *Petit Cape* summons the Tenant to answer the Default only: And therefore it is called *Petit Cape*; tho' some say it hath its Name, not because it is of small Force, but by Reason it consists of few Words. *Blount.*

Cape ad valentiam. This is a Species of *Cape Magnum*, and is where I am impleaded of Lands, and vouch to warrant another, against whom the Summons *ad Warrantizandum* hath been awarded, and he comes not at the Day given; then, if the Demandant recover against me, I shall have this Writ against the Vouchee, and recover so much in Value of the Lands of the Vouchee, if he hath so much; if not, I shall have Execution of such Lands and Tenements as descend to him in Fee; or, if he purchase afterwards, I shall have against him a Resummons; and if he can say nothing, I shall recover the Value: And this Writ lies before Appearance. *Old Nat. Br. 161.*

Capella. Before the Word *Chapel* was restrain'd to an Oratory, or depending Place of Divine Worship, it was used for any Sort of Chest, Cabinet, or other Repository of precious Things, especially of Religious Reliques. *Kennet's Paroch. Antiq. p. 580.*

Capella de floribus, A Chaplet or Garland of Flowers for the Head. *Cowel.*

Capella Lineata, A Head-piece lined. — *Abbas de Nevele tenet in Com. Lincoln, per Servitium reddendi Domino Regi unam Capellam lineatam de Syndone, &c. — Tenures, p. 64.*

Capellus, A Cap, Bonnet, or other Covering for the Head. — *Capite discooperto, sine Capello, cum una Garlanda de Latitudine, &c. Tenures, p. 32. — Capellus ferreus*, An Helmet, or iron Head-piece, *Quicumq; laicus habuerit in Catallis ad valentiam*

valentiam decem Marcatorum habeat Halbergellum & Capellum ferri & lanceam. Hoveden, pag. 61. — *Capellus Militis* is likewise an Helmet or military Head-piece. *Consuetud. Domus de Farendon. M. S. f. 21.*

Capias, Is a Writ or Process 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, as *Capias ad Satisfaciendum*, *Capias Utlagatum*, &c. The *Capias ad Respondendum* in C. B. is drawn from the *Præcipe*, which serves both for the Original and *Capias*, and the Return of the Original is the Teste of the *Capias*. If a *Capias* be special, in Debt, Covenant, &c. the Cause of Action must be recited at large, and you are to set forth the Substance of your intended Declaration, as you are also in your Original. The usual Course is to take out the *Capias*, and sue out the Original after, altho' it is supposed to be sued out before, because the Original cannot be so speedily sued out at all Times: And where the Cause of Action is for Debt, and requires Bail, the best Way is to make out an *Ac etiam Capias*, the Original to which is only a bare *Claiſum fregit*, and when you come to Judgment, you may file a new Original to warrant such Judgment. If a *Capias* be special, by *Præcipe quod reddat*, &c. And there is any Mistake in the Name, *alias dictus*, or Sum, it may be pleaded in Abatement, and a new Original afterwards will not cure it; but you are forc'd to discontinue your Action, paying Costs, and to begin *de novo*. There may be an *Alias* and a *Pluries Capias*, bearing Teste from the Return of each other, if the Defendant be not taken on the first Writ. See *Pract. Solic. p. 290.*

Form of a Writ of Capias in C. B.

G Georgius Dei Gratia, &c. Vic. South'ton. ff. Salut. Præcipimus tibi quod Capias A. B. nuper de, &c. ita quod Habeas Corpus ejus coram Justic. nostris apud Westm. in Octab. Sanct. Trin. ad respondend. C. D. Gen. de Placito, &c. ad dampnum ipsius C. 50 l. Et habeas ibi hoc breve. Teste, &c.

The Words *Si ut Alias*, and *Sicut Pluries*, distinguish the *Alias* and *Pluries* from the *Capias*.

Capias ad Satisfaciendum, Is a judicial Writ which issues out of the Record of a Judgment, where there is a Recovery in the Courts at Westminster of Debt, Damages, &c. And by this Writ the Sheriff is commanded to take the Body of the Defendant in Execution, and him safely to keep, so that he hath his Body in Court at the Return of the Writ, to satisfy the Plaintiff his Debt and Damages. And it is said the Sheriff cannot upon this Writ take the Money, and discharge the Prisoner; because the Writ is *Quod Capias* the Defendant, & *eum salvo custod. ita quod Habeas Corpus ejus die, &c. coram Domino Rege apud Westm. ad satisfaciendum* the Plaintiff, &c. 1 Lill. Abr. 249. It is usual to take out this Writ, where the Defendant hath no Lands nor Goods, whereof the Debt recovered may be levied. And where the Body is taken upon a *Ca. sa.* and the Writ is returned and filed, it is an absolute and perfect Execution against the Defendant, and no other Execution can be against his Lands and Goods: But this is unless the Defendant escape,

or die in Execution, &c. for where a Person dies in Execution, his Lands and Goods are liable to satisfy the Judgment, by Statute 21 Jac. 1. c. 24. A *Capias ad satisfaciendum* lieth not against a Peer; nor against Executors or Administrators; but where a *Devastavit* is return'd by the Sheriff, &c. 1 Lill. 250. Where the Defendant cannot be taken upon a *Capias* in the County where the Action is laid, there may issue a *Testatum Ca. sa.* into another County; and so of the other Writs.

Form of a Capias ad Satisfaciendum.

G Georgius Dei Gra. &c. Vic. S. Salutem Præcipimus tibi quod Capias A. B. Si invent. fuerit in Balliva tua & eum salvo Custod. ita quod Habeas Corpus ejus coram, &c. die, &c. ad satisfaciend. C. D. de trigint. libris de debito quas idem C. D. nuper in Cur. nostr. &c. versus eum recuperavit necnon de Quadragint. solid. qua eidem C. D. in Cur. nostr. &c. adjudicat. fuer. pro dampnis suis que sustinuit tam occasione detencion. Debi. illius quam pro mis. & custag. suis per ipsum circa sectam suam in ea parte appoit. Unde prædict. A. B. convict. est Sicut nobis constat de Recordo Et habeas ibi tunc hoc Breve. Teste, &c.

Capias Utlagatum, Is a Writ that lies against a Person who is outlawed in any Action, by which the Sheriff apprehends the Party outlawed, for not appearing upon the *Exigent*, and keeps him in safe Custody till the Day of Return, and then presents him to the Court, there to be ordered for his Contempt; who, in the Common Pleas, was in former Times to be committed to the Fleet, there to remain 'till he had sued out the King's Pardon, and appeared to the Action. And by a special *Capias Utlagatum* in the same Writ, the Sheriff is commanded, and may seize all the Defendant's Lands, Goods and Chattels, for the Contempt to the King; and the Plaintiff, (after an Inquisition taken thereupon, and return'd into the Exchequer) may have the Lands extended, and a Grant of the Goods, &c. whereby to compel the Defendant to appear; which, when he shall do, if he reverse the Outlawry, the same shall be restored to him. *Old Nat. Br. 154.* A Defendant may appear in Person, and reverse an Outlawry: And in B. R. one may appear by Attorney, &c. Also when a Person is taken upon a *Capias Utlagatum*, the Sheriff is to take an Attorney's Engagement to appear for him, where Special Bail is not required; and his Bond with Sureties to appear, where 'tis required. *Stat. 4 & 5 W. & M. c. 18.* This Writ is either general, against the Body; or, as I have before observ'd, it is Special, against Body, Lands and Goods. See *Outlawry*.

Form of a Capias Utlagatum.

G Georgius, &c. Vic. London Salutem. Præcipimus vobis quod non omittatis propter aliquam Libertatem Com. Civit. vestr. quin Capiatis A. B. nup. de &c. Utlagat. in London die, &c. ult. præterit. ad sectam C. D. de Placito transgr. sup. Casu. si invent. fuerit in Balliva vestra & eum salvo custod. ita quod habeatis Corpus ejus coram, &c. die, &c. ubicunq; tunc fuerimus in Angl. ad faciend. & recipiend. quod Cur. nostr. Considerav. in hac parte, Et habeatis ibi hoc Breve. Teste, &c.

Capias pzo Fine, Is where one who is fined to the King for some Offence committed against a Sta-

a Statute, does not discharge the Fine according to the Judgment: Whereupon his Body is to be taken by this Writ, and committed to Prison until he pay the Fine. It is also used in other Cases, for not making out some Pleas in Civil Actions. 3 Rep. 12. By the Stat. 4 & 5 W. & M. *Capiatur Fines* are taken away in several Cases. See *Fines for Offences*.

Capias in Withernam, Is a Writ lying for Cattle in *Withernam*; which is, where a Distress taken is driven out of the County, &c. so that the Sheriff cannot make Deliverance in Replevin, when this Writ issues to the Sheriff to take as many Beasts of the Distrainer, &c. Reg. Orig. 82, 83. Vide *Withernam*.

Capitale, Signifies a Thing which is stolen, or the Value of it. Leg. H. 1. cap. 59.

Capitale vivens, Hath been used for live Cattle. — *Reddam de meo proprio decimas Deo, tam in Vivente Capitali, quam in mortuis fructibus terræ.* Leg. Athelstan.

Capite, (from *Caput*, i. e. *Rex*, unde *tenere in Capite*, est *Tenere de Rege, omnium terrarum Capite*) An ancient Tenure, whereby a Man held Lands of the King immediately as of his Crown, whether by Knights Service, or Socage. This Tenure was likewise called, Tenure holding of the Person of the King: And a Person might hold of the King, and not in *Capite*; that is, not immediately of the Crown, but by Means of some Honour, Castle, or Manor belonging to it: According to *Kitchen*, one might hold of the King by *Knights Service*, and not in *Capite*; because it might be held of some Honour in the King's Hands, descended to him from his Ancestors, and not immediately of the King, as of his Crown. *Kitch.* 129. *Dyer* 44. F. N. B. 5. The very ancient Tenure in *Capite*, was of two Sorts; the one Principal and General, and the other Special or Subaltern; the Principal and General was of the King as *Caput Regni*, & *Caput Generalissimum omnium Feodorum*, the Fountain whence all Feuds and Tenures have their main Original: The Special was of a particular Subject, as *Caput Feudi*, seu *terra illius*, so called from his being the First that granted the Land in such Manner of Tenure, from whence he was stiled *Capitalis Dominus*, &c. But Tenure in *Capite* is now abolished; and by Stat. 12 Car. 2. c. 24. All Tenures are turned into free and common Socage: So that Tenures hereafter to be created by the King are to be in free and common Socage only, and not by *Capite*, Knights-Service, &c. Blount.

Capitulum, A Word used to signify what we now call Poll-Money.

Capitulum, A Covering for the Head. 'Tis mentioned in the Statute 1 Hen. 4. and other old Statutes, which prescribe what Dresses shall be wore by all Degrees of Persons.

Capitula Agri, The Head-lands, Lands that lie at the Head or upper End of the Lands or Furrows. — *Canonici (Burcester) concesserunt hominibus de Wrechwike duas acras prati pro Capitibus suarum crostarum tenus Rivulum versus Molendinum*, &c. Kenner's Paroch. Antiq. p. 137.

Capitula Ruralia, Assemblies or Chapters, held by Rural Deans and Parochial Clergy within the Precinct of every distinct Deanery; which at first were every three Weeks, afterwards once a Month, and more solemnly once a Quarter. Coovel.

Caption, (*Captio*) Is when a Commission is executed, the Commissioners subscribe their Names

to a Certificate, declaring when and where the Commission was executed; which in Law is called a *Caption*. And these *Captions* relate chiefly to Business of three Kinds, i. e. to Commissions to take Fines of Lands, to take Answers in Chancery, and Depositions of Witnesses: On the Taking of a Fine it is thus; *Capt. & Cogn. die & anno, &c. apud, &c.* And on the Back, *Executio istius Comm. patet in quadam Schedul. eidem Com. Annex.* On the Taking of an Answer in Chancery, the *Caption* is as follows; *Capt. fuit hac Respons. super sacram. supranominat. Def. Willielmi B. die & anno, &c. apud, &c. coram nobis, &c.* And on the Back, *Executio istius Com. &c.* On the taking Depositions of Witnesses, only the Execution on the Back is indorsed; as *Executio istius Com. in quad. Schedul. &c.* The *Caption* being included in the Title of the Depositions. Sometimes it is usual to add to the *Caption*, *Virtut. Commi'con. Dom. Regis nobis & al. directi, &c.*

Capture, (*Captura*) The Taking of a Prey, an Arrest, or Seizure: And it particularly relates to Prizes taken by Privateers, in Time of War, which are to be divided between the *Captors*, &c. Stat. 14 Car. 2. c. 14. and 4 & 5 W. & M. c. 25.

Caput Baronie, Is the Castle or Chief Seat of a Nobleman; which descends to the eldest Daughter, if there be no Son, and must not be divided among the Daughters like unto Lands, &c.

Caput Anni, New Year's Day, upon which of old was observ'd the *Festum Stultorum*.

Caput Jejunii, In our Records is used for *Asb-Wednesday*, being the Head, or first Day of the Beginning of the *Quadragesimal*, or *Lent-Fast*.

Caput loci, The Head or upper End of any Place; ad *Caput Villæ*, at the End of the Town.

Caputagium, Some think this Word signifies Head or Poll Money, or the Payment of it: But it is rather what we otherwise call *Chevagium*, or *Chevage*.

Car and Char, The Names of Places beginning with *Car* and *Char* signify a City, from the Brit. *Caer*, viz. *Civitas*, as *Carlisle*, &c.

Caravanna, A *Caravan*, or joint Company of Travellers in the Eastern Countries, for mutual Conduct and Defence. — *Egressa Caravanna nostra de Joppa versus exercitum veniebat onusta victualibus & aliis clientis necessariis.* Gaufrid. Vine-saut. Richardi Regis Iter Hierosol. lib. 5. cap. 52.

Cartan, A Word sometimes expounded for a Pillory: As is *Carcannum* for a Prison. L. L. *Cannuti Regis*.

Carcatus, Signifies loaden; as a Ship with her Freight. — *De Corpore cujuslibet Magna navis Carcatæ cum rebus venalibus 4. denar. Pat. 10 R. 2.*

Carecta & Caretata, A Cart and Cartload. — *Quinque Carectatas claustrum, ad prædicta terræ claustrum sustinendam.* Mon. Angl. Tom. 2. fol. 340.

Caretarius, or **Caretarius**, A Carter. Blount. See *Carreta*.

Caristia, Dearth, Scarcity, Dearthness. — *Rex Majori & Vic. London, Salutem. Querela Archiepiscoporum, Comitum, — quod de Bobus, Vaccis, multonibus, &c. Magna & quasi intollerabilis est Caristia hiis diebus sub. &c.* Pat. 8 Ed. 1.

Caritas, Ad *Caritatem*, *Poculum Caritatis*. A Grace-Cup; or an extraordinary Allowance of Wine, or other Liquor, wherein the Religious at Festivals drank in Commemoration of their Founders and Benefactors. *Cartular. Abbat. Glasston.* M. S. f. 29.

Clark,

Clark, A Quantity of Wool, whereof Thirty make a Sarpler. *Stat. 27 H. 6. cap. 2.*

Carnarium, A Charnel-house, or Repository for the Bones of the Dead. — *In Carnario sub-tus Capellum, &c. Offa humana, &c. humata de Licentia Sacrista qui pro tempore fuerit, qui. disti Carnarii clavem & custodiam habebit specialem, ut usq; ad Resurrectionem generalem honestius conserventur, a carnibus integre denudata reponi volumus & observari.*

— *Cartular. Foundationis Capelle Sancti Johannis in occid. parte Eccl. Norwic. per Joh. Norwic. Episc. Dat. 4 O&A. 1316.*

Carno. This Word hath been used for an Immunity or Privilege, as appears in *Cromp. Jurisd. fol. 191.*

Carpemeals, Cloth made in the northern Parts of England, of a coarse Kind, mentioned in *7 Jac. cap. 16.*

Carrat, A Weight of four Grains in Diamonds, &c. And this Word 'tis said was formerly used for any Weight or Burden.

Carreta, or **Carretta**, Was antiently taken for a Carriage, Cart, or Wane-Load; as *Carreta fœni* is used in an old Charter for a Load of Hay. *Kennet's Gloss.*

Carrels, Closets, or Apartments for Privacy and Retirement. — Three Pews or *Carrels*, where every one of the old Monks, after they had dined, did resort, and there study. — *Davies Mon. of Durham, p. 31.*

Carrick or **Carrack**, (*Carrucha*) A Ship of great Burden, so called of the Italian Word *Carico* or *Carco*, which signifies a Burden or Charge: It is mentioned in the Statutes *2 R. 2. c. 4.* and *1 Jac. c. 33.* They were not only used in Trade, but also in War, as *Walsingh. in H. 5. f. 394. viz. Galli conduxerant classem magnarum navium Carricarum, &c. qua Regnum Angliæ molestant.*

Carrier, (*Gestator*) Is a Person that carries Goods for others, for his Hire, which makes him answerable: And Justices of Peace have Power to assess the Price of Carriage of Goods yearly at their *Easter Sessions*; and if any *Carrier* shall take above the Rates and Prices so assess'd, he shall forfeit *5 l. Stat. 3 & 4 W. & M. c. 12.* A common *Carrier* having the Charge and Carriage of Goods, is to answer for the same, or the Value to the Owner. *Co. Lit. 78.* And where Goods are delivered to a *Carrier*, and he is robbed of them, he shall be charged, and answer for them, because of the Hire. *1 Roll. Abr. 338.* One brought a Box to a *Carrier*, in which there was a large Sum of Money, and the *Carrier* demanding of the Owner what was in it, he answered, it was filled with Silks, and such like Goods, upon which the *Carrier* took it, and was robbed; and adjudged, that the *Carrier* was liable to make it good: But a Special Acceptance, as provided there is no Charge of Money, would have excused the *Carrier*. *1 Ventr. 238. 4 Rep. 83.* If a common *Carrier* loses Goods he is intrusted to carry, a Special Action on the Case lies against him, on the Custom of the Realm; and not *Trover*: And so of a common *Carrier* by Boat. *1 Roll. Abr. 6. Noy 114.* If he be not a common *Carrier*, and takes Hire, he may be charged on a Special *Assumpsit*; for where Hire is taken, a Promise is implied. *Cro. Jac. 262.* A common *Carrier* may have Action of *Trover* or *Trespass* for Goods taken out of his Possession by a Stranger; he having a Special Property in the Goods, and being liable to make Satisfaction for them to the Owner: And where

Goods are stolen from a *Carrier*, he may bring an Indictment against the Felon as for his own Goods, tho' he has only the possessory, and not the absolute Property; and the Owner may likewise prefer an Indictment against the Felon. *Kel. 39.* If a *Carrier* is robb'd of Goods, also either he or the Owner may bring an Action against the Hundred, to make it good. *2 Saund. 380.* Where a *Carrier* entrusted with Goods, opens the Pack, and takes away and disposes of Part of the Goods, this shewing an Intent of Stealing them, will make him guilty of Felony. *H. P. C. 61.* And it is the same if the *Carrier* receives Goods to carry them to a certain Place, and carrieth them to some other Place, and not to the Place agreed. *3 Inst. 367.* If a *Carrier*, after he hath brought Goods to the Place appointed take them away privately, he is guilty of Felony; for the Possession which he received from the Owner being determined, his second Taking is in all Respects the same as if he were a meer Stranger. *1 Hawk. P. C. 90. See Larceny, &c.*

Caruca, (*Fr. Charrue*) A Plough; from the old Gallic *Carr*, which signifies a Plough, and is the present Irish Word for any Sort of wheel'd Carriage: Hence *Charl*, and *Carl*, a Ploughman or Rustick. *Vide Karle.*

Carucage, (*Carucagium*) A Tribute impos'd on every Plough, for the Publick Service: And as *Hidage* was a Taxation by Hides of Land, so *Carucage* was by Carucates of Land. *Mon. Angl. Tom. 1. fol. 294.*

Carucate, or **Carve of Land** (*Carucata Terra*) A Plough-Land; which in a Deed of *Thomas de Arden, 19 Edw. 2.* is declared to be One hundred Acres, by which the Subjects have sometimes been taxed; whereupon the Tribute so levied was called *Carvagium*, or *Carucagium*. *Bract. lib. 2. cap. 26.* But *Skene* says, it is as great a Portion of Land as may be tilled in a Year and a Day by one Plough; which also is called *Hilda*, or *Hida terra*, a Word used in the old British Laws. And now by *Stat. 7 & 8 W. 3.* a Ploughland, which may contain Houses, Mills, Pasture, Meadow, Wood, &c. is *50 l. per Annum*: This was ordained in^o regard to charging Persons for the Reparation of Highways, who are chargeable in sending out Teams, &c. by the Ploughland. *Littleton*, in his Chapter of Tenure in Socage, saith that *Soca idem est quod Carucata*, a Soke or Ploughland are all one. *Stow* says, *King Hen. 3.* took *Carvage*, that is, two Marks of Silver of every Knight's Fee, towards the Marriage of his Sister *Isabella* to the Emperor. *Stow's Annals, pag. 271.* And *Rastal*, in his Exposition of Words, tells us, *Carvage* is to be quit, if the King shall tax all the Lands by *Carves*; that is, a Privilege whereby a Man is exempted from *Carvage*. The Word *Carve* is mentioned in the Statute *28 Ed. 1.* of Wards and Reliefs, and in *Magna Charta, cap. 5.* And *Anno 1200. Facta est Pax inter Johannem Regem Angliæ & P. Regem Franciæ, &c. Et mutuavit Regi Franciæ 30 Milia Marcarum, pro quibus collectum est Carvagium in Anglia scil. 111 s. pro quolibet aratro.* *Ex Reg. Priorat. de Dunstable in Bibl. Cotton. See Co. Litt. 69. and Kennet's Gloss.*

Carucatarius, He that held Land in Carvage or Plough-Tenure. *Paroch. Antiq. p. 354.*

Cassatum and **Cassata**, By the Saxons called *Hide*; by *Bede, Familia*, is a House with Land sufficient to maintain one Family: *Rex Angl. Ethelred.*

red. de 310. *Cassatis, unum trierem, &c.* Hoveden Anno 1008. And *Hen. Huntingdon*, mentioning the same Thing, instead of *Cassata* writes *Hilda*.

Cashtite, A Saxon Word signifying a Mulct. *Blount*.

Cassidile, Is a little Sack, Purse, or Pocket. — *Protulit in Cassidili toxicum mellitum.* Mat. Westm.

Cask, Is an uncertain Quantity of Goods; and of Sugar contains from eight to eleven hundred Weight.

Castel, or **Castle**, (*Castellum*) Is well known to be a Fortrefs in a Town, and with us a principal Mansion of a Nobleman. In the Time of *Hen. 2.* there were in England 1115 Castles; and every Castle contains a Manor, so that the Constable of a Castle is the Constable of a Manor. 2 *Inst.* 31. But during the Civil Wars in this Kingdom, these Castles were demolished, so that there is generally only the Ruins or Remains of them at this Day.

Castellain, (*Castellanus*) The Lord-Owner, or Captain of a Castle, and sometimes the Constable of a Castle or fortified House. *Bract. lib. 5. tract. 2. cap. 16. 3 Ed. 1. c. 7.* It hath likewise been taken for him that hath the Custody of one of the King's Mansion-Houses, called by the Lombards *Curties*, in English Courts, tho' they are not Castles or Places of Defence. 2 *Inst.* 31. And *Manwood* in his *Forest-Laws*, says there is an Officer of the Forest called *Castellanus*.

Castellarium, **Castellarii**, The Precinct or Jurisdiction of a Castle. — *Et unum Toftum juxta Castellarium.* *Mon. Angl. Tom. 2. fol. 402.*

Castellozum Operatio, Castlework, or Service and Labour done by inferior Tenants, for the Building and Upholding of Castles of Defence; toward which some gave their personal Assistance, and others paid their Contribution. This was one of the three necessary Charges, to which all Lands among our Saxon Ancestors were expressly Subject. — *Liberi ab omni servitio, excepta trinoda necessitate, Pontis, & Arcis constructione, & expeditione contra hostem.* — And after the Conquest an Immunity from this Burden was sometimes granted: As King *Hen. 2.* granted to the Tenants within the Honour of *Wallingford*, — *Ut quieti sint de Operationibus Castellorum.* *Paroch. Antiq. p. 114.* It was unlawful to build any Castle without Leave of the King; which was called *Castellatio*: *Hec mittant hominem in Misericordia Regis, viz. Infractio pacis, Infidelitas & proditio, despectus de eo, Castellatio sine Licentia.* *Du Fresne.*

Castleward, (*Castelgardum, vel Wardum Castri*) An Imposition laid upon such Persons as dwell within a certain Compass of any Castle, towards the Maintenance of such as watch and ward the Castle, *Magn. Chart. c. 20. 32 H. 8. c. 48.* It is used sometimes for the Circuit it self, which is inhabited by those which are subject to this Service. *Castle-guard Rents* were Rents paid by Persons dwelling within the Liberty of any Castle, for the Maintaining of Watch and Ward in the same. *Stat. 22 & 23 Car. 2.*

Caster, and **Chester**: The Names of Places ending in these Words, are derived from the Lat. *Castrum*; for this Termination at the End, was given by the Romans to those Places where they built Castles.

Castor, and **Castritius**, A Weather Sheep. — *Acras Terra & Pasturam ad ducentas Oves, octo Castritios, & sexdecim Boves, &c.* *Mon. Angl. p. 88.*

Casu Confimili, Is a Writ of Entry, granted where Tenant by the Curtesy, or Tenant for Life, aliens in Fee or in Tail, or for another's Life: And is brought by him in Reversion against the Party to whom such Tenant so aliens to his Prejudice, and in the Tenant's Life-time. It takes its Name from this; that the Clerks of the Chancery did, by their common Assent, frame it to the Likeness of the Writ called *In Casu Proviso*, according to the Authority given them by the Stat. *Westm. 2. cap. 24.* Which Statute, as often as there happens a new Case in Chancery something like a former, yet not specially fitted by any Writ, authorizes them to frame a new Form answerable to the new Case, and as like the former as they may. 7 *Rep. 4.* See *Fitz. Nat. Br. fol. 206.*

Casu Proviso, A Writ of Entry given by the Statute of *Gloucester, cap. 7.* where a Tenant in Dower aliens in Fee, or for Life, &c. and lies for him in Reversion against the Alienee. *Fitz. N. B. 205.*

Casus omisus, Is where any particular Thing is omitted out of, and not provided against by a Statute, &c.

Catals, **Catalla**, Goods and Chattels. See *Chattels*.

Catallis captis nomine Distractionis, Is a Writ that lies within a Borough, &c. for Rent going out of the same; and warrants the Taking of Doors, Windows, &c. by Way of Distress for the Rent. *Old Nat. Br. 66.*

Catallis Reddendis, A Writ which lies where Goods being delivered to any Man to keep 'till a certain Day, are not upon Demand delivered at the Day. It may be otherwise called a *Writ of Detinue*: And is answerable to *Actio Depositum* in the Civil Law. See *Reg. Orig. 139*, and *Old Nat. Br. 63.*

Catapulta, A warlike Engine to shoot Darts; a Sling: But it is rather taken for a Cross-bow. — *Edmundus Willoughby tenet unum Messuagium & sex Bovatas terre in Carleton ut de Manerio de Shelford per servitium unius Catapultæ per Annun pro omni servitio.* *Lib. Schedul. de Term. Mich. 14 Hen. 4. Norr. fol. 210.*

Catafcopus. This Word signifies an Archdeacon: *Adulfe Herefordensis Ecclesia Catafcopus.* *Du Cange.*

Catchland, In *Norfolk* there are some Grounds which it is not known to what Parish they certainly belong, so that the Minister who first seizes the Tithes, does by that Right of Pre-occupation enjoy them for that Year: And the Land of this dubious Nature, is there called *Catchland*, from this Custom of seising the Tithes. *Coovel.*

Catchpole, (*quasi, one that catches by the Poll*). See *Catchpollus*.

Cathedral, (*Ecclesia Cathedralis*) Is the Church of the Bishop, and Head of the Diocese: Wherein the Service of the Church is perform'd with great Ceremony.

Cathedratick, (*Cathedraticum*) Is a Sum of 2 s. paid to the Bishop by the inferior Clergy, in *Argumentum subjectionis & ob honorem Cathedralis.* *Hist. Provat. & Synodals, pa. 82.*

Catzurus, A hunting Horse. — *Willielmus Fitz-Alan dat Regi duos bonos Catzuros, pro habendis duabus Feriis apud Norton.* *Tenures, p. 68. Vide Chacurus.*

Cattle, Shall be bought in open Fair or Market, and not sold again in the same Market or

Pain of Forfeiture. 3 & 4 Ed. 6. c. 19. No *Cattle* may be imported, dead or alive, but shall be liable to Forfeiture, &c. But Horses, Cows, Swine, &c. may be transported, paying the Duties. 18 Car. 2. c. 2. 22 Car. 2. c. 13. Factors, &c. selling *Cattle* for others, shall not buy *Cattle*, other than Swine or Calves, in eighty Miles of London, under Penalties; and Drovers of *Cattle* to be licensed by Justices of Peace, &c. 22 & 23 Car. 2. 1 Jac. 2.

Caveat, A Kind of Process in the Spiritual Court to stop the Institution of a Clerk to a Benefice, or Probate of a Will, &c. When a *Caveat* is entered against an Institution, if the Bishop afterwards institutes a Clerk, it is void; a *Caveat* being a *Superfedeas*: But a *Caveat* has been adjudged void when entered in the Life-time of the Incumbent. A *Caveat* entered against a Will, &c. stands in Force for three Months; and this is for the Caution of the Ordinary, that he do no Wrong: Though 'tis said the Temporal Courts do not regard these Sorts of *Caveats*. 1 Roll. Rep. 191. 1 Nels. Abr. 416, 417.

Cavers, Offenders relating to the Mines in *Derbyshire*, who are punishable in the *Berghmote* or Miner's Court.

Caulceis, Anno 6 Hen. 6. cap. 5. *Cauceis*. 1 Ed. 4. c. 1. Ways pitched with Flint, or other Stones. See *Calcetum*.

Caurfines, (*Caurfini*) Were *Italians* that came into *England* about the Year 1235, terming themselves the *Pope's Merchants*, but driving no other Trade than letting out Money; and having great Banks in *England*, they differed little from *Jews*, save (as History says) that they were rather more merciless to their Debtors. Some will have them called *Caurfines*, quasi, *Causa urfina*, bearish and cruel in their Causes; others *Caurfini*, or *Corfina*, as coming from the Isle of *Corfica*: But *Cowel* says, they have their Name from *Caorsum*, *Caorfi*, a Town in *Lombardy*, where they first practised their Arts of Usury and Extortion; from whence spreading themselves, they carried their cursed Trade through most Parts of *Europe*, and were a common Plague to every Nation where they came. The then Bishop of *London* excommunicated them: And King Hen. 3. banished them from this Kingdom in the Year 1240. But being the *Pope's Solicitors* and Money Changers, they were permitted to return in the Year 1250. Tho' in a very short Time after they were driven out of the Kingdom again for their intolerable Practices and Exactions. *Mat. Paris. pag. 403.*

Causa Matrimonii pralocuti, Is a Writ which lies where a Woman gives Lands to a Man in Fee-simple, &c. to the Intent he shall marry her, and he refuseth to do it in any reasonable Time, being thereunto required. *Reg. Orig. 66.* If a Woman makes a Feoffment to a Stranger of Land in Fee, to the Intent to enfeoff her, and one who shall be her Husband; if the Marriage doth not take Effect, she shall have the Writ of *Causa Matrimonii pralocuti* against the Stranger, notwithstanding the Deed of Feoffment be absolute. *New Nat. Br. 456.* A Woman enfeoffed a Man upon Condition that he should take her to Wife, and he had a Wife at the Time of the Feoffment; and afterwards the Woman for not performing the Condition, entered again into the Land, and her Entry was adjudged lawful, tho' upon a second Feoffee. *Lib. Ass. Anno 40 Ed. 3*

And the Husband and Wife may sue the Writ *Causa Matrimonii pralocuti* against another who ought to have married her. But if a Man give Lands to a Woman to the Intent to marry him, altho' the Woman will not marry him, &c. he shall not have his Remedy by Writ *Causa Matrimonii pralocuti*. *New Nat. Br. 455.*

Causam nobis significes, A Writ directed to a Mayor of a Town, &c. who was by the King's Writ commanded to give Seisin of Lands to the King's Grantee, on his delaying to do it, requiring him to shew Cause why he so delays the Performance of his Duty. 4 Rep.

Cautione admittenda, Is a Writ that lies against a Bishop, who holds an excommunicated Person in Prison for Contempt, notwithstanding he offers sufficient Caution or Security to obey the Orders and Commandment of Holy Church for the Future. *Reg. Orig. 66.* And if a Man be excommunicated, and taken by a Writ *Significavit*, and after offers Caution to the Bishop to obey the Church, and the Bishop refuseth it; the Party may sue out this Writ to the Sheriff to go against the Bishop, and to warn him to take Caution, &c. But if the Bishop stand in Doubt whether the Sheriff will deliver him by that Writ, the Bishop may purchase another Writ, directed to the Sheriff reciting the Case, and in the End thereof; *Tibi precipimus, quod ipsum A. B. a Prisona predict. nisi in presentia tua cautionem pignorat. ad minus eidem Episc. de satisfaciend. obtulerit, nullatenus deliberes absque mandato nostro, seu ipsius Episcopi, in hac parte speciali, &c.* When the Bishop hath taken Caution, he is to certify the same into the Chancery, and thereupon the Party shall have a Writ unto the Sheriff to deliver him. *New Nat. Br. 142.*

Ceapgilde A Word derived from the Sax. *Ceap*, Signifying *Pecus*, Cattle; and *Gild*, i. e. *solutio*; and hence it is, *solutio Pecudis*: From this *Saxon* Word *Gild*, 'tis very probable we have our common *English* Word *Yield*; as *Yield*, or *Pay*. *Cowel.*

Celer Lecti, The Top, Head, or Tetter of a Bed.—*Dedit ad Cameram Prioris unum Lectum, cum celere & Curtenis blodei coloris.* *Hist. Elie. apud Whartoni Angl. Sac. par. 1. p. 673.*

Cellerarius, alias *Cellarius*, Was the Butler in a Monastery: In the Universities they are sometimes called *Manciple*, and sometimes *Caterer*, and *Steward*.

Cendulæ, Small Pieces of Wood laid in Form of Tiles, to cover the Roof of a House.—

Mandatam ad Cendulas & lattas nostras caviandas de Parco ad Domus reficiendas. *Pat. 4 Hen. 3. p. 1. m. 10.*

Kenegild, 'This is an expiatory Mulct, paid by one who killed another to the Kindred of the Deceased. See *Kenegild*.

Cenellæ, Acorns, from the Oak, *Fr. Chesne*. In our old Writings, *Pessona Cenellarum* is put for the Pannage of Hogs, or running of Swine, to feed on Acorns.

Cennings, Was Notice given by the Buyer to the Seller, that the Thing sold was claimed by another, that he might appear and justify the Sale: It is mentioned in the Laws of *Athelstan* apud *Brompton. cap. 4.*

Censaria, A Farm, or House and Land, let ad *Censam*, at a standing Rent: It comes from the *Fr. Cense*, which Signifies a Farm.—*Henricus Sturmy tenet Maneria in Com. Wilts. per servitium*

vitium custodiendi ballivam totius Foreste de Saver-nake, & censariam, que vocatur la ferme in Fore-sta predicta. Temp. Ed. 3. Tenures p. 88.

Censarii, Farmers.—*Ibi sunt nunc 14 Censarii, habentes septem Carucatas.* Blount.

Censure, A Custom called by this Name (from the Lat. *Census* which has been expounded to be a Kind of personal Money, paid for every Poll) observed in divers Manors in Cornwall and Devon, where all Persons residing therein above the Age of sixteen are cited to swear Fealty to the Lord, and to pay 11 d. per Poll, and 1 d. per ann. ever after; and these thus sworn are called *Censers*.—*Item erat quaedam Custuma que vocatur Censure proveniens de illis qui manent in Burgo de Lestreythiel.* Survey of the Dutchy of Cornwall.

Ceola, A large Ship. The Word is mention'd in *Malmesbury.* Lib. 1. c. 1.

Cepi Corpus, Is a Return made by the Sheriff, upon a *Capias*, or other Process to the like Purpose, that he hath taken the Body of the Party. *F. N. B.* 26.

Ceppagium. The Stumps or Roots of Trees which remain in the Ground after the Trees are felled.—*Qui forestarii ceperint coopertiones, Ceppagia & Escheatas quercuum sive aliarum arborum,* &c. *Fleta lib. 2. cap. 41.*

Certificando de recognitione Stapule, Is a Writ directed to the Mayor of the *Staple*, &c. commanding him to certify to the Lord Chancellor of a Statute-*Staple* taken before him, where the Party himself detains it, and refuseth to bring in the same. *Reg. Orig.* 152. There is the like Writ to certify a Statute-Merchant; and in divers other Cases. *Ibid.* 148, 151, &c.

Certificate, Is a Writing made in any Court to give Notice to another Court of any Thing done therein, which is usually by way of Transcript, &c. And sometimes it is made by an Officer of the same Court, where Matters are referred to him, or a Rule of Court is obtained for it; containing the Tenor and Effect of what is done.

Certification of Affise of Novel Disseisin, (*Certificatio Affise nove Disseisine, &c.*) Is a Writ granted for the Re-examining of a Matter passed by *Affise* before any Justices: And this is used where a Man appearing by his Bailiff to an *Affise* brought by another, hath lost the Day; and having something more to plead for himself, 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 obtains Letters Patent to them to that Effect; whereupon, he brings a Writ to the Sheriff to call both the Party for whom the *Affise* passed, and the Jury that was impanelled on the same, before the said Justices at a certain Day and Place, when the same is to be examined: And it is called a *Certificate*, because therein Mention is made to the Sheriff, that upon the Party's complaint of the defective Examination, as to the *Affise* passed, the King hath directed his Letters Patent to the Justices for the better *Certifying* of themselves, whether all Points of the said *Affise* were duly examined. *Reg. Orig.* 200. *F. N. B.* 181. *Braeton. lib. 4. cap. 13. Horn's Mirr. lib. 3.*

Certiorari, Is a Writ issuing out of the Chancery to an inferior Court, to call up the Records of a Cause there depending, that Justice may be done therein, upon Complaint that the Party who seeks the said Writ hath received hard Usage, or is not like to have an indifferent Trial in the said

Court. *F. N. B. fol. 242.* This Writ is either returnable in the *King's Bench*, and then hath these Words, *Nobis mittatis*; or in the *Common Bench*, and then *Justiciariis nostris de Banco*; or in the Chancery, and then hath in *Cancellaria nostra, &c.* A *Certiorari* issues sometimes out of Chancery, and sometimes out of the *King's Bench*; and lies where the King would be certified of any Record, in any Court of Record; and the King may send such Writ to any of the said Courts, to certify such Record before him in *Banco*, or in the Chancery, or before such other Justices, where the King pleases to have the same certified. *F. N. B.* 245. *Certiorari* lies to the Court of *Wales*, and to the *Cinque Ports*, *Counties Palatines*, &c. 2 *Hawk. P. C.* 287. Indictments from inferior Courts, and Proceedings of the Quarter-Sessions of the Peace, &c. may be removed into *B. R.* by *Certiorari*. And on a *Certiorari* the very Record must be returned, and not a Transcript of it; for if so, then the Record will still remain in the inferior Court. Though in *C. B.* they return the Transcript, as the Record it self, which it is in Judgment of Law. 2 *Salk.* 565. Where a *Certiorari* is by Law grantable for an Indictment, at the Suit of the King, the Court is bound to award it, for it is the King's Prerogative to sue in what Court he pleases: But it is at the Discretion of the Court to grant it or not at the Prayer of the Defendant. And the Court will not grant it for the Removal of an Indictment before Justices of Gaol-Delivery, without some special Cause; or where there is much Difficulty in the Case, that the Judge desires it may be determined in *B. R.* &c. Also Indictments of Perjury, Forgery, or for heinous Misdemeanors, the Court will not grant a *Certiorari* to remove at the Instance of the Defendant. 2 *Hawk. P. C.* 287. Where Issue is joined in the Court below, it is a good Objection against Granting a *Certiorari*. And if a Person doth not make use of this Writ till the Jury are sworn, he loses the Benefit of it. *Mod. ca.* 16. After Conviction, a *Certiorari* may not be had to remove an Indictment, &c. Unless there be special Cause; as if the Judge below is doubtful what Judgment is proper to be given, when it may: And after Conviction, &c. it lies in such Cases where Writ of Error will not lie. 1 *Salk.* 149. The Court on Motion in an extraordinary Case will grant a *Certiorari* to remove a Judgment given in an inferior Court; but this is done where the Ordinary Way of taking out Execution is hindered in the inferior Court. 1 *Lill. Abr.* 253. In common Cases a *Certiorari* will not lie to remove a Cause out of an inferior Court, after Verdict. It is never sued out after a Writ of Error, but where Diminution is alleged: And when the King in Demand doth not exceed 5 l. a *Certiorari* shall not be had, but a Writ of Error or Attaint. *Stat. 21 Jac. 1. c. 23.* A *Certiorari* is to be granted on Matter of Law only: And in many Cases there must be a Judge's Hand for it. 1 *Lill.* 252. *Certiorari's* to remove Indictments, &c. are to be signed by a Judge: And to remove Orders, the *Fiat* for making out the Writ, must be signed by a Judge. 1 *Salk.* 150. In Vacation Time a *Certiorari* may be granted by any of the Judges of *B. R.* and Security is to be found before it is allowed. By Statute no *Certiorari* is to be granted out of *B. R.* to remove an Indictment before Justices of Peace at the Sessions, before Trial, unless Motion be made in open Court, and the Party indicted find Security

by two Persons in 20 l. each to plead to the Indictment in B. R. &c. And if the Defendant prosecuting the *Certiorari* be convicted, the Court of B. R. shall order Costs to the Prosecutor of the Indictment. *Stat. 5 & 6 W. & M. cap. 11.* If on *Certiorari* to remove an Indictment, the Party do not find Manucaptors in the Sum of 20 l. to plead to the Indictment, and try it, according to the Statute, it is no *Superfedeas*. *Mod. ca. 33.* And a *Procedendo* may be granted where Bail is not put in before a Judge, on a *Certiorari*. It has been ruled that a *Certiorari* ought not to be granted to remove any Order of Justices, where an Appeal lies to the Sessions, before the Matter is determined on the Appeal. *1 Salk. 147.* *Certiorari* lies to Justices of Peace, &c. even in Cases where they are impowered by Statute finally to hear and determine. *1 Mod. 44.* But Things may not be removed from before Justices of Peace, which cannot be proceeded in by the Court where removed; as in Case of refusing to take the Oaths, &c. which is to be certified and inquired into according to the Statute. *1 Salk. 145.* And where the Court which awards the *Certiorari* cannot hold Plea upon the Record, there but a Tenor of the Record shall be certified, because otherwise if the Record it self was removed into B. R. as it cannot be sent back, there would be a Failure of Right afterwards. *1 Danv. Abr. 792.* But a Record sent by *Certiorari* into B. R. may be sent after by *Mittimus* into C. B. *Ibid. 789.* And a Record in B. R. may be certified into Chancery, and from thence be sent by *Mittimus* to an inferior Court, where an Action of Debt is brought in the inferior Court, and the Defendant pleads that the Plaintiff hath recovered in B. R. and the Plaintiff replies *Nul tiel Record*, &c. *1 Saund. 97, 99.* If a *Certiorari* be prayed to remove an Indictment out of London, or *Middlesex*, three Days Notice must be given the other Side, or the *Certiorari* shall not be granted. *Raym. 74.* A *Certiorari* to remove an Indictment is good, although it bear Date before the Taking of the Indictment to be removed by it. *1 Lill. 253.* The Court of B. R. will grant a new *Certiorari* to affirm a Judgment, &c. Though generally one Person can have but one *Certiorari*. *Cro. Jac. 369.* Returns of *Certiorari*'s are to be under Seal: And the Person to whom a *Certiorari* is directed, may make what Return he pleases, and the Court will not stop the Filing of it, on *Affidavits* of its Falsity, except where the Publick Good requires it: The Remedy for a false Return, is Action on the Case, at the Suit of the Party injured; and Information, &c. at the Suit of the King. *2 Hawk. P. C. 295.* A *Certiorari* being once delivered, makes all subsequent Proceedings on the Record erroneous; whether the Proceedings are before or after its Return. It is said the Lord Chancellor, or any Judge of the Courts of Record at *Westminster*, may bring a Record to one another, without a *Certiorari*; but not a Judge of an inferior Court, &c. *1 Nels. 417, 418.*

Cert-Money, (*quasi* certain Money) Is Head-Money, paid yearly by the Residents of several Manors to the Lords thereof, for the certain keeping of the Leet; and sometimes to the Hundred: As the Manor of *Hook* in *Dorsetshire*, pays Cert-Money to the Hundred of *Egerdon*. In ancient Records this is called *Certum Let* &c. See *Common Fine*.

Cervisarii. The Saxons had a Duty called *Drinclean*, that his *Retributio Potus*, payable by

their Tenants; and such Tenants were in *Domesday* called *Cervisarii*, from *Cervisia*, Ale, their chief Drink: Though *Cervisarius* vulgarly signifies a Beer or Ale Brewer.

Cerura, A Mound, Fence, or Inclosure. — *Willielmus de Lucy Miles, dedit Thomæ Ministro Domus de Thelesford, licentiam Domos & portas levare, adificare, & cum Ceruris & Muris, &c. Cart. priorat. de Thelesford M. S.*

Cessavit, Is a Writ that lies in divers Cases, upon this general Ground, that he against whom it is brought, hath for two Years neglected to perform such Service, or to pay such Rent, as he is tied to by his Tenure, and hath not upon his Lands or Tenements sufficient Goods or Cattle to be distrained. *F. N. B. 280.* And if a Tenant for Years of Land at certain Rent, suffers the Rent to be behind 2 Years, and there is no such Distress to be had upon the Land; then the Landlord shall recover the Land: But if the Tenant come into Court before Judgment given, and tender the Arrearages and Damages, and find Security that he shall cease no more in Payment of the Rent, then the Tenant shall not lose his Land. *Terms de Ley 107.* By Statute, if a Fee-Farmer cease to pay his Rent two Years, the Lessor may have a *Cessavit*, and recover the Land: And in this Case, the Heir of the Demandant may maintain a *Cessavit* against the Heir or Assign of the Tenant. *6 Ed. 1. cap. 4.* But in other Cases, the Heir may not bring this Writ for Cessure in the Time of his Ancestor: And it lies not but for annual Service, Rent and such like; not for Homage or Fealty. If a Man cease to pay his Rent and Services for two Years, and inclose the Land, so as the Lord cannot distrain, if he lay not open the Gates or Hedges of the Land which make the Inclosure, the Lords shall have a *Cessavit*, although the Tenant hath sufficient Cattle upon the Land to be distrained for the Rent: For the Land ought to be open, and likewise there should be sufficient to distrain for the Rent, &c. And where the Tenant suffereth the Land to lie fresh, not occupied for two Years together, it is said this Writ will lie. *New Nat. Br. 463, 464.* The Lord shall have a Writ of *Cessavit* against Tenant for Life, where the Remainder is over in Fee to another: But the Donor of an Estate-Tail shall not have a *Cessavit* against the Tenant in Tail: Though if a Man make a Gift in Tail, the Remainder over in Fee to another, or to the Heirs of the Tenant in Tail, there the Lord of whom the Lands are holden immediate, shall have a *Cessavit* against the Tenant in Tail, because that he is Tenant to him, &c. *Ibid.* If the Lord distrains pendant his Writ of *Cessavit* against his Tenant, the Writ shall abate.

Cessavit de Cantaria, Lies where a Man gives Land to a House of Religion, &c. to say Divine Service, provide Alms for the Poor, &c. If the said Services be not done in two Years, the Donor or his Heirs shall have this Writ against him that holds the Land thus given, after such Cessure. See the *Stat. Westm. 2. cap. 41.*

Cesse, Signifies an *Assessment*, or Tax, and is mentioned in the *Stat. 22 Hen. 8. cap. 3.* *Cesse* or *Ceasse*, in *Ireland*, is an Exaction of Provision or Victuals, at a certain Rate, for Soldiers in Garrison. *Antiq. Hibernia.*

Cession, (*Cessio*) A Ceasing, Yielding up, or Giving over. And is when an Ecclesiastical Person is created Bishop, or a Parson of a Parsonage takes

takes another Benefice, without Dispensation, or otherwise not qualified, &c. In both Cases their first Benefices are become void, and are in the Law said to be void by *Cession*: And to those Benefices that the Person had who was created Bishop, the King shall present for that Time, whoever is Patron of them; and in the other Case the Patron may present. *Cowel*. Not only a Benefice with Cure, may be said to be void by *Cession*, when the Incumbent thereof accepts of another Benefice, but also when such Incumbent is made a Bishop, for thereby all his Ecclesiastical Preferments which he had before, whether with, or without Cure, are actually void. *Vaugh.* 19. But it is not the Election of any one to be a Bishop, and Confirmation thereof, that doth void his former Preferments, until Consecration be also had: And by Dispensation of Retainer, a Bishop may retain some, or all of those Preferments he was intitled to before he was Bishop. *Dyer* 235. The *Cession* on Promotion of a Bishop, not making an Avoidance in the common Way, and it being by the King's Means that the Livings are void, whose Presentation in such a Case is only as it were an Exchange of one Life for another, intitles the King to present to those Livings, and as he is Supream Patron. *Cession* makes a Living void, without any Resignation, Deprivation, &c.

Cessor, (*Lat.*) A Loiterer, or idle Fellow: But more particularly used for him who *ceaseth*, or neglects so long to perform a Duty, as he thereby incurs the Danger of the Law. *Old Nat. Br.* 136.

Cessure, or *Cesser*, Is used for ceasing, giving over, or departing from. *Stat. Westm.* 2. *cap.* 1.

Cestui que Trust, Is he who hath a Trust in Lands or Tenements, committed to him for the Benefit of another. *Anno* 12 *Car.* 2. *cap.* 30. And Lands of *Cestui que Trust* may be delivered in Execution, where any Person is seised in Trust for another. 29 *Car.* 2. If the Person intrusted doth not perform his Trust, he is compellable in the Chancery, &c.

Cestui que Use, (*Fr.* *Cestui a l'usage de qui*) Signifies him to whose Use any other Man is enfeoffed of any Lands or Tenements. 1 *Rep.* 133. Feoffees to Uses were formerly deemed Owners of the Lands; but now the Possession is adjudged in *Cestui que Use*, and without any Entry he may bring Assise, &c. *Stat.* 27 *H.* 8. *Cro. El.* 46. See *Use*.

Cestui que Vie, Is he for whose Life any Lands or Tenements are granted. *Perk.* 97. And if Tenant for Term of another's Life dieth, while *Cestui que Vie* is living; now, by the Common Law, he that first entereth, shall hold the Land as Occupant during such other Person's Life. 1 *Inst.* 41, 388. But this is prevented by making Leases for the Lives of others to the Lessees, their Heirs or Executors, during the Life of *Cestui que Vie*, &c. And the Statute 29 *Car.* 2. *cap.* 3. charges such Lands for Debr. See *Occupant*.

Chace, Is a Station of Game, more extended than a Park, and less than a Forest: And is sometimes taken for the Liberty of hunting within such a District. *Cowel*. And according to *Blount* it hath another Signification, i. e. The Way through which Cattle are drove to Pasture, commonly called in some Places a Drove-Way; *Ut si quis omnino viam obstruat vel Chaceam per quam ingredi solet pastura*, *Bracon lib.* 4. c. 44. Vide *Chase*.

Chaceare ad Lepores, vel vulpes; To hunt Hare or Fox.—*Licet, &c.* *Chaceare ad Lepores & vulpes in Manerio suo de Donham*. *Cartular. Abbat. Glaston.* M. S. 87.

Charurus (from the *Fr.* *Chasseur*) A Horse for the Chase, or a Hunter; or rather a Hound or Dog for the Chase, a Courser: It is mentioned in *Rot.* 7 *Johan*.

Chafe, From the *Fr.* *Chaufier* to heat, whence our *Chafing-Dish*.

Chafewar. An Officer in Chancery, that fitteth the Wax for sealing of the Writs, and such other Instruments as are there made to be issued out; So in *France*, *Calefactores ceræ sunt, qui Regis literis in Cancellaria cera imprimunt*. *Corasius*.

Chaffers, Seem to signify Wares or Merchandize; and we yet use *Chaffering* for buying and selling, though I take it to be generally a Kind of bartering of one Thing for another; it is mentioned in the *Stat.* 3 *Ed.* 4. c. 4.

Chaldon or *Chalder* of Coals, contains thirty-six Bushels heaped up, according to the Bushel sealed for that Purpose at *Guildhall, London*. *Stat.* 16 & 17 *Car.* 2. c. 2.

Chalking. The Merchants of the Staple require to be eased of divers new Impositions, as *Chalking*, *Ironage*, *Wharfage*, &c. *Rot. Parl.* 50 *Ed.* 3.

Challenge, *Calumnia* (from the *Fr.* *Chalenger*) Is used in the Law for an Exception to Jurors who are returned to pass on a Trial. And this *Challenge* to Jurors is either made to the *Array*, or to the *Polls*: To the *Array* is, when Exception is taken to the whole Number impanelled; and to the *Polls* is, when some one or more are excepted against, as not indifferent. *Challenge* to Jurors is also divided into *Challenge Principal* or *Peremptory*, and *Challenge per Cause*, i. e. upon Cause or Reason: *Challenge Principal* or *Peremptory*, is that which the Law allows without Cause alledged, or further Examination; as a Prisoner at the Bar, arraigned for Felony, may challenge peremptorily the Number allowed him by Law, one after another, alledging no Cause, but his own Dislike, and they shall be put off, and new taken in their Places. But yet there is a Difference between *Challenge Principal* and *Challenge Peremptory*; this being used only in Matters Criminal, and barely without Cause alledged; whereas that is in Civil Actions for the most Part, and by assigning some such Cause of Exception, as being found true the Law allows. *Staundf. P. C.* 124, 157. *Lamb. Eiren. lib.* 4. *cap.* 14. In Treason, and Petit Treason, the Number of thirty-five Jurors may be peremptorily challenged, without shewing any Cause, in Favour of Life; and in Murder and Felony. 20. And more may be challenged shewing Cause. 1 *Inst.* 155. 22 *H.* 8. c. 14. 1 *P. & M.* 10. A Person indicted of Treason may challenge thirty-five of those returned on the Panel of Jurors to try him, without Cause shewn; and if two or more are to be tried, they may challenge so many each, but then they are to be tried singly, or all may challenge that Number in the Whole, and be tried jointly. 3 *Salk.* 81. By the *Stat.* 3 *H.* 7. *cap.* 14. In Treason for compassing to kill the King, &c. no *Challenge* shall be allowed, but for Malice. If a Prisoner challenge peremptorily more than allowed, he is to be dealt with as one standing Mute, &c. And some Statutes which take away the Benefit of Clergy from Felons, exclude those
their

their Clergy who peremptorily *challenge* more than twenty, whereby they are liable to Judgment of Death. 2 *Hawk. P. C.* 414. 3 & 4 *W. & M. c.* 9. But if the Offence be within the Benefit of the Clergy, the *Challenge* shall be over ruled, and the Party put upon his Trial. The King cannot *challenge* peremptorily in Murther, &c. without shewing Cause. *Moor* 595. And by Stat. 33 E. 1. if those who prosecute for the King *challenge* a Juror, they shall assign the Cause, and if they alledge not a good Cause, the Inquest shall be taken. All Peremptory *Challenges* are to be taken by the Party himself; and where there are divers *Challenges*, they must be taken all at once. But there can be no *Challenge* till the Jury is full; and then the Array is to be *challenged* before one of them is sworn. *Hob.* 235. Where the King is Party, if the other Side *challenge* a Juror above the Number allowed by Law, he ought to shew the Cause of his *Challenge* immediately. 1 *Bust.* 191. A Defendant shall shew all Causes of *Challenge*, before the King shall shew any. 2 *Hawk.* 413. And the King ought not to shew his Cause of *Challenge* before all the Jurors are called over; for if there are enough besides those *challenged*, there will be no Occasion to shew any Cause why he *challenged* the Rest: But if there are not enough, then he must shew the Cause of his *Challenge*. *Raym.* 473. There may be a Principal Cause of *Challenge* to the Array, and a *Challenge* to the Favour: A Principal Cause of *Challenge* is in Respect of Partiality or Default of the Sheriff, &c. and not in Respect of the Persons returned; and this Partiality in the Sheriff, may be by Reason of Kindred, or Affinity to the Plaintiff or Defendant; or if one of the Jury is returned at the Nomination of the Plaintiff or Defendant; if a Knight be not returned, when a Peer is Party, &c. 1 *Inst.* 156, 157. *Challenge* to the Favour is where the Plaintiff or Defendant is Tenant to the Sheriff, or if the Sheriff's Son hath married the Daughter of the Party, &c. and is also when either Party cannot take any Principal *Challenge*, but sheweth Cause of Favour; and Causes of Favour are infinite. But where the King is Party, one shall not *challenge* the Array for Favour, though the King may do it. *Wood's Inst.* 592. Where *Challenge* is to the Favour, by Reason of Kindred to the Sheriff, you may shew how Kin, and then the *Challenge* is good. 1 *Nelf. Abr.* 423. If one of the Parties is of Affinity to a Juror, the Juror hath married the Plaintiff's Daughter, &c. if a Juror hath given a Verdict before in the Cause, Matter or Title; if one labours a Juror to give his Verdict; if after he is returned, a Juror eats and drinks at the Charge of either Party; if the Plaintiff, &c. be his Master, or the Juror hath any Interest in the Thing demanded, &c. these are *Challenges* to the Favour. 2 *Roll. Abr.* 636. *Hob.* 294. If the Juror is convicted and attainted of Treason, Felony, Perjury, adjudged to the Pillory, or other Punishment whereby he becomes infamous, or is outlawed, or excommunicate; these are all Principal *Challenges*: But in these Cases and all others, he that *challengeth*, must shew the Record if he will have it take Place as a Principal *Challenge*; otherwise he must conclude to the Favour, unless it be a Record of the same Court. 1 *Inst.* 157. A Person under Prosecution for any Crime, may before indicted, *challenge* any of the Grand Jury, as being outlawed, &c. or returned at the Instance of the Prosecutor, or not returned by the

proper Officer, &c. 2 *Hawk. P. C.* 215. As a Peer ought not to be sworn on Juries, he may be *challenged*: But a Peer of the Realm tried for Treason or Felony, shall not *challenge* any of his Peers. Trials *per pais* 130. A Juror may be *challenged* for Defect, as well as for any Crime; as Defect of Birth, where he is an Alien born; of Age, because a Minor; or of Estate, for Want of ten Pounds *per Annum* Freehold, &c. in the same County, or a Talesman five Pounds a Year, by Stat. 4 & 5 *W. & M.* 24. In Corporation Towns Freemen worth forty Pounds in Goods, are qualified to be Jurors for trying of Felonies. Stat. 23 H. 8. But on Trials in London for High Treason, every Juror ought to have such Freehold, &c. as required by 4 & 5 *W. & M.* A Principal *Challenge*, being found true, is sufficient without leaving it to the Triers: But if some of a Jury are *challenged* for Favour, they shall be tried by the rest of the Jury, whether indifferent. 1 *Inst.* 158. And where a *Challenge* is made to the Array, the Court appoints two Triers, who are sworn, and then the Cause of Favour is shewed to them, which may be called the Issue they are to try; and if 'tis proved, then they give their Verdict that they are not indifferently impanelled, and this is entered of Record: But if the Favour is not proved, then they say that the Jury was indifferently impanelled, and so the Trial goes on without making any Entry of the Matter. 1 *Bulstr.* 114. If the Array of the whole Jury is *challenged*, the Counsel for the Party is to read the *Challenge* in French; and deliver it to the Secondary, who reads it in Latin. 1 *Lill. Abr.* 260. If one take a Principal *challenge* against a Juror, he cannot afterwards *challenge* that Juror for Favour, and wave his former *Challenge*: But a *Challenge* may be made to the Polls, after made to the Array. *Wood* 592. A new Jury is to be impanelled by the Coroner, where the Array is qualified for Partiality, &c. of the Sheriff. If there be Cause of *Challenge* against the Sheriff, the Process is to be directed to the Coroners; and if there is Cause of *Challenge* against them, the Court will appoint certain Elisors, against whose Return no *Challenge* can be taken to the Array; though it may to the Polls. Trials *per pais* 15. If a Plaintiff or Defendant have Action of Battery, &c. against the Sheriff, or the Sheriff against them, it is Cause of *Challenge*: And if either of the Parties have Action of Debt against the Sheriff; or if the Sheriff hath any Parcel of Land depending on the same Title as the Parties; or if he, or his Bailiffs who returned the Jury be under the Distress of either Party, &c. These are good Causes of *Challenge*. *Ibid.* 154. Where one of the Jurors hath a Suit in Law depending with the Plaintiff, 'tis good *Challenge*. *Stile* 129. An Action depending betwixt either of the Parties and a Juror, implying Malice, is Cause of *Challenge*: And a Juror may be *challenged* for holding Lands by the same Title as the Defendant. 2 *Leon.* 40. If a Person owes Suit of Court, &c. to a Lord of a Hundred who is Plaintiff, it is a Principal *Challenge*, as he is within the Distress of the Plaintiff. *Dyer* 176. But it is no *Challenge* that a Person is in Debt to a Party. 1 *Nelf. Abr.* 426. A Juror returned by a wrong Name, may be *challenged* and withdrawn: And if a Juror declares the Right of either of the Parties, &c. it is said to be Cause of *Challenge*: But it hath been ruled that it is not sufficient Cause of *Challenge*, that a Juror delivered his O-

pinion

pinion touching the Title of the Land in Question; because his Opinion may be altered on hearing the Evidence. *Pasch. 23 Car. B.R.* to say of a Person to be tried for any Crime, that *he is Guilty, or will be hanged, &c.* is good Cause of Challenge; but the Prisoner must prove it by Witnesses, and not out of the Mouth of the Jurymen, who may not be examined: And though a Jurymen may be asked upon a *Voir dire* whether he hath any Interest in the Cause, or whether he hath a Freehold, &c. Yet a Jurymen, or a Witness, shall not be examined, whether he hath been convict of Felony, or guilty of any Crime, &c. which would make a Man discover that of himself which tends to make him infamous, and the Answer might charge him with a Misdemeanor. *1 Salk. 153.* Default of Hundredors is Cause of Challenge by the Common Law; but by Stat. 4 & 5 Ann. cap. 16. every *Venire facias* for Trial of Issues in any Court of Record, shall be awarded of the Body of the proper County; though this extends only to Civil Causes, and not to Appeals of Felony, Indictments, &c. In a Writ of Right, four Knights were returned; they must appear with their Swords, or it will be good Cause of Challenge. *Moor 67.* If one Challenge a Juror, and the Challenge is entered, he cannot afterwards have him sworn on the Jury. And if the Defendant do not appear at the Trial when called, he loseth his Challenge to the Jurors, though he afterwards appear. *1 Lill. Abr. 259.* When the Jury appear at a Trial, before the Secondary calls them to be sworn, he bids the Plaintiff and Defendant to attend their Challenges, viz. *Gardes vofres Challenges, &c.*

Chamberdeains, or Chamber-Dacons, Were certain poor Irish Scholars, cloathed in mean Habit, and living under no Rule; banished England by Statute *1 Hen. 5. cap. 7. 8.*

Chamberer, (Fr. Chambriere) Is a Word used for a Chamber-Maid: It is mentioned *33 Hen. 8. cap. 21.*

Chamberlain, (Camerarius) Is variously used in our Laws, Statutes, and Chronicles: As first Lord Great Chamberlain of England, to whose Office belongs the Government of the Palace at Westminster, and upon all solemn Occasions the Keys of Westminster-hall, and the Court of Requests are delivered to him: 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 to the King's Person: He has the Care of providing all Things in the House of Lords in Time of Parliament; to him belongs Livery and Lodging 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 the Oversight and Government of all Officers belonging to the King's Chamber, (except the Bed-Chamber, which is under the Groom of the Stole) and also of the Wardrobe; of Artificers retained in the King's Service, Messengers, Comedians, Revels, Musick, &c. The Serjeants at Arms are likewise under his Inspection; and the King's Chaplains, Physicians, Apothecaries, Surgeons, Barbers, &c. And he hath under him a Vice-Chamberlain, both being always Privy Counsellors. There were formerly Chamberlains of the King's Courts. *7 E. 6. c. 1.* And there are Chamberlains of the Exchequer, who keep a Controllment of the Pells of Receipts and Exits, and have in their Custody the Leagues and Treaties

with foreign Princes, many ancient Records, the two famous Books of Antiquity called *Domesday*, and the *Black Book of the Exchequer*; and the Standards of Money, and Weights, and Measures are kept by them. There are also Under Chamberlains of the Exchequer, who make Searches for all Records in the Treasury; and are concerned in making out the Tallies, &c. The Officer of Chamberlain of the Exchequer is mentioned in the Statute *34 & 35 H. 8. cap. 16.* Besides these we read of a Chamberlain of North Wales. *Stow pag. 641.* A Chamberlain of Chester, to whom it belongs to receive the Rents and Revenues of that City; and when there is no Prince of Wales, and Earl of Chester, he hath the Receiving and Returning of all Writs coming thither out of any of the King's Courts. The Chamberlain of London, who is commonly the Receiver of the City Rents, payable into the Chamber; and hath great Authority in making and determining Rights of Freemen, concerning Apprentices, Orphans, &c.

Chambers of the King, (Regie Camere) The Havens or Ports of the Kingdom are so called in our ancient Records. *Mare Claus. f. 242.*

Chambrze depinct, Anciently *St. Edward's Chamber*, now called the Painted Chamber.

Champarty, or Champerty, (from the Fr. *Champ*, a Field, and *Parti* divided, or the Lat. *Campus*, and *Partitio*, because the Parties in Champerty agree to divide the Thing in Question) Signifies a Bargain with the Plaintiff or Defendant in any Suit, to have Part of the Land, Debt, or other Thing sued for, if the Party that undertakes it prevails therein. *1 Inst. 368.* This seems to have been an ancient Grievance in our Nation; for notwithstanding the several Statutes of *3 E. 1. c. 25. 13 Ed. 1. c. 49. 28 Ed. 1. c. 11. and 33 Ed. 1. &c.* and a Form of a Writ framed to them, yet the *4 Ed. 3. cap. 11. and 33 Hen. 8.* enacted, That whereas a former Statute provided Redress for this Evil in the King's Bench only, from henceforth it should be lawful for Justices of the Common Pleas, Justices of Assize, and Justices of Peace in their Quarter-Sessions, to inquire, hear and determine this and such like Cases, as well at the Suit of the King, as of the Party: And this Offence is punishable by Common Law and Statute; the Statute *33 Ed. 1.* makes the Offenders liable to three Years Imprisonment, and a Fine at the King's Pleasure. By the Statute *28 E. 1. c. 11.* it is ordained, that no Officer, nor any other, shall take upon him any Business in Suit, to have Part of the Thing in Plea; nor none upon any Covenant, shall give up his Right to another; and if any do, and be convicted thereof, the Taker shall forfeit to the King so much of his Lands and Goods as amounts to the Value of the Part purchased, &c. for such Maintenance. In the Construction of these Statutes, it hath been adjudged, that under the Word Covenant, all Kinds of Promises and Contracts are included, whether by Writing, or Parol: That Rent granted out of Land in Variance, is within the Statutes of Champerty. And Grants of Part of the Thing in Suit made merely in Consideration of the Maintenance, are within the Meaning of the Statute; but not such as are made in Consideration of a precedent honest Debt, which is agreed to be satisfied with the Thing in Demand when recovered. *F. N. B. 172. 2 Inst. 209. 2 Roll. Abr. 113.* It is said not to be material, whether he who brings a Writ of Champerty, did in Truth suffer

suffer any Damage by it; or whether the Plea wherein it is alledged be determined or not. 1 Hawk. 257. A Conveyance executed hanging a Plea, in Pursuance of a Bargain made before, is not within the Statutes against *Champerty*: And if a Man purchase Land of a Party, pending the Writ, if it be *Bona fide*, and not to maintain, it is not *Champerty*. E. N. B. 172. 2 Roll. Abr. 113. But it hath been held, that the Purchase of Land while a Suit of Equity concerning it is depending, is within the Purview of the Statute 28 E. 1. Moor 655. A Lease for Life, or Years, or a voluntary Gift of Land, is within the Statutes of *Champerty*; but not a Surrender made by a Lessee to his Lessor: Or a Conveyance relating to Lands in Suit, made by a Father to his Son, &c. 1 Hawk. P. C. 258. The Giving of Part of the Land in Suit, after the End of it, to a Counsellor for his Wages, is not *Champerty*, if there be no precedent Bargain relating to such Gift: But if it had been agreed between the Counsellor and his Client before the Action brought, that he should have Part for his Wages, then it would be *Champerty*. Bro. *Champert*. 3. And it is dangerous to meddle with any such Gift, since it carries with it a strong Presumption of *Champerty*. 2 Inst. 564. If any Attorney follow a Cause to be paid in gross, when the Thing in Suit is recovered, it hath been adjudged that this is *Champerty*. Hob. 117. Every *Champerty* implicth Maintenance; but every Maintenance is not *Champerty*, for *Champerty* is but a Species of Maintenance. Cromp. Jur. 39. 2 Inst. 208.

Champertors, According to the Statute, are they who move Pleas or Suits, or cause them to be moved, either by their own Procurement, or by others, and sue them at their proper Costs, to have Part of the Land in Variance, or Part of the Gains. 33 Ed. 1. — *Champertors, vel Campi Participes, sunt qui per se, vel per alios placita movent, vel movere faciunt, & ea suis sumptibus persequuntur ad Campi partem, vel pro parte lucri habenda.* Stat. 2. Artic. super Chart. 11.

Champion, (*Campio*) Is taken in the Law not only for him that fights a *Combat* in his own Cause, but also for him that doth it in the Place or Quarrel of another. Bract. lib. 3. Tract. 2. c. 21. And in Sir Edward Bishe's Notes on Upton, fol. 36. you will find that Henry de Ferneberg for 30 Marks Fee, did by Charter covenant to be *Champion* to Roger Abbot of Glastonbury. An. 42 H. 3. These *Champions*, mentioned in our Law Books and Histories, were usually hired; and any one might hire them, except Parricides, and those who were accused of very great Offences: Before they came into the Field, they shaved their Heads, and made Oath that they believed the Persons who hired them, were in the Right, and that they would defend their Cause to the utmost of their Power; which was always done on Foot, and with no other Weapon than a Stick or Club, and a Shield: And before they engaged, they always made an Offering to the Church, that God might assist them in the Battel. When the Battel was over, the Punishment of a *Champion* overcome, and likewise the Person for whom he fought, was various: If it was the *Champion* of a Woman, she was burnt, and the *Champion* hanged: If it was of a Man, and not for a Capital Crime, he not only made Satisfaction, but had his right Hand cut off; and the Man was to be close confined in Prison till the Battel was over. Bract. lib. 2. c. 35. And Hottonian de verbis feudali-

bis, defines it thus; *Campio est Certator pro alio datus in Duello, a Campo dictus, qui circus erat decertantibus definitus*: And therefore this Fighting is called *Campfight*. See *Combat*.

Champion of the King, (*Campio Regis*) Is an ancient Officer, whose Office it is at the Coronation of our Kings, when the King is at Dinner, to ride armed *Cap-a-pe* into *Westminster-hall*, and by the Proclamation of a Herald make a Challenge, *That if any Man shall deny 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 hath the Cup for his Fee. This Office, ever since the Coronation of King Rich. II. when Baldwin Freville exhibited his Petition for it, was adjudged from him to Sir John Dymocke his Competitor, (both claiming from *Marmion*) and hath ever since continued in the Family of the *Dymockes*; who hold the Manor of *Scrivelsby* in *Lincolnshire*, Hereditary from the *Marmions*, by Grand Serjeanty, viz. That the Lord thereof shall be the King's *Champion*, as abovesaid. Accordingly Sir Edward Dymocke performed this Office at the Coronation of King Charles II.

Chantelloz, (*Cancellarius*) Was at first only a chief Notary or Scribe under the Emperor, and was called *Cancellarius*, because he sat *infra Cancellis*, to avoid the Crowd of the People. This Word is by some derived from *Cancellis*, and by others from *Chancellis*, an inclosed or separated Place, or Chancel, encompassed with Bars, to defend the Judges, and other Officers from the Press of the Publick. And *Cancellarius* originally, as *Lupanus* thinks, signified only the Registers in Court; *Grapharios, scil. qui conscribendis & excipiendis Judicium actis dant operam*: But this Name and Office is of late Times greatly advanced, not only in this, but in other Kingdoms; for he is the chief Administrator of Justice, next to the Sovereign, who anciently heard equitable Causes himself. All other Justices in this Kingdom are tied to the strict Rules of the Law, in their Judgments; but the *Chancellor* hath the King's absolute Power to moderate the written Law, governing his Judgment by the Law of Nature and Conscience, and ordering all Things *juxta equum & bonum*: And having the King's Power in these Matters, he hath been called the Keeper of the King's Conscience. According to a late Treatise, the *Chancellor* originally presided over a Political College of Secretaries, for the Writing of Treaties, Grants, and other Publick Business; and that the Court of Equity under the old Constitution was held before the King and his Counsel in the Palace, where one Supreme Court for Business of every Kind was kept: And at first the *Chancellor* became a Judge to hear and determine Petitions to the King, which were referred to him; and in the End as Business increased, the People intitled their Suits to the *Chancellor*, and not the King: And thus the *Chancellor's* equitable Power had by Degrees Commencement by Prescription. Hist. Chanc. p. 3, 10, 44, &c. Staundford says, the *Chancellor* hath two Powers; one absolute, the other ordinary; meaning, that though by his Ordinary Power, in some Cases; he must observe the Form of Proceeding as other inferior Judges, yet in his absolute Power he is not limited by the Law, but by Conscience and Equity, according to the Circumstances of Things. And tho' Polydore Virgil, in

in his History of *England*, makes *William the First*, called the *Conqueror*, the Founder of our *Chancellors*; yet our Antiquary *Mr. Dugdale* has shewn that there were many *Chancellors of England* long before that Time, which are mentioned in his *Origines Juridicales*, and Catalogues of *Chancellors*; and *Sir Edward Coke* in his fourth Institute saith, it is certain, That both the *British* and *Saxon* Kings had their *Chancellors*, whose great Authorities under their Kings, were in all Probability drawn from the reasonable Customs of neighbouring Nations, and the Civil Law. He that bears this Chief Magistracy, is stiled the *Lord High Chancellor of Great Britain*, which is the highest Honour of the long Robe; being made so *Per traditionem magni sigilli sibi per Dominum Regem*, and by taking his Oath: And a *Chancellor* may be made so at Will, by Patent, but 'tis said not for Life, for being an ancient Office, it ought to be granted as has been accustomed. 4 *Inst.* 87. But *Sir Edward Hyde*, afterwards *Earl of Clarendon*, had a Patent to be *Lord Chancellor for Life*; though he was dismissed from that Office, and the Patent declared void. 1 *Sid.* 338. By the Stat. 5 *Eliz.* c. 18. The *Lord Chancellor* and *Keeper* have one and the same Power; and therefore since that Statute, there cannot be a *Lord Chancellor*, and *Lord Keeper* at one and the same Time; before there might, and hath been. 4 *Inst.* 78. *K. Hen.* 5. had two Great Seals, one of Gold, which he delivered to the Bishop of *Durham*, and made him *Lord Chancellor*, and another of Silver, which he delivered to the Bishop of *London* to keep; but at this Day there being but one Great Seal, there cannot be a *Lord Chancellor*, and *Lord Keeper* at once, and because they are but one Office, as is declared by 5 *Eliz.* and the Taking away the Seal determines the Office. 1 *Sid.* 338. But the *Lord Bridgeman* was *Lord Keeper*, and *Lord Chief Justice* of the Common Pleas, at the same Time; which Offices were held not to be inconsistent. *Ibid.* By 1 *W. & M.* cap. 21. *Commissioners* appointed to execute the Office of *Lord Chancellor*, may exercise all the Authority, Jurisdiction, and Execution of Laws, which the *Lord Chancellor*, or *Lord Keeper*, of Right ought to use and execute, &c. since which Statute, this High Office hath been several Times in Commission; tho' generally only on the Dismission of a *Chancellor*, till another was appointed. The *Lord Chancellor*, now there is no *Lord High Steward*, is accounted the first Officer of the Kingdom; and he not only keeps the King's Great Seal, but all Patents, Commissions, Warrants, &c. from the King, are perused by him before signed: And he has the Disposal of all Ecclesiastical Benefices in the Gift of the Crown under 20 *l.* a Year in the King's Books, which has occasioned this Office to be formerly possessed by a Clergyman. He by his Oath swears well and truly to serve the King, and to do Right to all manner of People, &c. In this judicial Capacity, he hath divers Assistants and Officers, viz. The Master of the Rolls, the Masters in Chancery, &c. And in Matters of Difficulty, he calls one or more of the Chief Justices, and Judges to assist him in making his Decrees; though in such Cases they only give their Advice and Opinion, and have no Share of the Judicial Authority. As to the Master of the Rolls, he hath Judicial Power; and is an Assistant to the *Lord Chancellor* when present, and his Deputy when absent, but he has certain Causes assigned

him to hear and decree, which he usually doth on certain Days appointed at the Chapel of the Rolls, being assisted by one or more Masters in Chancery: He is by Virtue of his Office, chief of the Masters in Chancery, and chief Clerk of the Petty-Bag Office. The twelve Masters in Chancery, sit in Court, and take Notice of such References as are made to them, to be reported to the Court, relating to Matters of Practice, the State of the Proceedings, Accounts, &c. And they also take Affidavits, acknowledge Deeds and Recognizances, &c. The Six Clerks in Chancery, transact and file all Proceedings by Bill and Answer; and also issue out some Patents that pass the Great Seal; which Business is done by their Under-Clerks, each of which has a Seat there, and whereof every Six Clerk has a certain Number in his Office, usually about ten. The Curstors of the Court, four and twenty in Number, make out all original Writs in Chancery, which are returnable in C. B. &c. and among these the Business of the several Counties is severally distributed. The Register is a Place of great Importance in this Court, and he hath several Deputies under him to take Cognizance of all Orders and Decrees, and enter and draw them up, &c. The Master of the Subpoena Office issues out all Writs of Subpoena. The Examiners are Officers in this Court, who take the Depositions of Witnesses, and are to examine them, and make out Copies of the Depositions. The Clerk of Affidavits files all Affidavits used in Court, without which they will not be admitted. The Clerk of the Rolls sits constantly in the Rolls to make Searches for Deeds, Offices, &c. and to make out Copies. The Clerks of the Petty-Bag Office, in Number three, have great Variety of Business that goes through their Hands; in making out Writs of Summons to Parliament, Conge d'Esliors for Bishops, Patents for Customs, &c. Liberates upon Extents of Statutes-Staple; and Recovery of Recognizances forfeited, &c. And the Clerks of this Office have several Clerks under them. The Usher of the Chancery hath the Receiving and Custody of all Money ordered to be deposited in Court, and payeth it back again by Order: But this Business hath been of late assumed by the Masters in Chancery. And Anno 12 Geo. A new Officer was appointed by Act of Parliament, called Accountant General, to receive the Money lodged in Court, in the Place of the Masters, and this Officer is to convey the Money to the Bank, to be there kept for the Suitors of the Court. Then there is a Serjeant at Arms, to whom Persons standing in Contempt are brought up by his Substitutes as Prisoners. A Warden of the Fleet, who receives such Prisoners as stand committed by the Court, &c. And besides these Officers, there is a Clerk of the Crown in Chancery; Clerk and Controller of the Hanaper; Clerk for Inrolling Letters Patent, &c. not employed in Proceedings of Equity, but concerned in making out Commissions, Patents, Pardons, &c. under the Great Seal, and collecting the Fees thereof: A Clerk of the Faculties, for Dispensations, Licenses, &c. Clerk of the Presentations, for Benefices of the Crown in the Chancellor's Gift; Clerk of Appeals, on Appeals from the Courts of the Archbishop, to the Court of Chancery: And divers other Officers, who are constituted by the Chancellor's Commission.

Chancellor of the Dutchy of Lancaster, A great Officer, whose Office is principally to determine

Controversies between the King and his Tenants of the *Dutchy Land*, and otherwise to direct all the King's Affairs belonging to that Court. The *Chancellor* is the chief Judge of the *Dutchy Court*, who, in difficult Points of Law is usually assisted by two Judges of the Common Law, out of one Court or other, to decide the Matter in Question: This Court is held in *Westminster-Hall*, and was formerly much used in Relation to Suits, between Tenants of Dutchy Lands, and against Accountants and others for the Rents and Profits of the said Lands. Under the *Chancellor of the Dutchy*, are an *Attorney of the Court*, one *Chief Clerk* or *Register*, and several *Auditors*, &c. This Officer is mentioned in the Stat. 3 Ed. 6. cap. 1. and 5 Ibid. c. 26.

Chancellor of the Exchequer, Is likewise a great Officer, who 'tis thought by many to have been originally appointed for the qualifying Extremities in the Exchequer: He sometimes sits in Court, and in the Exchequer-Chamber; and with the Judges of the Court, orders Things to the King's best Benefit. He hath by the Stat. 33 H. 8. c. 39. Power with others, to compound for the Forfeitures upon Penal Statutes, Bonds and Recognizances entered into to the King: He hath also great Authority in the Management of the Royal Revenue, &c. which seems of late to be his chief Business, being commonly the first Commissioner of the Treasury. And tho' the Court of Equity in the Exchequer-Chamber, was intended to be holden before the Treasurer, Chancellor, and Barons; it is usually before the Barons only. When there is a Lord Treasurer, the Chancellor of the Exchequer is Under-Treasurer.

Chancellor of the Order of the Garter, Stow's Annals, pag. 706. *Chancellor of the Universities*, see 9 Hen. 5. c. 8. *Chancellor of the Diocese*, 32 H. 8. c. 15. *Chancellor in Cathedral Churches*: His Office is thus described in the *Monasticon*, and the Statutes of *Litchfield*, viz. — *Lectiones legendas in Ecclesia per se vel per suum Vicarium auscultare, male legentes emendare, Scholas conferre, sigilla ad causas conferre, literas capituli facere & consignare, libros servare, quotiescunq; voluerit predicationes in Ecclesia vel extra Ecclesiam predicare, & cui voluerit predicationis Officium assignare.* Mon. Angl. Tom. 3. p. 24. 339.

Chancery, (*Cancellaria*) Is the highest Court of Judicature in this Kingdom next to the Parliament, and of very antient Institution. The Jurisdiction of this Court is of two Kinds; ordinary, or legal; and extraordinary, or absolute. The ordinary Jurisdiction is that wherein the Lord Chancellor in his Proceedings and Judgments is bound to observe the Order and Method of the Common Law; and in such Cases the Proceedings are usually in *Latin*, and filed or inrolled in the Petty-Bag Office: And the extraordinary or unlimited Power, is that Jurisdiction which this Court exercises in Cases of Equity, wherein Relief is to be had by Way of *English Bill* and *Answer*. The Ordinary Court holds Plea of Recognizances acknowledged in the *Chancery*, Writs of *Scire facias* for Repeal of Letters Patent, Writs of Partition, &c. and also of all Personal Actions, by or against any Officer of the Court; and by Acts of Parliament of several Offences and Causes: All original Writs; Commissions of Bankrupts; of Charitable Uses; of Ideots, and Lunacy, &c. issue out of this Court, for which it is always open; and sometimes a *Superfedeas* or Writ of Privilege, hath been here granted to discharge a Person out of Prison: One from

hence may have an *Habeas Corpus*, Prohibition, &c. in the Vacation, which are to be had out of the other Courts only in Term-time; and here a *Subpoena* may be had to force Witnesses to appear in other Courts, when they have no Power to call them. 4 Inst. 79. 1 Danv. Abr. 776. But in prosecuting Causes, if the Parties descend to Issue, this Court cannot try it by Jury; but the Lord Chancellor delivers the Record into the King's Bench to be tried there, and for that Purpose both Courts are accounted but one; and after Trial had, it is to be remanded into the *Chancery*, and there Judgment given: But if there be a Demurrer in Law, it shall be argued and adjudged in this Court. Upon a Judgment given in this Court, a Writ of Error lies returnable in B. R. 4 Inst. 80. The *Extraordinary Court*, or Court of Equity, proceeds by the Rules of Equity and Conscience, and moderates the Rigour of the Common Law, considering the Intention rather than the Words of the Law: It gives Relief for and against Infants, notwithstanding their Minority: And for and against married Women, notwithstanding their Coverture: In some Cases a Woman may sue her Husband for Maintenance; she may sue him when he is beyond Sea, &c. and be compelled to answer without her Husband: All Frauds and Deceits, for which there is no Redress at Common Law: All Breaches of Trust and Confidences; and Accidents, as to relieve Obligors, Mortgagors, &c. against Penalties and Forfeitures, where the Intention was to pay the Debt, are here remedied: For in *Chancery* a Forfeiture, &c. shall not bind, where a Thing may be done after, or Compensation made for it. 1 Danv. 752. 2 Ventr. 352. 1 Roll. Abr. 373. Also this Court will give Relief against the Extremity of unreasonable Engagements, entered into without Consideration; oblige Creditors that are unreasonable, to compound with an unfortunate Debtor: Make Executors, &c. give Security and pay Interest for Money that is to lie long in their Hands; and where Money is devised to a Child at such an Age, it hath been adjudged that it shall have the Interest in the mean Time. 2 Ventr. 346. Here Executors may sue one another, or one Executor alone be sued without the Rest: Order may be made for Performance of a Will: It may be decreed who shall have the Tuition of a Child: This Court may confirm Title to Lands, though one hath lost his Writings: Render Conveyances defective thro' Fraud or Mistake, good and perfect; but not Defects in a voluntary Conveyance, unless where intended as a Provision for younger Children. 2 Ventr. 365. In *Chancery*, Copyholders may be relieved against the ill Usage of their Lords: Inclosures of Lands that are Common be decreed; and this Court may decree Money or Lands given to Charitable Uses; Things in Action, upon Assignment on Consideration: Oblige Men to account with each other: Avoid the Bar of Actions, by the Statute of Limitations, &c. for Debts thus barred, are still Debts in Equity, and the Duty remains. 1 Danv. Abr. 749, 750, &c. 1 Salk. 154. But in all Cases, where the Plaintiff can have his Remedy at Law, he ought not to be relieved in *Chancery*: And a Thing which may be tried by a Jury, is not triable in this Court. Danv. 763. Also long Leases, as for 1000 Years; naked Promises; verbal Agreements not executed; Estates derived under conceal'd Titles, &c. have been refused Relief in this Court:

And

And Mortgages are not relievable in Equity after twenty Years, where no Demand has been made, or Interest paid, or there are not other particular Circumstances, &c. 2 *Ventr.* 340. This Court will not retain a Suit for any Thing under 10 l. Value, except it be in Cases of Charity; nor for Lands, &c. under 40 s. *per Annum*: And refuses Relief in Suits where the Substance of them tends to the Overthrow of an Act of Parliament, or any fundamental Point of the Common Law. If a Man loses his Obligation, he shall not be relieved for his Debt, being against a Maxim in Law. 1 *Danv.* 754. And an Executor in a Court of Equity ought not to be compelled to pay Legacies before Bonds, &c. for this is against the Common Law: So in many other Cases. *Ibid.* 756. And where a Man by his own Act destroys his Remedy at Law, he shall not be relieved in Equity: But in Case of an apparent Fraud, or in a dubious Case in Law, of which the Party could not have Conscience, Relief may be had in Equity against a Statute. *Ibid.* 755, 759. Defendants may not be regularly relieved in Chancery, after Judgment at Law; tho' there have been Decrees made in such Cases: But on Persons being committed for Non-performance, they have been discharged by *Habeas Corpus*. *Cro. Eliz.* 220. 1 *Roll. Rep.* 252. 1 *Nels. Abr.* 432. A Bill in Chancery at *Westminster* may be brought, after a Decree in the Chancery at *Chester*, &c. 3 *Bulst.* 118. If there be an Order that one shall stand committed to the *Fleet*, for Breach of a Decree, in Pursuance of the Order there ought to be a Writ awarded for Taking and Imprisoning him. 1 *Danv.* 776. It is common to give Relief in Chancery, tho' there is an Agreement between the Parties that there shall be no Relief in Law or Equity. 1 *Mod.* 141, 305. But tho' the Power of this Court is so great; and it may restrain other Courts that exceed their Jurisdiction, and remove Suits to it self by *Certiorari*, yet it is no Court of Record, and therefore 'tis said can bind the Person only, and not the Estate of the Defendant. 4 *Inst.* 84. And if the Party will not obey the Decree, he must be committed 'till he does. 1 *Danv.* 749. If a Portion be given to a Woman, provided she marries not without Consent of a certain Person, altho' she marries without such Consent, she shall be relieved in Chancery, and have her Portion: But if the Portion, on such Marriage, had been limited over to another, it would be otherwise. 1 *Danv. Abr.* 752. 1 *Mod.* 300. If a Father, on the Marriage of his Son, take a Bond of the Son that he shall pay him so much, &c. this is void in Equity, being adjudged by Coercion while he is under the Awe of the Father. 1 *Salk.* 158. Also where a Son, without Privity of the Father, treating the Match, gives Bond to return any Part of the Portion, in Equity it is void. *Ibid.* 156. A Man is not bound to discover the Consideration of a Bond generally given, which in it self implies a Consideration. *Hard.* 200. If a Factor to a Merchant hath Money in his Hands, it shall be accounted his own, for Equity cannot follow Money; but it may Goods, to make them the Merchant's, which may be known, tho' Money cannot. 1 *Salk.* 260. Money articulated to be laid out in Land, shall be taken as Land in Equity, and descend to the Heir. *Ibid.* 154. Personal Estate in the Hands of Executors shall be applied in Discharge of the Heir, where there is sufficient Assets to pay the Debts and Legacies. 1 *Danv.* 770. There shall be no

Bill in Equity against an Executor to discover Assets, before a Suit commenced at Law. *Harp.* 115. Where Trustees convert Money rais'd out of Land for Payment of Debts, to their own Use, the Heir shall have the Land discharg'd, which hath born its Burden, and the Trustees are liable to the Debts in Equity. 1 *Salk.* 153. If Lease for Years, without Impeachment of Waste, about the End of his Term cuts down Timber-Trees, the Court of Chancery by Injunction may stop the Cutting down of the Trees, it being against the Publick Good to destroy Timber. 1 *Roll. Abr.* 380. And Tenant after Possibility of Issue extinct, or for Life, dispendible of Waste, may be stopp'd in Equity from Pulling down Houses, &c. 1 *Danv.* 761. Where a Party hath Law and Equity on his Side, it will prevail against Equity only. *Ibid.* 773. The King cannot create a Court of Equity at this Day, but the same must be done by Act of Parliament. 4 *Inst.* 84. By Statute, the Court of Chancery is to follow the King. 28 *Ed.* 1. c. 5. And whosoever shall find himself grieved with any Statute, he shall have his Remedy in the Chancery. 36 *Ed.* 3. c. 9. No *Subpoena* or other Process of Appearance, shall issue out of Chancery, &c. 'till after a Bill is filed, (except Bills for Injunctions to stay Waste, or Suits at Law commenced) and a Certificate thereof brought to the *Subpoena* Office. 4 & 5 *Ann.* c. 16. And for preventing vexatious Suits, it is enacted, That upon the Plaintiff's Dismissing his own Bill, or the Defendant's Dismissing the same for Want of Prosecution, the Plaintiff shall pay to the Defendant full Costs, &c. *Stat. Ibid.* Persons in Remainder, or Reversion of any Estate, after the Death of another, upon making Affidavit in the Court of Chancery, that they have Cause to believe such other Person dead, and such Death concealed by the Guardian, Trustees or others, may move the Lord Chancellor to order such Guardian, Trustees, &c. to produce the Person suspected to be concealed; and if he be not produc'd, he shall be taken to be dead, and those in Reversion, &c. may enter upon the Estate. And if such Person be abroad, a Commission may be issued for his being viewed by Commissioners. *Stat.* 6 *Ann.* c. 18. Infants under the Age of twenty-one Years, seized of Estates in Trust, or by Way of Mortgage, are enabled by Statute to make Conveyances thereof; or they may be compelled thereto, by Order of the Court of Chancery, &c. upon Petition and Hearing the Parties concern'd. 7 *Ann.* c. 9. See the *Stat.* 13 *Car.* 2. relating to the Masters in Chancery, and their Fees, &c.

The Proceedings in Chancery, Are first to file the Bill of Complaint, signed by some Counsel, setting forth the Fraud or Injury done, or Wrong sustained, and praying Relief: After the Bill is filed, Process of *Subpoena* issues to compel the Defendant to appear; and when the Defendant appears, he puts in his Answer to the Bill of Complaint, if there be no Cause for Plea to the Jurisdiction of the Court, in Disability of the Person, or in Bar, &c. Then the Plaintiff brings his Replication, unless he files Exceptions against the Answer as insufficient, referring it to a Master to report, whether it be sufficient or not; to which report Exceptions may be also made. The Answer, Replication, and Rejoinder, &c. being settled, and the Parties come to Issue, Witnesses are to be examined upon Interrogatories, either in Court or by Commission in the County, wherein

the Parties usually join; and when the Plaintiff and Defendant have examined their Witnesses, Publication is to be made of the Depositions, and the Cause is to be set down for Hearing, after which follows the Decree. If the Plaintiff dismisseth his own Bill, or the Defendant dismisseth it by Reason of Want of Prosecution, as I have already observed, or if the Decree is in Behalf of the Defendant; the Bill is dismissed with Costs, to be taxed by a Master. If the Defendant doth not appear, on being served with the Process of *Subpœna*, in order to answer, upon Affidavit of the Service of the Writ, an Attachment will issue out against him; and if a *Non est inventus* is returned, an Attachment with Proclamation goes forth against him; and if he stands further out in Contempt, then a Commission of Rebellion may be issued, for apprehending him, and bringing him to the Fleet Prison, in the Execution whereof the Persons to whom directed may justify breaking open Doors. If the Defendant stands further in Contempt, a Serjeant at Arms is to be sent out to take him; and if he cannot be taken, a Sequestration of his Land may be obtained 'till he appears. And if a Decree, when made, be not obeyed, being served upon the Party under the Seal of the Court, all the afore-mentioned Processes of Contempt will issue out against him, for his Imprisonment 'till he yields Obedience to it. If a Bill in Chancery be exhibited against a Peer, the Course is for the Lord Chancellor to write a Letter to him, and if he doth not put in his Answer, then a *Subpœna* issues, and then an Order to shew Cause why a Sequestration should not go forth; and if he still stands out, then a Sequestration shall be had; for there can be no Process of Contempt against his Person. Where there is any Error in a Decree in Matter of Law, there may be a Bill of Review, which is in Nature of a Writ of Error; or an Appeal to the House of Lords. A Party grieved with a Decree in Chancery, on Petition to the King, it hath been adjudged that the Matter may be referred by the King to the Judges, who may reverse the Decree, &c. 3 Bulst. 116. But it is now usual to Appeal to the House of Lords, which Appeals are to be signed by two noted Counsels, and exhibited by Way of Petition; and after Counsel heard on both Sides, the Lords will affirm or reverse the Decree of the Chancery, and finally determine the Cause by a Majority of Votes, &c. If a Bill be brought where the Lord Chancellor is Party to the Suit, it must be directed to the King's Majesty; for no Man may be both Judge and Party in a Cause.

Form of a Bill in Chancery.

To the Right Honourable, &c. Lord High Chancellor of Great Britain.

Humbly Complaining sheweth unto your Lordship, your Orator A. B. of, &c. That whereas about, &c. Years last past, T. B. of, &c. did grant to L. M. all that Messuage, &c. And afterwards, that is to say, on, &c. he the said L. M. by his Deed bearing Date, &c. under his Hand and Seal, in Consideration of the Sum of, &c. to him paid, did bargain, sell, assign and set over the said Premises, &c. unto J. D. of, &c. which said J. D. not long after, viz. on, &c. did, in Consideration of, &c. by your Orator to him in Hand paid, bargain, sell, assign,

transfer and set over unto your Orator, all and singular the said Premises above-mentioned, and every Part thereof; upon which Bargain, Sale, and Assignment of the said Premises so made as aforesaid, your Orator well hoped to have peaceably and quietly entered into the said Premises, and to have held, occupied and enjoyed the same accordingly; But now so it is, may it please your Lordship, That one L. E. of, &c. pretending to have a Lease for divers Years yet to come, of Part of the said Premises made unto him by the said T. D. &c. long before any such Sale or Assignment made thereof to your Orator as aforesaid, hath kept, and doth still keep your Orator out of the Possession of the said Premises, upon which Lease be the said L. E. pretends a certain yearly Rent is reserved to the said J. D. his Executors or Assigns, which Rent, if any be, your Orator hath heard is, &c. And which your Orator, by Reason of the lawful Conveyance to him made, as aforesaid, ought in Equity and good Conscience, to have and enjoy during such Term as the said L. E. shall hold and enjoy the Premises aforesaid, by Reason of the said Lease which he so pretendeth to have; but forasmuch as your Orator doth not certainly know whether the said L. E. hath any such Lease, or if he hath any such Lease, what Date the same beareth, nor what Term the said L. E. hath therein unexpired, nor what Rent is thereby reserved, or what Covenants are therein contained: And for that the said L. E. doth not only Use and Occupy the said Premises to his own Profit and Advantage, without Yielding or Paying any Rent therefore to your Orator, but doth also utterly refuse to shew his said Lease, whereby he pretendeth to claim the Premises aforesaid, either to your Orator, or to any other Person; and for that the said L. E. in Confederacy with, &c. giveth out, &c. All which Actings and Doings of the said L. E. &c. are contrary to all Right, Equity, and Good Conscience, and tend to the manifest Wrong, Injury, and Oppression of your Orator: In tender Consideration whereof, and forasmuch as your Orator is Remediless save in this honourable Court, and for that your Orator cannot by the ordinary Course of the Common Law enter into the Premises, nor commence any Action against the said L. E. either for the Recovery of the said Land, or the Rent aforesaid, or to enforce the said L. E. to produce or shew to your Orator such Writings as he hath for the Holding and Occupying the Premises aforesaid; but is altogether destitute of the Means to obtain or have a Sight of the same, but by the Assistance of this Honourable Court: To the End therefore that the said L. E. may be obliged upon his Oath to discover what Right he hath to the Premises, or any Part thereof; and what Rent or Rents he hath paid for the same, and to whom; and that he may also set forth in his Answer upon Oath, a true Copy of such Lease or other Writings, whereby he claimeth the Premises aforesaid, or any Part thereof; and that the said L. E. may truly and directly Answer all the Matters and Things herein before contained, as fully and perfectly as if the same had been here again repeated and interrogated, and may particularly set forth upon Oath, whether, &c. And may come to account for, and pay, &c. And that your Orator may be relieved in the Premises according to Equity and Good Conscience.

May it please your Lordship, the Premises considered, to grant to your Orator his Majesty's Writ or Writs of Subpœna to be directed to the said L. E. and other his Confederates when discovered, thereby commanding them and every of them at a certain Day, and under a certain Pain therein limited, personally to be and appear

pear before your Lordship in this Honourable Court, then and there to Answer all and singular the Premises, and to stand to, perform and abide such Order and Decree therein, as to your Lordship shall seem meet.

And your Orator shall ever pray, &c.

Form of an Answer in Chancery.

The Answer of L. E. Defendant to the Bill of Complaint of A. B. Complainant.

THis Defendant now, and at all Times hereafter, saving to himself all Manner of Benefit and Advantage of Exception to the many Uncertainties, Insufficiencies and Imperfections in the said Complainant's Bill of Complaint contained; for Answer thereunto, or unto so much thereof as this Defendant is advised is any Ways material for him to make Answer unto, he answereth and saith, That the said J. D. named in the Complainant's said Bill, was possessed for divers Years yet to come of the said Messuage or Tenement, Lands and Hereditaments in the said Bill mentioned, called, &c. by Virtue of a Lease thereof made by, &c. in the said Bill named unto the said J. D. long before, &c. mentioned in the said Bill of Complaint; and the said J. D. so being thereof possessed, had in such Manner as in the said Complainant's Bill is supposed, made a lawful Demise of the said Messuage and Lands unto the said Defendant for Years to come; upon which Lease the said J. D. reserved an yearly Rent of, &c. to be paid during the Continuance of the said Lease, by Force of which Lease the Defendant entered into the said Lands, &c. and was and is yet lawfully possessed thereof accordingly, and ever since hath and yet doth enjoy the same by Virtue of the said Lease and Demise, and is thereby to have and enjoy the same during the Continuance of the said Lease, of which there are at this Time about, &c. Years to come, and unexpired; and saith, that the Plaintiff is a Person altogether unknown to this Defendant, being one he this Defendant never had any Dealings or Correspondence with; and therefore the Defendant cannot but admire at this Suit commenced by the said Complainant against this Defendant touching the Premises: And this Defendant saith that he humbly conceives and is advised, that he, this Defendant, is for the Payment of his Rent chargeable, and ought by the Law to pay the Rent so reserved unto the said J. D. and not the said Complainant, which said J. D. this Defendant doth verily think is his lawful Landlord, during the said Term of Years yet to come, and not the Complainant, who is altogether a Stranger to this Defendant; and saith, that the said Complainant never at any Time heretofore demanded any Rent for the said Messuage, or Tenement and Lands that this Defendant hath and occupieth by Virtue of the said Lease for Years; and also saith, &c. and therefore the said Defendant is the more surprized at this Suit brought against him by the said Complainant touching the Premises, whereby this Defendant is wrongfully vexed and sued without any just Cause; without that there is any such Bargain and Sale made by, &c. as in the said Bill is set forth, or that the said, &c. bargained and sold the Premises to the Complainant; or that the said Complainant ought to have and enjoy the said Premises to the Knowledge of this Defendant; and this Defendant denies all Combination in the Bill charged; without that, that there is any other Matter or Thing in the Complainant's said Bill of Complaint contained, material or effectual for this Defendant to make Answer unto, and not herein and hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true,

to the Knowledge and Belief of this Defendant; all which Matters and Things this Defendant is ready to aver and prove as this Honourable Court shall Award; and humbly prays to be hence dismissed with his reasonable Costs and Charges in this Behalf wrongfully sustained.

Form of a Replication to an Answer.

The Replication of A. B. Complainant, to the Answer of L. E. Defendant, put into the said Repliant's Bill of Complaint.

THE said Repliant, saving to himself all Advantages of Exception to the Defendant's said Answer, for Replication thereunto saith, That all and every the Matters and Things in and by his said Bill of Complaint already said, he will justify, maintain and prove to be good, certain, and sufficient in the Law, to be answered unto in such Manner as the same are therein and thereby set forth and declared; and that the Answer of the said Defendant is untrue and insufficient in the Law to be by this Repliant replied unto, for divers manifest Imperfections and Uncertainties therein contained; the Benefit of Exception whereunto being now and at all Times saved to this Repliant: This Repliant for farther Replication saith, That, &c. and that the Matters contained in the said Bill of Complaint are altogether relievable in this Honourable Court, &c. Without that, that any other Matter or Thing in the said Defendant's Answer contained, material or effectual in the Law to be replied unto, and herein and hereby not well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which Matters and Things this Repliant is ready to aver, maintain and prove, as this Honourable Court shall Award; and humbly prays, as in and by his said Bill he hath already prayed.

A Rejoinder to a Replication in Chancery.

The Rejoinder of L. E. Defendant to the Replication of A. B. Complainant.

THE said Defendant, now, and at all Times hereafter, saving and reserving to himself all Manner of Benefit and Advantage of Exception to the Uncertainty and Insufficiency of the said Replication; for Rejoinder saith, That the Defendant's said Answer is true, certain, and sufficient in the Law to be replied unto; and saith, as in and by his said Answer he hath already said, and doth and will aver and maintain all and every Thing and Things therein to be true and certain, in such Manner as therein is alledged and expressed; and this Defendant also saith, That the said Replication of the said Complainant is uncertain and insufficient in the Law to be rejoined unto by the said Defendant, for divers Defects and Imperfections therein contained; and for that, &c. and without that, that, &c. in the said Replication material or effectual in the Law to be rejoined unto, &c. All which Matters this Defendant is ready to aver and prove, as this Honourable Court shall Award: And therefore prays, as before in his said Answer he hath prayed.

Form of a Decree in Chancery.

WHereas heretofore, that is to say, about, &c. Term, which was in the Year, &c. A. B. Complainant did exhibit his Bill of Complaint into this High and Honourable Court of Chancery, against L. E. Defendant, thereby setting forth, &c. (Here recite the Bill briefly) for Relief wherein, &c. the Complainant

plainant humbly prayed the Aid and Assistance of this Honourable Court, and that Process of Subpoena might be awarded against the said Defendant to compel him to appear and answer the said Bill; which being granted, and the Defendant served therewith, he appeared accordingly, and answered the said Bill; and by his said Answer confessed and set forth, &c. (Here recite the Substance of the Answer) To which Answer the Complainant replied, and the Defendant rejoined, and so the Parties being at Issue, divers Witnesses were examined in the Cause, and their Depositions duly taken and published, according to the usual Course of this Court, as by the said Bill, Answer, Replication, Deposition of Witnesses, and other Proceedings remaining upon Record in this Honourable Court may more at large appear; and the said Cause thus standing in Court the Day of, &c. was by this Court appointed for the Hearing thereof, on which Day the same coming to be heard and debated accordingly in Presence of Counsel learned on both Sides, the Substance of the Complainant's Bill and the Defendant's Answer appeared to be as is herein before recited and set forth; whereupon, and upon Debate of the Matter, and Hearing what could be alledged on all Sides, this Court doth think fit, and accordingly it is this present Day, that is to say, the Day, &c. in the Year, &c. by the Right Honourable, &c. Lord High Chancellor of Great Britain, &c. ordered, adjudged, and decreed, that, &c. And that, &c.

Writ of Execution of a Decree.

G Georgius, &c. Salutem. Cum per quoddam finale Judicium sive decretum coram nobis in Cur. Canc. nostra fact. inter A. B. quer. & te prefat. L. E. Def. & geren. dat. die, &c. ult. praterit. ordinat. & adjudicat. existit quod solv. prad. A. B. quingent. libr. &c. bone & legalis Menet. Magn. Britan. nosq; decret. dict. Cur. nostra inviolabiliter observare volentes, tibi precipimus & firmit. injungen. Mandamus quod immediate post receptionem hujus brevis prad. &c. prefat. A. B. &c. debito modo solvas seu solvi facias juxta tenorem effectum veramq; intentionem decreti prad', &c.

Chancemedley, (from the Fr. Chance, Lapsus, and Mesler, Miscere) Signifies the casual Killing of a Man, not without the Killer's Fault, tho' without any Evil Intent; and is where a Person is doing a lawful Act, and a Person is killed by Chance thereby: For if the Act be unlawful, it is Felony: If a Person casts a Stone, which happens to hit one whereof he dies: Or shoots an Arrow in a Highway, and another that passeth by is kill'd therewith: Or if a Workman, in throwing down Rubbish from a House, after Warning to take Care, kills a Person: Or a Schoolmaster in Correcting his Scholar, a Master his Servant, or an Officer in Whipping a Criminal, in a reasonable Manner, happens to occasion his Death; it is *Chancemedley* and Misadventure. 3 Inst. 56. Dalt. 351. But if a Man throws Stones in a Highway, where Persons usually pass: Or shoot an Arrow, &c. in a Market-place, among a great many People: Or if a Workman cast down Rubbish from a House, in Cities and Towns, where People are continually passing: Or a Schoolmaster, Master, &c. correct his Servant or Scholar, &c. exceeding the Bounds of Moderation, it is Manslaughter; and if with an improper Instrument of Correction, as with a Sword or iron Bar, or by a Kicking, Stamping, &c. in a cruel Manner, it is Murder. *Terms de Ley* 113. H. P. C. 58. 31, &c. Kel. 40, 65, 113.

If a Man whips his Horse in the Street to make him gallop, and the Horse runs over a Child and kills it, it is Manslaughter: But if another whip the Horse, 'tis Manslaughter in him, and *Chancemedley* in the Rider. H. P. C. 58, 59. And if two are Fighting, and a third Person coming to part them is kill'd by one of them, without any evil Intent, yet this is Murder in him; and not Manslaughter by *Chancemedley*. or Misadventure: And if they were met with premeditated Malice, the one intending to kill the other, then it is Murder in both. *Terms de Ley* 113. In *Chancemedley* the Offender forfeits his Goods; but hath a Pardon of Course. Stat. 6 E. 1. c. 9.

Changer, An Officer belonging to the King's Mint, whose Office consists chiefly in exchanging Coin for Bullion brought in by Merchants or others: It is written, after the old Way, *Chaunger*. Stat. 2 Hen. 6. cap. 12.

Chanter, (*Cantator*) A Singer in the Choir of a Cathedral Church; and is usually applied to the Chief of the Singers. This Word is mentioned in 13 Eliz. cap. 10. At St. David's Cathedral in Wales, the Chanter is next to the Bishop; for there is no Dean. *Camb. Britan.*

Chantry, or **Chauntry**, (*Cantaria*) Is a little Church, Chapel, or particular Altar, in some Cathedral Church, &c. endowed with Lands, or other Revenues, for the Maintenance of one or more Priests, daily to Sing Mass, and officiate Divine Service for the Souls of the Donors, and such others as they appointed. Stat. 37 Hen. 8. c. 4. 1 Ed. 6. c. 14. and 15 Car. 2. c. 9. Of these Chantries Mention is made of forty seven belonging to St. Paul's Church in London, by Dugdale, in his History of that Church. I find in an ancient M. S. this Record — *Sciant, &c. quod Ego Reginaldus Seuard dedi Willielmo Crumpe Capellano Cantariæ beate Mariæ de Yarpol, unam parcellam pasture, &c. Dat. apud Leominstre die Martis prox. post. Festum Sancti Hillarii, Anno 7 Hen. 5.*

Chapel, (*Capella*, Fr. *Chapelle*) Is either adjoining to a Church, for performing Divine Service; or separate from the Mother-Church, where the Parish is wide, which is commonly called a *Chapel of Ease*. And *Chapels of Ease* are built for the Ease of those Parishioners who dwell far from the Parochial Church; they are for their Ease in Prayer and Preaching only, for the Sacraments and Burials ought to be performed in the Parochial Church. 2 Roll. Abr. 340. — *Ad Capellam non pertinet Baptisterium neque Sepultura.* Selden of Tithes, p. 265. These *Chapels* are serv'd by inferior Curates, provided at the Charge of the Rector, &c. And the Curates are therefore removable at the Pleasure of the Rector or Vicar. But *Chapels of Ease* may be Parochial, and have a Right to Sacraments and Burials, and to a distinct Minister, by Custom, tho' subject in some Respects to the Mother-Church: And Parochial *Chapels* differ only in Name from Parish Churches, but they are small, and the Inhabitants within the District are few. In some Places *Chapels* of Ease are endowed with Lands or Tithes, and in other Places by voluntary Contributions; and in some few Districts there are *Chapels* which baptize and administer the Sacraments, and have *Chapelwardens*; but these *Chapels* are not exempted from the Visitation of the Ordinary, nor the Parishioners who resort thither from contributing to the Repairs of the Mother-Church, especially if they bury there; for the *Chapel* generally belongs to, and is as it were a Part of the Mother-Church,

Church, and the Parishioners are obliged to go to the Mother-Church, but not to the *Chapel*. 2 *Roll. Abr.* 289. And hence it is said, that the Offerings made to any *Chapel*, are to be rendered to the Mother-Church; unless there be a Custom that the Chaplain shall have them. Publick *Chapels*, annex'd to Parish Churches, are to be repaired by the Parishioners, as the Church is; if any other Persons be not bound to do it. 2 *Inst.* 489. Besides the afore-mentioned *Chapels*, there are *Free Chapels*; perpetually maintained and provided with a Minister, without Charge to the Rector or Parish; or that are free and exempt from all ordinary Jurisdiction; and these are where some Lands or Rents are charitably bestowed on them. *Stat.* 37 *Hen.* 8. c. 4. 1 *Ed.* 6. c. 14. Then there are *Private Chapels* built by Noblemen, and others, for private Worship, in or near their own Houses, maintain'd at the Charge of those noble Persons to whom they belong, and provided with Chaplains and Stipends by them; which may be erected without Leave of the Bishop, and need not be consecrated, though they antiently were so, nor are they subject to the Jurisdiction of the Ordinary. And also *Chapels in the Universities*, belonging to particular Colleges, which tho' they are consecrated, and Sacraments are administered there, yet they are not liable to the Visitation of the Bishop, but of the Founder. 2 *Inst.* 363.

Chapeltry, (*Capellania*) Is the same Thing to a *Chapel*, as a Parish to a Church; being the Precinct and Limits thereof: It is mentioned in the Statute 14 *Car.* 2. c. 9.

Chaperon, (*Fr.*) A Hood or Bonnet, antiently worn by the Knights of the Garter, as Part of the Habit of that noble Order: But in *Heraldry*, it is the little Escutcheon fixed in the Forehead of the Horses that draw a Hearse at a Funeral. See *Stat.* 1 *R.* 2. c. 17.

Chapters, (*Lat.* *Capitula*, *Fr.* *Chapitres*, *i. e.* Chapters of a Book) Signifies in our Common Law a Summary of such Matters as are to be enquired of, or presented before Justices in Eyre, Justices of Assize, or of Peace, in their Sessions. *Briton*, cap. 3. useth the Word in this Signification: And *Chapters* are now most commonly called *Articles*, and are delivered by the Mouth of the Justice in his Charge to the Inquest; whereas, in antient Time, (as appears by *Bracton* and *Briton*) they were, after an Exhortation given by the Justices for the good Observation of the Laws and the King's Peace, first read in open Court, and then delivered in Writing to the Grand Inquest, for their better Observance; and the Grand Jury were to answer upon their Oaths to the *Articles* thus delivered them, and not put the Judges to long and learned *Charges* to little or no Purpose, for Want of Remembling the same, as they now do, when they think their Duty well enough perform'd, if they only Present those few of many Misdemeanors which are brought before them by Way of Indictment. It is to be wished that this Order of delivering written *Articles* to Grand Juries were still observed, whereby Crimes would be more effectually punished; and in some inferior Courts, as the Court-Leet, &c. in several Parts of *England*, it is usual at this Day for Stewards of those Courts to deliver their Charges in Writing to the Juries sworn to enquire of Offences. *Horne*, in his *Mirror of Justices*, expresses what these *Articles* were wont to contain, *Lib.* 3. cap. *Des Articles in Eyre*. And an Example of Ar-

ticles of this Kind, you may find in the Book of Assises, fol. 138.

Chaplain, (*Capellanus*) Is most commonly taken for one that is depending upon the King, or other noble Person, to instruct him and his Family, and say Divine Service in his House, where there is usually a private Chapel for that Purpose. The King, Queen, Prince, Princess, &c. may retain as many *Chaplains* as they please; and the King's *Chaplains* may hold any Number of Benefices of the King's Gift, as the King shall think fit to bestow upon them. An Archbishop may retain eight *Chaplains*; a Duke or a Bishop, Six; Marquis or Earl, Five; Viscount, Four; Baron, Knight of the Garter, or Lord Chancellor, Three: A Dutchesse, Marchioness, Countess, Baroness, the Treasurer, and Controller of the King's House, the King's Secretary, Dean of the Chapel, Almoner, and Master of the Rolls, each of them Two; the Chief Justice of the King's Bench, &c. One; all which may purchase a License or Dispensation, and take two Benefices with Cure of Souls. *Stat.* 21 *H.* 8. c. 13. Also every Judge of the King's Bench, Common Pleas, the Chancellor and Chief Baron of the Exchequer, and the King's Attorney and Solicitor General, may each of them have one *Chaplain*, attendant on his Person, having one Benefice with Cure, who may be non-resident on the same. By Statute 25 *H.* 8. c. 16. And the Groom of the Stole, Treasurer of the King's Chamber, and Chancellor of the Duchy of Lancaster, may retain each one *Chaplain*. *Stat.* 33 *H.* 8. c. 28. If a Nobleman hath his full Number of *Chaplains* allow'd by Law, and retains one more, who has Dispensation to hold Plurality of Livings, it is not good. 1 *Cro.* 723. A Person retaining a *Chaplain*, must not only be capable thereof at the Time of Granting the Instrument of Retainer, but he must continue capable of Qualifying 'till his *Chaplain* is advanced: And therefore if a Duke, Earl, &c. retain a *Chaplain*, and die; or if such a noble Person be attainted of Treason; or if an Officer qualified to retain a *Chaplain*, is removed from his Office, the Retainer is determined: But where the *Chaplain* hath taken a second Benefice before his Lord dieth, or is attainted, &c. the Retainer is in Force to qualify him to enjoy the Benefices. And if a Woman that is noble by Marriage, afterwards marries one under the Degree of Nobility, her Power to retain *Chaplains* will be determined: Tho' 'tis otherwise where a Woman is Noble by Descent, if she marry under Degree of Nobility, for in such Case her Retainer before or after Marriage is good. A Baroness, &c. during the Coverture, may not retain *Chaplains*; if she doth, the Lord, her Husband, may discharge them, as likewise her former *Chaplains*, before their Advancement. 4 *Rep.* 118. A *Chaplain* must be retained by Letters testimonial, under Hand and Seal, or he is not a *Chaplain* within the Statute; so that it is not enough for a Spiritual Person to be retained by Word only to be a *Chaplain*, by such Person as may qualify by the Statute to hold Livings, &c. altho' he abide and serve as *Chaplain* in the Family. And where a Nobleman hath retained and thus qualified his Number of *Chaplains*, if he dismisses them from their Attendance upon any Displeasure, after they are preferred, yet they are his *Chaplains* at large, and may hold their Livings during their Lives; and such Nobleman, tho' he may retain further *Chaplains* in his Family,

mily, meerly as *Chaplains*, he cannot qualify any others to hold Pluralities whilst the First are living: For if a Nobleman could discharge his *Chaplain* when advanced, to qualify another in his Place, and qualify other *Chaplains* during the Lives of *Chaplains* discharged, by those Means he might advance as many *Chaplains* as he would, whereby the Statute would be evaded. 4 Rep. 90.

Form of a Retainer of a Nobleman's *Chaplain*.

UNiversis & singulis Praesentes Literas inspecturis, siue quos infra scripta tangunt seu tangere poterint in futurum, Thomas Dominus B. Baro de, &c. Salutem. Noveritis me praefat. Thom. Dom. B. de Vita probitate, morum integritate, & sacrarum Literarum Scientia, de quibus Willielmus C. Clericus, mihi commendatus existit, ipsum Willielmum C. in numerum Capellanorum meorum Domesticorum, ad deservendum mihi circa Divina Officia, infra Aedes meas celebranda, assumptisse, aggregasse, escivisse, & admisisse: Eumque in Capellanum meum Domesticum assumere, aggregare, esciscere, & admittere per Praesentis. Quorum vigore libere liceat & licebit eidem Willielmo C. Capellano meo, omnia & singula Privilegia, Beneficia, Libertates, Praebeminentias, & Immunitates Capellanis Baronum & Procerum in Statutis & Legibus hujus incliti Regni Angliae quomodocumque concessa & elargita consequi pariter & obtinere ad omnem juris effectum inde sequi valentem, illudque Universitati vestra attestandum fore duxi opportunum, secus Attestor per Praesentes. Dat. sub manu & sigillo meo ad Arma, die & anno, &c.

Chapter, (*Capitulum*) Is a Congregation of Clergymen under the Dean in a Cathedral Church: Congregationem Clericorum in Ecclesia Cathedrali, Conventuali, Regulari vel Collegiata: And in another Sense, Locum in quo fiunt communes tractatus Collegiatorum. This Collegiate Company is metaphorically termed *Capitulum*, signifying a little Head, it being a Kind of Head, not only to govern the Diocese in the Vacation of the Bishoprick, but also in many Things to advise and assist the Bishop when the See is full, for which, with the Dean, they form a Council. 1 Inst. 103. The Chapter consists of Prebends or Canons, which are some of the chief Men of the Church, and therefore are called *Capita Ecclesiae*: They are a Spiritual Congregation aggregate, which they cannot surrender without Leave of the Bishop, because he hath an Interest in them; they, with the Dean, have Power to confirm the Bishop's Grants; during the Vacancy of an Archbishoprick, they are Guardians of the Spiritualities, and as such have Authority by the Stat. 25 H. 8. c. 21. to grant Dispensations; likewise as a Corporation they have Power to make Leases, &c. When the Dean and Chapter confirm Grants of the Bishop, the Dean joins with the Chapter, and there must be the Consent of the major Part; which Consent is to be expressed by their Fixing of their Seal to the Deed, in one Place, and at one Time, either in the Chapter-House, or some other Place; and this Consent is the Will of many joined together. Dyer 233. Chapters as well as Deans are antient and new; and were either translated or founded by K. H. 8. A Chapter is not capable to take by Purchase or Gift, without the Dean, who is the Head of the Body: But there may be a Chapter without a Dean, as the Chapter of the Collegiate Church of Southwell; and Grants by or to them are as effec-

tual as other Grants by Dean and Chapter. Tho' where there are Chapters without a Dean, they are not properly Chapters: And the Chapter in a Collegiate Church, where there is no Episcopop See, as at Westminster and Windsor, is more properly called a College. The Bishop hath a Power of Visiting the Dean and Chapter: But the Dean and Chapter have nothing to do with what the Bishop transacts as Ordinary: 3 Rep. 75. Tho' the Bishop and Chapter are but one Body, yet their Possessions are for the most Part divided; as the Bishop hath his Part in Right of his Bishoprick; the Dean hath a Part in Right of his Deanery; and each Prebendary hath a certain Part in Right of his Prebend; and each too is incorporate by himself. And Deans and Chapters have some of them Ecclesiastical Jurisdiction in several Parishes, (besides that Authority they have within their own Body) executed by their Officials; also temporal Jurisdiction in several Manors belonging to them, in the same Manner as Bishops, where their Stewards keep Court, &c. 2 Roll. Abr. 229. It has been observed, that tho' the Chapter have distinct Parcels of the Bishop's Estate assigned for their Maintenance, the Bishop hath little more than a Power over them in his Visitations, and is scarce allowed to nominate Half of those to their Prebends, who were originally of his Family: But of common Right it is said he is their Patron. Roll. Ibid.

Charge of Justices in Sessions, &c. See *Chapiters*, or *Chapitres*.

Charre of Lead, Is a Quantity of Lead consisting of thirty Pigs, each Pig containing six Stone wanting two Pounds, and every Stone being twelve Pounds. — La Charre de Plumbo constat ex 30. foinellis, & qualibet foinella continet 6. Petras, exceptis duabus libris, & qualibet Petra constat ex 12. libris. Assisa de Ponderibus, Rob. 3. R. Scot. cap. 22.

Charta, A Word taken not only for a Charter or Deed in Writing for the Holding an Estate; but also a Statute of Privilege. See *Magna Charta*.

Charte, A Card or Plan which Mariners use at Sea, mentioned 14 Car. 2. c. 33.

Chartel, (Fr. *Cartel*) A Letter of Defiance, or Challenge to a single Combat; in Use heretofore to decide difficult Controversies at Law, which could not otherwise be determined. Blount.

Charter, (Lat. *Charta*, Fr. *Chartres*, i.e. *Instrumenta*) Is taken in our Law for written Evidence of Things done between Man and Man: Whereof Bracton, lib. 2. cap. 26. says thus, *Fiunt aliquando Donationes in Scriptis, sicut in Chartis, ad perpetuam rei memoriam, propter brevem hominum vitam, &c.* And Briton in his 39th Chapter divides Charters into those of the King, and those of private Persons. Charters of the King are those whereby the King passeth any Grant to any Person or Body Politick; as a Charter of Exemption of Privilege, &c. Charter of Pardon, whereby a Man is forgiven a Felony; or other Offence committed against the King's Crown and Dignity; and of these there are several Sorts, viz. *Charta Pardonationis Utlagarum*, *Charta Pardonationis se Defendendo*, &c. and others mentioned in Reg. Writs 287, 288, &c. Charter of the Forest, wherein the Laws of the Forest are comprised, such as the Charter of Canutus, &c. Kitch. 314. Fleta, lib. 3. cap. 14. Charters of Private Persons are Deeds and Instruments for the Conveyance of Lands, &c.

Charterer. In Cheshire, a Freeholder is called by this Name. Sir P. Ley's Antiq. fol. 356.

Charter=

Charter-land, (*Terra per Chartam*) Is such as a Man holds by *Charter*, that is by Evidence in Writing, otherwise called Freehold. *Anno 19 Hen. 7. cap. 13.* This in the Time of the Saxons was called *Bockland*, which was held (according to *Lambard*) with more commodious and easy Conditions than *Folkland* was, i. e. Land held without Writing; because that was *Hereditaria, libera atque immunis*; whereas, *Fundus sine scripto censum pensitabat annuum, atque officiorum quadam servitute est obligatus: Priorem viri plerumque nobiles, atque ingenui; posteriorem Rustici fere & pagani possidebant: Illam nos vulgo Freehold & per Chartam; hanc ad voluntatem Domini appellamus.* Lamb.

Charter-party, (*Lat. Charta partita, Fr. Chartere parti*, i. e. a Deed or Writing divided) Is what among Merchants and Sea-faring Men, we commonly call a *Pair of Indentures*, containing the Covenants and Agreements made between them, touching their Merchandize and maritime Affairs. *2 Inst. 673.* And *Charter-parties* of Affreightment settle Agreements, as to the Cargo of Ships, and bind the Master to deliver the Goods in good Condition at the Place of Discharge, according to Agreement; and the Master sometimes obliges himself, Ship, Tackle and Furniture for Performance. The Common Law contrives *Charter-parties* as near as may be according to the Intention of them, and not according to the literal Sense of Traders, or those that merchandize by Sea; but they must be regularly pleaded. In Covenant by *Charter-party* that the Ship shall return within the River of *Thames* by a certain Time, *Dangers of the Sea* excepted, and after in the Voyage, and within the Time of the Return, the Ship was taken upon the Sea by Pirates, so that the Master could not return at the Time mentioned in the Agreement; it was adjudged that this Impediment was within the Exception of the *Charter-party*, which extends as well to any Danger upon the Sea by Pirates and Men of War, as *Dangers of the Sea* by Shipwreck, Tempest, &c. *Stile 132. 2 Roll. Abr. 248.* A Ship is freighted at so much per Month that she shall be out, covenanted to be paid after her Arrival at the Port of *London*; the Ship is cast away coming up from the *Downs*, but the Lading is all preserved, the Freight shall in this Case be paid; for the Money becomes due monthly by the Contract, and the Place mentioned is only to ascertain where the Money is to be paid, and the Ship is entitled to Wages like a Mariner that serves by the Month, who if he dies in the Voyage, his Executors are to be answered *pro rata.* *Molloy de Fur. Maritim. 260.* If a Part-owner of a Ship refuse to join with the other Owners in setting out the Ship, he shall not be entitled to his Share of the Freight; but by the Course of the Admiralty, the other Owners ought to give Security if the Ship perish in the Voyage, to make good to the Owner standing out his Share of the Ship. Sir *Lionel Jenkins*, in a Case of this Nature, certified that by the Law Marine and Course of the Admiralty, the Plaintiff was to have no Share of the Freight; and that it was so in all Places, for otherwise they would be no Navigation. *Lex Mer. at. 100.* See *Freight.*

Form of a *Charter-party* of Affreightment.

THIS *Charter-party* indented, made, &c. between A. B. of, &c. Mariner, Master and Owner of the good Ship or Vessel called, &c. now ri-

ding at Anchor at, &c. of the Burthen of two hundred Tons, or thereabouts, of the one Part, and C. D. of, &c. Merchant of the other Part, Witnesseth, That the said A. B. for the Considerations hereinafter mentioned, Hath granted and to Freight letten; and by these Presents doth grant and to Freight let unto the said C. D. his Executors, Administrators and Assigns, the whole Tonnage of the Hold, Stern-sheets and Half-deck of the said Ship or Vessel, called, &c. from the Port of *London*, to, &c. in a Voyage to be made with the said Ship, in Manner hereafter mentioned; (that is to say) to sail with the first fair Wind and Weather that shall happen after, &c. next from the said Port of *London*, with the Goods and Merchandize of the said C. D. his Factors or Assigns on Board to, &c. aforesaid, (the Dangers of the Sea excepted) and there unlade and make Discharge of the said Goods and Merchandizes: And also shall there take into and aboard the said Ship again, the Goods and Merchandizes of the said C. D. his Factors or Assigns, and shall then return to the Port of *London* with the said Goods, in the Space of, &c. limited for the End of the said Voyage. In Consideration whereof the said C. D. for himself, his Executors and Administrators, doth covenant, promise and grant to and with the said A. B. his Executors, Administrators and Assigns, by these Presents, that he the said C. D. his Executors, Administrators, Factors or Assigns, shall and will well and truly pay or cause to be paid unto the said A. B. his Executors, Administrators or Assigns, for the Freight of the said Ship and Goods, the Sum of, &c. or so much per Ton, within twenty-one Days after the said Ship's Arrival, and Goods returned and discharged at the Port of *London* aforesaid, for the End of the said Voyage: And also shall and will pay for Demorage, (if any shall be by the Default of him the said C. D. his Factors or Assigns) the Sum of, &c. per Day, daily and every Day, as the same shall grow due: And the said A. B. for himself, his Executors and Administrators, doth covenant, promise and grant, to and with the said C. D. his Executors, Administrators and Assigns, by these Presents, that the said Ship or Vessel shall be ready at the Port of *London*, to take in Goods by the said C. D. on or before, &c. next coming: And the said C. D. for himself, his, &c. doth covenant and promise, within ten Days after the said Ship or Vessel shall be thus ready to have his Goods put on Board the said Ship, to proceed on in the said Voyage: And also on the Arrival of the said Ship at, &c. within, &c. Days, to have his Goods ready to put on Board the said Ship, to return on the said Voyage: And the said A. B. for himself, his Executors and Administrators, doth farther covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that the said Ship or Vessel now is, and at all Times during the said Voyage, shall be to the best Endeavours of him the said A. B. his Executors and Administrators, and at his and their own proper Costs and Charges, in all Things made and kept stiff, staunch, strong, well apparelled, furnished and provided, as well with Men and Mariners, sufficient and able to sail, guide and govern the said Ship, as with all Manner of Rigging, Boats, Tackle, Apparel, Furniture, Provision and Appurtenances, fitting and necessary for the said Men and Mariners, and for the said Ship during the Voyage aforesaid. In Witness, &c.

Chartis Reddendis, Is a Writ which lies against him that hath Charters of Feoffment entrusted to his Keeping, and refuseth to deliver them. *Reg. Orig. 159.*

Chasse, (*Fr. Chasse*) In its general Signification is a great Quantity of woody Ground lying open,

pen, and privileged for wild Beasts, and wild Fowl: And the Beasts of *Chafe* properly extend to the Buck, Doe, Fox, &c. and in a common and legal Sense to all the Beasts of the Forest. 1 *Inst.* 233. But if one have a *Chafe* within a Forest, and he kill or hunt any Stag or red Deer, or other Beasts of the Forest, he is finable. 1 *Jones's Rep.* 278. A *Chafe* is of a middle Nature, between a Forest and Park, being commonly less than a Forest, and not endowed with so many Liberties, as the Courts of Attachment, Swainmote, and Justice-Seat; tho' of a larger Compass, and stored with greater Diversity both of Keepers, and wild Beasts or Game, than a Park. A *Chafe* differs from a Forest in this, because it may be in the Hands of a Subject, which a Forest in its proper and true Nature cannot; and from a Park, in that it is not enclosed, and hath a greater Compass, and more Variety of Game, and Officers likewise. *Crompton in his Jurisd.* fol. 148. says, A Forest cannot be in the Hands of a Subject, but it forthwith loseth its Name, and becomes a *Chafe*: But *Fol.* 197. he says, A Subject may be Lord and Owner of a Forest, which though it seems a Contradiction, yet both Sayings are in some Sort true: For the King may give or alienate a Forest to a Subject, so as when it is once in the Subject, it loseth the true Property of a Forest, because the Courts called the Justice-Seat, Swainmote, &c. do forthwith vanish, none being able to make a Lord Chief Justice in Eyre of the Forest, but the King; yet it may be granted in so large a Manner, as there may be Attachment, Swainmote, and a Court equivalent to a Justice-Seat. *Manwood, Part 2. c.* 3, 4. A Forest and a *Chafe* have different Offices and Laws: Every Forest is a *Chafe*, & *quiddam amplius*; but every *Chafe* is not a Forest. A *Chafe* is *ad Communem Legem*, and is not to be guided by the Forest Laws; and it is the same of Parks. 4 *Inst.* 314. A Man may have a free *Chafe* as belonging to his Manor in his own Woods, as well as a Warren and a Park in his own Grounds; for a *Chafe*, Warren and Park are collateral Inheritances, and not issuing out of the Soil; and therefore if a Person hath a *Chafe* in other Men's Grounds, and after purchaseth the Grounds, the *Chafe* remaineth. *Ibid.* 318. If a Man have Freehold in a free *Chafe*, he may cut his Timber and Wood growing upon it, without View or Licence of any; though it is not so of a Forest: But if he cut so much that there is not sufficient for Covert, and to maintain the Game, he shall be punished at the Suit of the King. And so if a common Person hath a *Chafe* in another's Soil, the Owner of the Soil cannot destroy all the Covert, but ought to leave sufficient thereof, and also Broweswood as hath been accustomed. 11 *Rep.* 22. And it has been adjudged, that within such a *Chafe*, the Owner of the Soil by Prescription may have Common for his Sheep, and Warren for his Conies; but he cannot surcharge with more than has been usual, nor make Coney-Burrows in other Places than has been used. *Ibid.* If a free *Chafe* be enclosed, it is said to be a good Cause of Seizure into the King's Hands. It is not lawful to make a *Chafe*, Park or Warren, without Licence from the King under the Broad Seal.

Chasor, An hunting Horse. — *Dederunt mihi unum Chasorem*, &c. *Leg. Will.* 1. cap. 22. And in another Chapter it is written *Cacorem*.

Chastellaine, A noble Woman: *Quasi Castellana Domina.*

Chattels or *Catalls*, (*Catalla*) Comprehend all Goods moveable and immoveable, except such as are in Nature of Freehold, or Parcel of it. The Normans call moveable Goods only *Chattels*; but this Word by the Common Law extends to all moveable and immoveable Goods: And the Civilians denominate not only what we call *Chattels*, but also Land, all under *Bona*. But no Estate of Inheritance or Freehold, can be termed in our Law Goods and Chattels; though a Lease for Years, may pass as Goods. *Chattels* are either *Personal* or *Real*: *Personal*, as Gold, Silver, Plate, Jewels, Household-Stuff, Cattle, Corn sown on the Ground, &c. and these are called *Personal* in two Respects, one because they belong immediately to the Person of a Man, and the other, for that being any Way injuriously withheld from us, we have no Means to recover them but *Personal* Action. *Chattels Real* are such as either appertain not immediately to the Person, but to some other Thing by Way of Dependency, as a Box with Charters of Land, &c. or such as are issuing out of some immoveable Thing to a Person, as a Lease, or Rent for Term of Years: And *Chattels Real* concern the Realty, Lands and Tenements, Leases for Years, Interest in Advowsons, in Statutes-Merchant, &c. And also include Corn cut, Trees cut, &c. 1 *Inst.* 118. *Noy's Max.* 49. But Deeds relating to a Freehold, Obligations, &c. which are Things in Action, are not reckoned under such Goods and *Chattels*; though if Writings are pawned, they may be *Chattels*: And Money hath not been accounted Goods or *Chattels*; nor are Hawks or Hounds such, being *fera Natura*. 8 *Rep.* 33. *Terms de Ley* 103. *Kitch.* 32. *Personal* Estate is usually taken for Money, Goods, Bonds, Leases for Years, &c. And *Chattels Personal* are not only moveable and immoveable, but some are animate, as Horses, &c. and others inanimate, as Beds, &c. A Collar of SS. Garter of Gold, Buttons, &c. belonging to the Dress of a Knight of the Garter, are not Jewels to pass by that Name in *Personal* Estate, but Ensigns of Honour. *Dyer* 59. The Law will not suffer the Devise of a *Personal Chattel*, with a Remainder over; but a Devise of a *Chattel Real*, with Remainder over, hath been in some Cases adjudged good in Equity. 2 *And.* 185. The Use of *Personal* Things, such as Plate, Jewels, &c. may be given to one, and the Remainder to another; and in that Case the Property is vested in the last Devisee. *Owen* 33. But a Devise of the Use of Money, has been adjudged a Devise of the Money itself; and so a Devise of the Use of Books, Medals, &c. and Limitations over have been declared void. 2 *Chan. Rep.* 167. 1 *Chan. Rep.* 129. *Chattels Personal* are immediately upon the Death of the Testator, in the actual Possession of the Executor, as the Law will adjudge, though they are at never so great a Distance from him: *Chattels Real*, as Leases for Years of Houses, Lands, &c. are not in the Possession of the Executor till he makes an Entry, or hath recovered the same, except there be a Lease for Years of Tithes, where no Entry can be made. 1 *Nels. Abr.* 437. An Owner of *Chattels* is said to be *possessed* of them, as of Freehold the Term is that a Person is *seised*.

Chaumpert, A Kind of Tenure mentioned *Pat.* 35 *Edw.* 3. To the Hospital of *Bowes* in the Isle of *Guernsey*. Blount.

Chaunter, A Singer in a Cathedral. See *Chanter*.

Cherch-Roll, Is a Roll or Book containing the Names of such as are Attendants and in Pay to the King, or other great Personages, as their Household Servants. *Stat. 19 Car. 2. cap. 1.* It is otherwise called the *Chequer-Roll*, and seems to take its Etymology from the *Exchequer*. 24 Hen. 8. c. 13.

Chelindra, A Sort of Ship. — *Ohligavit se Imperator ad 100 Chelindras & 50 Galeas ducendas ultra mare.* Mat. Paris, Anno 1238.

Cherisetum, Any customary Oblation paid (at first in Lieu of Church-seed or Corn) to the Parish Priest or Appropriators. *Cowel.*

Chest, An uncertain Quantity of Merchandize, Wine, &c.

Chebage, (*Chevagium*, from the Fr. *Chef*, i. e. *Caput*) Is a Tribute or Sum of Money formerly paid by such as held Lands in Villenage to their Lords in Acknowledgment, and was a Kind of Head or Poll Money. Of which *Bracton*, lib. 1. cap. 10. says thus; *Chevagium dicitur recognitio in signum Subjectionis & Domini de Capite suo.* *Lambard* writes this Word *Chivage*; but it is more properly, *Chiefage*: That it is taken for a Sum of Money we learn by a Charter of Hen. 3. And antiently the *Jews*, whilst they were admitted to live in *England*, paid *Chebage* or Poll-Money to the King, as appears by *Pat. 8 Edw. 1. par. 1.* It seems also to be used for a Sum of Money, yearly given to a Man of Power for his Protection, as a Chief Head or Leader: But the Lord *Coke* says, that in this Signification, it is a great Misprision for a Subject to take Sums of Money, or other Gifts yearly of any in Name of *Chebage*, because they take upon them to be their Chief Heads or Leaders. *Co. Lit. 140.*

Chebantia, A Loan or Advance of Money upon Credit: Fr. *Chavarice*, Goods, Stock. — *Idem Prioratus pene destructus, & possessiones sue ad plurimos terminos pro plurimis Chevanciis alienate existunt.* Mon. Ang. Tom. 1. pag. 629.

Chevisance, (from the Fr. *Chevir*, i. e. *Venir a chief de quelque chose*, to come to the Head or End of a Business) Signifies an Agreement or Composition made; an End or Order set down between a Creditor and Debtor; or sometimes an indirect Gain, in Point of Usury, &c. In our Statutes it is often mentioned, and most commonly used for an unlawful Bargain or Contract. *Stat. 37 Hen. 8. c. 9. 13 Eliz. cap. 5. & 8. 21 Jac. 1. c. 17. and 12 Car. 2. c. 13.*

Chebitæ and Chevisæ, Heads of ploughed Lands. *Novem Aras Terræ cum Cheviscis ad ipsas pertinentibus.* Mon. Ang. Tom. 2. f. 116.

Chief Pledge, (*Plegius vel vas Capitalis*) mentioned 20 Hen. 6. cap. 8. See *Borough-head* and *Borough-holder*.

Childwit, (Sax.) Is a Fine or Penalty of a Bond-Woman unlawfully begotten with Child: *Prior habeat Gersumam de Nativa sua imprægnata sine Licentia maritandi.* Ex Reg. Priorat. de *Cokeford*. *Cowel* says, it signifieth a Power to take a Fine of your Bond-Woman gotten with Child without your Consent: And within the Manor of *Writtel* in *Com. Essex*, every reputed Father of a base Child, pays to the Lord for a Fine 3 s. 4 d. where it seems to extend as well to Free as Bond Women; and the Custom is there called *Childwit* to this Day.

Chimin, (Fr. *Chemin*, i. e. *Via*) In Law Phrase is a Way; which is of two Sorts: The King's

Highway, and a private Way. The King's Highway, (*Chiminus Regius*) is that in which the King's Subjects, and all others under his Protection, have free Liberty to pass, though the Property of the Soil where the Way lies, belongeth to some private Person. A Private Way is that in which one Man or more have Liberty to pass through the Ground of another, by Prescription or Charter; and this is divided into *Chimin in gross* and *Chimin appendant*. *Chimin in gross* is where a Person holds a Way principally and solely in it self; *Chimin appendant* is that Way which a Man hath as appurtenant to some other Thing: As if he rent a Close or Pasture, with Covenant for Ingress and Egress, through some other Ground in which otherwise he might not pass. *Kitb. 117. Co. Lit. 56.* A Man may covenant for a Way thro' another Person's Ground, for himself and his Heirs, &c. so as to make *Chimin in gross* as it were *Personal*: And by purchasing a Way through the Ground of another, for such as do or shall dwell in such an House for ever, or be Owners of such a Manor, &c. *Chimin appendant* may be made as it were *Real*; but this is according to the Terms of the Civilians. *Cowel.* It is said a Way may not be claimed by Prescription as appendant or appurtenant to an House, because it is only an Easement and no Interest; but a Person may prescribe for a Way from his House through a certain Close, &c. to Church, though he himself hath Lands next adjoining to his said House, through which of Necessity he must first pass; for the general Prescription shall be applied only to the Lands of others. *Yelv. 159. 1 Danv. Abr. 785.* See *Highways*.

Chiminage, (*Chiminagium*) Is a Toll due by Custom for having a Way through a Forest; and in ancient Records it is sometimes called *Pedagium*. *Crompt. Jurisd. 189. Co. Lit. 56.* — *Tellonium quod in Forestis exigebant Forestarii a Plaustris & Equis. oneris causa eo venientibus.* Chart. Forest, cap. 14. *Et nullus Forestarius qui non sit Forestarius de Feodo, &c. capiat Chiminagium, &c.*

Chimney-Money, Otherwise called *Hearth-Money*, was a Duty to the Crown on Houses. By Statute 14 Car. 2. cap. 2. Every Fire-Hearth and Stove of every Dwelling and other House within *England* and *Wales*, (except such as pay not to Church and Poor) shall be chargeable with 2 s. per Annum, payable at *Michaelmas* and *Lady-day*, to the King and his Heirs, and Successors, &c. which Payment was commonly called *Chimney-Money*. This Tax being much complained of, as burthensome to the People, hath been long since taken off, and others imposed in its Stead; among which that on *Windows* of Houses, laid 7 & 8 W. 3. has by some Persons been esteemed almost equally grievous. See *Euage*.

Chipp, **Cheap**, **Chipping**, Signifies the Place to be a Market-Town, as *Chippenham*, &c. *Blount.*

Chimmingabel, or *Cheapingavel*, Toll for Buying and Selling.

Chirgemot, *Chirch gemot*, (Sax.) *Forum Ecclesiasticum.* — *Quousque Chirgemot Discordantes inveniet, vel amore congreget, vel sequestret Judicio.* Leg. Hen. 1. c. 8. 4 Inst. 321.

Chirograph, (*Chirographum*, or *Scriptum Chirographatum*) Any publick Instrument of Gift or Conveyance, attested by the Subscription and Crosses of Witnesses, was in the Time of the Saxons called *Chirographum*; which being somewhat changed in Form and Manner by the Nor-

mans, was by them stiled *Charta*: In following Times, to prevent Frauds and Concealments, they made their Deeds of mutual Covenant in a *Script* and *Rescript*, or in a Part and Counter-part; and in the Middle between the two Copies, they drew the Capital Letters of the Alphabet, and then talliated or cut asunder in an indented Manner, the Sheet or Skin of Parchment; which being delivered to the two Parties concerned, were proved authentick by matching with and answering to one another: And when this prudent Custom had for some Time prevailed, then the Word *Chirographum* was appropriated to such bipartite Writings or Indentures. Anciently when they made a *Chirograph* or Deed, which required a Counterpart, they ingrossed it twice upon one Piece of Parchment contrariwise, leaving a Space between, in which they wrote in great Letters the Word *Chirograph*; and then cut the Parchment in two, sometimes even and sometimes with Indenture, through the Middle of the Word, concluding the Deed with — *In cujus rei Testimonium utraque pars mutuo scriptis presentibus, fide media sigillum suum fecit apponi.* This was afterwards called *Dividenda*, because the Parchment was so divided or cut: And 'tis said the first Use of these *Chirographs* was in Henry the Third's Time. *Chirograph* was of Old used for a *Fine*; the Manner of Ingrossing whereof, and cutting the Parchment in two Pieces, is still observed in the *Chirographer's Office*: But as to Deeds, that was formerly called a *Chirograph*, which was subscribed by the proper Hand-Writing of the Vendor or Debtor, and delivered to the Vendee or Creditor: And it differed from *Syngraphus*, which was in this Manner, viz. Both Parties, as well the Creditor as Debtor, wrote their Names, &c. and the Sum of Money borrowed, on Paper, &c. and the Word *Syngraphus* in Capital Letters in the Middle; which Letters were cut in the Middle, and one Part given to each Party, that upon comparing them (if any Dispute should arise) they might put an End to the Difference. The *Chirographs* of Deeds have sometimes concluded thus: — *Et in hujus rei Testimonium huic scripto in modum Chirographi confecto vicissim sigilla nostra apposuimus.* The *Chirographs* were called *Charta Devise*, *Scripta per Chirographum Divisa*, *Charta per Alphabetum Divisa*; as the *Chirographs* of all Fines are at this Time. *Kennet's Antiq.* 177. *Mon. Ang. Tom. 2. p. 94.*

Chirographer of Fines, (*Chirographus Finium & Concordiarum*, of the Greek *Χειρογραφον*, a Compound of *Χειρ*, *Manus*, a Hand, and *γραφω*, *Scribo*, to write, a Writing of a Man's Hand) Signifies that Officer in the Common Pleas which ingrosseth Fines acknowledged in that Court into a perpetual Record, after they are examined and passed in the other Offices, and that writes and delivers the Indentures of them to the Party. And this Officer makes out two Indentures, one for the Buyer, another for the Seller; and also makes one other indented Piece, containing the Effect of the Fine, which he delivers to the *Custos Brevium*, which is called the *Foot of the Fine*. The *Chirographer* likewise, or his Deputy, proclaims all the Fines in the Court every Term, according to the Statute, and endorses the Proclamation upon the Backside of the Foot thereof; and always keeps the Writ of Covenant, and Note of the Fine. *Stat. 2 Hen. 3. cap. 8. 23 Eliz. c. 3. 2 Inst.* 468.

Chivalry, (*Servitium Militare*) Comes from the

Fr. *Chevalier*, i. e. *Equus*; and in our Law is used for a Tenure of Lands by Knights-Service, whereby the Tenant was bound to perform a Service in War unto the King, or the mesne Lord of whom he held by that Tenure. And *Chivalry* is either *General* or *Special*; *General*, where it was only in the Feoffment that the Tenant held *per servitium militare*, without any Specification of Serjeanty, Escuage, &c. *Special*, when it was declared particularly by what Kind of Knight-Service the Court was held. For the better Understanding of this Tenure, it has been observed, that there is no Land but is holden mediately or immediately of the Crown by some Service; and therefore all our Freeholds that are to us and our Heirs, are called *Feuda* or *Feoda*, Fees, as proceeding from the King, for some small yearly Rent, and the Performance of such Services as were originally laid upon the Land at the Donation thereof; for as the King gave to the great Nobles, his immediate Tenants, large Possessions for ever, to hold of him for this or that Service or Rent, so they in Time parcelled out to such others as they liked the same Lands, for Rents and Services as they thought good: And these Services were by *Littleton* divided into two Sorts, *Chivalry* and *Socage*; the First whereof was martial and military, the other rustical; *Chivalry* therefore was a Tenure of Service, whereby the Tenant was obliged to perform some noble or military Office unto his Lord, being of two Kinds, either *Regal*, that is held only of the King, or common, where held of a common Person: That which might be held only of the King, was called *Servitium* or *Serjeantia*, and was again divided into Grand and Petit Serjeanty; the *Grand Serjeanty* was where one held Lands of the King by Service, which he ought to do in his own Person, as to bear the King's Banner or Spear, to lead his Host, or to find a Man at Arms to fight, &c. *Petit Serjeanty* was when a Man held Lands of the King, to yield him annually some small Thing towards his Wars, as a Sword, Dagger, Bow, &c. *Chivalry* that might be holden of a common Person, was termed *Scutagium*, *Escuage*, that is Service of the Shield, which was either uncertain, or certain; *Escuage uncertain* was likewise two-fold, first, where the Tenant was bound to follow his Lord, going in Person to the King's Wars, either himself or sending a sufficient Man in his Place, there to be maintained at his Cost so long as was agreed upon between the Lord and his first Tenant, at the Granting of the Fee; and the Days of such Service seem to have been rated by the Quantity of Land so holden, as if it extended to a whole Knights-Fee, then the Tenant was to follow his Lord forty Days; and if but to Half a Knights-Fee, then twenty Days; if a fourth Part, then ten Days, &c. and the other Kind of this *Escuage* was called *Castleward*, where the Tenant was obliged by himself or some other, to defend a Castle, as often as it should come to his Turn; and these were called *Escuage uncertain*, because it was uncertain how often a Man should be called to follow his Lord to the Wars, or to defend a Castle, and what his Charge would be therein. *Escuage certain* was where the Tenant was set at a certain Sum of Money to be paid in Lieu of such Service; as that a Man should pay yearly for every Knights-Fee twenty Shillings, for Half a Knights-Fee ten Shillings, or some like Rate; and this

Ser-

Service, because it is drawn to a certain Rent, groweth to be of a mixt Nature, not merely Socage, and yet Socage in Effect, being now neither Personal Service nor uncertain. *Littleton*. The Tenure called *Chivalry* had other Conditions annexed to it: But there is a great Alteration made in these Things by the Statute 12 *Car. 2. cap. 24.* which enacts that Tenures by *Knights-Service* of the King, or any other Person, in *Capite*, &c. and the Fruits and Consequences thereof happened, or which shall or may happen or arise thereupon, or thereby, are taken away and discharged; and all Tenures shall be construed and adjudged to be free and common Socage, &c.

Chocagium, The same with *Ceppagium*; Stumps of Trees, &c. In *Picardy* they are called *Choques*, with us *Chucks*, vulgo *Chips*.

Chopchurch, (*Ecclesiastiarum Permutatio*) Is a Word used in a Statute of King *Hen. 6.* by the Sense of which, it was in those Days a Kind of Trade, and by the Judges declared to be lawful: But *Broke* in his *Abridgment* says, it was only permissible by Law: It was without Doubt a Nick-name given to those that used to change Benefices; as to *chop* and *change* is a common Expression. 9 *H. 6. cap. 65.* Vide *Litera missa omnibus Episcopis*, &c. contra *Choppe-Churches*, Anno 1391. *Spelm. de Conc. vol. 2. pag. 642.*

Choral, (*Choralis*) Signifies any Person that by Virtue of any of the Orders of the Clergy, was in ancient Time admitted to sit and serve God in the *Choir*; which in *Latin* is *Chorus*: And Mr. *Dugdale* in his History of *St. Paul's Church* says, that there were formerly six *Vicars Choral* belonging to that Church.

Chorepiscopi, *Suffragan* or *Rural Bishops*, anciently delegated by the Prime Diocesan; their Authority was restrained by some Councils, and their Office by Degrees abolished; after whom the *Rural Deans* were so commissioned to exercise Episcopal Jurisdiction, till inhibited by Pope *Alexander the Third.* *Kennet's Paroch. Antiq. 639.*

Chose, (*Fr.*) A Thing, as a Thing in Action, &c. It is used in the Common Law with divers Epithets; as *Chose Local*, *Chose Transitory*, and *Chose in Action*. *Chose Local* is such a Thing as is annexed to a Place: And *Chose Transitory* is that Thing which is moveable, and may be taken away, or carried from Place to Place. *Chose in Action* is a Thing incorporeal, and only a Right; as an Annuity, Obligation for Debt, &c. And generally all Causes of Suit for any Debt or Duty, Trespas or Wrong, are to be accounted *Choses in Action*: And it seems *Chose in Action* may be also called *Chose in Suspence*, because it hath no real Existence or Being, nor can properly be said to be in our Possession. *Bro. Tit. Chose in Action.* When a Man may bring an Action for some Duty, viz. Debt upon Bond, or for Rent; or Action of Covenant, or Trespas for Goods taken away, or such like; these are *Chose in Action*: And as they are Things whereof a Person is not possessed, but is put to his Action for Recovery of them, they are therefore called *Choses in Action*. 1 *Lill. Abr. 264.* A *Chose in Action* cannot be transferred over; nor is it devisable: Nor can a *Chose in Action* be a Satisfaction, as one Bond cannot be pleaded to be given in Satisfaction for another; but in Equity *Choses in Action* may be assignable; and the King's Grant of a *Chose in Action* is good. *Cro. Jac. 170, 371. Chanc. Rep. 169.* When Bonds are assigned, it is done with Power of Attorney to receive and sue in the

Assignor's Name; so that though in this Case a *Chose in Action* is said to be assignable over, yet it amounts to little more than a Letter of Attorney to sue for the Debt. *Wood's Inst. 282.* A *Chose in Action*, as an Obligation, &c. is not within the Statute 21 *Hen. 8.* concerning Larceny by Servants, in going away with or imbeziling their Master's Goods, to the Value of 40 s. And generally these are of no Use to any but the Owner. 1 *Hawk. P. C. 92, 93.*

Chrism, A Confection of Oil and Balsam consecrated by the Bishop, and used in the *Papish* Ceremonies of Baptism, Confirmation, and sometimes Ordination.

Chrismal, *Chrismal*, *Chrism*, The Face-Cloth, or Piece of Linen laid over the Child's Head at Baptism, which in ancient Times was a Perquisite due to the Parish Priest. — *Mulieres sequentes debent offerre Chrismalia Infantum, nec Chrismalia debent alienari, nec in aliquos usus mitti debent, nisi in usus Ecclesie.* Statut. *Ægid. Episc. Salisbur. An. 1256.*

Chrismatis denarii, *Chrism-Pence*, Money paid to the Diocesan, or his Suffragan, by the Parochial Clergy, for the *Chrism* consecrated by them about *Easter*, for the Holy Uses of the Year ensuing. This customary Payment being made in *Lent* near *Easter*, was in some Places called *Quadragesimals*, and in others *Paschals* and *Easter-Pence*. The Bishops Exaction of it was condemned by Pope *Pius 11.* for Simony and Extortion; and thereupon the Custom was released by some of our *English Bishops*: As *Robert Bishop of Lincoln*, by express Charter. — *Sciatis nos remississe Clericis omnibus infra Episcopatum Lincolnensem Paschalem consuetudinem quam Chrismatis denarios vocant.* — *Cartular. Mon. de Berdeny. M. S. Cotton.*

Christianitatis Curia, The Court Christian, or Ecclesiastical Judicature. See *Court Christian*.

Church, (*Ecclesia*) Is a Place or Building consecrated to God and Religion, or an Assembly of People met together for religious Worship; and if it hath Administration of the Sacraments and Sepulture, it is in Law adjudged a *Church*. If the King founds a *Church*, he may exempt it from the Ordinary's Jurisdiction; but 'tis otherwise in case of a Subject. The Manner of founding Churches in ancient Times was, after the Founders had made their Applications to the Bishop of the Diocese, and had his License; the Bishop or his Commissioners set up a Cross, and set forth the Church-yard where the Church was to be built; and then the Founders might proceed in the Building of the Church, and when the Church was finished, the Bishop was to consecrate it, and then and not before the Sacraments were to be administered in it. *Stillingsfleet's Ecclesiast. Cases.* But by the Common Law and Custom of this Realm, any Person who is a good Christian, may build a Church without Licence from the Bishop, so as it be not prejudicial to any ancient Churches; though the Law takes no Notice of it as a Church, till consecrated by the Bishop, which is the Reason why Church and no Church, &c. is to be tried and certified by the Bishop. And in some Cases, though a Church has been consecrated, it must be consecrated again; as in case any Murder, Adultery, or Fornication be committed in it, whereby it is defiled; or if the Church be destroyed by Fire, &c. The ancient Ceremonies in consecrating the Ground on which the Church was intended to be built,

built, and of the *Church* it self after it was built, were thus : When the Materials were provided for Building, the Bishop came in his Robes to the Place, &c. and having prayed, he then perfumed the Ground with Incense, and the People sung a Collect in Praise of that Saint to whom the Church was dedicated ; then the Corner-Stone was brought to the Bishop, which he crossed, and laid for the Foundation : And a great Feast was made on that Day, or on the Saint's Day to which it was dedicated ; but the Form of Consecration was left to the Discretion of the Bishop, as it is at this Day. Some Bishops, who have consecrated *Churches*, on entring into them, have pronounced the Place to be holy, *In the Name of the Father*, &c. then with their Retinue of grave Divines, &c. went round the *Church*, repeating the Hundredth Psalm, and a Form of Prayer, concluding, *We consecrate this Church, and set it apart to Thee, O Lord Christ, as Holy Ground*, &c. After which, turning to the Communion Table, and having bowed to it several Times, they pronounced Blessings on all those who should be Benefactors, and Curses against those who should prophane that Place : And then a Sermon hath been preached, and the Sacrament administered with more than common Ceremony of Bowing, Kneeling, &c. A *Church* in general consists of three principal Parts, that is the Belfry or Steeple, the Body of the *Church* with the Isles, and the Chancel : And not only the Freehold of the whole *Church*, but of the *Church-yard*, are in the Parson or Rector ; and the Parson may have an Action of Trespass against any one that shall commit any Trespass in the *Church* or *Church-yard* ; as in breaking of Seats annexed to the *Church*, or the Windows, taking away the Leads, or any of the Materials of the *Church*, cutting the Trees in the *Church-yard*, &c. The Property of the Bells, Books, and other Ornaments, and of the Goods of the *Church*, is in the Parishioners ; but in the Custody of the Church-wardens, who may maintain Action of Trespass against such as shall wrongfully take them away. 1 Roll. Rep. 255. If a Man erect a Pew in a *Church*, or hang up a Bell, &c. therein, they thereby become *Church* Goods, though not expressly given to the *Church* ; and he may not afterwards remove them. Stat. 10 Hen. 4. The Parson only is to give Licence to bury in the *Church* ; but for defacing a Monument in a *Church*, &c. the Builder or Heir of the Deceased may have an Action. 2 Cro. 367. And a Man may be indicted for digging up the Graves of Persons buried, and taking away their burial Dresses, &c. The Property whereof remains in the Party who was the Owner when used, and 'tis said an Offender was found guilty of Felony in this Case, but had his Clergy. Co. Lit. 113. Though the Parson hath the Freehold of the *Church*, he hath not the Fee-simple, which is always in Abeyance ; but in some Respects a Parson hath a Fee-simple qualified. Litt. 644, 645. The Use of the Body of the *Church*, and the Seats fixed to the Freehold, is common to all the Parishioners that pay to the Repairs thereof. The Chancel of the *Church* is to be repaired by the Parson, unless there be a Custom to the contrary ; and for these Repairs, the Parson may cut down Trees in the *Church-yard*, but not otherwise. 35 Ed. 1. The Church-wardens are to see that the Body of the *Church* and Steeple are in Repair ; but not any Isle, &c. which any Person claims by Prescrip-

tion, to him or his House : Concerning which Repairs the Canons require every Person who hath Authority to hold Ecclesiastical Visitations, to view their *Churches* within their Jurisdiction once in three Years, either in Person, or cause it to be done ; and they are to certify the Defects to the Ordinary, and the Names of those who ought to repair them ; and these Repairs must be done by the Church-wardens, at the Charge of the Parishioners. Can. 86. 1 Mod. 236. By the Common Law, Parishioners of every Parish are bound to repair the *Church* : But by the Canon Law, the Parson is obliged to do it, and so it is in foreign Countries. 1 Salk. 164. In London, the Parishioners repair both the *Church* and the Chancel. The Spiritual Court may compel the Parishioners to repair the *Church*, and excommunicate every one of them till it be repaired ; but those that are willing to contribute shall be absolved till the greater Part agree to a Tax, when the Excommunication is to be taken off ; but the Spiritual Court cannot assess them towards it. 1 Mod. 194. 1 Ventr. 367. For though this Court hath Power to oblige the Parishioners to repair by Ecclesiastical Censures, yet they cannot appoint in what Sum, or set a Rate, for that must be settled by the Church-wardens, &c. 2 Mod. 8. Where a *Church* is so much out of Repair, that 'tis necessary to pull it down, in such Case upon a general Warning to the Parishioners, the major Part meeting may make a Rate for pulling it down, and rebuilding it on the old Foundation, and it shall be good ; and if any Parishioner refuse to pay his Proportion, they may libel against him in the Ecclesiastical Court. 2 Mod. 222. And it is said if a *Church* be down, and the Parish is encreased, that the greater Part of the Parish may raise a Tax for the necessary Inlarging it as well as the Repairing thereof. 1 Mod. 237. But in some of our Books we find that if a *Church* falls down, the Parishioners are not obliged to rebuild it ; tho' they ought to keep it in due Repair. 1 Ventr. 35. In a Case where Church-wardens made a Rate for Repairs of the *Church*, it was adjudged that the Parishioners ought to assess the Rate, and they are bound to repair the *Church*. 1 Salk. 165. Church Rates for Repairs, are to be made by the Church-wardens and the major Part of the Parishioners, which shall bind the others, after a general Notice given ; and if the Parishioners refuse or neglect to meet, upon such Notice ; or if on Meeting they refuse to make a Rate, then the Church-wardens and Overseers of the Poor may make a Rate, and levy it upon the Inhabitants, being first confirmed by the Ordinary or Archdeacon. And Rates for repairing of *Churches*, &c. are of Ecclesiastical Cognizance ; and to be recovered in the Ecclesiastical Court : Also if a Parish is unequally rated, those who are grieved must plead it in the Spiritual Court, being sued there. 1 Ventr. 367. 2 Roll. Abr. 291. These Rates must be made upon the whole Parish, and not upon a particular Person ; and the Charge is in Respect of the Land, upon every Occupier, &c. If the Owner lives in another Parish, he shall be rated for Repairs in the Parish where the Lands lie, and not where he liveth ; for tho' the Charge is upon the Person, yet 'tis in Regard of his Lands : If he let the same by Lease, then he shall be charged in Respect of the Rent reserved, and the Farmer shall make up the Rest. One that hath Lands in a

Village,

Village, but doth not inhabit there, is to contribute to the Repairs of the Parish Church. For Church Ornaments, Utensils, &c. the Charge is upon the Personal Estates of the Parishioners; and for this Reason Persons must be charged for these where they live: But tho' generally Lands ought not to be taxed for Ornaments, yet by special Custom, both Lands and Houses may be liable to it. 2 *Inst.* 489. *Cro. Eliz.* 843. *Hetley* 131. It has been resolved that no Man shall be charged for his Land to contribute to the Church Reckonings, if he do not reside in the same Parish. *Moor* 554. The Communion Tables are to be kept in Repair in Churches, and covered in Time of Divine Service with a Carpet, &c. And the Ten Commandments to be set up at the East-End of every Church or Chapel, and other chosen Sentences of Scripture upon the Walls. And at the common Charge shall be provided a strong Chest with a Hole in the upper Part thereof, having three Keys, of which one shall be kept in the Custody of the Parson, and the other two by the Church-wardens severally; which Chest is to be fixed in a proper Place in the Church, to collect the Alms for the Poor; and the Alms shall be quarterly distributed to the Poor, in the Presence of the Chief of the Parish. *Can.* 82, 83. By Statute, Churches not above six Pounds a Year in the King's Books, by Assent of the Ordinary, Patron and Incumbent, may be united: And in Cities and Corporations, &c. Churches may be united by the Bishop, Patrons, and Chief Magistrates, unless the Income exceeds 100 *l.* per Ann. and then the Parishioners are to consent, &c. 37 *H. 8. cap.* 21. 17 *Car.* 2. Fifty new Churches are to be built in or near London and Westminster, for the Building whereof a Duty is granted upon Coals, and Commissioners appointed to purchase Lands, ascertain Bounds, &c. The Rectors of which Churches shall be appointed by the Crown, and the first Church-wardens and Vestrymen, &c. are to be elected by the Commissioners. 9 *Ann. cap.* 22. A Minister by Ordination of Priesthood receives Authority to preach in the Church, though he is nevertheless to have a Licence from the Bishop of the Diocese, &c. If a Layman be admitted and instituted to a Benefice, and doth administer the Sacraments, marry, &c. these Acts performed by him during the Time he continues Parson in Fact, are good. 3 *Cro.* 775. Ministers are to declare their Assent to the Thirty-nine Articles of Religion, &c. and are bound to read Morning and Evening Prayers, on every Holiday, on the 5th of November, the 30th of January, and the 29th of May, as on the Lord's Day. And if any Minister shall use any Form of Church Service but such as in the Book of Common Prayer, &c. he shall forfeit a Year's Profit of his Living, and suffer six Months Imprisonment for the first Offence; and for the second Offence to be deprived, &c. *Stat.* 1 *Eliz. c.* 2. And if a Parson in reading Prayers, stand or sit when he is appointed to kneel, or kneel when he should stand, &c. he is punishable by this Statute. If any Persons deprave the Book of Common Prayer, &c. they shall be imprisoned six Months, and forfeit 100 Marks. 13 & 14 *Car.* 2. *cap.* 4. Every Person is to repair to his Parish Church every Sunday on Pain of forfeiting 1 *s.* for every Offence; and being present at any Form of Prayer used contrary to the Book of Common Prayer, is punished with six Months Imprisonment, &c.

1 *Eliz. cap.* 2. 23 *Eliz. cap.* 1. Persons above sixteen Years of Age, who absent from the Church above a Month, are to forfeit 20 *l.* per Month, &c. But Protestant Dissenters are exempted from Penalties, by 1 *W. & M.* And a Person is not so bound to go to his Parish Church, but upon reasonable Excuse he may go to another; of which Excuse the Spiritual Courts are Judges. 2 *Roll. Rep.* 438, 455. No Man shall cover his Head in the Church, in Time of Divine Service, except he have some Infirmary, and then with a Cap; and all Persons are to kneel and stand, &c. as directed by the Common Prayer during Service. *Can.* 18. No ill Language is to be used, or Noise made in Churches or Church yards; and Persons striking others there, are to be excommunicated, and lose one of their Ears: And a Man may not lawfully return Blows in his own Defence in these Cases. 5 & 6 *Ed. 6. cap.* 4. Disturbing Ministers officiating Divine Service, incurs three Months Imprisonment; and a Forfeiture of 20 *l.* By 1 *M. cap.* 3. and 1 *W. & M.* Any Person may be indicted for indecent or irreverent Behaviour in the Church; and those that offend against the Acts of Uniformity, are punishable either by Indictment upon the Statutes, or by the Ordinary, &c.

Church-wardens, (*Ecclesie Guardiani*) Are ancient Officers chosen yearly in Easter Week, by the Minister and Parishioners of every Parish, to look and take Care of the Church and Churchyard, and the Things belonging to the same. They are to be chose by the joint Consent of the Parishioners and Minister; and by Custom the Minister may chuse one, and the Parishioners another; or by Custom the Parishioners alone may elect both, though it be against the Canon. 1 *Ventr.* 267. They are to be sworn into their Offices by the Archdeacon; and if the Archdeacon refuseth to swear a Church-warden, a *Mandamus* shall issue to compel him. 3 *Cro.* 551. As the Parishioners chuse Church-wardens, who have a Trust reposed in them by the Parish as Temporal Officers, they are the proper Judges of their Ability to serve, and not the Archdeacon who swears them. 5 *Mod.* 325. They are a Corporation to sue and be sued for the Goods of the Church; and they may purchase Goods, but not Lands, except it be in London, by Custom. And they may have Appeal of Robbery for stealing the Goods of the Church. 1 *Roll. Abr.* 393. *Cro. Eliz.* 179. But Church-wardens cannot release to the Prejudice of the Church: Nor can they dispose of the Church Goods, without the Consent of the Vestry. If they waste the Goods of the Church, the new Church-wardens may have Actions against them, or call them to account before the Ordinary; though the Parishioners cannot have an Action against them for wasting the Church Goods, for they must make new Church-wardens, who must prosecute the former, &c. 1 *Danv. Abr.* 788. 1 *Cro.* 145. *Bro. Account* 1. The Church-wardens are to take Care of the Repairs of the Church; and if they erect, or add any Thing new to the same, they must have the Consent of the Parishioners or Vestry; and if in the Church, the Licence of the Ordinary. 2 *Inst.* 489. 1 *Ventr.* 367. They have with Consent of the Minister, the Placing the Parishioners in the Seats of the Body of the Church, Appointing Gallery-keepers, &c. reserving to the Ordinary a Power to correct the same: And in London, by Custom, the Church-wardens have this Authority

in themselves. Particular Persons may prescribe to have a Seat, as belonging to them by Reason of their Estates, as being an ancient Messuage, &c. and the Seats having been constantly repaired by them: Also one may prescribe to an Isle in the Church, to sit and bury there, always repairing the same. 3 *Inst.* 202. 2 *Cro.* 366. If the Ordinary displaces a Person claiming a Seat in a Church by Prescription, a Prohibition shall be granted, &c. 12 *Rep.* 106. *Church-wardens* are to see that all the Parishioners duly resort to their Parish Church, and there continue during the Time of Divine Service: They are not to permit any to stand idle, walk, or make any Noise in the Church, or to contend for Places, &c. they may apprehend those who disturb the Minister, &c. and justify the Appealing any Disorder in the Church or Church-yard; they are to chastise disorderly Boys, and take off the Hats of those who would irreverently keep them on. 1 *Saund.* 13. Further they must search Ale-houses on *Sundays*, that there be no Persons therein, during the Divine Service; and execute Warrants against such who profane the Lord's Day, &c. Also levy Penalties on Persons not coming to Church, against Profaners of the Sabbath in Pastimes, Tipling, &c. and for Drunkenness, Cursing and Swearing, &c. by divers Statutes. And they are to present to the Ordinary, &c. all Things presentable by the Ecclesiastical Laws, which relate to the Church, the Parson and Parishioners; what relates to the Church is chiefly of Repairs; and of the Parson and Parishioners their Duty, the first in reading Prayers, Preaching, administering the Sacraments, &c. and the last, in coming to Church, and duly attending the Worship of God: They must likewise present Crimes and Offences, such as Drunkenness, Incest, Blasphemy, &c. and by Statute Popish Recusants: And if they refuse to make Presentments, the Parsons or Vicars, &c. may present to the Bishop all Crimes committed in their Parishes. 3 *Cro.* 291. 1 *Ventr.* 114. At the End of the Year, the *Church-wardens* are to yield just Accounts to the Minister and Parishioners, and deliver what remains in their Hands to the Parishioners, or to the new *Church-wardens*: In case they refuse, they may be presented at the next Visitation, or the new Officers may by Process call them to Account before the Ordinary, or sue them by Writ of Account at Common Law. And if all the Parish have allowed their Accounts of the Church Goods, the Ordinary may nevertheless call them to Account before him too, and punish them if he find Cause; but in laying out their Money, they are punishable for Fraud only, not Indiscretion. If their Receipts fall short of their Disbursements, the succeeding *Church-wardens* must pay them the Ballance, and place it to their Account. 1 *Roll. Abr.* 121. *Can.* 89, 109, &c. Disputes arising about *Church-wardens* Accounts, are to be decided before the Ordinary: And for Disbursements of any Sum not exceeding 40 s. the *Church-wardens* Oath alone is a sufficient Proof; but for all Sums above, Receipts are to be produced, &c. Beside their ordinary Power, the *Church-wardens* have the Care of the Benefice during its Vacancy; and as soon as there is any Avoidance, they are to apply to the Chancellor of the Diocese for a Sequestration; which being granted, they are to manage all the Profits and Expences of the Benefice for him that succeeds, plough and sow his Glebes,

gather in Tithes, thrash out and sell Corn, repair Houses, &c. and they are to see that the Church be duly served by a Curate approved by the Bishop, whom they are to pay out of the Profits of the Benefice. 2 *Inst.* 489. And they are to join with the Overseers of the Poor, in making Rates for Relief of the Poor, setting up Trades for employing them, placing out poor Apprentices, settling poor Persons, &c. And in the Execution of their whole Office, by Statutes 43 *Eliz.* 14 *Car.* 2. 3 & 4 *W. & M.* &c. It is their Duty to collect the Charity Money upon Briefs, which are to be read in Churches, and the Sums collected, &c. to be indorsed on the Briefs in Words at Length, and signed by the Minister and *Church-wardens*; after which, they shall be delivered with the Money collected to the Persons undertaking them, in a certain Time, under the Penalty of 20 l. *Stat.* 4 & 5 *Ann.* They are to sign Certificates of receiving the Sacrament, by Persons to qualify them to bear Offices, &c. And in London and within the Bills of Mortality, they must fix Fire-Cocks, keep Engines, &c. in their Parishes, under the Penalty of 10 l. For the Maintenance whereof, the Parish is to be assessed. *Stat.* 6 & 7 *Ann.* There may be select *Vestries* elected in Parishes to make Rates, and take the *Church-wardens* Accounts, &c. But those that do not pay to any Church Rates have no Votes, except the Parson or Vicar. See *Church*.

Church-Reeve, Is the same with *Church-warden*, (*Reve* in the Sax. being as much as *Guardian* in the French) the Guardian or Overseer of the Church: As *Shire-Reeve* is the Guardian of the Shire, &c. though afterwards it became a Name of Office: The Word is now out of Use, but is mentioned by *Chaucer* on the Jurisdiction of Archdeacons, viz.

Of Church-Reves, and of Testaments,
Of Contracts, and of Lack of Sacraments.

Churcheslet, or *Chirchset*, A Saxon Word used in *Domesday*, which is interpreted *Quasi semen Ecclesia*, Corn paid to the Church. *Eleta* says, it signifies a certain Measure of Wheat, which in Times past every Man on St. Martin's Day gave to Holy Church, as well in the Times of the Britains as of the English; yet many great Persons after the Coming of the Romans, gave that Contribution according to the ancient Law of Moses, in the Name of *First-Fruits*; as in the Writ of King *Canutus* sent to the Pope is particularly contained, in which they call that Contribution *Chirch-fed*, as one would say *Church-feed*. *Selden's Hist.* Tithes, pag. 216.

Church-scot, Customary Oblations paid to the Parish Priest; from which Duty the Religious sometimes purchased an Exemption. *Cowel.*

Churle, *Ceorle*, *Carl*, Was in the Saxon Time a Tenant at Will; of free Condition, who held some Land of the *Thanes*, on Conditions of Rents and Services: Which *Ceorles* were of two Sorts; one that hired the Lord's Out-Land or tenementary Estate, like our Farmers; the other that tilled and manured the Inland or *Demesnes*, (yielding Work and not Rent) and were thereupon called his *Sockmen* or *Ploughmen*. *Spelm.*

Cinque Ports, (*Quinque Portus*) Are those special Havens that lie towards France, and therefore have been thought by our Kings to be such as ought to be vigilantly guarded and preserved against

against Invasion: In which Respect they have an especial Governor called Lord Warden of the Cinque Ports, and divers Privileges granted them, as a peculiar Jurisdiction; their Warden having not only the Authority of an Admiral among them, but sending out Writs in his own Name, &c. Stat. 32 H. 8. cap. 48. 4 Inst. 222. Camden tells us, that Kent is accounted the Key of England; and that William, called the Conqueror, was the first who made a Constable of Dover Castle, and Warden of the Cinque Ports, which he did to bring that Country under a stricter Subjection to his Government; but King John was the first who granted the Privileges to those Ports, which they still enjoy: However it was upon Condition that they should provide a certain Number of Ships at their own Charge for forty Days, as often as the King should have Occasion for them in the Wars, he being then under a Necessity of having a Navy for passing into Normandy, to recover that Dukedom which he had lost. And this Service the Barons of the Cinque Ports acknowledged and performed, upon the King's Summons, attending with their Ships the Time limited at their proper Costs, and staying as long after as the King pleased at his own Charge. Somner of Rom. Ports in Kent. The Cinque Ports, as we now account them, are Dover, Sandwich, Rumney, Winchelsea and Rye; and to these we may add Hythe and Hastings, which are reckoned as Part or Members of the Cinque Ports: Tho' by the first Institution, it is said that Winchelsea and Rye, were added as Members, and that the others were the Cinque Ports; there are also several other Towns adjoining that have the Privileges of the Ports. These Cinque Ports have certain Franchises; and the King's Writs do not run there: But on a Judgment in any of the King's Courts, if the Defendant hath no Lands or Goods but in the Ports; the Plaintiff may get the Record certified into Chancery, and from thence sent by *Mittimus* to the Lord Warden, to make Execution. 4 Inst. 223. 3 Leon. 3. The Constable of Dover Castle, is Lord Warden of the Cinque Ports: And there are several Courts within the Cinque Ports; one before the said Constable, others within the Ports themselves, before the Mayors and Jurats; another which is called *Curia quinque Portuum apud Shepway*: There is also a Court of Chancery in the Cinque Ports, to decide Matters of Equity; but no original Writs issue thence. 1 Danv. Abr. 793. The Jurisdiction of the Cinque Ports is general, as well to Personal, as Real and mix'd Actions. And if any erroneous Judgment is given in the Cinque Ports before any of the Mayors and Jurats, Writ of Error lies not in B. R. but it shall be redressed, according to the Custom, by Bill in Nature of a Writ of Error, *coram Domino Custode seu Guardiano quinque Portuum apud Curiam suam*, &c. And in these Cases the Mayor and Jurats may be fined, and the Mayor removed, &c. 4 Inst. 224. Crompt. Jurisd. 138. Though in the Cinque Ports the King's Writs do not run, yet they are not *Fura Regalia*, like Counties Palatine, but are Parcel of the County of Kent: So that if a Writ be brought against one for Land within the Cinque Ports, and he appears and pleads to it, and Judgment is given against him in the Common Pleas, this Judgment shall bind him; for the Land is not exempted out of the County, and the Tenant may waive the Benefit of his Privilege. Wood's Inst. 519. The Cinque Ports cannot award

Process of Outlawry. Cro. Eliz. 910. And a *Quo Minus* lies to the Cinque Ports. Ibid. 911. If a Man is imprisoned at Dover by the Lord Warden, an *Habeas Corpus* may be issued; for the Privilege that the King's Writ lies not there is intended between Party and Party, and there can be no such Privilege against the King; and an *Habeas Corpus* is a Prerogative Writ, by which the King commands an Account of the Liberty of the Subject. Cro. Jac. 543. 1 Nelf. Abr. 447. *Certiorari* lies to the Cinque Ports to remove Indictments, and the Jurisdiction that *Brev. Dom. Regis non currit* there, is only in Civil Causes between Party and Party: But this has been held to extend only to Indictments before the Mayors; Barons, &c. as Justices of Peace, on late Statutes, &c. Cro. Car. 252, 253. 2 Hawk. P. C. 286, 287.

Cippus, A Pair of Stocks. — *Habeant, necnon Cippos & conclusoria in singulis Villis, ad Correctionem Delinquentium.* Mon. Ang. Par. 2. fol. 349.

Circa, A Watch; from which *Circuitor*: *Quatuor Circuitores Monasterii quos alio nomine Circas vocant, juxta preceptum sancti Benedicti certis horis circuire debent monasterii officinas.*

Circada, A Tribute anciently paid to the Bishop or Archdeacon for visiting the Churches. *Du Fresne.*

Circuit, or **Circuitry of Action**, (*Circuitus Actionis*) Is a longer Course of Proceeding to recover a Thing sued for than is needful: As if a Person grant a Rent-charge of 10*l.* *per Annum* out of his Manor of B. and after the Grantee disseiseth the Grantor of the same Manor, who brings an Assise, and recovers the Land, and 20*l.* Damages; which being paid, the Grantee brings his Action for 10*l.* of his Rent due during the Time of the Disseisin, which he must have had if no Disseisin had been: This is called *Circuitry of Action*, because as the Grantor was to receive 20*l.* Damages, and pay 10*l.* Rent, he might have received but 10*l.* only for Damages, and the Grantee might have kept the other 10*l.* in his Hands by Way of Retainer for his Rent, and so saved his Action, which appears to be needless. *Terms de Ley* 128. This Example shews that an Action may be rightfully brought for a Debt or Duty, and yet be wrong; for that it might have been as well otherwise answered and determined.

Circumspecte Agatis, Is the Title of a Statute made Ann. 13 Edw. 1. relating to *Prohibitions*, prescribing certain Cases to the Judges wherein the King's Prohibition lies not. 2 Inst. 487.

Circumstantibus, By-Standers; and signifies in our Law the Supply or making up the Number of *Furors*, if any impanelled appear not, or appearing are challenged by either Party, by adding to them so many of those that are present or standing by that are qualified as will serve the Turn. Stat. 35 H. 8. cap. 6. The Act of Supplying is usually called a *Tales de Circumstantibus*. See *Tales*.

Citation, (*Citatio*) A Summons to appear, applied particularly to Process in the Spiritual Court. The Ecclesiastical Courts proceed according to the Course of the Civil and Canon Laws, by *Citation*, *Libel*, &c. A Person is not generally to be cited to appear out of the Diocese where he lives, unless it be by the Archbishop, in Default of the Ordinary, where the Ordinary

dinary is Party to the Suit, in Cases of Appeal, &c. And by Law a Defendant may be sued where he lives, though 'tis for substracting Tithes in another Diocese; but it has been made a *Quare* as to local Tithes. 1 *Nelf.* 449. By the Stat. 23 *Hen.* 8. cap. 9. Every Archbishop may cite any Person dwelling in any Bishop's Diocese within his Province for Heresy, &c. if the Bishop or other Ordinary consents; or if the Bishop or Ordinary, or Judge, do not his Duty in punishing the Offence. Where Persons are cited out of their Diocese, and live out of the Jurisdiction of the Bishop, a Prohibition or Consultation may be granted: But where Persons live in the Diocese, if when they are cited they do not appear, they are to be excommunicated, &c.

Citatio ad instantiam Partis, Is mentioned in 22 & 23 *Car.* 2. for laying Impositions on Proceedings at Law.

City, (*Civitas*) By *Cowel* is a Town Corporate, which hath a Bishop and Cathedral Church, which is called *Civitas*, *Oppidum* and *Urbs*; *Civitas*, in Regard it is governed by Justice and Order of Magistracy; *Oppidum*, for that it contains a great Number of Inhabitants; and *Urbs*, because it is in due Form begirt about with Walls. But *Crompton* in his Jurisdictions, where he reckons up the *Cities*, leaveth out *Ely*, although it hath a Bishop and Cathedral Church; and puts in *Westminster*, though it hath at present no Bishop: And Sir *Edward Coke* makes *Cambridge* a City, yet there is no Mention that it ever was an Episcopal Sec. Indeed it appears by the Stat. 35 *H.* 8. cap. 10. that there was a Bishop of *Westminster*; since which, by 27 *Eliz.* cap. 5. it is termed a City, or Borough: And notwithstanding what the Lord *Coke* observes of *Cambridge*, by the Stat. 11 *H.* 7. cap. 4. *Cambridge* is called only a Town. Kingdoms have been said to contain so many *Cities* as they have Seats of Archbishops and Bishops: But according to *Blount*, *City* is a Word which hath obtained since the Conquest; for in the Time of the *Saxons* there were no *Cities*, but all great Towns were called *Burghs*, and even *London* was then stiled *Lunden-Burgh*; as the Capital of *Scotland* is now called *Edinburgh*. And long after the Conquest the Word *City* is used promiscuously with *Burgh*, as in the Charter of *Leicester* 'tis called both *Civitas* and *Burgus*; which shews that those Writers were mistaken, that tell us every *City* was or is a Bishop's See: And tho' the Word *City* signifies with us such a Town Corporate as hath usually a Bishop and Cathedral Church; yet 'tis not always so.

Civil Law, Is defined to be that *Law* which every particular Nation, Common-wealth or City, has established peculiarly for it self: *Jus Civile est, quod quisque Populus sibi constituit*. But more strictly the *Civil Law* is that which the old *Romans* used, compiled from the *Laws* of Nature and of Nations. The twelve Tables were also the Foundation of this *Law*; which for its great Wisdom is as it were the Common *Law*, or the Foundation of it, in all well-governed Kingdoms, a very few only excepted; and no other *Laws* are esteemed comparable to it for its Equity. The *Civil Law* is either *written* or *unwritten*; and the *written Law* is Publick or Private: Publick, which immediately regards the State of the Common-wealth, as the Enacting and Execution of *Laws*; Consultations about War and Peace, Establishment of Things relating to Religion, &c. Private, that more im-

mediately 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 whole *Civil Law* is contained in four Books or Tomes, 1. *The Code*. 2. *The Pandects or Digests*. 3. *The Institutes*. 4. *The Novels or Authenticks*. The *Code* is divided into twelve Books, and was the first Book of the *Civil Law* which the Emperor *Justinian* ordered to be collected: It was published in the Year 529 and contains the Constitutions, &c. of fifty-six Emperors, and their wise Councils. The first Book of it treats of Religion, Priests, &c. Other Books are upon Trade, Merchandize, the Exchequer, &c. *The Digest or Pandects*, was collected from the Works and Commentaries of the ancient Lawyers, some whereof lived before the Coming of our Saviour: This Tome is divided into fifty Books; and upon a more particular Division, the whole Digest is divided into seven Parts: The first Part contains the Elements of the *Law*, as what is Justice, Right, &c. The second Part treats of Judges and Judgment: The third Part, of personal Actions, &c. The fourth Part, of Contracts, Pawns and Pledges: The fifth Part, of Wills, Testaments, &c. The sixth Part, of the Possession of Goods: The seventh Part of Obligations, Crimes, Punishments, &c. *The Institutes*, contain a System of the whole Body of *Law*, and are an Epitome of the Digest divided into four Books; but sometimes they correct the Digest: They are called *Institutes*, because they are of Instruction, and shew an easy Way to the obtaining a Knowledge of the *Civil Law*: But they are not so distinct and comprehensive as they might be, nor so useful at this Time as they were at first. The *Novels or Authenticks* were published at several Times without any Method: They are termed *Novels* as they are new *Laws*, and *Authenticks* being authentically translated from the *Greek* into the *Latin* Tongue; and the whole Volume is divided into nine Collations, Constitutions or Sections, and they again into 168 *Novels*, which also are distributed into certain Chapters: The first Collation relates to Heirs, Executors, &c. The second, the State of the Church: The third is against Bawds: The fourth concerns Marriages, &c. The fifth forbids the Alienation of the Possessions of the Church: The sixth shews the Legitimacy of Children, &c. The seventh determines who shall be Witnesses: The eighth ordains Wills to be good, though imperfect, &c. And the ninth contains Matter of Succession in Goods, &c. To these Tomes of the *Civil Law* we may add the *Book of Feuds*, which contains the Customs and Services that the Subject or Vassal doth to his Prince or Lord, for such Lands or Fees as he holdeth of him. The *Constitutions of the Emperor*, are either by a *Rescript*, which is the Letter of the Emperor in Answer to particular Persons who enquire the Law of him; or by *Edict*, which the Emperor establishes of his own Accord, that it may be generally observed by every Subject; or by *Decree*, which the Emperor pronounces between Plaintiff and Defendant, upon hearing a particular Cause. The Power of issuing forth *Rescripts*, *Edicts* and *Decrees*, was given to the Prince by the *Lex Regia*, wherein the People of *Rome*

Rome wholly submitted themselves to the Government of one Person, viz. *Julius Caesar*, after the Defeat of *Pompey*, &c. And by this Submission, the Prince could not only make *Laws*, but was esteemed above all coercive Power of them. The Matters wherein the whole *Civil Law* is exercised, relate either to *Persons* in the Commonwealth; or the *Things* belonging or not belonging to them; or the *Actions* whereby Men claim such Things as are due to them by the *Law*, &c. 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 Judgments of *Ensigns* and Arms; Rights of Honour, &c. Vide my *Treatise of Laws*, p. 243, 396.

Clades, *Clida*, *Cleta*, *Cleia*, from the Brit. *Clie*, and the Irish *Clia*, A Wattle or Hurdle; and a Hurdle for penning or folding of Sheep, is still in some Counties of England called a *Cley*. Paroch. Antiq. p. 575.

Claretum, A Liquor made of Wine and Honey, clarified or made clear by Decoction, &c. which the *Germans*, *French* and *English* called *Hippocras*: And it was from this, the Red Wines of France were called *Claret*. — *Ad hac etiam in tanta abundantia vinum hic videas, & ficeram, Pigmentum, & Claretum, mustum & medonem*. Girald. Cambr. apud Wharton. Angl. Sac. Par. 2. p. 480.

Claim, (*Clameum*) Is 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. Where any Thing is wrongfully detained from a Person, this *Claim* is to be made; and the Party making it, may thereby avoid Descents of Lands, Disseisins, &c. and preserve his Title which otherwise would be in Danger of being lost. *Co. Lit.* 250. A Man which hath present Right or Title to enter, must make a *Claim*; and in case of Reversions, &c. one may make a *Claim* where he hath Right, but cannot enter on the Lands: When a Person dares not make an Entry on Land, for Fear of being beaten or other Injury, he may approach as near as he can to the Land, and *claim* the same; and it shall be sufficient to vest the Seisin in him. 1 *Inst.* 25. If a Fine is levied of Lands, Strangers to it are to enter and make a *Claim* within five Years, or be barred: Infants after their Age, Feme Coverts after the Death of their Husbands, &c. have the like Time, by Stat. 1 *R. 3. cap.* 7. If a Disseisor levy a Fine, and the Disseisee enters his *Claim* in the Record of the Foot of the Fine, this is not such a *Claim* as shall avoid the Statute. 4 *Hen. 7. cap.* 24. 1 *Lill. Abr.* 270. See the Stat. 4 & 5 *Ann.* and *Continual Claim*.

Claim of Liberty, Is a Suit or Petition to the King in the Court of *Exchequer*, to have Liberties and Franchises confirmed there by the King's Attorney General. *Co. Ent.* 93.

Clamea admittenda in Jure per Attornatum, A Writ by which the King commands the Justices in Eyre to admit a Person's Claim by Attorney who is employed in the King's Service, and cannot come in his own Person. *Reg. Orig.* 19.

Clap-board, Is Board cut in order to make Cask or Vessels; it is mentioned 35 *Eliz. c.* 11.

Clarigarius Armozum, An Herald at Arms. *Blount*.

Claris, A Trumpet. *Statimque clangebant Clariones & Tuba*. Knighton, Anno 1346.

Classarius, A Seaman, or Soldier serving at Sea. — *Omnesque ejus Capitaneos, Milites & Classarios, &c.* Chart. Carol. 5. Imperator. Thomæ Comit. furr. dat. in Urbe Londinensi, 8 Junii 1522.

Claud, (*Brit.*) A Ditch: *Claudere*, to enclose, or turn open Fields into Enclosures. — *Dedi & concessi totam culturam ad Claudendum & faciendum quicquid inde dictis Canonicis placuerit*. Paroch. Antiq. 236.

Claves Insulæ, Is a Term used in the *Isle of Man*, where all ambiguous and weighty Cases are referred to twelve Persons, whom they call *Claves Insulæ*; i. e. the Keys of the Island.

Clavia. In the Inquisition of Serjeanties in the 12th and 13th Years of King *John*, within the Counties of *Essex* and *Hertford*; *Boydin Aylet tenet quatuor libr. terre in Bradwell, per manum Willielmi de Done per Serjeantiam Claviæ, viz.* By the Serjeancy of the Club or Mace. *Brady's Append. Introduct. to Eng. Hist.* 22.

Clavigeratus, A Treasurer of a Church. — *Aliter Willielmus Wallingford Clavigeratus*. Mon. Angl. Tom. 1. p. 184.

Clause Rolls, (*Rotuli Clausi*) Contain all such Matters of Record as were committed to close Writs: These Rolls are preserved in the Tower.

Claustura, Brushwood for Hedges and Fences, or an Inclosure. King *Hen. 3.* gave to the Prior and Canons of *Chetwode*, *quinque carucatus Chauteræ ad predicta terra Clausturam sustinendam*. Paroch. Antiq. 247. This Sort of Wood is in many Parts of England called *Teenage*, from Sax. *Tynan*, to enclose or shut; whence to *tine* the Door, is understood to shut the Door; but this Word hath another vulgar Signification, as to *tine* a Candle, &c.

Clausum fregit, Signifies in our Law as much as *Action of Trespass*; and it is a Writ so called, because the Defendant is summoned thereby to answer *Quare Clausum fregit* of the Plaintiff, that is why he did such a Trespass. It is the Course of the Common Pleas, to declare in Actions (especially upon an *Assumpsit* or the like) upon a *Quare Clausum fregit*, as they do on a *Latitat* in the King's Bench. 2 *Ventr.* 192, 259. But by the Lord *Clarendon's* Orders in Chancery, Curstors of that Court are not to make Writs of *Clausum fregit*, &c. in London, without special Warrant from the Lord Chancellor, or Master of the Rolls, unless it appear by Affidavit that the same is the proper Cause of Action, &c. In *C. B.* a *Pone* in Trespass, (and here the Proceedings are by *Præcipe* or *Pone*) is made out thus: Wilts ff. *Si A. B. fec. &c. tunc Pone C. D. nuper de, &c. de Placito quare Vi & Armis Clausum & Domum ipsius A. fregit & alia Enormia ei intulit, Ad grave Dampn. ipsius A. Et contra pacem, &c.* This is delivered to the Filizer of the County to draw out the *Capias*, &c. And Debt may be added to it, viz. *Pone, &c. C. D. nuper de, &c. in Com. tuo Clausum freg. apud, &c. Ac etiam in Debito pro 50 l. &c.*

Clausum Paschæ. Stat. *Westm.* 1. In *Crasino Clausi Paschæ*, or *In Crasino Octabis Paschæ*, which is all one, that is the Morrow of the *Utas* of *Easter*. 2 *Inst.* 157. *Clausum Paschæ*, i. e. *Dominica in Albis*; sic dictum, quod Pascha Claudat. *Blount*.

Clausura Heye, The Enclosure of a Hedge. — *Johannes Stanley Ar. clamat quod ipse & heredes sui sunt quieti de Clausura Heye de Macelesfield*

field, *scil.* *Clausura unius Roda terra circiter Haym prædict.* Rot. Plac. in Itinere apud Cestriam, ann. 14 Hen. 7.

Claw. A Clofe, or small Measure of Land.

— *Unam Clawam terra cum pertinentiis.* Mon. Angl. Tom. 2. pag. 250.

Cleptor. This Word is taken for a Rogue or Thief. *Hoveden Anno 946.*

Clergy, (Clerus) Is taken for the whole Number of those who are *De Clero Domini*, of our Lord's Lot or Share, as the Tribe of *Levi* was in *Judea*; and are separate from the Noise and Bustle of the World, that they may have Leisure to spend their Time in heavenly Meditation and Prayer. And sometimes *Clergy* is used for a Plea to an Indictment of Felony, &c. being an ancient Privilege of the Church, where a Priest or one in Orders is arraigned of Felony, before a secular Judge, who may pray his *Clergy*; which is as much as if he prayed to be delivered to his Ordinary, to purge himself of the Offence objected against him. *Staufd. P. C. lib. 2. c. 41:* Anciently the *Clergy* strongly insisted that by the Law of God, their Persons were so sacred that they could not, without a Violation of that Law, be convened before, and much less be punished by any secular Judge; but it hath been observed that this is not warranted by Scripture: Though all Persons in Holy Orders have this Privilege from the *Canon Law.* 2 *Hawk. P. C. 337.* As to the *Clergy* in general, they are *Regular* or *Secular*: Those are *Regular*, which live under certain Rules, and are of some religious Order, and are called Men of Religion, or the *Religious*: Such are all Abbots, Priors, Monks, &c. The *Secular*, are those who live not under any certain Rules of the Religious Orders; as Bishops, Deans, Parsons, Vicars, &c. And although the *Clergy* claim an Exemption from all secular Jurisdiction, yet *Mat. Paris* tells us, that soon after *William* the First had conquered *Harold*, he subjected the Bishopricks and Abbeyes who held *per Baroniam* (and who till then were exempted from all secular Service) that they should be no longer free from military Service; and for that Purpose he in an arbitrary Manner registred how many Soldiers every Bishoprick and Abbey should provide, and send to him and his Successors in Time of War; and having placed these Registers of Ecclesiastical Servitude in his Treasury, those who were aggrieved, departed out of the Realm: But the *Clergy* were not till then exempted from secular Service; because by the Laws of King *Edgar* they were bound to obey the secular Magistrate in three Cases, *viz.* Upon any Expedition of the Wars, and to contribute to the Building and Repairing of Bridges, and of Castles for the Defence of the Kingdom. 'Tis probable that by Expedition to the Wars, it was not at that Time intended they should personally serve, but contribute towards the Charge: One they must do; as appears by the Petition to the King, *Anno 1267, viz. Ut omnes Clerici tenentes per Baroniam vel feudum laicum, personaliter armati procederent contra Regios Adversarios, vel tantum servitium in Expeditione Regis invenirent, quantum pertineret ad tantam terram vel Tenementum.* But their Answer was, That they ought not to fight with the Military, but with the Spiritual Sword, that is with Prayers and Tears; that they were to maintain Peace, and not War; and that their Baronies were founded in Charity, for which Reason they ought not to perform any military Service.

Blount. That the *Clergy* had greater Privileges and Exemptions at Common Law than the *Laity* is certain; for they are confirmed to them by *Magna Charta*, and other ancient Statutes: But these Privileges are in a great Measure lost, the *Clergy* being included under general Words in later Statutes; so that *Clergymen* are liable to all publick Charges imposed by Act of Parliament, where they are not particularly excepted. Indeed they are not at this Day to undergo temporal Offices, as the Office of Sheriff, Constable, &c. (though they are sometimes in the Commission of the Peace, in which Commission they may either act as Justices, or not act at their Pleasure) nor are they to serve on Juries, or obliged to appear at Turns and Leets; or to be pressed to serve in the Wars in Person, although by Statutes they are compellable to contribute to the Charge of a War, and to Musters of the Militia: Their Bodies are not to be taken upon Statutes Merchant or Staple, &c. for the Writ to take the Body of the Conusor is *Si laicus sit*; and if the Sheriff or any other Officer arrest a *Clergyman* upon any such Process, it is said an Action of false Imprisonment lies against him that does it, or the *Clergyman* arrested may have a *Superfedeas* out of the Chancery. In Action of Trespass, Account, &c. against a Person in Holy Orders, wherein Process of *Capias* lies, if the Sheriff return that the Defendant is *Clericus Beneficiatus nullum habens Laicum feudum ubi Summoneri potest*; in this Case the Plaintiff cannot have a *Capias* to arrest his Body; but the Writ ought to issue to the Bishop to compel him to appear, &c. But on Execution had against such *Clergyman*, a Sequestration shall be had of the Profits of his Benefice. *Clergymen* may not be arrested in the Church, or Church-yard, while attending on Divine Service, &c. upon Pain of Imprisonment, and Ransom at the King's Pleasure, and likewise to make Agreement with the Party: And he that beats a *Clergyman*, may be obliged to do Penance in the Spiritual Court. But these are all the Privileges remaining on civil Accounts: Though by the Common Law, they were to be free from the Payment of Tolls, in all Fairs and Markets, as well for all the Goods gotten upon their Church Livings, as for all Goods and Merchandizes by them bought to be spent upon their Rectories; and they had several other Exemptions, &c. These Privileges, for the most Part, have been allowed the *Clergy*, that they might with the more Freedom attend the Service of God and Religion, and be respected as they ought; and therefore they are not to undertake any secular Business, by which they may be diverted from their Duty, or be brought into Contempt. They are used like other Men in criminal Cases; except as to Burning in the Hand for Felony, from which upon producing of their Orders, or the Ordinary's Certificate they ought to be freed: And though they have had the Privilege of the *Clergy* for a Felony, yet they may again have their *Clergy*, and so cannot a Layman. But see Stat. 28 H. 8. c. 1. In ancient Times *Clergymen* convicted of Crimes, were delivered over to the Ordinary, to be punished by the Ecclesiastical Laws; but this Privilege is long since abolished, nor was it ever allowed in Treason or Sacrilege. *Wood's Inst. 24. Parson's Counc. 145, &c. 2 Inst. 4, 58, &c.*

Benefit of Clergy, I have already said is an ancient Privilege of the Church, where one in Orders

ders claimed to be delivered to his Ordinary to purge himself of a Felony. And this Purgation was to be by his own Oath affirming his Innocency, and the Oaths of twelve Compurgators as to their Belief of it, before a Jury of twelve Clerks: If the Clerk failed in his Purgation, he was deprived of his Character, whereby he became a meer Layman, or he was to be kept in Prison till a Pardon was obtained. But if he purged himself, he was set at Liberty. Sometimes the Delivery to the Ordinary was without Purgation, as upon Attainder by Confession of the Felony, or by Verdict, where the Felony was notorious, and then the Clerk was to be degraded, or kept in Prison by the Ordinary, &c. though in these Cases the Ordinaries would frequently proceed to Purgation. But Purgation is now taken away by Stat. 18. Eliz. cap. 7. Which enacts that where an Offender is admitted to his Clergy, after Burning in the Hand, he shall not be delivered to his Ordinary, but shall be enlarged by the Court, &c. And the Benefit of Clergy, and Burning in the Hand, comes in the Place of Purgation at Common Law. In ancient Times in the King's Courts where Felonies were determined, the Bishop or his Deputy were to attend to inform the Court whether the Felon could read as a Clerk or not; but the Court was still to judge of his Sufficiency. Since the Stat. 18 Eliz. Every Man to whom Benefit of Clergy is granted, hath been put to read at the Bar after found guilty, and convicted of the Felony, and so burnt in the Hand, and set free for the first Time, if the Ordinary's Commissioner or Deputy standing by did say, — *Legit ut Clericus*; or otherwise he was to be hanged. But Reading at last, as well as Purgation, is wholly laid aside; for by the 5 Ann. c. 6. if any Person convicted of such Felony, for which he ought to have the Benefit of the Clergy, doth pray the Benefit of this Act, he shall not be required to read, but shall be punished as a Clerk convicted. A Lord of Parliament shall have the Benefit of his Clergy, though he cannot read, without Burning in the Hand, for the first Time only; And the King may Pardon the Burning of the Hand in others; which is not so much in Nature of a Punishment, as a Mark to notify that the Person may have his Clergy but once. The Privilege of Clergy is said to have its Beginning from an Encroachment of the Pope upon the temporal Power, in Behalf of the Clergy, whom he endeavoured to exempt from the Jurisdiction of lay Judges in case of Life and Member; which the temporal Courts would not yield to, but only in Part: And first they would indict Clerks for Felony, as well as others, and proceed thereon until the Ordinary did demand them; and if the Ordinary would not demand them, the King's Courts proceeded to Conviction, Attainder and Execution; and if the Ordinary did claim Clerks before Conviction, then an Inquisition was taken, whether the Party was guilty or not; and if acquitted, was discharged, but if found Guilty, then delivered to the Ordinary, &c. The Privilege so restrained was confirmed and established by the Statute of Westm. 1. cap. 2. And allowed by divers Acts of Parliament since that Time: And though at first the Clergy never intended that any should have that Privilege, but those who were in Holy Orders, yet afterwards they extended it to those who were not strictly in Orders, but were Assistants to them in doing Divine Offices. As to Laymen being admitted to this Privilege, it hath been observed that in those Days few

were bred to Literature, but those who were actually in Orders, or educated for that Purpose; and therefore the Way of Trial whether one was a Clerk or no, was by reading, of which the Court was Judge; for if he could not read, the Court would not deliver him as a Clerk, tho' the Ordinary did claim him; and if he did read, he should be allowed as a Clerk, though the Ordinary refused him: And Reading being the Way of Trial, whether a Man were a Clerk or not, without further Examination into any other Qualification, by an equitable Construction of the Statutes that established and extended this Privilege, all Persons that so approved themselves by reading, were allowed to be Clerks. *Linwood* 92, 100. *Kel.* 180. It appears by our Books that Laymen that could read ever had the Privilege of Clergy since the 25 Ed. 3. which Allowance never was condemned in Parliament, or complained of as a Grievance, but rather approved of: And by the Stat. 18 Eliz. every Person as well Lay as Spiritual, hath a Right to the Benefit of that Statute, for the first Offence, in the same Manner as Clergymen. *Ibid.* Though it was anciently the usual Method for the Ordinary to demand the Criminal as his Clerk, before the Court allowed him the Benefit of his Clergy; yet there was no Necessity for such Demand, but the Court might without it admit a Person to the Benefit of Clergy, on sufficient Evidence of his being a Clerk, as upon producing Letters of Orders, or reading as a Clerk, &c. except he appeared to have been guilty of Sacrilege, or of breaking of Prison of the Ordinary, in which Cases it is said to have been at the Discretion of the Ordinary, whether he should have his Clergy or not: And as there is no Necessity that the Ordinary should demand the Benefit of the Clergy for a Clerk; so neither is there any that the Prisoner himself should demand it, where it sufficiently appears to the Court that he hath a Right to it, in Respect of his being in Orders, &c. In which Case; if the Prisoner does not demand it, it is left to the Discretion of the Judge, whether he will allow it him or not. 2 *Hawk. P. C.* 359. Those who demand the Benefit of Clergy, are to plead, and put themselves upon Trial; but after a Clerk hath put himself upon Trial, and the Inquest are charged with him, some Writers tell us that he may, if he desire it, be admitted to his Clergy before the Jury come back; and shall not forfeit his Goods, unless they find him Guilty. *Ibid.* 358. This Claim of Clergy might formerly be made upon Arraignment, or as soon as the Prisoner was brought to the Bar: Afterwards it could not be claimed till after Conviction, because it is for the Advantage of the King as to the Forfeiture of the Lands and Goods of the Criminal Convict, and for the Advantage of the Party himself to make his Challenges to the Inquest; and perhaps he may be acquitted, and then he will not need this Privilege: After Conviction, it may be allowed as a Favour, though the Party does not claim it; yet others say that the Criminal must claim it. 2 *Inst.* 164, 633. At Common Law, if the Party had not demanded his Clergy before Conviction, he lost it: But in the Time of H. 6. an Alteration was made in the Method of allowing Clergy, viz. That the Party indicted or appealed, was to answer to the Felony, and after Conviction, upon his Demand the Judge to allow him his Clergy; which Course has been ever since observed. *Kel.* 100. Clergy may be demanded after Judgment given against

gainst a Person; whether of Death, &c. And even under the Gallows, if there be a proper Judge there who has Power to allow it. 2 *Hawk.* 357. *Clergy* is never allowed by the Civil Law; so that Pirates, &c. shall not have *Clergy*. 1 *Nelf. Abr.* 449. The Common Law did not deny *Clergy* but in certain Cases; as in High Treason or Sacrilege, where a Person was convicted of Heresy; was a *Turk*, *Jew*, or *Infidel*, &c. Also Women, were not allowed it; but this is altered by Stat. 3 *W. & M.* By Statutes, *Clergy* is denied in a great many Felonies; though it is allowed in all Cases where not expressly taken away: And where *Clergy* is expressly taken away by any Statute, the Offence must be laid in the Indictment to be against that very Statute, and the Words of it, or the Offender shall have his *Clergy*. *Kêl.* 104. H. P. C. 231.

Clergy is taken away by Statutes, in the following Cases: Petit Treason, Murder, Robbing of Churches, Dwelling-Houses, or burning of Dwelling-Houses, Barns, &c. 23 *Hen.* 8. c. 1. 1 *Ed.* 6. &c. Also Accessories to these Crimes, 4 & 5 *P. & M.* Persons guilty of Buggery. 25 *H.* 8. c. 6. Of Horse-stealing, 1 *Ed.* 6. Robbing in Tents or Booths, in Fairs or Markets. 5 & 6 *Ed.* 6. forging of false Deeds or Writings, the second Offence. 5 *Eliz.* c. 14. Taking of Money or Goods privately from the Person of another, without his Knowledge: And if any admitted to *Clergy*, hath before committed any other Offence where *Clergy* is not allowed, he may be tried for such Offence, as though there were no Admission of *Clergy*. 8 *El.* c. 4. Rapes of Women: And Stealing of them having Lands, &c. or being Heirs apparent. 18 *Eliz.* c. 7. 39 *El.* c. 9. Stabbing any Person, if he die of the Wound within six Months; 1 *Jac.* 1. c. 8. Persons convicted of Invocation or Conjuraton of any evil Spirit, using Witchcraft, &c. 1 *Jac.* 1. c. 12. Acknowledging any Fine, Recovery, Deed inrolled, Statute or Recognizance, Bail or Judgment in the Name of another, not privy and consenting; 21 *Jac.* 1. c. 26. Concealing the Death of a Bastard Child, whether born alive or not, 21 *Jac.* 1. cap. 27. Cutting, taking, and stealing away Cloth from the Rack or Tents, in the Night-Time; and purloining or imbezilling Armor, Ordnance, or Habilliments of War, Naval Stores, &c. to the Value of 20*s.* but the Judges may cause such Offenders to be transported. 22 *Car.* 2. c. 5. Cutting out, or disabling the Tongue, putting out an Eye, slitting or cutting off a Nose or Lip, or cutting off any Limb or Member, with a malicious Intent to maim or disfigure. 22 & 23 *Car.* 2. c. 1. Persons who shall rob any Dwelling-House in the Day-time any Person being therein, or shall abet, or command any Person in such Robbery; or to break any Dwelling-House, Shop or Warehouse thereunto belonging, in the Day-time, and feloniously take away any Money or Goods to the Value of 5*s.* although no Person be therein, &c. 3 & 4 *W. & M.* c. 9. if any Person indicted of an Offence for which he would be excluded *Clergy*, shall stand Mute, not answer directly, or challenge peremptorily above 20 Jurors, or shall be outlawed on the Indictment. *Stat. Ibid.* And where any Person hath once had the Benefit of *Clergy*, the Certificate of the Clerk of the Crown, Clerk of the Peace, or of the Assizes, shall be a sufficient Proof. *Ibid.* Forging or Counterfeiting the Seal of the Bank of England, or any Bank-Bills, 7 & 8

W. 3. c. 31. Persons that by Night or Day, in any Shop, Warehouse, Coach-house or Stable, privately steal any Goods or Merchandizes of the Value of 5*s.* although the Shop be not broke, &c. 10 & 11 *W.* 3. c. 23. Setting forth Pirates, assisting or advising any Piracy; or receiving, entertaining or concealing such Pirate, or Vessels, Goods, &c. piratically taken, 11 & 12 *W.* 3. cap. 7. if any Master or Mariner shall cast away, burn or destroy any Ship: Or if any Person shall make a Hole in the Bottom of a Ship, steal any Pump, or do any Thing which tends to the Loss of the Ship. 1 *Ann.* c. 9. 12 *Ann.* c. 18. Where a Person convicted of Theft, shall have Benefit of *Clergy*, and be burnt in the Hand; the Court may commit the Offender to the House of Correction for any Time not under six Months, or above a Year, there to be kept at hard Labour. 5 *Ann.* c. 6. Unlawfully attempting to kill, or assaulting and striking, or wounding any one of the Privy Council, in the Execution of his Office. 9 *Ann.* cap. 16. Forging the common Seal of the South-Sea Company; or forging or counterfeiting any Bond under the Seal of the said Company, or offering to dispose of any counterfeited Bond knowingly. 9 *Ann.* cap. 21. Forging or Counterfeiting any Stamp or Mark on Vellum, Paper, &c. to defraud the Crown of the Duty, or uttering Parchment, &c. with such counterfeit Stamp. 10 *Ann.* c. 19. Forging or Counterfeiting any Lottery Order, or altering the Number, or Sum of such Order. 12 *Ann.* cap. 2. Servants stealing or purloining Goods, &c. of 40*s.* Value from their Masters. But this is not to extend to the Apprentices under 15 Years of Age, who shall rob their Masters, 12 *Ann.* c. 7. If any Persons to the Number of twelve, unlawfully and riotously assembled to the Disturbance of the Peace, required by a Justice of Peace, Mayor, &c. by Proclamation to disperse, continue together an Hour after; or if they obstruct such Proclamation, and then continue an Hour after the same. 1 *Geo.* cap. 5. Soldiers enlisted in his Majesty's Service, exciting or joining in any Mutiny or Sedition, or deserting the Service, &c. 3 *Geo.* c. 2. Forging any Exchequer Bill or Indorsement thereon, or tendering any such counterfeit Bill, or demanding the same to be exchanged for Money knowing thereof. 3 *Geo.* c. 8. If any Person shall be convicted of Grand or Petit Larceny, who by Law would be intitled to *Clergy*, (except Persons receiving or buying stolen Goods) the Court instead of ordering the Offender to be burnt in the Hand or Whipt, may order him to be sent to the Plantations for seven Years, &c. 4 *Geo.* c. 11. Where any Person shall take any Money or Reward for helping another to stolen Goods, unless he cause the Felon to be apprehended, and brought to his Trial, and give Evidence against him. *Ibid.* If any one who shall become a Bankrupt, or any by his Order, shall remove, conceal or imbezil any Goods, whereof he or any Person in Trust for him was possessed or intitled to at the Time of the Bankruptcy, to the Value of 20*l.* or any Books of Account, Bonds, Bills, Notes, Papers, &c. relating thereto. 5 *Geo.* c. 24. Forging, Counterfeiting or altering any Receipt, or Warrant, &c. of the South-Sea Company upon Subscriptions for enlarging their Stock. 6 *Geo.* c. 11. Forging any Lottery Ticket or Certificate, &c. 8 *Geo.* c. 2. Forging or Counterfeiting any Letter of Attorney to transfer or assign any capital Stock, of any Body

Politick or corporate, established by Parliament; or to receive any Annuity, &c. or Forging the Name of any Proprietor; or fraudulently demanding to have any Stock transferred, by Virtue of any forged Letter of Attorney. 8 Geo. c. 22. If any Master of a Ship, &c. shall trade with any Pirate, or furnish him with Stores, Ammunition, &c. or shall combine or confederate with Pirates: Or if any Person belonging to any Ship, forcibly board any other Ship or Vessel, and throw over Board, or destroy any of the Goods, &c. 8 Geo. c. 24. Persons going abroad armed in Masks and Disguises, robbing Forests, Parks, &c. killing or wounding Cattle, shooting at any Persons, or sending threatening Letters to Persons, demanding Money, &c. 9 Geo. c. 22. In all these Instances Clergy is taken away. Vide the Statutes.

Clerico Admittendo, Is a Writ directed to the Bishop, for admitting a Clerk to a Benefice, upon a *Ne admittas* tried and found for the Party that procures the Writ. Reg. Orig. 31. If a Person recover a Benefice, the Patron may have this Writ to the Bishop, tho' the six Months are past, if the Church is void, &c. And this Writ begins thus: *Rex venerabili in Christo Patri, &c. Cum A. B. de, &c. in Curia nostra Recuperasset versus nos Presentationem suam ad vicariam de, &c. vobis Mandamus quod ad Presentat. ipsius A. B. ad vicariam idoneam Personam admittatis, &c.*

Clerico infra factos Ordines constituto, non Eligendo in Officium, Is a Writ directed to those who have thrust a Bailiwick, or other Office, upon one in Holy Orders, charging them to release him. Reg. Orig. 143.

Clerico capto per Statutum Mercatorum, &c. A Writ for the Delivery of a Clerk out of Prison, who is taken and imprisoned upon the Breach of a Statute-Merchant. Reg. Orig. 147.

Clerico convicto commissio Bæ in defectu Ordinarii deliberando, Is an ancient Writ that lay 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. Reg. Orig. 69.

Clerk, (*Clericus*) In the most general Signification, is one that belongs to the Holy Ministry of the Church; under which, where the Canon Law hath full Power, are not only comprehended *Sacerdotes*, and *Diaconi*, but also *Subdiaconi*, *Lectores*, *Acolyti*, *Exorcistæ* and *Ofiarii*: But the Word has been anciently used for a *Secular Priest*, in Opposition to a *Religious* or *Regular*. Paroch. Antiq. 171. And is said to be properly a Minister or Priest, one who his more peculiarly called *in sortem Domini*. Blount.

Clerk, In another Sense denotes a Person who by his Function or Course of Life, practises his Pen in any Court, or otherwise; of which Clerks there are various Kinds, in the several Offices, &c. And Temp. Ed. 1. Johannes Sawell, *Clericus Domini Regis*, was supposed to signify Secretary or Clerk of his Council. Antiq. Nottinghamsh. 317.

Clerk of the Acts, Is an Officer in the Navy-Office, whose Business it is to record all Orders, Contracts, Bills, Warrants, &c. transacted by the Lord High Admiral, or Lords Commissioners of the Admiralty, and Commissioners of the Navy; and is mentioned in the Stat. 16 Car. 2. c. 5. And 22 & 23 Car. 3.

Clerk of the Assize, Is he that writes all Things judicially done by the Justices of Assize in their Circuits. Crompt. Jurisd. 227. This Officer is af-

filiated to the Judge in Commission of Assize, to take Assizes, &c.

Clerk of the Bail, An Officer belonging to the Court of King's Bench. Stat. 22 & 23 Car. 2. He files the Bail-Pieces taken in that Court, and attends for that Purpose.

Clerk of the Check, Is an Officer in the King's Court, so called, because he hath the Check and Controlment of the Yeomen of the Guard, and all other ordinary Yeomen belonging either to the King, Queen, or Prince; giving Leave, or allowing their Absence in Attendance, or diminishing their Wages for the same: He also by himself or Deputy takes the View of those that are to watch in the Court, and hath the Setting of the Watch. 33 H. 8. c. 12. Also there is an Officer of the same Name in the King's Navy at Plymouth, &c. 19 Car. 2. c. 1.

Clerk of the Crown, (*Clericus Corona*) An Officer in the King's Bench, whose Function is to Frame, Read and Record all Indictments against Offenders there arraigned or indicted upon any Publick Crime. He is otherwise termed *Clerk of the Crown Office*, and exhibits Informations, by Order of the Court, for divers Offences. On Informations exhibited in the Crown-Office, for Trespas, Battery, &c. Recognizances are to be entered into of 20 l. Penalty for the Informer to prosecute with Effect, &c. 4 & 5 W. & M.

Clerk of the Crown in Chancery, Is an Officer in that Court who continually attends the Lord Chancellor in Person, or by Deputy: He writes and prepares for the Great Seal, special Matters of State by Commission, or the like, either immediately from his Majesty's Orders, or by Order of his Council, as well Ordinary as Extraordinary, viz. Commissions of Lieutenancy, of Justices of Assize, Oyer and Terminer, Gaol-Delivery, and of the Peace, with their Writs of Association, &c. Also all General Pardons, at the King's Coronation; or in Parliament, where he sits in the Lords House in Parliament Time; and into whose Office the Writs of Parliament, with the Names of Knights and Burgesses elected thereupon, are to be returned and filed. He hath likewise the Making out of all special Pardons; and Writs of Execution upon Bonds of Statute-Staple forfeited, which was annexed to his Office in the Reign of Queen Mary, in Consideration of his chargeable Attendance.

Clerk of the Deliberings, Is an Officer in the Tower of London, who exercises his Office in taking of Indentures for all Stores, Ammunition, &c. issued from thence.

Clerk of the Errors, (*Clericus Errorum*) In the Court of Common Pleas, transcribes and certifies into the King's Bench, the Tenor of the Records of the Cause or Action, upon which the Writ of Error, made by the Curfitor, is brought there to be heard and determined. The Clerk of the Errors in the King's Bench, likewise transcribes and certifies the Records of Causes in that Court into the Exchequer, if the Cause or Action were by Bill: If by Original, the Lord Chief Justice certifies the Record into the House of Peers in Parliament, by taking the Transcript from the Clerk of the Errors, and delivering it to the Lord Chancellor, there to be determined, according to the Statutes. 27 Eliz. cap. 8. and 31 Eliz. c. 1. The Clerk of the Errors in the Exchequer also transcribes the Records, certified thither out of the King's Bench, and prepares them for Judgment in the Court of Exchequer-Chamber, to be gi-

given by the Justices of C. B. and Barons there. *Stat. 16 Car. 2. c. 2. 20 Car. 2. c. 4.*

Clerk of the Effoins, Is an Officer belonging to the Court of *Common Pleas*, who keeps the *Effoin Rolls*; and the *Effoin Roll* is a Record of that Court: He hath the Providing of Parchment, and cutting it out into *Rolls*, marking the Numbers thereon; and the Delivery out of all the *Rolls* to every Officer of the Court; the Receiving of them again, when they are written, and the Binding and Making up the whole Bundles of every Term; which he doth as Servant to the Chief Justice. The Chief Justice of C. B. is at the Charge of the Parchment of all the *Rolls*; for which he is allowed, as is also the Chief Justice of B. R. besides the Penny for the Seal of every Writ of Privilege and Outlawry, the seventh Penny taken for the Seal of every Writ in Court under the Green Wax, or Petit Seal, the said Lord Chief Justices having annexed to their Offices or Places, the Custody of the said Seals belonging to each Court.

Clerk of the Estreats, (*Clericus Extraكتورum*) A Clerk or Officer belonging to the Exchequer, who every Term receives the *Estreats* out of the Lord Treasurer's Remembrancer's Office, and writes them out to be levied for the King: And he makes Schedules of such Sums *estreated*, as are to be discharged.

Clerk of the Hanaper, or *Hamper*, Is an Officer in the Chancery, whose Office is to receive all the Money due to the King, for the Seals of Charters, Patents, Commissions and Writs; as also Fees due to the Officers for inrolling and examining the same. He is obliged to Attendance on the Lord Chancellor daily in the Term-Time, and at all Times of sealing, having with him Leather Bags, 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 Hanaper*, who upon Receipt of them, enters the Effect of them in a Book, &c. This *Hanaper* represents what the Romans termed *Fiscum*, which contained the Emperor's Treasure: And the Exchequer was anciently so called, because in *eo reconderentur Hanapi & intra ceteraque vasa quae in censum & tributum persolvi solebant*; or it may be for that the yearly Tribute which Princes received, was in *Hampers*, or large Vessels full of Money.

Clerk of the Juries, (*Clericus Juratorum*) An Officer belonging to the Court of Common Pleas, who makes out the Writs of *Habeas Corpora* and *Distingas*, for Appearance of *Juries*, either in that Court, or at the Assizes, after the *Fury* or Panel is returned upon the *Venire facias*: He also enters into the *Rolls* the Awarding of these Writs, and makes all the Continuances from the going out of the *Habeas Corpora* until the Verdict is given.

Clerk Controller of the King's House, An Officer in the King's Court, that hath Authority to allow or disallow the Charges and Demands of Purfivants, Messengers of the Green-Cloth, &c. He hath likewise the Oversight of all Defects and Miscarriages of any of the inferior Officers; and hath a Right to sit in the Counting-House, with the superior Officers, *viz.* The Lord Steward, Treasurer, Controller, and Cofferer of the Household, for correcting any Disorders. *Stat. 33 H. 8. c. 12.*

Clerk Marshal of the King's House, An Officer that attends the *Marshal* in his Court, and records all his Proceedings. *33 H. 8. c. 12.*

Clerk of the King's Silver, (*Clericus Argentii Regis*) Is an Officer belonging to the Court of Common Pleas, to whom every Fine is brought after it hath passed the Office of the *Custos Bre-vium*, and by whom the Effect of the Writ of Covenant is entered into a Paper-Book; according to which all the Fines of that Term are recorded in the *Rolls* of the Court. And the Entry is in this Form: *Wils. ff. A. B. dat Domino Regi dimidiam Marcam, &c. pro licentia concordandi cum C. D. pro talibus Terris in, &c. & habet per Chiro-graphum per pacem admissum, &c.* After the King's Silver is entered, it is accounted a Fine in Law, and not before.

Clerk of the King's Great Wardrobe, An Officer of the King's Household, that keeps an Account or Inventory of all Things belonging to the Royal Wardrobe. *Stat. 1 Ed. 4. c. 1.*

Clerk of the Market, (*Clericus Mercati Hospitii Regis*) Is an Officer of the King's House, to whom it belongs to take Charge of the King's Measures, and keep the Standards of them, which are Examples to all Measures throughout the Land; as of Ells, Yards, Quarts, Gallons, &c. Weights, Bushels, &c. And to see that all Measures in every Place be answerable to the said Standard: Of which Office, you may read in *Fleta, lib. 2. cap. 8, 9, 10, &c.* And *Briton* has writ a Treatise of this Matter, which well shews the ancient Law and Practice in this Point: Touching this Officer's Duty, there are also divers Statutes: By *13 R. 2. c. 4.* The Clerk of the Market of the King's House, is to cause false Weights and Measures to be burnt. The *17 Car. 2. c. 19.* Enacts that Clerks of the Market of the King's or Prince's Household, are only to execute their Offices within the Verge; and Head Officers to act in Corporations, &c.

Clerk of the Nichils, or *Nihilis*, (*Clericus Nihilorum*) An Officer of the Court of Exchequer, who makes a Roll of all such Sums as are *nihil*ed by the Sheriffs upon their *Estreats* of Green Wax, and delivers the same into the Lord Treasurer's Remembrancer's Office, to have Execution done upon it for the King. *Stat. 5 R. 2. cap. 13.* *Nihilis* are Issues by Way of Fine or Amercement, &c.

Clerk of the Ordinance, Is an Officer in the Tower, who registers all Orders touching the King's Ordinance.

Clerk of the Outlawries, (*Clericus Utlagarium*) An Officer belonging to the Court of Common Pleas, being the Servant or Deputy to the King's Attorney General, for making out Writs of *Capias Utlagatum*, after Outlawry; the King's Attorney's Name being to every one of those Writs.

Clerk of the Papers, Is an Officer in the Common Pleas; who has the Custody of the Papers of the Warden of the Fleet, enters Commitments and Discharges of Prisoners, delivers out Day-Rules, &c.

Clerk of the Parliament Rolls, (*Clericus Rotulorum Parliamenti*) Is that Person which records all Things done in the High Court of Parliament, and ingrosseth them in Parchment *Rolls*, for their better Preservation to Posterity: Of these there are two, one in the Lords House, and another in the House of Commons.

Clerk

Clerk of the Patents, Or of the Letters Patent under the Great Seal of England; an Office erected 18 Jac. 1.

Clerk of the Peace, (*Clericus Pacis*) Is an Officer belonging to the Sessions of the Peace: His Duty is to read the Indictments, enrol the Proceedings, and draw the Process; he keeps the Counterpart of the Indenture of Armour; records the Proclamation of Rates for Servants Wages; has the Custody of the Register-Book of Licences given to Badgers of Corn; and of Persons licensed to kill Game, &c. And he certifies into the King's Bench, Transcripts of Indictments, Outlawries, Attainders and Convictions, had before the Justices of Peace, within the Time limited: And by Statute, *Clerks of the Peace*, &c. are to certify the Tenor of every Indictment, Outlawry, &c. into B. R. within forty Days under a certain Penalty. Stat. 34 & 35 H. 8. c. 14. And every Clerk of the Peace is to deliver to the Sheriff within twenty Days after Michaelmas yearly, an Estreat of all Fines, &c. 22 Car. 2. The *Custos Rotulorum* of the County hath the Appointment of the Clerk of the Peace, who may execute his Office by Deputy. 37 H. 8. c. 1. And if a Clerk of the Peace misdemeanors himself, the Justices of Peace in Quarter-Sessions have Power to discharge him; and the *Custos Rotulorum* is to chuse another Resident in the County, or on his Default the Sessions may appoint one: The Place is not to be sold, on Pain of forfeiting double the Value of the Sum given, and Disability to enjoy it, &c. Stat. 1 W. & M. Sess. 1. c. 21. The Clerk of the Peace is to register the Estates of Papists, and others not taking the Oaths. 3 Geo.

Clerk of the Pell, (*Clericus Pellis*) Is a Clerk belonging to the Exchequer, whose Office is to enter every Teller's Bill into a Parchment-Roll called *Pellis Receptorum*, and also to make another Roll of Payments, which is termed *Pellis Exitum*; wherein he sets down by what Warrant the Money was paid, mentioned in the Stat. 22 & 23 Car. 2.

Clerk of the Petty-Bag, (*Clericus Parva Baga*) An Officer of the Chancery; of which Sort there are three, and the Master of the Rolls is their Chief. Their Office is to record the Return of all Inquisitions out of every Shire; to make out all Patents of Customers, Gaugers, Controllers, &c. all *Conge d'Eslores* for Bishops; the Summons of the Nobility and Burgessees to Parliament; Commissions directed to Knights, and others of every Shire, for assessing Subsidies and Taxes: All Offices found *Post Mortem* are brought to the Clerks of the Petty-Bag to be filed; and by them are entered all Pleadings of the Chancery concerning the Validity of Patents or other Things which pass the Great Seal; they also make forth *Liberates* upon *Extents* of Statutes-Staple, and Recovery of Recognizances forfeited, and all *Elegits* upon them: And all Suits for or against any privileged Person are prosecuted in their Office, &c.

Clerk of the Pipe, (*Clericus Pipe*) Is an Officer in the Exchequer, who having the Accounts of Debts due to the King, delivered and drawn out of the Remembrancer's Offices, charges them down in the Great Roll, and is called Clerk of the Pipe from the Shape of that Roll, which is put together like a Pipe: He also writes out Summons to the Sheriffs to levy the said Debts upon the Goods and Chattels of the Debtors; and if

they have no Goods, then he draws them down to the Lord Treasurer's Remembrancer, to write Estreats against their Lands. The ancient Revenue of the Crown stands in Charge to him, and he sees the same answered by the Farmers and Sheriffs: He makes a Charge to all Sheriffs of their Summons of the Pipe, and Green Wax, and takes Care it be answered on their Accounts. And he hath the Drawing and Ingrossing of all Leases of the King's Land. In the Reign of King Hen. 6. this Officer was called *Ingrossator Magni Rotuli*. See Stat. 33 H. 8. c. 22.

Clerk of the Pleas, (*Clericus Placitorum*) An Officer in the Court of Exchequer, in whose Office all the Officers of the Court, upon special Privilege belonging unto them, ought to sue or be sued in any Action, &c. In this Office are also prosecuted Actions at Law, by other Persons as well as Officers of the Court; but the Plaintiff ought to be Tenant, or Debtor to the King, or some way accountant to him: The Clerk of the Pleas has under him a great many Clerks, who are Attornies in all Suits commenced or depending in the Exchequer.

Clerk of the Privy Seal, (*Clericus Privati sigilli*) There are four of these Officers which attend the Lord Privy Seal; or if there be no Lord Privy Seal, the Principal Secretary of State, writing and making out all Things that are sent by Warrant from the Signet to the Privy Seal, and which are to be passed to the Great Seal; also they make out Privy Seals, upon a special Occasion of his Majesty's Affairs, as for Loan of Money, and the like. He that is now called Lord Privy Seal, seems to have been in ancient Time called Clerk of the Privy Seal, but notwithstanding to have been reckoned in the Number of the Great Officers of the Realm. 12 R. 2. c. 11. And 27 H. 8. c. 11.

Clerk of the Rules, Is an Officer in the Court of King's Bench, mentioned in 22 & 23 Car. 2. His Office is to look to the Prisoners within the Rules of the King's Bench Prison; make out their Bonds of Surety, and agree with them for the Benefit of the Rules, &c.

Clerk of the Sewers, An Officer belonging to the Commissioners of Sewers, who writes and records their Proceedings, which they transact by Virtue of their Commissions, and the Authority given them by Statute, 13 El. c. 9.

Clerk of the Signet, (*Clericus Signeti*) Is an Officer continually attendant on his Majesty's Principal Secretary, who hath the Custody of the Privy Signet, as well for sealing his Majesty's Private Letters, as such Grants as pass the King's Hand by Bill signed: And of these Officers there are four that attend in their Course, and have their Diet at the Secretary's Table. The Fees of the Clerk of the Signet, and Privy Seal, are limited particularly by Statute, with a Penalty annexed for taking any Thing more. See 27 H. 8. c. 11.

Clerk of the Superseas, An Officer belonging to the Court of Common Pleas, who makes out the Writ of *Superseas*, upon a Defendant's appearing to the Exigent on an Outlawry, whereby the Sheriff is forbidden to return the Exigent.

Clerk of the Treasury, (*Clericus Thesaurarii*) Is an Officer of the Common Pleas, who hath the Charge of keeping the Records of the Court, and makes out all the Records of *Nisi prius*; he hath the Certifying of all Records into the King's Bench, when a Writ of Error is brought; also he makes all Exemplifications of Records being in the Treasury:

And he hath the Fees due for all Searches. He is taken to be the Servant of the Chief Justice, and removeable at Pleasure; whereas all other Officers of the Court are for Life: There is a *Secondary* or *Under-Clerk of the Treasury* for Assistance, who hath some Fees and Allowances: And likewise an *Under-Keeper*, that always keeps one Key of the *Treasury* Door, and the chief *Clerk* of the *Secondary* another; so as the one cannot come in without the other.

Clerk of the Warrants, (*Clericus Warrantorum*) An Officer belonging to the Common Pleas Court, who enters all *Warrants* of Attorney for Plaintiffs and Defendants in Suits; and inrolls all Deeds of Indentures of Bargain and Sale, which are acknowledged in the Court, or before any Judges out of the Court. And it is his Office to estreat into the Exchequer all Issues, Fines and Amerciaments, which grow due to the King in that Court, for which he hath a standing Fee or Allowance.

Cleronimus, An old Word signifying Heir; it is mentioned in *Mon. Angl. Tom. 3. pa. 129.*

Clitones, The Eldest, and all the Sons of Kings: This Word is often met with in ancient Authors. In the Charter of King *Ethelred* — *Ethelstanus Ecbryth, &c. cum Clitonis Epitheto subscribunt.* *Mat. Paris. pa. 158.* — *Ego Edgar, &c. Ego Edmund. Clito Legitimus prefati Regis, &c. Selden's Notes upon Eadmerus.*

Cliffe, **Cliff**. The Names of Places beginning or ending with these Words, signify a Rock, from the old *Saxon*.

Cloere, A Prison or Dungeon, 'tis conjectured from *British* Original: The Dungeon or inner Prison in *Wallingford* Castle, *Temp. H. 2.* was called *Cloere Brien*, i. e. *Carcer Brien*, &c. Hence seems to come the Lat. *Cloaca*, which was anciently the closest Ward or nastiest Part of a Prison: The old *Cloacerius* is interpreted *Carceris Custos*; and the present *Cloacarius*, or Keeper of a *Fakes*, is an Office in some Religious Houses abroad, imposed on some offending Brother, or by him chosen as an Exercise of Humility and Mortification. *Cowel.*

Clotch, Was an unlawful Game, forbidden by *Stat. 17 Ed. 4. c. 3.* and *33 H. 8. c. 9.* It is said to have been the same with our *Nine-Pins*, and is called *Clash-cayls* by the *33 H. 8.* At this Time it is allowed; and is called *Kailes*, or *Kittles*.

Clobe, Is the two and thirtieth Part of a Weigh of Cheese, i. e. eight Pounds. *9 H. 6. c. 8.*

Clough, A Word made use of for Valey, in *Domesday* Book: But among Merchants, it is an Allowance for the Turn of the Scale, on buying Goods Wholesale by Weight. *Lex. Mercat.*

Clunch, In *Staffordshire* upon sinking of a *Coal-Mine*, near the Surface they meet with Earth and Stone, then with a Substance called *Blue Clunch*, and after that they come to *Coal*.

Cluta, (*Fr. Clous*) Shoes, clouted Shoes; and most commonly Horse-Shoes: It also signifies the Strakes of Iron with which Cart-Wheels are shod. *Consuetud. Dom. de Farend. M. S. f. 16.* Hence *Clutarium*, or *Cluarium*, a Forge, or Smith's Shop, where the *Clous* or Iron-Shoes are made or apply'd. — *Tenuit duas Carucas Terræ de Domino Rege, in Capite per tale servitium deferendo Palefridum Domini Regis super quatuor pedes de Cluario Domini Regis quotiescunque ad Manerium suum de Manfield venerit, &c.* *Mon. Angl. Tom. 2. p. 598.*

Clypeus, One of a noble Family: *Clypei Prostrati*, a noble Family extinct. — *Sic nobilis Cly-*

peus ille Marefcallorum tot & tantis Hostibus Angliæ formidabilis evanuit. *Mat. Paris. 463.*

Coach, (*Currus*) A Convenience well known; and for the regulating of Hackney Coaches in London, there are several Statutes. By *9 Ann.* Eight hundred Hackney Coaches, and Two hundred Chairs, are allowed in London and Westminster; which are to be licensed by Commissioners, and pay a Duty to the Crown: And if any Person drive a Hackney Coach without License, he shall forfeit *5l.* and a Chair *40s.* Coachmen and Chairmen, giving abusive Language, or demanding more than their Fare, &c. a Justice of Peace may Order them to pay not exceeding *20s.* to the Poor, and not being able to pay it, send them to the House of Correction; and Persons not paying Coachmen their Fare, or cutting or defacing Coaches, &c. a Justice will order to make Satisfaction, and on Refusal, may bind them over to the Quarter-Sessions: The *1 Geo.* ordains that where Coachmen refuse to go at, or exact more for their Hire than is limited by the Act, they shall forfeit not exceeding *3l.* nor under *10s.* and the Commissioners have Power to determine it. The Fare of Hackney Coachmen in London, or within ten Miles thereof, is *10s.* per Day, allowing 12 Hours to the Day; and by the Hour not above *1s. 6d.* for the First, and *1s.* for every Hour after: And none are obliged to pay above *1s.* for the Use of any Hackney Coach for any Distance, not mentioned in the Act, which is not above one Mile and four Furlongs; nor above *1s. 6d.* for any Distance not exceeding two Miles: The Fare of a Hackney Chair is *1s.* for any Distance not exceeding a Mile; and *1s. 6d.* for any Distance not exceeding a Mile and four Furlongs. There are several Places and Distances mentioned in the Act for the Extent of the respective Fares; and other Distances measured and rated by the Commissioners, in Pursuance of the Statutes. Coachmen are to have Numbers to their Coaches on Tin-Plates, or shall forfeit *5l.* and refusing any Person to take the Number of their Coaches, or giving a wrong Number, incurs the Forfeiture of a Sum not exceeding *40s.* none but licensed Coaches are to ply at Funerals for Hire, under the Penalty of *5l.* Drivers of Hackney Coaches, are to give Way to Persons of Quality, and Gentlemen's Coaches, on the Penalty of *10s.* On Sundays, there are only One hundred and seventy-five Coaches to ply; which are to be appointed by the Commissioners. And there are several Standings of Coaches, at the most noted Parts of the Town; ordered by the Commissioners to be in the Middle of Streets, &c. *Vide 9 Ann. c. 23. 1 Geo. c. 57.*

Coadjutor, (*Lat.*) A Fellow-helper or Assistant; particularly applied to one appointed to assist a Bishop, being grown old and infirm, so as not to be able to perform his Duty.

Coals. The Sack of Coal is to contain four Bushels of clean Coals: And Sea Coals brought into the River Thames, and sold, shall be after the Rate of thirty-six Bushels to the Chaldron; and One hundred and twelve Pounds the Hundred, &c. The Lord Mayor and Court of Aldermen in London, and Justices of the Peace of the several Counties, or three of them, are empowered to set the Price of all Coals to be sold, by Retail; and if any Person shall refuse to sell for such Prices, they may appoint Officers to enter any Wharfs or Places where Coals are kept, and cause the Coals to be sold at the Prices appointed. *7 Ed. 6. c. 7.*

6. c. 7. 16 & 17 Car. 2. ca. 2. Commissioners are ordained for Measuring and Marking the Keels of Boats, &c. for Coals : And there are several Statutes which lay a Duty on Coals ; and relating to the Colliery at New-Castle, &c. 30 Car. 2. 6 & 7 W. 3. 9 & 10 W. 3. 8 & 9 Ann. &c.

Cocherings, An Exaction or Tribute in Ireland, now reduced to chief Rents. See *Bonaght*.

Cocket, (*Cockettum*) Is a Seal belonging to the King's Custom-House : Also a Scroll of Parchment sealed and delivered by the Officers of the Custom-House to Merchants, as a Warrant that their Merchandizes are customed ; which Parchment is otherwise called *Littere de Cocketto*, or *Littere Testimoniales de Cocketto*. 11 H. 6. Reg. Orig. 192, 179. So it is used, 5 & 6 Ed. 6. ca. 14, &c. The Word *Cockettum* or *Cocket*, is likewise taken for the Custom-House or Office where Goods to be transported were first entered, and paid their Custom, and had a *Cocket* or Certificate of Discharge : And *Cockettata Lana* is Wool duly entered and *cocketted*, or authorized to be transported. *Cowel*. *Cocket* is likewise used for a Sort of Measure, as we may read in *Fleta*, lib. 2. cap. 9. *Panis vero integer quadrantalibus frumenti ponderabit unum Cocket & dimidium* : And it is made Use of for a Distinction of Bread, in the Statute of Bread and Ale. 51 H. 3. Where Mention is made of *Wastel-Bread*, *Cocket-Bread*, *Bread of Treet*, and *Bread of Common Wheat* ; the *Wastel-Bread* being what we call now the *finest Bread*, or *French Bread* ; the *Cocket-Bread*, the second Sort of *white Bread* ; *Bread of Treet*, and of common Wheat, *Brown*, or *Household Bread*, &c.

Cocletus, A Boat-man, Cockswain or Coxon. *Cowel*.

Cocula, *Coculum*, A Cogue, or little drinking Cup, in Form of a small Boat, used especially at Sea ; and still retained in a Cogue of Brandy. These drinking Cups are also used in Taverns to drink new Sherry, and other white Wines, which look foul in a Glass.

Codicil, (*Codicillus*, from *Codex* a Book, a Writing) Is a Schedule or Supplement to a Will, where any Thing is omitted, which the Testator would add, or he would explain, alter, or retract what he hath done ; and it is the same with a Testament, but that it is without an Executor : And one may leave behind him only one Testament, but as many *Codicils* as he pleases. *West. Symb.* p. 636. A *Codicil* is taken as Part of the Will ; and the *Codicils* ought to be annexed to the Testament, and the Executor is to see that they are all performed : If the Will or *Codicils* are kept from the Executor, he may force the Party detaining them to deliver them up by the Ecclesiastical Law, and recover them in the Spiritual Court. Some Writers conferring a Testament, and a *Codicil* together, call a Testament a great Will, and a *Codicil* a little one.

Coffra, A Coffer, Chest or Trunk. — *Custos Collegii*, &c. & *Ministri ejusdem non sunt dotati quacunq; dote temporalis seu Spiritualis, vivente fundatore ejusdem ; sed fuerunt stipendarii capientes certam summam pecunie de Cofris dicti fundatoris*. *Munimenta Hospit. SS. Trinit. de Pontefracto*, M. S. fol. 50.

Cofferer of the King's Household, Is a Principal Officer of the King's House next under the Controller, who in the Counting-House, and elsewhere, hath a special Charge and Oversight of other Officers of the Household, to all which he pays their Wages : This Officer passes his Ac-

counts in the Exchequer, and is mentioned in 39 Eliz. c. 7.

Cogs, (*Cogones*) A Kind of Boats or Vessels, used in the Rivers *Ouse* and *Umler*. Stat. 23 H. 8. c. 18.

Coggie, A small fishing Boat, upon the Coasts of *Yorkshire* : It is also called a little *Cogge*, from the old Teuton. *Kogge* a Ship ; whence the Lat. *Coggo*, *Cogga*, &c. Anno 1066. *Preparatis Cogonibus, Galleis, & aliis navibus*, &c. Mar. Paris. And hence the old Lat. *Cogcio*, a wandering and begging Seaman ; and the *Cogiones*, *Cogmen*, or Boatmen, who after Shipwreck or Losses by Sea, travelled about to defraud the People by begging and stealing, are restrained by many civil and good Laws. *Du Fresne*.

Cognitione, A Writ of Cofenage. See *Cofenage*.

Cognisance, (Fr. *Conusance*, Lat. *Cognitio*) Is used diversly in our Law : Sometimes it is an Acknowledgment of a *Fine*, or Confession of a Thing done ; and there is *Cognisance* of taking a *Disseisin* : Sometimes it is the Hearing of a Matter judicially, as to take *Cognisance* of a *Cause* : And sometimes it signifies a Jurisdiction, as *Cognisance of Pleas* is a Power to call a *Cause* or *Plea* out of another Court ; which none can but the King, or by Charter. This *Cognisance* of Pleas is a Privilege granted by the King to a City or Town, to hold *Plea* of all Contracts, &c. within the Liberty of the Franchise ; and when any Man is impleaded for such Matters in the Courts of *Westminster*, the Mayor, &c. of such Franchise may ask *Cognisance* of the *Plea*, and demand that it shall be determined before them : But if the Courts at *Westminster* be possessed of the *Plea* before *Cognisance* is demanded, it is then too late. *Terms de Ley* 178, 179. — *Cognisance* also signifieth the Badge of a Waterman or Servant, which is usually the Giver's *Crest*, whereby he is known to belong to this or that Nobleman or Gentleman.

Cognisor, and **Cognissee**, *Cognisor*, Is he that passeth or acknowledgeth a *Fine* of Lands or Tenements to another ; and *Cognissee* is he to whom the *Fine* of the said Lands, &c. is acknowledged. Stat. 32 H. 8. c. 5.

Cognitiones, Ensigns or Arms, or rather a military Coat painted with Arms. — *Cum viderunt Hostes Christi armis, vexillis & Cognitionibus picturatis*, &c. Mat. Paris. 1250.

Cognitionibus Mittendis, Is a Writ to one of the King's Justices of the Common Pleas, or other that hath Power to take a *Fine*, who having taken the *Fine* defers to certify it, commanding him to certify the same. Reg. Orig. 68.

Cognovit Actionem, Is where a Defendant acknowledges or confesses the Plaintiff's Cause against him to be just and true, and after Issue suffers Judgment to be entered against him without Trial.

Cogware, Is said to be a Sort of coarse Cloaths, made in divers Part of England, of which Mention is made in the 13 R. 2. c. 10.

Cohuagium, A Tribute paid by those who meet promiscuously in a Market or Fair ; *Cohua* signifying a promiscuous Multitude of Men in a Fair or Market. — *Quieti ab omni Theloneo, Passagio, Pontagio, Cohuagio, Pallagio*, &c. Du Cange.

Coif, (*Coifa*) A Title given to Serjeants at Law ; who are called *Serjeants of the Coif*, from the Lawn *Coif* they wear on their Heads under

their Caps, when they are created. The Use of it was anciently to cover *Tonsuram Clericalem*, otherwise called *Corona Clericalis*; because the Crown of the Head was close shaved, and a Border of Hair left round the lower Part, which made it to look like a Crown. *Blount*.

Coin, (*Cuna*, *Pecunia*) Seems to come from the Fr. *Coign*, i. e. *Angulus*, a Corner; whence it has been held, that the ancientest Sort of Coin was square with Corners, and not round as it now is: It is any Sort of Money coined. *Crompt. Jurisd.* 220. *Coin* is a Word collective, which contains in it all manner of the several Stamps and Species of Money in any Kingdom: And this is one of the Royal Prerogatives belonging to every Sovereign Prince, that he alone in his own Dominions may order and dispose the Quantity and Value, and Fashion of his Coin. But the Coin of one King is not current in the Kingdom of another, unless it be at great Loss; though our King by his Prerogative may make any Foreign Coin lawful Money of England at his Pleasure, by Proclamation. *Terms de Ley* 136. If a Man binds himself by Bond to pay One hundred Pounds of lawful Money of Great Britain, and the Person bound, the Obligor, pays the Obligee the Money in French, Spanish, or other Coin, made current either by Act of Parliament, or the King's Proclamation, the Obligation will be well performed. *1 Inst.* 207. But 'tis said a Payment in Farthings, is not a good Payment. *2 Inst.* 517. When a Person has accepted of Money in Payment from another, and put the same into his Purse, it is at his Peril after his Allowance; and he shall not then take Exception to it, notwithstanding he presently reviews it. *Terms de Ley*. By Statute, any Person may break or deface Pieces of Silver Money suspected to be counterfeit or diminished, otherwise than by wearing: But if such Pieces on breaking, &c. are found to be good Coin, it will be at the Breaker's Peril, who shall stand to the Loss of it. *9 & 10 W. 3. ca. 21*. Coins of Gold and Silver are to pass notwithstanding some of them are cracked, or worn; but not if they are clipt. *19 H. 7. cap. 5*. Counterfeiting, Impairing, or Clipping of the King's Coin, is made High Treason. *25 Ed. 3. 14.* and *18 Eliz. cap. 7*. It is also High Treason to make any Stamp, Dye, Mould, &c. for coining, except by Persons imployed in the Mint, &c. Conveying such out of the Mint, is the same; and so is Colouring Metal resembling Coin of Gold or Silver, marking it on the Edges, &c. And if any Persons mix blanch'd Copper with Silver, to make it heavier, and look like Gold, or receive, or pay counterfeit mill'd Money, it is Felony. *8 & 9 W. 3. cap. 26*. The Statutes which ordain mill'd Money to be made, give Liberty to any Person to refuse hammer'd Silver Coin, as not being the lawful Coin of this Kingdom. *9 W. 3. c. 2*. Counterfeiting of the Coin extends only to Gold and Silver Coin; for the Coining of Farthings or Half-pence, or Pieces to go for such, of Copper, incurs a Penalty of 5 l. for every Pound-weight, by Stat. *9 & 10 W. 3. cap. 33*. Persons apprehending Money-Coiners, Clippers, &c. are to have 40 l. Reward; and a guilty Person discovering two others, to be pardoned, &c. *6 & 7 W. 3*. In the seventh Year of King William III. an Act was made for calling in all the old Coin of the Kingdom, and to melt it down and recoin it; the Deficiencies whereof were to be made good at the publick Charge: And in every Hun-

dred-weight coined, 40 l. was to be Shillings, and 10 l. Six-pences, under certain Penalties. Persons bringing Plate to the Mint to be coined, were to have the same Weight of Money delivered out, as an Encouragement; and Receivers General of Taxes, &c. were to receive Money at a large Rate per Ounce. Our Guineas have been raised and fallen, as Money has been Scarce or Plenty, several Times by Statute: And anno 3 Geo. on a Scarcity of Silver Coin, for Remedy, Guineas were sunk to 21 s. at which they now pass by Proclamation. See Money.

Coinage, (*Cunagium*) Is the Stamping and Making of Money, by the King's Authority. And there is a Duty of 10 s. per Ton on Wine, Beer, and Brandy imported, called the *Coinage-Duty*, granted for the Expence of the King's Coinage, not exceeding 3000 l. per ann. Stat. 18 Car. 2. c. 5. See *1 Geo. c. 43. 9 Geo. c. 19*.

Coliberty, (*Coliberti*) Were Tenants in free Socage; and particularly such Villains as were manumitted or made Freemen. *Domesday*. But they had not an absolute Freedom; for though they were better than Servants, yet they had superior Lords to whom they paid certain Duties, and in that Respect they might be called Servants, though they were of middle Condition between Freemen and Servants. — *Libertate carens Colibertus dicitur esse. Du Cange*. They are thought to be the same with *Colonus*.

Collateral, (*Collateralis*) From the Lat. *Leterale*, Sideways, or that which hangeth by the Side, not direct: As *Collateral Assurance* is that which is made over and above the Deed it self: *Collateral Security*, is where a Deed is made of other Lands, besides those granted by the Deed of Mortgage: And if a Man covenants with another, and enters into Bond for Performance of his Covenant, the Bond is a *Collateral Assurance*; because it is external, and without the Nature and Essence of the Covenant. If a Man hath Liberty to pitch Booths or Standings, for a Fair or Market in another Person's Ground; it is *Collateral* to the Ground. The private Woods of a common Person, within a Forest, may not be cut without the King's License; it being a Prerogative *Collateral* to the Soil. And to be subject to the Feeding of the King's Deer, is *Collateral* to the Soil of a Forest. *Crompt. Jurisd.* 185. *Mauwood p. 66*.

Collateral Discent, and Collateral Warranty; See *Discent* and *Warranty*.

Collation of a Benefice, (*Collatio Beneficii*) Signifies the Bestowing of a Benefice by the Bishop, when he hath Right of Patronage. And it differs from Institution in this, that Institution is performed by the Bishop upon the Presentation of another, and Collation is his own Act of Presentation; and it differeth from Presentation, as it is the Giving of the Church to the Parson, and Presentation is the Giving or Offering of the Parson to the Church. But Collation supplies the Place of Presentation and Institution, and amounts to the same as Institution, where the Bishop is both Patron and Ordinary. *1 Lill. Abr.* 273. Anciently the Right of Presentation to all Churches, was in the Bishop; and now if the Patron neglects to present to a Church, then this Right returns to the Bishop by Collation: And if the Bishop neglects to collate within six Months after the Lapse of the Patron, then the Archbishop hath a Right to do it; and if the Archbishop neglects, then it devolves to the King; the

one as Superior, to supply the Defects of Bishops, the other as Supreme, to reform all Defects of Government. As a Bishop may neglect to *collate*, so it may happen that he may make his *Collation* without Title; but such a wrongful *Collation* doth not put the true Patron out of Possession; for after the *Collatee* of the Bishop is instituted and inducted, he may present this Clerk: And *Collation* in this Case, shall be intended only as a provisional Incumbency to perform Divine Service 'till Presentment is made by the true Patron. 1 *Inst.* 344. By *Collation* the Church is not full; and a right Patron may bring his Writ at any Time to remove the Person *collated*; except his Right be likewise to *collate*, when *Plenary* by *Collation* may be pleaded. *Wood's Inst.* 159. Where a Bishop gives a Benefice as *Patron*, he *collates* to it *Jure Pleno*; and when by *Lapse*, he doth it *Jure devoluto*.

Collatione facta uni post Mortem alterius, Is a Writ directed to the Justices of the *Common Pleas*, commanding them to issue their Writ to the 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: For Judgment once passed for the King's Clerk, and he dying before Admission, the King may bestow his Presentation on another. *Reg. Orig.* 31.

Collatione Heremitagii, A Writ whereby the King conferred the Keeping of an *Hermitage* upon a Clerk. *Reg. Orig.* 303, 308.

Collation of Seals. This was when upon the same appending Ribbon or Label, one Seal was set on the Back or Reverse of the other. —

Ad majorem securitatem Premissorum, Sigillum discreti viri Officialis Domini Batho-Well. Episcopi filio medio per modum Collationis, sigillo meo apponi procuravi. Carrular. Abbat. Glaston. M. S. 105.

Collegiate Church, Is that which consists of a Dean and secular Canons; or more largely, it is a Church built and endowed for a Society, or Body Corporate, of a Dean or other President, and secular Priests, as Canons or Prebendaries in the said Church. There were many of these Societies distinguished from the Religious or Regulars, before the *Reformation*: And some are establish'd at this Time; as *Westminster*, *Windsor*, *Winchester*, *Southwell*, *Manchester*, &c.

Collusion, (*Collusio*) Is a deceitful Agreement or Compact between Two, or more, for the One to bring an Action against the other, to some evil Purpose, as to defraud a third Person of his Right, &c. The Statute of *Westm.* 2. 13 Ed. 1. c. 32. gives the Writ *Quale jus*, and Enquiry in such Cases: And there are several other Statutes relating to Deeds, made by *Collusion* and Fraud. The Cases particularly mentioned by the Statute of *Westm.* 2. are of *Quare Impedit*, *Affise*, &c. which any Corporation brings against another, with Intent to recover the Land or Advowson, for which the Writ is brought in *Mortmain*, &c. *Vide* the Statute.

Colonus, An Husbandman or Villager, who was bound to pay yearly a certain Tribute, or at certain Times in the Year to plough some Part of the Lord's Land; and from hence comes the Word *Clown*; who is called by the Dutch *Boor*.

Colour, (*Color*) Signifies a probable Plea, but what is in Fact false; and hath this End, to draw the Trial of the Cause from the Jury to the Judges: And therefore *Colour* ought to be Matter

in Law, or doubtful to the Jury. This *Colour* is used in *Affises*, or Action of *Trespas*; and every *Colour* ought to have these Qualities following: 1. It ought to be doubtful to the Lay-Gents, as in Case of a Deed of *Feoffment* pleaded, and it is a Doubt whether the Land passeth by the *Feoffment*, without *Livery*, or no. 2. *Colour* ought to have Continuance, tho' it wants Effect. 3. It should be such *Colour*, that if it were effectual, would maintain the Nature of the Action; as in *Affise*, to give *Colour* of *Freehold*, &c. 10 *Rep.* 88, 91. *Colour* ought to be such a Thing, which is a good *Colour* of Title, and yet it is not any Title. *Cro. Jac.* 122. The Reason of giving *Colour* in *Trespas* is, for that the Defendant's Plea may not amount to the general Issue. If a Man justifies his Entry for such a Cause as binds the Plaintiff or his Heirs for ever, he shall not give any *Colour*: But if he pleads a Descent in Bar, he must give *Colour*, because this binds the Possession, and not the Right; so that when the Matter of the Plea bars the Plaintiff of his Right, no *Colour* must be given. When the Defendant entitles himself by the Plaintiff; where a Person pleads to the Writ, or to the Action of the Writ; he who justifies for Tithes; or where the Defendant justifies as Servant; in all these Cases no *Colour* ought to be given. 10 *Rep.* 91. *Lutw.* 1343. Where the Defendant doth not make a Special Title to himself, or any other, he ought to give *Colour* to the Plaintiff. *Cro. El.* 76. In *Trespas* for Taking and Carrying away twenty Loads of Wood, &c. the Defendant says, that A. B. was possessed of them, *ut de bonis propriis*, and that the Plaintiff claiming them by *Colour* of a Deed after made, took them, and the Defendant retook them; and adjudged that the *Colour* given to the Plaintiff, makes a good Title to him, and confesseth the Interest in him. 1 *Lil. Abr.* 275. *Colour* is for this Cause, *viz.* Where the Defendant justifies by Title in *Trespas* or *Affise*, if he do not give the Plaintiff *Colour*, his Plea amounteth only to Not guilty; for if the Defendant hath Title, he is not Guilty. 1 *Rep.* 79, 108. *Terms de Ley* 140.

Colour of Office, (*Color Officii*) Signifies an Act evilly done by the Countenance of an Office; and is always taken in the worst Sense, being grounded upon Corruption, to which the Office is as a Shadow and *Colour*. *Plewd. Comment.* 64. See *Extortion*.

Colpices, (*Colpicium*, *Colpiciis*) Young Poles, which being cut down, make Leavers or Lifters; and in *Warwickshire* they are called *Colpices* to this Day. *Blount*.

Colpo, A small Wax-Candle, à Copo de Cere: We read in *Hoveden*, that when the King of Scots came to the *English* Court, as long as he staid there, he had every Day, *De Liberatione triginta sol. & duodecim vassellos Dominicos, & quadraginta grossos longos Colpones de Dominica Candela Regis, &c.* Anno 1194.

Combarones, The Fellow Barons, or Commonalty of the Cinque Ports: King *Hen.* 3. grants to the Barons, or Freemen of the Port of *Feverham*, *quietantiam de omni Thelonio, & Consuetudine, sicut ipsi & antecessores sui, & Combarones sui de Quinque Portibus eam melius & plenius habuerunt tempore Regis Edwardi.* *Placit. temp.* Ed. 1. & Ed. 2. M. S. penes Dom. *Fountain*. The Title of Barons of the Cinque Ports is now restrained from the common Inhabitants, to distinguish their Representatives in Parliament; and the Word

Combaron

Combaron is used for a Fellow Member, the Baron and his *Combaron*.

Comba terræ, or *Cumba terra*, from Sax. *Cumbe*, Brit. *Kum*, Engl. *Comb*, A Valley or low Piece of Ground or Place between two Hills; which is still so called in *Devonshire* and *Cornwall*: Hence many Villages in other Parts of England have their Names of *Comb*, as *Wickcomb*, &c. from their Situation. *Kenet's Gloss*.

Combat, (Fr.) Is taken with us for a formal Trial between the Champions, of a doubtful Cause or Quarrel, by the Sword or Bastons. The last Trial by *Combat* in this Kingdom was Anno 6 Car. 1. between *Donald Lord Rey*, Appellant, and *David Ramsey Esq*; Defendant, both *Scotchmen*, before *Robert Earl of Lindsey*, Lord High Constable, *Thomas Earl of Arundel*, Earl Marshal, with other Lords; when after the Court had met several Times in the Painted Chamber, and Bill, Answer, and Replication were put in by the Parties, and Counsel heard, with other Formalities, it was at last referred to the King's Will and Pleasure, who was inclined to favour *Ramsey*. Co. Lit. 294. Orig. Juridical. fol. 65. See *Battel*.

Combinations To do unlawful Acts, are punishable before the unlawful Act is executed; this is to prevent the Consequence of *Combinations*, and *Conspiracies*, &c. 9 Rep. 57. See *Confederacy*.

Combustio Pecuniæ, The antient Way of Trying mix'd and corrupt Money, by melting it down upon Payments into the Exchequer. In the Time of King Hen. 2. a Constitution was made called the *Trial by Combustion*; the Practice of which differed little or nothing from the present Method of assaying Silver. But whether this Examination of Money by *Combustion*, was to reduce an Equation of Money only of *Sterling*, viz. a due Proportion of Alloy with Copper; or to reduce it to fine pure Silver without Alloy, doth not appear. On making the Constitution of Trial, it was considered, that tho' the Money did answer *Numero & Pondere*, it might be deficient in Value; because mix'd with Copper or Brass, &c. Vide *Lownde's Essay upon Coin*, p. 5.

Comitatus, A County. *Ingulpbus* tells us, That England was first divided into Counties by K. Alfred; and Counties into Hundreds, and these again into Tithings: And *Fortescue* writes, that *Regnum Angliæ per Comitatus ut Regnum Franciæ per Ballivatus distinguitur*. Sometimes it is taken for a Territory or Jurisdiction of a particular Place, as in *Mat. Paris.* anno 1234. *Infra Metas illas continentur quadam prædia & etiam Civitates & Castra, quas Comitatus suo assignare præsumunt*. And in *Charta H. 2. apud Hoveden*: *Castellum de Nottingham cum Comitatu*, &c. And, *De firmis mortuis & debitis, de quibus non est spes, fiat unus Rotulus, & intituletur Comitatus, & legatur singulis Annis super Computum Vicecomitum*. Claus. 12 Ed. 1. See *County*.

Comitatu Commissio, Is a Writ or Commission whereby a Sheriff is authorized to take upon him the Charge of the County. *Reg. Orig.* 295.

Comitatu & Castro Commissio, A Writ by which the Charge of a County, together with the Keeping of a Castle, is committed to the Sheriff. *Reg. Orig. Ibid.*

Comitiva, A Companion or Fellow Traveller; 'tis mentioned in *Brompton*, *Regn. H. 2.* And sometimes it signifies a Troop or Company of Robbers; as in *Walsingham*, Anno 1366. *Interpellave-*

runt auxilium Regis Angliæ contra Magnæ Comitivas, &c.

Commandry, (*Præceptoría*) Was any Manor or Chief Mesuage, with Lands and Tenements thereunto appertaining, which belong'd to the Priory of St. John of Jerusalem in England; and he who had the Government of such a Manor or House was stiled the *Commander*, who could not dispose of it but to the Use of the Priory; and only taking thence his own Sustenance, according to his Degree. *New Eagle* in *Lincolnshire* was and still is called the *Commandry of Eagle*, and did antiently belong to the said Priory of St. John: So *Selbach* in *Pembrokeshire*, and *Shingay* in *Cambridgeshire*, were *Commandries* in the Time of the Knights Templars, says *Camden*: And these in many Places of England are termed Temples; as *Temple Bruere*, in the County of *Lincoln*, *Temple Newsum* in *Yorkshire*, &c. because they formerly belonged to the said Templars. *Stat. 26 Hen. 8. c. 2.* The Manors and Lands belonging to the Priory of St. John of Jerusalem, were given to King Hen. 8. by the Stat. 32 H. 8. about the Time of the Dissolution of Abbies and Monasteries; so that the Name only of these *Commandries* remains, the Power being long since extinct.

Commandment, (*Præceptum*) Is diversly taken; as the *Commandment of the King*, when upon his own Motion, he casts any Man into Prison. *Commandment of the Justices*, Absolute or Ordinary; Absolute, where upon their own Authority they commit a Person for Contempt, &c. to Prison, as a Punishment; Ordinary is when they commit one rather for safe Custody, than for any Punishment: And a Man committed upon such an ordinary *Commandment*, is replevifable. *Staundf. P. C. 72, 73.* Persons committed to Prison by the Special Command of the King, were not formerly replevifable, or bailable by the Court of King's Bench; but at this Day the Law is otherwise declared and settled, as appears under Bail. 2 Hawk. P. C. 96. *Commandment* is also used for the Offence of him that willet another Man to transgress the Law, or to do any Thing contrary to it: And it likewise signifies the Act of a Servant, in any lawful Business, by the express Authority of the Master. In the most common Signification, *Commandment* is taken where one willet another Person to do any unlawful Act; as Murder, Theft, or the like: Which the Civilians call *Mandatum*. *Bract. lib. 3. c. 19.* He that *commandeth* any one to do an unlawful Act, is Accessary to it and all the Consequences, if it be executed in the same Manner as *commanded*: But if the Commander revoke the *Command*; or if the Execution varies from it, or in the Nature of the Offence, in such Case he will not be Accessary. 3 Inst. 51, 57. 2 Inst. 182. If a Man *command* another to commit a Felony on a particular Person, and he doth it on another, as to kill A. and he kills B. or to burn the House of A. and he burn the House of B. or to steal one Thing, and he steals another; or to commit a Felony of one Kind, and he commits another; it is said that the *Commander* is not an Accessary, because the Act done varies in Substance from that which was *commanded*. H. P. C. 217. *Plovd.* 475. But where a Person *commands* or advises another to kill such a one in the Night, and he kills him in the Day; or to kill him in the Fields, and he kills him in the Town; or to poison him, and he stabs or shoots him; these Acts being the same Fe-

lony

lony in Substance with that which was intended, and varying only in Circumstances, in Respect to Time, Place, &c. the *Commander* is as much an Accessary as if there had been no Variance at all between the *Command* and the Execution of it. 2 *Hawk.* 316. If I *command* a Man to rob another, and he kills him in the Attempt, tho' he doth not rob him, I am guilty of the Murder, it being the direct and immediate Effect of an Act done in Execution of my *Command* to commit a Felony. And if the *Command* be to beat a Person, and the Person *commanded* beat him in such a Manner that he dies thereof, I am an Accessary before to the Felony; because it happened in the Execution of a *Command*, which tended to endanger the Life of the other. Also it is said, that if one *command* another to burn the House of a certain Person, and he by Burning it burn likewise the House of another, the *Commander* is equally Accessary to the subsequent Felony, as to that which was directly *commanded*. *Ibid.* 315, 316. To *Command* or Counsel any one to commit Burglary, is Felony without Benefit of Clergy. *Stat.* 3 & 4 *W. & M.* In Forcible Entries, &c. an Infant or Feme Covert may be guilty in Respect of actual Violence done by them in Person; but not in Regard to what shall be done by others at their *Command*, because all such *Commands* of theirs are void. *Co. Litt.* 357. 1 *Hawk.* 147. In Trespas, &c. the Master shall be charged criminal-ly for the Act of the Servant, done by his *Command*: But Servants, &c. shall not be excused for committing any Crime, when they act by *Command* of their Masters; who have no Authority over them to give such *Command*. *Doct. & Stud.* c. 42. *H. P. C.* 66. *Kel.* 13. And if a Master *commands* his Servant to distrain, and he abuses the Distress, the Servant shall answer it to the Party injured, &c. *Kitch.* 372.

Commarchio, The Confines of the Land; from whence probably comes the Word *Marches*. — *Imprimis de nostris Landimeris*, Commarchionibus. *Du Cange*.

Commendam, (*Ecclesia Commendata, vel Custodia Ecclesie alicui commissa*) Is the Holding of a Benefice or Church-Living, which being void, is *commended* to the Charge and Care of some sufficient Clerk, to be supplied until it may be conveniently provided of a Pastor: And he to whom the Church is *commended*, hath the Profits thereof only for a certain Time, and the Nature of the Church is not changed thereby, but is as a Thing deposited in his Hands in Trust, who hath nothing but the Custody of it, which may be revoked. When a Parson is made Bishop, there is a Cession or Voidance of his Benefice by the Promotion; but if the King by Special Dispensation gives him Power to retain his Benefice, notwithstanding his Promotion, he shall continue Parson, and is said to hold it in *Commendam*. *Hob.* 144. *Litch.* 236. As the King is the Means of Avoidances on Promotions to Dignities, and the Presentations thereon belong to him, he often on the Creation of Bishops grants them Licenses to hold their Benefices in *Commendam*; but this is usually where the Bishopricks are small, for the better Support of the Dignity of the Bishop promoted: And it must be always before Consecration; for afterwards it comes too late, because the Benefice is then absolutely void. A *Commendam*, founded on the Statute 25 *H.* 8. is a Dispensation from the supreme Power, to hold or take an Ecclesiastical Living *contra jus Positivum*: And there

are several Sorts of *Commendams*; as a *Commendam Semestris*, which is for the Benefit of the Church without any Regard to the *Commendatory*, being only a provisional Act of the Ordinary, for Supplying the Vacation of six Months, in which Time the Patron is to present his Clerk, and is but a Sequestration of the Cure and Fruits until such Time as the Clerk is presented: A *Commendam Retinere*, which is for a Bishop to retain Benefices, on his Preferment; and these *Commendams* are granted on the King's Mandate to the Archbishop, expressing his Consent, which continues the Incumbency, so that there is no Occasion for Institution. A *Commendam Recipere* is to take a Benefice *de Novo* in the Bishop's own Gift, or in the Gift of some other Patron, whose Consent must be obtained. *Dyer* 228. 3 *Lev.* 381. *Hob.* 143. *Dav.* 79. A *Commendam* may be Temporary, for Six or Twelve Months; Two or Three Years, &c. or it may be perpetual, *i. e.* for Life, when it is equal to a Presentation, without Institution or Induction. But all Dispensations beyond Six Months, were only permissive at first, and granted to Persons of Merit: The *Commendam Retinere* is for one or two Years, &c. and sometimes for Three or Six Years, and doth not alter the Estate which the Incumbent had before: A *Commendam Retinere*, as long as the *Commendatory* should live and continue Bishop, hath been held good. *Vaugh.* 18. The *Commendam Recipere* must be for Life, as other Parsons and Vicars enjoy their Benefices; and as a Patron cannot Present to a full Church, so neither can a *Commendam Recipere* be made to a Church that is then full. *Show.* 414. A Benefice cannot be *commended* by Parts, any more than it may be presented unto by Parts; as that one shall have the Glebe, another the Tithes, &c. Nor can a *Commendatory* have a *Juris Utrum*, or take to him and his Successors, sue or be sued, in a Writ of Annuity, &c. But a *Commenda perpetua* may be admitted to do it. 11 *H.* 4. *Compl. Incumb.* 360. A Dispensation *Recipere & Retinere*, &c. to a Parson is not good after Institution, when the Church is full. 1 *Nelf. Abr.* 454.

Commendatory, (*Commendatarius*) Is he that hath a Church-Living or Preferment in *Commendam*.

Commendatory Letters, Are such as are Writ by one Bishop to another, in Behalf of any of his Clergy, or others of his Diocese, travelling thither, that they may be received among the Faithful; or that the Clerk may be promoted, or Necessaries administered, &c. several Forms of these Letters may be seen in our Historians, as in *Bede*, lib. 2. c. 18.

Commendatus, One that Lives under the Protection of a Great Man. *Spelm.* *Commendati Homines* were Persons who by voluntary Homage put themselves under the Protection of any superior Lord: For ancient Homage was either *Prædial*, due for some Tenure; or *Personal*, which was by Compulsion, as a Sign of necessary Subjection; or voluntary, with a Desire of Protection: And those who by voluntary Homage put themselves under the Protection of any Men of Power, were sometimes called *Homines ejus Commendati*, and sometimes only *Commendati*, as often occurs in *Domesday*. *Commendati dimidii* were those who depended on two several Lords, and were to pay one Half of their Homage to each: And *Sub-Commendati* were such, as like Under-Tenants, were under the Command of those that were

were themselves depending on a superior Lord. Also there were *Dimidii sub-commendati*, who bore a double Relation to such depending Lords. *Domesday*. This Phrase seems to be still in Use, in the usual Compliment, *Commend me to such a Friend*, &c. *Spelm. of Feuds, cap. 20.*

Commerce, (*Commercium*) Traffick, Trade or Merchandize in Buying and Selling of Goods. See *Merchant*.

Commiffary, (*Commissarius*) Is a Title in the Ecclesiastical Law, belonging to one that exerciseth Spiritual Jurisdiction, in Places of a Diocese which are so far from the Episcopal City, as the Chancellor cannot call the People to the Bishop's Principal Consistory Court, without their too great Inconvenience. This *Commiffary* was ordain'd to supply the Bishop's Jurisdiction and Office in the Out-places of the Diocese; or in such Parishes as are Peculiar to the Bishop, and exempted from the Jurisdiction of the Archdeacon: For where, either by Prescription or Composition, Archdeacons have Jurisdiction within their Archdeaconries, as in most Places they have, this *Commiffary* is superfluous and oftentimes vexatious, and ought not to be; yet in such Cases a *Commiffary* is sometimes appointed by the Bishop, he taking Prestation-Money of the Archdeacon yearly *pro exteriori Jurisdictione*, as it is ordinarily called. But this is held to be a Wrong to Archdeacons and the poorer Sort of People. 4 *Inst.* 338. *Cowel*.

Commission, (*Commissio*) Is taken for the Warrant or Letters Patent, which all Men exercising Jurisdiction either ordinary or extraordinary, have to authorize them to hear or determine any Cause or Action: As the *Commission* of the Judges, &c. *Commission* is with us as much as *Delegatio* with the Civilians: And this Word is sometimes extended farther than to Matters of Judgment, as the *Commission of Purveyance*, &c. There was formerly a *High Commission* Court, which was founded on 1 *Eliz. c. 1.* but it was abolished by Act of Parliament 17 *Car. 1. c. 11.* and by 13 *Car. 2. c. 2.* Of *Commissions* you may see divers in the Table of the *Reg. of Writs*.

Commission of Anticipation, Was a *Commission* under the Great Seal to collect a Tax or Subsidy before the Day. 15 *H. 8.*

Commission of Association, Is a *Commission* to associate Two or more learned Persons with the Justices in the several Circuits and Counties of *Wales*. 18 *Eliz. c. 9.*

Commission of Bankrupts. Where any Person is become a Bankrupt within any of the Statutes against Bankrupts, on Security given to prove the Party a Bankrupt, &c. this *Commission* issues from the Lord Chancellor to certain Commissioners appointed to take Order with the Bankrupt's Lands and Goods, for the Satisfaction of the Creditors. *Stat. 34 H. 8. 13 Eliz. c. 7. 1 Jac. 1, &c.*

Commission of Charitable Uses, Goes out of the Chancery to the Bishop and others, where any Lands given to Charitable Uses are misemploy'd, or there is any Fraud or Disputes concerning them, to enquire of and redress the Abuse, &c. 43 *Eliz. c. 4.*

Commission of Delegates, Is a *Commission* under the Great Seal to certain Persons, to sit upon an Appeal to the King in the Court of Chancery, where any Sentence is given in any Ecclesiastical Cause by the Archbishop. *Stat. 25 H. 8. c. 19.*

Commission to enquire of Faults against the Law, Was an antient Commission set forth on extraordinary Occasions and Corruptions.

Commission of Lunacy, A Commission out of Chancery to enquire whether a Person represented to be Lunatick be so or not, that if Lunatick the King may have the Care of his Estate, &c. 17 *Ed. 2. c. 10.*

Commission of Rebellion, Otherwise called a Writ of Rebellion, issues when a Man after Proclamation made by the Sheriff, upon a Process out of the Chancery, on Pain of his Allegiance to Present himself to the Court by a Day assign'd, makes Default in his Appearance: And this Commission is directed to certain Persons, to the End they, Three, Two, or one of them apprehend the Party, or cause him to be apprehended as a *Rebel* and Contemner of the King's Laws, wherefoever found within the Kingdom, and bring or cause him to be brought to the Court on a Day therein assigned: This Writ or Commission goes forth after an Attachment return'd *Non est inventus*, &c. Terms de Ley 144.

Commission of Sewers, Is directed to certain Persons to see Drains and Ditches well kept and maintained in the Marthy and Fenny Parts of *England*, for the better Conveyance of the Water into the Sea, and preserving the Grass upon the Land. *Stat. 23 H. 8. c. 5. 13 Eliz. c. 9.*

Commission of Treaty with Foreign Princes, Is where Leagues and Treaties are made and transacted between States and Kingdoms, by their Embassadors and Ministers, for the mutual Advantage of the Kingdoms in Alliance.

Commission to take up Men for War, Was a Commission to press or force Men into the King's Service.

Commissioner, (*Commissionarius*) Is he that hath a Commission, as Letters Patent, or other lawful Warrant, to execute any Publick Office, &c. As Commissioners of the Treasury, of the Customs, Wine-Licences, Alienations, &c. of which there is an infinite Number.

Committee, Are they to whom the Consideration or Ordering of any Matter is referred, by some Court, or by Consent of Parties to whom it belongs: As in Parliament, a Bill is either consented to and passed, or denied, or neither, but referred to the Consideration of certain Persons appointed by the House farther to examine it, who are thereupon called a *Committee*. And when a Parliament is called, and the Speaker and Members have taken the Oaths, and the standing Orders of the House are read, *Committees* are appointed to sit on certain Days, viz. The Committees of Privileges and Elections, of Religion, of Grievances, of Courts of Justice, and of Trade; which are the standing Committees. But tho' they are appointed by every new Parliament, they do not all of them act, only the Committee of Privileges; and this being not of the whole House, is first called in the Speaker's Chamber, from whence it is adjourned into the House, every one of the House having a Vote therein, tho' not named, which makes the same usually very numerous: And any Member may be present at any select Committee; but is not to vote unless he be named. The Chairman of the Grand Committee, who is always some leading Member, sits in the Clerk's Place at the Table, and writes the Votes for and against the Matter referred to them; and if the Number be equal, he

he has a casting Voice, otherwise he hath no Vote in the Committee; and after the Chairman hath put the Question for Reporting to the House, if that be carried, he leaves the Chair, and the Speaker being called to his Chair, (who quits it in the Beginning, and the Mace is laid under the Table) he is to go down to the Bar, and so bring up his Report to the Table. After a Bill is read a second Time in the House of Commons, the Question is put, whether it shall be committed to a Committee of the Whole House, or a Private Committee; and the Committees meet in the Speaker's Chamber, and report their Opinion of the Bill with the Amendments, &c. And if there be any Exceptions against the Amendments reported, the Bill may be recommitted: Eight Persons make a Committee, which may be adjourned by Five, &c. *Lex Constitutionis* 147, 150. There is a Committee of the King, mentioned in *West's Symb. Tit. Chancery, Sect. 144*. And this hath been used, tho' improperly, for the Widow of the King's Tenant being dead, who is called the Committee of the King, that is, one committed by the antient Law of the Land to the King's Care and Protection. *Kitch. fol. 160*. See *Parliament*.

Commitment, Is the Sending of a Person to Prison by Warrant or Order who hath been guilty of any Crime or Offence; and it may be by the King and Council, by the Judges of the Law, Justices of Peace, and other Magistrates, who have Authority by the Laws and Statutes of the Realm to do it, which must be exactly pursued. Every Commitment to Prison ought generally to be made by Warrant under the Hand and Seal of him that commits the Party; and the Cause of Commitment to be expressed in the Warrant, &c. See *Bail, Imprisonment*.

Commoigne, (Fr.) A Word signifying a Fellow Monk, that Lives in the same Convent. *3 Inst. 15*.

Commonalty, (*Populus, Plebs, Communitas*.) In *Art. super Chartas*, 28 Ed. 1. c. 1. *Tout le Commune d'Engleterre* signifies all the People of England. *2 Inst. 539*. But this Word is generally used for the middle Sort of the King's Subjects, such of the Commons as are raised beyond the ordinary Sort, and coming to have the Managing of Offices, by that Means are one Degree under Burgeses, which are superior to them in Order and Authority; and in Companies incorporated, they are said to consist of Masters, Wardens, and Commonalty, the first Two being the Chief, and the others such as are usually called of the Livery. The ordinary People, and Freeholders, or at best Knights and Gentlemen, under the Degree of Barons, have been of late Years called *Communitas Regni*, or *Tota terra Communitas*; but antiently the Barons and Tenants in Capite, or military Men, were the Community of the Kingdom; and those only were reputed as such in our most antient Histories and Records. *Brady's Gloss. to his Introduct. to Engl. Hist.*

Common, (*Communia, i. e. Quod ad omnes pertinet*) Signifies that Soil whereof the Use is common to this or that Town or Lordship: Or it is a Profit that a Man hath in the Land of another Person, usually in Common with others; or a Right which a Person hath to put his Cattle to pasture into Ground that is not his Own. And there is not only Common of Pasture, but also Common of Fishing, Common of Estovers, Common of Turbary, &c. Common of Pasture is divided into Common in Gross, Common Appendant, Common Appurte-

nant, and Common per Cause de Vicinage. Common in Gross is a Liberty to have Common, without any Land or Tenement in another Person's Land, granted by Deed to a Man and his Heirs, or for Life, &c. *F. N. B. 31, 37. 4 Rep. 50*. Common Appendant is a Right belonging to a Man's arable Land, of putting Beasts commonable into another's Ground. And Common Appurtenant is belonging to an Estate for all Manner of Beasts commonable or not commonable. *4 Rep. 37. Plowd. 161*. Common Appendant and Appurtenant are in a Manner confounded, as appears by *Fitzherbert*; and are there defined to be a Liberty of Common appertaining to or depending on a Freehold; which Common must be taken with Beasts commonable, as Horses, Oxen, Kine, and Sheep; and not of Goats, Hogs, and Geese. But some make this Difference, that Common Appurtenant may be severed from the Land whereto it pertains; but not Common Appendant, which, according to Sir *Edward Coke*, had this Beginning: When a Lord enfeofed another of arable Land, to hold of him in Socage, the Feoffee to maintain the Service of his Plough, had at first, by the Curtesy or Permission of the Lord, Common in his Wastes for necessary Beasts to ear and compost his Land, and that for two Causes; one, for that it was tacitly implied in the Feoffment, by Reason the Feoffee could not till or compost his Land without Cattle, and Cattle could not be sustained without Pasture; so by Consequence the Feoffee had, as a Thing necessary and incident, Common in the Waste and Lands of the Lord: And this may be collected from the antient Books and Statutes: And the second Reason of this Common was, for the Maintenance and Advantage of Tillage, which is much regarded and favoured by the Law. *F. N. B. 180. 4 Rep. 37*. Common per Cause de Vicinage, Common by Reason of Neighbourhood, is a Liberty that the Tenants of one Lord in one Town have to common with the Tenants of another Lord in another Town: It is where the Tenants of two Lords have used Time out of Mind to have Common promiscuously in both Lordships, lying together and open to one another. *8 Rep. 78*. And those that challenge this Kind of Common, which is usually called *Intercommoning*, may not put their Cattle in the Common of the other Lord, for then they are distrainable; but they may turn them into their own Fields, and if they stray into the Neighbour-Common, they must be suffered. *Terms de Ley 146*. The Inhabitants of one Town or Lordship may not put in as many Beasts as they will, but with Regard to the Freehold of the Inhabitants of the other; for otherwise it were no good Neighbourhood, upon which all this depends. *Ibid*. If one Lord encloses the Common, the other Town cannot then common; but tho' the Common of Vicinage is gone, Common Appendant remains. *7 Rep. 5. 4 Rep. 38*. Every Common per Cause de Vicinage is a Common Appendant. *1 Danv. Abr. 799*. Common Appendant is only to antient arable Land; not to a House, Meadow, Pasture, &c. It is against the Nature of Common Appendant, to be appendant to Meadow or Pasture: But if in the Beginning Land be arable, and of late a House hath been built on some Part of the Land, and some Acres are employ'd to Meadow and Pasture, in such Case it is appendant; tho' it must be pleaded as appendant to the Land, and not to the House, Pasture, &c. *1 Nelf. Abr. 457*. Common Appendant is of Common Right; but it is not

Common Appendant, unless it has been appendant Time out of Mind. 1 *Danv.* 746. It may be upon Condition; be for all the Year, or for a certain Time; or for a certain Number of Beasts, &c. by Usage: Tho' it ought to be for such Cattle as plough and compost the Land, to which it is appendant. *Ibid.* 797. *Magna Averia* are Horses, Oxen, &c. all Manner of Cattle except Sheep and Yearlings. 2 *Roll. Rep.* 173. *Common Appendant* may be to *Common* in a Field after the Corn is sever'd, 'till the Ground is resown: So it may be to have *Common* in a Meadow after the Hay is carried off the same 'till *Candlemas*, &c. *Yelv.* 185. This *Common*, which is in its Nature without Number, by Custom may be limited as to the Beasts: *Common Appurtenant* ought always to be for those *Levant and Couchant*, and may be *Sans Number*. *Plowd.* 161. A Man may prescribe to have *Common Appurtenant* for all Manner of Cattle, at every Season in the Year. 25 *Aff.* 8. *Common* by Prescription for all Manner of *commonable* Cattle as belonging to a Tenement, &c. must be for Cattle *Levant and Couchant* upon the Land, (which is so many as the Land will maintain) or it will not be good: And if a Person grants *common sans Number*, the Grantee cannot put in so many Cattle, but that the Grantor may have sufficient *Common* in the same Land. 1 *Danv. Abr.* 798, 799. He who hath *Common Appendant* or *Appurtenant*, can keep but a Number of Cattle proportionable to his Land; for he can *common* with no more than the Lands to which his *Common* belongs is able to maintain. 3 *Salk.* 93. *Common Appurtenant* may be to a House, Pasture, &c. tho' *Common Appendant* cannot; but it ought to be prescribed for, as against *Common Right*: And un*commonable* Cattle, as Hogs, Goats, &c. are *appurtenant*: This *Common* may be created by Grant at this Day; so may not *Common appendant*. 1 *Inst.* 122. 1 *Roll. Abr.* 398. If a Man grant *Common* to another in Land wherein he hath nothing, if he afterwards purchases the Land, this shall be a good *Common appurtenant*: And it is not necessary that he should have the Land at the Time of the Grant. 1 *Danv.* 800. If A. hath *Common* in the Lands of B. as *appurtenant* to a Messuage, and after B. enfeoffs A. of the said Lands, whereby the *Common* is extinguished; and then A. leases to B. the said Messuage and Lands, with all *Commons*, &c. *Occupat vel usitat cum pred. Messuagio*, this is a good Grant of a new *Common* for the Time. *Cro. Eliz.* 570. Where a Person purchases Part of the Land wherein he hath *Common*, the whole *Common* is extinct and gone. *Cro. Eliz.* 594. If several Persons are severally seised of several Parts of a *Common*, and a *Commoner* purchases the Inheritance of one Part, his entire *Common* is extinct. 1 *And.* 159. When a Man hath *Common Appendant* for a certain Number of Cattle, and to a certain Parcel of Land, if he sell Part of it, the *Common* is not extinguished: But 'tis otherwise in *Common Appurtenant*. 1 *Nels.* 460. *Common Appurtenant* for a certain Number of Beasts may be granted over. 1 *Danv.* 802. A Man may use *Common Appurtenant* to his Manor with Cattle which are for his Household; tho' it is said he cannot use it with Cattle which are to sell. *Ibid.* Lords of Manors may depasture in *Commons* where their Tenants put in Cattle; and a Prescription to exclude the Lord is against Law. 1 *Inst.* 122. The *Commoner* cannot use *Common* but with his own proper Cattle: But if he hath

not any Cattle to manure the Land, he may borrow other Cattle to manure it, and use the *Common* with them; for by the Loan, they are in a Manner made his own Cattle. 1 *Danv.* 798. Grantee of *Common Appurtenant*, for a certain Number of Cattle, cannot *common* with the Cattle of a Stranger: He that hath *Common in Grofs*, may put in the Cattle of a Stranger, and use the *Common* with such Cattle. *Ibid.* 803. *Common Appendant* or *Appurtenant* can't be made *Common in Grofs*: And *Approvement* extends not to *Common in Grofs*. 2 *Inst.* 86. The Lord may agist the Cattle of a Stranger in the *Common*, by Prescription: And he may licence a Stranger to put in his Cattle, if he leaves sufficient Room for the *Commoners*. 1 *Danv.* 795. 2 *Mod.* 6. Also the Lord may surcharge, &c. an Overplus of the *Common*: And if, where there is not an Overplus, the Lord surcharges the *Common*, the *Commoners* are not to distrain his Beasts; but must commence an Action against the Lord. *F. N. B.* 125. But it is said, if the Lord of the Soil put in Cattle into a Close, contrary to Custom, when it ought to lie fresh, a *Commoner* may take the Cattle Damage-feasant: Otherwise it is a general Rule that he cannot distrain the Cattle of the Lord. 1 *Danv.* 807. A *Commoner* may distrain Beasts put into the *Common* by a Stranger, or every *Commoner* may bring Action of the Case, where Damage is received. 9 *Rep.* 112. But one *Commoner* cannot distrain the Cattle of another *Commoner*, tho' he may those of a Stranger, who hath no Right to the *Common*. 2 *Lutw.* 1238. The Lord may distrain where the *Common* is surcharged; and bring Action of Trespas for any Trespas done in the *Common*. 9 *Rep.* 113. Where a *Commoner* surcharges the *Common*, the other *Commoners* may have a Writ of *Admeasurement*; and *Admeasurement* is to be according to the Quality and Quantity of the Freehold, and for all the Cattle which are upon the Land. It lies only by one *Commoner* against another; and not against a *Commoner sans Number*; nor against the Lord, in which Case there must be an *Affise*. 1 *Danv.* 809. If a Man be disseised of his *Common*, he shall have an *Affise*. *New Nat. Br.* 399. If any *Commoner* incloses, or builds on the *Common*, every *Commoner* may have an Action for the Damage. Where Turf is taken away from the *Common*, the Lord only is to bring the Action: But 'tis said the *Commoners* may have an Action for the Trespas, by entering on the *Common*, &c. 1 *Roll. Abr.* 89, 398. 2 *Leon.* 201. A *Commoner* cannot dig Clay on the *Common*, which destroys the Grass, and carrying it away doth Damage to the Ground; so that the other *Commoners* can't enjoy the *Common in tam amplo modo* as they ought. *Godb.* 344. Also a *Commoner* may not cut Bushes, dig Trenches, &c. in the *Common*, without a Custom to do it. 1 *Nels.* 462. If he makes any Thing *de novo*, he is a Trespasser: He can do nothing to impair the *Common*; but may reform a Thing abused, fill up Holes, dig down Mole-hills, &c. for Improvement. 1 *Brownl.* 208. A Lord may make a Pond on the *Common*: But the Lord cannot dig Pits for Gravel or Coal; the Statutes of *Approvement* being only by Inclosure. 3 *Inst.* 204. 1 *Sid.* 106. If the Lord make a Warren on the *Common*, the *Commoners* may not kill the Conies; but are to bring their Action, for they may not be their own Judges. 1 *Roll.* 90, 405. The Property of the Soil in the *Common* is entirely in the Lord; but the Use of it, jointly in him and the

the *Commoners*. No *Commoner* can take the Grass that grows on the *Common*, otherwise than by depasturing it; nor can he meddle with the Soil: But if the Owner of the Soil set up a Hedge on the *Common*, the *Commoner* may throw it down. 15 H. 7. A *Commoner* may abate Hedges erected on a *Common*; for tho' the Lord hath an Interest in the Soil, by abating the Hedges, the *Commoner* doth not meddle with it. 2 Mod. 65. By Statute, Lords may approve against their Tenants, viz. inclose Part of the Waste, &c. and thereby discharge it from being *Common*, leaving *Common* sufficient; and Neighbours as well as Tenants claiming *Common* of Pasture, shall be bound by it. 20 H. 3. c. 4. If the Lord encloses on the *Common*, and leaves not *Common* sufficient, the *Commoners* may not only break down the Inclosures; but may put in their Cattle, although the Lord ploughs and sows the Land. 2 Inst. 88. 1 Roll. Abr. 406. Upon Agreement between two *Commoners* to enclose a *Common*, a Party having Interest not privy to the Agreement, will not be bound, but one or Two wilful Persons shall not hinder the publick Good. Chanc. Rep. 48. *Commons* must be driven yearly; infected Horses, and Stone-Horses under Size, &c. are not to be put into *Commons*, by Stat. 32 H. 8. c. 13. New erected Cottages, tho' they have four Acres of Ground laid to them, ought not to have *Common* in the Waste. 2 Inst. 740. In Law Proceedings, where there are two distinct *Commons*, the two Titles must be shewn: Cattle are to be alledged *commonable*; and *Common* ought to be in Lands *commonable*. And the Place is to be set forth where the Messuage and Lands lie, &c. to which the *Common* belongs. 1 Nelf. Abr. 462, 463.

Common of Estovers, Is a Right of taking Wood out of another Man's Woods; for House-bote, Plough-bote, and Hay-bote. What Botes are necessary, Tenants may take, notwithstanding no Mention be made thereof in their Leases: But if the Tenant take more House-bote than is needful, he may be punished for Waste. *Terms de Ley* 387, 396. Tenants for Life may take upon the Land demised reasonable Estovers, unless restrained by Special Covenant: And every Tenant for Years hath three Kinds of Estovers incident to his Estate. 1 Inst. 41. When a House having Estovers appendant or appurtenant, is blown down by Wind, if the Owner rebuilds it in the same Place and Manner as before, his Estovers shall continue: So if he alters the Rooms and Chambers, without making new Chimneys; but if he erect any new Chimneys, he will not be allowed to spend any Estovers in such new Chimneys. 4 Rep. 87. 4 Leon. 383. In all Cases where the Alterations to a House do no Prejudice to the Tertenant or Owner of the Land or Wood, the Estovers will remain. 4 Rep. 87.

Common of Piscary, Is a Liberty of Fishing in another Man's Water. *Common of Piscary* to exclude the Owner of the Soil, is contrary to Law: But a Person by Prescription may have a separate Right of Fishing in such Water, and the Owner of the Soil be excluded; for a Man may grant the Water, without passing the Soil. And if one grant *Separalem Piscariam*, neither the Soil nor the Water pass, but only a Right of Fishing. 1 Inst. 4, 122, 164. 5 Rep. 34. No Person shall fish in any River without the Owner's Consent, under Penalties. And Nets, Angles, &c. shall be seized and destroy'd, by Stat. 22 & 23 Car. 2. c. 25. Fish are not to be taken or sold

under certain Sizes. 1 Geo. c. 16. See *Fish and Fishing*.

Common of Turbary, Is a License to dig Turf upon the Ground of another, or in the Lord's Waste. This *Common* is appendant or appurtenant to an House, not to Land; for Turfs are to be burnt in the House: And it may be in *Gross*; but it does not give any Right to the Land, Trees, or Mines. It cannot exclude the Owner of the Soil. 1 Inst. 4. 4 Rep. 37.

There's *Common* or Liberty of digging Coals, Gravel, Sand, &c. as well as Turf.

Common Bench, (*Bancus Communis*, from the Sax. *Banc*, Bank, and thence metaphorically a Bench, high Seat or Tribunal). The Court of *Common Pleas* was antiently called *Common Bench*, because *Communia Placita inter subditos ex jure nostro, quod Commune vocant, in hoc disceptantur*: That is, the Pleas or Controversies between common Persons are there tried and determined. Camb. Britan. 113. In Law-Books and References the Court of *Common Pleas* is writ C. B. from *Communi Banco*. And the Justices of that Court are stiled *Jusficiarii de Banco*. See *Common Pleas*.

Common Day in Plea of Land, Signifies an ordinary Day in Court, as *Ostabis Hillarii, Quindena Pasche*, &c. It is mentioned in 13 R. 2. Stat. 1. c. 17. And in the Statute 51 Hen. 3. concerning general Days in Bank.

Common Fine, (*Finis Communis*) Is a small Sum of Money, which the Reliants within the Liberty of some Lects pay to the Lords, called in divers Places *Head-Silver* or *Head-pence*, in others *Cert-Money*; and was first granted to the Lord, towards the Charge of his Purchase of the *Court-Lect*, whereby the Reliants have the Ease to do their Suit within their own Manors, and are not compellable to go to the *Sheriff's Turn*: In the Manor of *Sheaphead* in the County of *Leicester*, every Reliant pays 1d. per Poll to the Lord at the Court held after *Michaelmas*, which is there called *Common Fine*. For this *Common Fine* the Lord may distrain; but he cannot do it without a Prescription. 11 Rep. 44. There is also *Common Fine of the County*. — *Quod Communes Misericordie, vel Fines Comitatum amerciatorum in Finibus itinerum Jusficiariorum*, &c. Fleta, lib. 7. c. 48. See Stat. 3 Ed. 1. c. 18.

Commons House of Parliament, Is the Lower House of Parliament, so called, because the *Commons* of the Realm, that is, the Knights, Citizens, and Burgeesses return'd to Parliament, representing the whole Body of the Commons, do sit there. *Crompt. Jurisd.* See *Parliament*.

Common Intendment, Is common Meaning or Understanding, according to the Subject Matter, not strain'd to any extraordinary or foreign Sense: *Bar to Common Intendment* is an ordinary or general Bar, which commonly disables the Plaintiff's Declaration. There are several Cases in the Law where *Common Intendment*, and Intendment take Place: And of *Common Intendment*, a Will shall not be suppos'd to be made by Collusion. Co. Lit. 78.

Common Law, (*Lex Communis*) Is taken for the Law of this Kingdom, simply, without any other Laws; for such Laws as were generally holden before any Statute was enacted in Parliament to alter them: And for the King's Courts of Justice, called the *Common Law Courts*. The *Common Law* is grounded upon the general Customs of the Realm; and includes in it, the Law of Nature, or of Reason, the Law of God, and

the Principles and Maxims of the Law: It is founded upon Reason; and is said to be the Perfection of Reason, acquired by long Study, Observation and Experience, and refined by Learned Men in all Ages. And it is the common Birth-right, that the Subject hath for the Safe-guard and Defence, not only of his Goods, Lands, and Revenues; but of his Wife and Children, Body, Fame, and Life also. *Co. Lit.* 97, 142. *Treatise of Laws*, p. 2. See my *Common Law Common-plac'd*, p. 110. As to the Rise of the Common Law, this Account is given by some antient Writers: After the Decay of the Roman Empire, three Sorts of the German People invaded the Britons, viz. the Saxons, the Angles, and the Jutes; from the last sprung the Kentish Men, and the Inhabitants of the Isle of Wight; from the Saxons came the People called East, South and West Saxons; and from the Angles, the East-Angles, Mercians and Northumbrians: These People having different Customs, they inclined to the different Laws by which their Ancestors were governed; but the Customs of the West-Saxons and Mercians, who dwelt in the Midland Counties, being preferred before the rest, were for that Reason called *Jus Anglorum*; and by these Laws those People were govern'd for many Ages: But the East-Saxons having afterwards been subdued by the Danes, their Customs were introduc'd, and a third Law was substituted, which was called *Dane-Lage*; as the other was stiled *West-Saxon Lage*, &c. At length the Danes being overcome by the Normans, William called the Conqueror, upon Consideration of all those Laws and Customs, abrogated some, and establish'd others; to which he added some of his own Country Laws, which he judg'd most to conduce to the Preservation of the Peace: And this is what we now call the Common Law. But tho' we usually Date the Common Law from hence, this was not the Original of the Common Law; for *Ethelbert*, the first Christian King of this Nation, made the first Saxon Laws, which were published by the Advice of some Wise Men of his Council: And King *Alfred*, who lived 300 Years afterwards, being the first sole Monarch after the Heptarchy, collected all the Saxon Laws into one Book, and commanded them to be observed thro' the whole Kingdom, which before only affected certain Parts thereof; and it was therefore properly called the Common Law, because it was Common to the whole Nation; and soon after it was called the *Folk Right*, i. e. the People's Right. *Alfred* was stiled *Anglicarum Legum Conditor*: And when the Danes had introduc'd their Laws, on the Conquest of the Kingdom, they were afterwards destroy'd; and *Edward the Confessor* out of former Laws compos'd a Body of the Common Law; wherefore he is called by our Historians *Anglicarum Legum Restitutor*. *Blount*. In the Reign of *Edw. 1.* *Britton* wrote his learned Book of the Common Law of this Realm, which was done by the King's Command, and runs in his Name, answerable to the Institutions of the Civil Law which *Justinian* assumes to himself, tho' compos'd by others. *Staundf. Prerog.* 6, 21. This *Britton* is mentioned by *Gavin* to be Bishop of Hereford. *Bracton*, a great Lawyer, in the Time of *Hen. 3.* wrote a very learned Treatise of the Common Law of England, held in great Estimation; and is said to be Lord Chief Justice of the Kingdom. And the famous and learned *Glanvil*, Lord Chief Justice in the Reign of *Hen. 2.* writ a Book of the Common Law, which is said to be the most antient Com-

position extant on that Subject. Besides these, in the Time of King *Ed. 4.* the renowned Lawyer *Littleton* wrote his excellent Book of *English Tenures*. In King *James the First's* Reign, the great Oracle of the Law, *Sir Edward Coke*, published his learned and laborious *Institutes* of our Law, and Commentaries on *Littleton*. About the same Time likewise *Dr. Cowel*, a Civilian, wrote a short Institute of our Laws. And in the Reign of King *George*, *Dr. Tho. Wood*, a Civilian and Common Lawyer, and at last *Divine*, wrote an Institute of the Laws of England, which is something after the Manner of the Institutes of the Civil Law.

Common Pleas, (*Communia Placita*) Is one of the King's Courts now constantly held in *Westminster-Hall*; but in antient Time moveable, as appears by *Magna Charta*, c. 11. *Gwyn*, in the Preface of his Readings, says, That 'till *Hen. 3.* granted the Great Charter there were but two Courts, called the King's Courts, viz. The King's Bench and the Exchequer, which was then stiled *Curia Domini Regis*, and *Aula Regis*, because they followed the Court or King; and that upon the Grant of that Charter, the Court of Common Pleas was erected and settled in one certain Place, i. e. *Westminster-Hall*; and after that, all the Writs ran *Quod sit coram Justiciariis meis apud Westm.* whereas before, the Party was required by them to appear, *Coram me vel Justiciariis meis*, without any Addition of Place, &c. as he observes out of the Writings of *Glanvil* and *Bracton*. But *Sir Edw. Coke* is of Opinion, in his Preface to the eighth Report, that the Court of Common Pleas was constituted before the Conquest; and was not created by *Magna Charta*, at which Time there were *Justiciarii de Banco*, &c. Tho' before this Act, Common Pleas might have been held in *Banco Regis*; and all original Writs were returnable there. Writs returnable in this Court, are now *coram Justiciariis nostris apud Westm.* But Writs returnable in *B. R.* are, *coram nobis ubicunque fuerimus in Anglia*. The Jurisdiction of this Court is general, and extends it self throughout England: It holds Plea of all Civil Causes at Common Law, between Subject and Subject, in Actions real, personal, and mix'd; and it seems to have been the only Court for Real Causes. In personal and mix'd Actions it hath a concurrent Jurisdiction with the King's Bench: But it hath no Cognizance of Pleas of the Crown; and Common Pleas are all Pleas that are not such. This Court cannot regularly hold Plea in any Action, real or personal, &c. but by Writ out of Chancery returnable here; except it be by Bill for or against an Officer, or other privileged Person of the Court. All Actions belonging to this Court, come hither either by Original, as Arrests and Outlawries; or by Privilege or Attachment, for or against privileged Persons; or out of inferior Courts, not of Record, by *Pone*, *Recordare*, *Accedas ad Curiam*, *Writ of False Judgment*, &c. Actions Popular, and Actions Penal, as of Debt, &c. upon any Statute, are cognizable by this Court: And besides having Jurisdiction for Punishment of its Officers and Ministers; the Court of Common Pleas may grant Prohibitions to keep Temporal and Ecclesiastical Courts within due Bounds. *4 Inst.* 99, 100, 118. In this Court are four Judges, created by Letters Patent; of whom the Chief Justice is a Lord by his Office: The Seal of the Court is committed to the Custody of the Chief Justice. The other Officers of the Common Pleas are,

are, the *Custos Brevium*, three *Prothonotaries* and their *Secondaries*, the Clerk of the *Warrants*, Clerk of the *Effoins*, fourteen *Filizers*, four *Exigents*, a Clerk of the *Furies*, the *Chirographer*, Clerk of the *King's Silver*, the Clerk of the *Treasury*, Clerk of the *Seal*, of *Outlawries*, and the Clerk of the *Involment of Fines and Recoveries*, Clerk of the *Errors*, &c. The *Custos Brevium* is the Chief Clerk in this Court, who receives and keeps all Writs returnable therein; and all Records of *Nisi Prius*, which are delivered to him by the Clerks of the Assise of every Circuit, &c. and he files the Rolls together, and carries them into the Treasury of Records: He also makes out Exemptions, and Copies of all Writs and Records, &c. The *Prothonotaries* enter and enrol all Declarations, Pleadings, Judgments, &c. and they make out all judicial Writs, Writs of Execution, Writs of Privilege, *Procedendo's*, &c. The *Secondaries* are Assistants to the *Prothonotaries* in the Execution of their Offices; and they take Minutes, and draw up all Orders and Rules of Court. The *Filizers*, who have the several Counties of England divided among them, make out all mesne Process, as *Capias*, *Alias*, *Pluries*, &c. between the Original Writ, and the Declaration; and they make all Writs of View &c. The *Exigents*, appointed for several Counties, make out all Exigents and Proclamations in order to Outlawry. For the Clerk of the *Effoins*, the *Furies*, *Warrants*, and other Clerks of this Court, *vide verb.* Clerk, &c. And to the above Officers may be added, a *Proclamator* of the Court; a *Keeper* of the Court; *Cryer*; and *Tipstiffs*; besides the *Warden of the Fleet*. There are also *Attornies* of this Court, whose Number is unlimited; and none may plead at the Bar of the Court, or sign any special Pleadings, but *Serjeants* at Law.

Common Prayer, (*Preces Publice*) Is the Liturgy or Prayers used in our Church. It is the particular Duty of Clergymen every Sunday, &c. to use the publick Form of Prayer prescribed by the *Book of Common Prayer*: And if any Incumbent be Resident upon his Living, as he ought to be, and keep a Curate, he is obliged by the *Act of Uniformity* once every Month at least, to read the *Common Prayers* of the Church, according as they are directed by the *Book of Common Prayer*, in his Parish Church, in his own Person, or he shall forfeit 5*l.* for every Time he fails therein. *Stat. 14 Car. 2. c. 4.* Also by that Statute the *Book of Common Prayer* is to be provided in every Parish, under the Penalty of 3*l.* a Month: And the *Common Prayer* is to be read before every *Lecture*; the Whole appointed for the Day, with all the Circumstances, and Ceremonies, &c. And by one of the *Canons of the Church*, Ministers before all *Sermons*, are to move the People to join in a short Prayer, for the Catholic Church; and the whole Congregation of Christian People, &c. for the King and Royal Family; the Ministers of God's Word, Nobility, Magistrates, and whole Commons of the Realm, &c. and conclude with the Lord's Prayer. *Can. 55.* Refusing to use the *Common Prayer*; or using any other open Prayers, &c. is punishable by *Stat. 1 Eliz. c. 2.* See Church.

Commorance, (*Commorantia*, from *Commoro*) An Abiding, Dwelling or Continuing in any Place; as an Inhabitant of a House in a Vill, &c. And *Commorancy* for a certain Time, may make a Settlement in a Parish. *Dalt.* See Poor.

Commonth, or *Comoth*, (*Comortha*) From the Brit. *Cymmorth*, i. e. *Subsidium*; a Contribution which was gathered at Marriages, and when young Priests said or sung their first Masses, &c. 4 *Hen. 4. cap. 27.* But the 26 *H. 8. cap. 6.* prohibits the Levying any such in *Wales*, or the *Marches*, &c.

Commote, In *Wales* is Half a *Cantred* or Hundred, containing fifty Villages. *Stat. Wallie. 12 Ed. 1.* *Wales* was anciently divided into three Provinces; *North-Wales*, *South-Wales* and *West-Wales*; and each of these were again subdivided into *Cantreds*, and every *Cantred* into *Commotes*. *Dodrige's Hist. Wal. f. l. 2.* And *Brecknockshire* is found to have three *Cantreds*, and eight *Commotes*. *Commote* also signifies a great Seigniorship or Lordship, and may include one or divers Manors. *Co. Lit. 5.*

Communance. The Commoners, or Tenants and Inhabitants, who had the Right of *Common*, or Commoning in open Fields, &c. were formerly called the *Communance*. *Cowel.*

Commune Concilium Regni Angliæ, The Common Council of the King and People assembled in Parliament.

Communia placita non tenenda in Scaccario, Is a Writ directed to the Treasurer and Barons of the Exchequer, forbidding them to hold Plea between common Persons in that Court, where neither of the Parties belong to the same. *Reg. Orig. 187.*

Communi Custodia, A Writ which anciently lay for the Lord, whose Tenant holding by Knights-Service died, and left his eldest Son under Age, against a Stranger that entered the Land, and obtained the Ward of the Body. *F. N. B. 89. Reg. Orig. 161.* Since the *Stat. 12 Car. 2. c. 24.* hath taken away Wardships, this Writ is become of no Use.

Communication, (*Communicatio*) A Taking, Consultation or Conferring with, where there is only a Discourse between two or more, without coming to any Agreement. *Blount.*

Companage, (*Fr.*) Is all Kind of Food, except Bread and Drink: And the learned *Spelman* interprets it to be *Quicquid cibi cum pane sumitur*. In the Manor of *Feskerton* in the County of *Nottingham*, some Tenants when they performed their Boons or Work-days to their Lords, had three Boon Loaves with *Companage* allowed them. *Reg. de Thurgarton* cited in *Antiq. Nottingham.*

Companion of the Garter, Is one of the Knights of that most noble Order; at the Head of which is the King, as Sovereign. 24 *Hen. 8. cap. 13.*

Compellatibum, An Adversary or Accuser. — *Episcopus in Compellativum adlegationem docere ne quis alium perperam cogat jurejurando vel in Ordalio.* *Leg. Athelstan.*

Compertorium, A judicial Inquest in the Civil Law, made by Delegates, or Commissioners to find out and relate the Truth of a Cause. *Paroch. Antiq. 575.*

Composition, (*Compositio*) An Agreement or Contract between a Parson, Patron and Ordinary, &c. for Money or other Thing in Lieu of Tithes. Land may be exempted from the Payment of Tithes, where *Compositions* have been made: And Real *Compositions* for Tithes are to be made by the concurrent Consent of the Parson, Patron and Ordinary. Real *Compositions* are distin-

distinguished from Personal Contracts; for a *Composition* called a Personal Contract is only an Agreement between the Parson and Parishioners, to pay so much instead of Tithes; and though such an Agreement is confirmed by the Ordinary, yet that doth not make it a Real *Composition*, because he ought to be a Party to the Deed of *Composition*. *March's Rep.* 87. The *Compositions* for Tithes made by the Consent of the Parson, Patron and Ordinary, by Virtue of 13 *Eliz. cap. 10.* shall not bind the Successor unless made for 21 Years, or three Lives, as in case of Leases of Ecclesiastical Corporations, &c. *Compositions* were at first for a valuable Consideration, so that tho' in Process of Time upon the Increase of the Value of the Lands, such *Compositions* do not amount to the Value of the Tithes, yet Custom prevails, and from hence arises what we call a *Modus decimandi*. *Hob.* 297. The Word *Composition* hath likewise another Meaning, i. e. *Decisio Litis*.

Compositio Mensurarum, Is the Title of an ancient Ordinance for Measures, not printed, mentioned in the Statute 23 *H. 8. c. 4.*

Comprint, Intends a surreptitious Printing of another Bookfeller's Copy, to make Gain thereby, which is contrary to the Stat. 14 *Car. 2. cap. 33.* and other Statutes.

Compromise, (*Compromissum*) Is defined to be a mutual Promise of two or more Parties at Difference, to refer the Ending of their Controversy to Arbitrators: And *West* says it is the Faculty or Power of pronouncing Sentence between Persons at Variance, given to Arbitrators by the Parties private Consent, without publick Authority. *West's Symb. Sect. 1.* Matters *compromised*, are also Matters of Law referred, or made an End of.

Compurgator, One that by Oath justifies another's Innocence. See *Oath*.

Computation, (*Computatio*) Is the true Account and Construction of Time; and to the End neither Party to an Agreement, &c. may do Wrong to the other, nor the Determination of Time be left at large, it is to be taken according to the just Judgment of the Law. A Deed dated the 20th Day of *August*, to hold from the Day of the Date, shall be construed to begin on the 21st Day of *August*: But if in the *Habendum* it be to hold from the Making, or from thenceforth, it shall begin on the Day delivered. 1 *Inst.* 46. 5 *Rep.* 1. If an Indenture of Lease dated the 4th Day of *July*, made for three Years from thenceforth, be delivered at four of the Clock in the Afternoon of the said 4th Day of *July*, the Lease shall end the 3d Day of *July* in the third Year: And the Law in this *Computation* rejects all Fractions or Divisions of the Day. *Blount*. But some have held that Rent is not due on the Day limited to be paid, till the Middle of the Day, and after Noon; in case a Tenant for Life dies at such a critical Juncture, &c. See *Day and Month*.

Computation of Miles, Is according to the *English* Manner, allowing 5280 Feet, or 1760 Yards to each Mile; and the same shall be reckoned not by strait Lines, as a Bird or Arrow may fly, but according to the nearest and most usual Way. *Cro. Eliz.* 212.

Comptur, (*Lat.*) Is a Writ to compel a Bailiff, Receiver or Accountant, to yield up his Accounts: It is founded on the Statute of *Westm.* 2. *cap. 12.* And also lies against Guardians, &c. *Reg. Orig.* 135.

Concealers, (*Concelatores*, so called à *concelando*, as *Mons à movendo*, by an *Antiphrasis*) Are such as find out concealed Lands, i. e. such Lands as are privily kept from the King by common Persons, having nothing to shew for their Title or Estate therein. 39 *Eliz. c. 22.* There are *Concealers* of Crimes; and Concealing Treason, &c. when Misprision, see *Misprision*.

Concessi, A Word of frequent Use in Conveyances, creating a Covenant in Law; as *Dedi* makes a Warranty. *Co. Lit.* 384.

Concionatores, Common Council-Men, Free-men called to the Hall or Assembly, as most worthy. — *Quodam tempore cum convenissent* *Concionatores apud London*, &c. *Histor. Elien. Edit. Gale*, *cap. 46.*

Conclusion, (*Conclusio*) Is when a Man by his own Act upon Record hath charged himself with a Duty or other Thing, or confessed any Matter whereby he shall be concluded: As if a Sheriff returns that he hath taken the Body upon a *Capias*, and hath not the Body in Court at the Day of the Return of the Writ; by the Return, the Sheriff is concluded from Plea of Escape, &c. *Terms de Ley* 153. And in another Sense this Word *Conclusion* signifies the End of any Plea, Replication, &c. and every Plea ought to have its proper *Conclusion*; as a Plea to the Writ is to conclude to the Writ; a Plea in Bar, to conclude to the Action, &c. *Conclusion* of Plea in Bar shall be, *Et hoc paratus est verificare*: Of other Pleas, *Et de hoc ponit se super Patriam*. *Kitch.* 219, 220.

Concord, (*Concordia*) Is an Agreement made between two or more, upon a Trespass committed; and is divided into *Concord executory*, and *Concord executed*: And according to *Plowden*, one binds not, as being imperfect, but the other is absolute, and ties the Party. Though by some Opinions, Agreements executory are perfect, and bind no less than Agreements executed. *Plowd.* 5, 6, 8. These *Concords* and Agreements are by Way of Satisfaction for the Trespass, &c. *Concord* is also an Agreement between Parties, who intend the Levying of a Fine of Lands one to the other, how and in what Manner the Lands shall pass: It is the Foundation and Substance of the Fine, taken and acknowledged by the Party before one of the Judges of C. B. or by Commissioners in the Country, and begins thus: *Et est Concordia talis scilicet quod prad. A. B. recogn. Tenementa prad. cum pertin' esse jus ipsius C. D. ut ill. qua idem C. D. h'et de Dono prad. A. B. Et ill. remisit. Et quiet. clam. de se & Hared. suis prasat. C. & Hared. suis imperpetuum, &c.*

Concubaria, A Fold, Pen or Place, where Cattle lie together. *Cowel*.

Concubinage, (*Concubinatus*) In common Acceptation is the Keeping of a Whore or Concubine: But in a legal Sense, it is used as an Exception against her that sueth for Dower, alledging thereby that she was not a Wife lawfully married to the Party, in whose Lands she seeks to be endowed, but his Concubine. *Britt. cap. 107. Braff. lib. 4. tract. 6. cap. 8.* There was a *Concubinage* allowed in Scripture to the Patriarchs, *secundum legem Matrimonii*, &c. *Blount*.

Conders, (from the Fr. *Conduire*, to conduct) Are such as stand upon high Places, near the Sea-Coast, at the Time of Herring-Fishing, to make Signs with Boughs, &c. to the Fishermen at Sea, which Way the Shole of Herrings passeth; for this may be better discovered by such as stand

stand upon some high Cliff on the Shore, by Reason of a Kind of blue Colour which the Herrings cause in the Water, than by those that are in the Ships or Boats for Fishing. These are otherwise called *Huers* and *Balkers*, *Directors* and *Guiders*, as appears by the Stat. 1 Jac. c. 23.

Condis, A Ridge of Land. — *Quandam parcellam cujusdam Condis juxta Campum ipsorum.* Du Cange.

Condition, (*Conditio*) Is a Restraint or Bridle annexed to a Thing, so that by the Non-performance, the Party to it shall receive Prejudice and Loss; and by the Performance, Commodity and 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 'tis defined to be what is referred to an uncertain Chance, which may happen or not happen. *West's Symb. part 1. lib. 2. sect. 156.* And of Conditions there are divers Kinds, viz. Conditions in Deed, and in Law; Conditions Precedent, and Subsequent; Conditions Inherent, and Collateral, &c. A Condition in Deed is that which is knit by express Words to a Feoffment, Lease, or other Grant; as if a Man makes a Lease of Lands to another, reserving a Rent to be paid at such a Feast, upon Condition if the Lessee fail in Payment at the Day, then it shall be lawful for the Lessor to enter. Condition in Law is when a Person grants to another an Office, as that of a Park, Steward, Bailiff, &c. for Term of Life; here though there be no Condition expressed in the Grant, yet the Law makes one, which is if the Grantee do not justly execute all Things belonging to the Office, it shall be lawful for the Grantor to enter and discharge him of his Office. *Litt. lib. 3. cap. 5.* These Conditions are also called Condition expressed, and Condition implied. Condition Precedent is when a Lease or Estate is granted to one for Life, upon Condition that if the Lessee pay to the Lessor a certain Sum at such a Day, then he shall have Fee-simple: In this Case the Condition precedes the Estate in Fee, and on Performance thereof gains the Fee-simple. Condition Subsequent is when a Man grants to another his Manor of Dale, &c. in Fee, upon Condition that the Grantee shall pay to him at such a Day such a certain Sum, or that his Estate shall cease; here the Condition is subsequent and following the Estate, and upon the Performance thereof continues and preserves the same: So that a Condition Precedent doth get and gain the Thing or Estate made upon Condition, by the Performance of it; as a Condition Subsequent keeps and continues the Estate, by the Performance of the Condition. 1 *Inst.* 201, 325. *Terms de Ley* 156. If one agree to do such an Act, and for the Doing thereof the other shall pay so much Money; here the Doing the Act is a Condition Precedent to the Payment of the Money, and the Party shall not be compelled to pay till the Act is done: But where a Day is appointed for the Payment of Money, which Day happens before the Thing contracted for can be performed, there the Money may be recovered before the Thing is done; for here it appears that the Party did not intend to make the Performance of the Thing a Condition Precedent. 3 *Salk.* 95. Inherent Conditions are such as descend to the Heir, with the Land granted, &c. And Collateral Condition is that which is annexed to any collateral Act. Conditions are likewise Affirmative, which consist of doing; Negative, and consist of not doing: Some are Compul-

sory, and some Copulative, and others Disjunctive. Conditions may be to any Estate, whether in Fee-simple, Fee-tail, for Life or Years. They run with the Estate, and bind in whosoever's Hands they come. *Litt. Rep.* 128. But a Condition may not be made but on the Part of the Lessor, Donor, &c. For no Man may annex a Condition to an Estate, but he that doth create the Estate itself. Conditions are good to enlarge or limit Estates: And there are four Incidents, which Conditions to create and increase an Estate ought to have. 1. They should have a particular Estate, as a Foundation whereupon the Increase of the greater Estate, shall be built. 2. Such particular Estate shall continue in the Lessee or Grantee, until the Increase happens. 3. It must vest at the Time the Contingency happens, or it shall never vest. 4. The particular Estate and Increase must take Effect by the same Deed, or by several Deeds delivered at the same Time. 8 *Rep.* 75. Conditions to create Estates shall be favourably construed: But Conditions which tend to destroy, or restrain an Estate, shall be taken strictly. A Feoffment upon Condition, that the Feoffee shall not alien, is void: But a Condition in a Feoffment not to alien for a particular Time, or to a particular Person, may be good. *Hob.* 13, 261. And if a Condition is that Tenant in Tail, shall not alien in Fee, &c. or Tenant for Life or Years, not alien during the Term, these Conditions are good: Where the Reversion of an Estate is in the Donor, he may restrain an Alienation by Condition. 10 *Rep.* 39. 1 *Inst.* 222. A Liberty inseparable from an Estate, cannot be restrained; and therefore a Condition that a Tenant in Tail shall not levy a Fine, within the Stat. 4 H. 7. or suffer a Recovery; or not make a Lease, within the Stat. 32 Hen. 8. is void and repugnant. But if the Condition restrain levying a Fine at Common Law, it may be good. 2 *Danv. Abr.* 22. A Gift in Tail, or in Fee, upon Condition that a Feme shall not be endowed; or Baron be Tenant by the Curtesy, is repugnant and void. So is a Condition in a Lease, &c. that the Lessee shall not take the Profits: And where a Man grants a Rent-charge out of Land, provided it shall not charge the Land. *Co. Litt.* 146. Conditions repugnant to the Estate, impossible, &c. are void. And if they go before the Estate, the the Estate and Condition are void: If to follow it, the Estate is absolute, and the Condition void. 1 *Inst.* 206. 9 *Rep.* 128. But if at the Time of entering into a Condition, a Thing be possible to be done, and become afterwards impossible by the Act of God, the Estate of a Feoffee (created by Livery) shall not be avoided. 2 *Mod.* 204. A Feoffment in Fee is made upon Condition, that the Feoffee shall within a Year go to Rome, &c. If the Feoffee dies before the Year ended, yet the Estate of the Feoffee is become absolute; for the Estate once vested by the Livery, shall not be devested without Default in the Feoffee. *Ibid.* Where a Condition is of two Parts, one possible, and the other not so, it is a good Condition for performing that Part which is possible. *Cro. Eliz.* 780. Though if a Condition is of two Parts disjunctive, and one of them becomes impossible by the Act of God, the Person bound is not obliged to perform the other Part. 5 *Rep.* 22. If a Condition be in the Copulative, and is not possible to be performed, it may be taken in the Disjunctive. 1 *Danv. Abr.* 73. Where an Estate is to be wholly created upon a Condition impossible to be performed,

ed, there the Estate shall never come *in esse*. 1 *Leon. cap.* 311. If a Woman makes a Feoffment to a Man that is married, upon Condition that he shall marry her; 'tis said this Condition is not impossible, for the Man's Wife may die, and then he may marry her. 2 *Danv.* 25. A Reversion may be granted in Tail upon Condition, that if the Grantee pays so much, he shall have Fee. 8 *Rep.* 73. But if a Man grants Land, &c. for Years, upon Condition that if the Lessee pay 20 s. within one Year, that he shall have it for Life; and that if he after the Year pay 20 s. he shall have Fee: Though both Sums are paid, he shall have but an Estate for Life; the Estate for Life, at the Time of the Grant, being only in Contingency, and a Possibility cannot increase upon a Possibility, nor can the Fee increase upon the Estate for Years. 8 *Rep.* 75. If a Lease be made to two, with Condition to have Fee, and one dies, the Survivor may perform the Condition, and have the Fee; but if they make Partition, the Condition is destroyed. 8 *Rep.* 75, 76. If a Feoffee grant the Reversion of Part of the Land, upon a Lease for Years, on which a Rent upon Condition is reserved, all the Condition is confounded and gone; though if the Lessee assign Part, the Condition remains, for he cannot discharge the Estate of the Condition. 2 *Danv. Abr.* 119. A Man makes a Feoffment upon Condition, and after levies a Fine to a Stranger, the Condition is gone. *Ibid.* 120. Condition that a Lessee shall not do Waste; if the Lessee permits the House to fall for Want of Reparation, it is doing Waste, and the Condition is broke. *Ibid.* 46. If a Feoffee upon Condition to infeoff another, infeoff a Stranger; or if it be to reinfeoff the Feoffor, and he grant the Land to another Person, upon Condition to perform the Condition, the Condition is broke, because the Feoffee hath disabled himself to do it: So where such Feoffee upon Condition to reinfeoff, &c. takes a Wife, that the Land is subject to the Dower of the Wife; and so if the Land is recovered, and Execution sued out by another, the Condition is broke. *Co. Litt.* 221. 1 *Danv.* 79. If a Condition be performed in Substance and Effect, it is "good although it differs in Words; as where it is to deliver Letters Patent, and the Party bound having lost them, delivers an Exemplification, &c. 2 *Danv.* 40. Tho' Payment of the Money before the Day, is Payment at the Day, in Performance of a Condition; yet a Feoffor, &c. cannot re-enter, and re-vest his old Estate by Force of the Condition, till the Day whereon the Condition gives him Power to re-enter. *Ibid.* 121. If a Man seised of Land in Right of his Wife, make a Feoffment in Fee on Condition, and dies; if the Heir of the Feoffor enters for the Condition broken, and defeats the Feoffment, his Estate vanishes, and presently it is vested in the Wife. *Co. Litt.* 202. And if a Person seised of Land, as Heir on the Part of his Mother, makes a Feoffment on Condition, and dieth; though the Heir on the Part of the Father, who is Heir at Common Law, may enter for the Condition broken, the Heir of the Part of the Mother shall enter upon him, and enjoy the Land. *Ibid.* 12. Where there is a Condition in a Feoffment or Lease, that if no Distress can be found, the Feoffor, &c. shall re-enter; if the Place is not open to the Distress, as if there be only a Cupboard in the House which is locked, &c. it is all one as if there were no Distress there, and the Feoffor, &c. may enter. 2 *Danv.*

46. Where a Rent is to be paid upon Condition at a certain Day, the Lessor cannot enter for the Condition broke, before Demand of the Rent. *Ibid.* 98. And the Lessor ought to demand the Rent at the Day, or the Condition shall not be broke by the Nonpayment of the Rent. A Re-entry may be given on a Feoffment, &c. though none be reserved. If one make a Lease for Life, or Feoffment upon Condition, that if the Feoffee or Lessee does such an Act, the Estate shall be void: Now although the Estate cannot be void before Entry, this is a good Condition, and shall give an Entry to the Lessor, &c. by Implication. 1 *Roll. Abr.* 408. A Lease for Life on Condition, being a Freehold, cannot cease without Entry; but if it be a Lease for Years, the Lease is void *ipso facto*, on Breach of the Condition, without Entry. 1 *Inst.* 214. If a Lease for Years is that on Breach of the Condition, the Term shall cease, the Term is ended without Entry; but where the Words are that the Lease shall be void, it is otherwise. *Cro. Car.* 511. 3 *Rep.* 64. Regularly where one will take Advantage of a Condition, if he may enter, he must do it; and if he cannot enter, he must make a Claim. *Co. Litt.* 218. No one can reserve the Power or Benefit of Re-entry, on Breach of a Condition, to any other but himself, his Heirs, Executors, &c. Parties and Privies, in Right and Representation: Privies in Law, Grantees of Reversions, &c. are to have no Advantage by it. But by Statute 32 *Hen.* 8. Grantees of Reversions may take Advantage against Lessees, &c. by Action. 1 *Inst.* 214, 215. *Plowd.* 175. Tenants by the Curtesy, Tenant in Tail after Possibility of Issue extinct, Tenant in Dower, for Life, or Years, &c. hold their Estates subject to a Condition in Law, not to grant a greater Estate than they have, nor to commit Waste, &c. 1 *Inst.* 233. Estates made to Infants, and Feme Coverts, upon Condition, shall bind them, because the Charge is on the Land. 2 *Danv.* 30. A Release of all a Man's Right, may be upon Condition: A Lessee may surrender upon Condition; a Contract may be upon Condition, &c. But a Parson cannot resign upon Condition, any more than be admitted upon Condition. A Condition cannot be released on Condition; nor may a Condition be reserved without Deed in Writing indented; though a Condition on the Back of a Lease, before the Execution thereof, may be good. 2 *Danv.* 11, 12. 9 *Rep.* 85. A Condition that would take away the whole Effect of a Grant, is void; and so it is if it be contrary to the express Words of it. A Condition against Law, is void; but what may be prohibited by Law, may be prohibited by Deed. 1 *Inst.* 223, 206. He that taketh an Estate in Remainder, is bound by Condition in a Deed, though he doth not seal it. No Person shall defeat any Estate of Freehold upon Condition, without shewing the Condition; of Chattels he may without it. *Lit.* 374. A Condition may be apportioned by Act of the Law, or the Lessee. 4 *Rep.* 120. But a Man cannot by his own Act divide, or apportion a Condition, which goes to the Destruction of an Estate. 1 *Nelf. Abr.* 474. A Condition in a Will is a Thing odious in Law, which shall not be created without sufficient Words. 2 *Leon.* 40. A Devise to the Heir at Law, provided he pay to A. B. 20 l. is a void Condition, because there is no Person to take Advantage of the Nonperformance. 1 *Lutw.* 797. A Devise to one, paying to another so much Money generally, makes a Condition in a Will.

Will. *Conditional* Devises, as well of Lands as of Goods, are allowed by our Law; and not being performed, the Heir or Executors, shall take Advantage of them. 1 *Nelf.* 467. *Sub Conditione* is the most proper Word to make a *Condition*. *Proviso* is as good a Word, when not dependant upon another Sentence; but in some Cases, the Word *Proviso* may make no *Condition*, but be only a Qualification, or Explication of a Covenant. 2 *Danv.* 1, 2. And neither the Word *Proviso*, nor any other, makes a *Condition*, unless it is restrictive. *Plowd.* 34. 1 *Nelf.* 466. A Grant to one, to the Intent he shall do so and so, is no *Condition*, but a Trust and Confidence. *Dyer* 138. Some Words in a Lease do not make a *Condition* but a Covenant, upon which the Lessor may bring his Action. A Lease being the Deed of Lessor and Lessee, every Word is spoken by both; and a *Condition* may be therein, though it sounds in Covenant. 1 *Nelf.* 464. A Covenant not to grant, sell, &c. may be a *Condition*; and Covenant that paying the Rent, the Lessee should enjoy the Land, is conditional. 2 *Danv.* 2, 6. Where Words are indefinite, and proper to defeat an Estate, they shall be taken to have the Force of a *Condition*. *Palm.* 503. *Conditions* regularly follow the *Habendum* in a Deed; but are good in Law, in any other Place. 2 *Rep.* 70.

Cone and Key. A Woman at the Age of fourteen or fifteen Years, might take the Charge of her House, and receive *Cone and Key*: *Cone* or *Colne* in the *Sax.* signifying *Computus*, and *Key*, *clavis*; so that she was then held to be of competent Years, when she was able to keep the *Accounts* and *Keys* of the House. — *Fœmina in tali ætate potest disponere Domui suæ & habere Cone and Key.* *Bract.* lib. 2. cap. 37. And there is something to the same Purpose in *Glanv.* lib. 7. c. 9.

Confederacy, (Confœderatio) Is when two or more combine together to do any Damage or Injury to another, or to do any unlawful Act. And false *Confederacy* between divers Persons shall be punished, though nothing be put in Execution: But this *Confederacy* punishable by Law before it is executed, ought to have these Incidents; first, it must be declared by some Matter of Prosecution, as by making of Bonds, or promises the one to the other; secondly, it should be malicious, as for unjust Revenge; thirdly, it ought to be false against an Innocent; and lastly, it is to be out of Court voluntarily. *Terms de Ley* 158. Where a Writ of *Conspiracy* doth not lie, the *Confederacy* is punishable. 27 *Affis.* pl. 44. And Enquiry shall be made of *Conspirators* and *Confederators*, which bind themselves together, &c.

Confession, (Confessio) Is where a Prisoner indicted of Treason or Felony, and brought to the Bar to be arraigned; and his Indictment being read to him, the Court demands what he can say thereto; then either he confesses the Offence, and the Indictment to be true, or pleads *Not guilty*, &c. *Confession* may be made in two Kinds, and to two several Ends: The one is, that the Criminal may confess the Offence whereof he is indicted openly in the Court, before the Judge, and submit himself to the Censure and Judgment of the Law; which *Confession* is the most certain Answer, and best Satisfaction that may be given to the Judge to condemn the Offender; so that it proceeds freely of his own Accord, without any Threats or Extremity used; for if the *Confession* arise from any of these Causes, it ought not to be recorded: As a Woman indicted for

the felonious Taking of a Thing from another, being thereof arraigned, confessed the Felony, and said that she did it by Commandment of her Husband; the Judges in Pity would not record her *Confession*, but caused her to plead *Not guilty* to the Felony; whereupon the Jury found that she did the Fact by Compulsion of her Husband, against her Will, for which Cause she was discharged. 27 *Affis.* pl. 50. The other Kind of *Confession* is, when the Prisoner confesses the Indictment to be true, and that he hath committed the Offence whereof he is indicted, and then becomes an Approver or Accuser of others, who have committed the same Offence whereof he is indicted, or other Offences with him; and then prays the Judge to have a Coroner assigned him, to whom he may make Relation of those Offences, and the full Circumstances thereof. There is also a third Sort of *Confession*, formerly made by an Offender in Felony, not in Court before the Judge, as the other two are, but before a Coroner in a Church, or other privileged Place, upon which the Offender by the ancient Law of the Land was to abjure the Realm. 3 *Inst.* 129. *Confession* is likewise a Plea in Civil Cases, where the Defendant confesses the Plaintiff's Action to be good. *Finch* 387. And there is a *Confession* indirectly implied, as well as directly expressed in Criminal Cases; as if the Defendant in a Case not capital, doth not directly own himself guilty of the Crime, but by submitting to a Fine, owns his Guilt; whereupon the Judge may accept of his Submission to the King's Mercy. *Lamb.* lib. 4. c. 9. By this indirect *Confession*, the Defendant shall not be barred to plead *Not guilty* to an Action for the same Fact: The Entry of it is, that the Defendant *posuit se in gratiam Regis*, &c. And of the direct *Confession*, *quod Cognovit Indictamentum*, &c. And this last *Confession* carries with it so strong a Presumption of Guilt, that being entered on Record, in Indictment of *Trespas*, it estops the Defendant to plead *Not guilty* to an Action brought afterwards against him for the same Matter: But such Entry of a *Confession* of an Indictment of a capital Crime, 'tis said will not estop a Defendant to plead *Not guilty* to an Appeal, it being in case of Life. And where a Person upon his Arraignment actually confesses himself guilty, or unadvisedly discloses the special Manner of the Fact, supposing that it doth not amount to Felony, where it doth; yet the Judges upon probable Circumstances, that such *Confession* may proceed from Fear, Duress, or from Weakness or Ignorance, may refuse such *Confession*, and suffer the Party to plead *Not guilty*. 2 *Hawk.* 333. A *Confession* may be received, and the Plea of *Not guilty* be withdrawn, though recorded. *Kel.* 11. The *Confession* of the Defendant, whether taken upon an Examination before Justices of Peace, in Pursuance of the 1 & 2 *P. & M.* 13. or 2 & 3 *P. & M.* c. 10. upon a Bailment, or Commitment for Felony; or taken by the Common Law, upon an Examination before a Secretary of State, or other Magistrate, for Treason, or other Crimes, is allowed to be given in Evidence against the Party confessing; but not against others. Also two Witnesses of a *Confession* of High Treason, upon an Examination before a Justice of Peace, were sufficient to convict the Person so confessing, within the Meaning of 1 *Ed.* 6. cap. 12. and 5 & 6 *Ed.* 6. cap. 11. which required two Witnesses in High Treason, unless the Offender should willingly confess, &c.

But the 7 *W. 3. cap. 3.* requires two Witnesses, except the Party shall willingly without Violence *confess*, &c. in open Court. 2 *Hawk. P. C.* 429. It has been held that where-ever a Man's *Confession* is made Use of against him, it must all be taken together, and not by Parcels. *Ibid.* And no *Confession* shall, before final Judgment, deprive the Defendant of the Privilege of taking Exceptions in Arrest of Judgment, to Faults apparent in the Record. 333. A Demurrer amounts to a *Confession* of the Indictment as laid so far, that if the Indictment be good, Judgment and Execution shall go against the Prisoner. *Bra. 86. S. P. C. 150. H. P. C. 246.* And in criminal Cases not capital, if the Defendant demur to an Indictment, &c. whether in Abatement, or otherwise, the Court will not give Judgment against him to answer over, but final Judgment. 2 *Hawk.* 334. Where a Prisoner confesses the Fact, the Court has nothing more to do than to proceed to Judgment against him. And *Confessus in Judio pro Judicato Habetur.* 11 *Rep. 30. 4 Inst. 66.*

Confessor, (Lat. *Confessor, Confessionarius*) Hath Relation to private *Confession* of Sins, in Order to Absolution: And the Priest, who received the auricular *Confession*, had the Title of *Confessor*; though improperly, for he is rather the *Confessee*, being the Person to whom the *Confession* is made. This Receiving the *Confession* of a Penitent, was in old English to *Shreve* or *Shrive*; whence comes our Eng. *Beshrieved*, 'or looking like a confessed or *shrieved* Person, on whom was imposed some uneasy Penance. The most solemn Time of *Confessing* was the Day before *Lent*, which from thence is still called *Shrove-Tuesday*. Cowel.

Confirmation, (*Confirmatio*, from the Verb *Confirmare, quod est firmum facere*) Is a Conveyance of an Estate, or Right *in esse*, from one Man to another, whereby a voidable Estate is made sure and unavoidable; or a particular Estate is increased, or a Possession made perfect. And it is a Strengthening of an Estate formerly made, which is voidable, though not presently void: As for Example; A Bishop granteth his Chancellorship by Patent, for 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. *Confirmation, aut est perficiens, crescens, aut diminuens*: *Perficiens*, as if Feoffee upon Condition make a Feoffment, and the Feoffor confirm the Estate of the second Feoffee: *Crescens* doth always enlarge the Estate of a Tenant; as Tenant for Years, to hold for Life, &c. *Diminuens*, as when the Lord of whom the Land is holden, confirms the Estate of his Tenant, to hold by a less Rent. 9 *Rep. 142.* In *Confirmations*, the Confirmer must have a larger Estate in the Land, than the Confirmer, and be in Possession of the Estate or Right. 1 *Inst. 295, 301.* Leases for Years may be confirmed for Part of the Term, or Part of the Land, &c. But it is otherwise of an Estate of Freehold, which being entire, cannot be confirmed for Part of the Estate. 5 *Rep. 81.* A Freehold for Life, and Term for Years, it is said cannot stand together of the same Land, in the same Person. 1 *Nels. Abr. 480.* If a Feme Lessee for Years marries, and the Lessee confirms the Estate of Husband and Wife, to hold for their Lives, by such a *Confirmation*, the Term will be drowned; and the Husband and Wife be Jointenants for their Lives. *Co. Lit. 300.* But if the Feme were Lessee for Life, then by the *Confirmation* to Husband and Wife for their Lives,

the Husband holdeth only in Right of his Wife for her Life; but shall take a Remainder for his Life. *Ibid. 299.* *Confirmation* to Lessee for Life, and a Stranger, to hold for their Lives, is void; for there is no Privity: But 'tis otherwise if for Years. 2 *Danv. Abr. 141.* If Tenant for Life grant a Rent-charge, &c. to one and his Heirs, he in Reversion is to confirm it, otherwise 'tis good only for Life of Tenant for Life. *Litt. 529.* A Tenant for Life, and Remainder-man in Fee, join in a Lease, this shall be taken to be the Lease of Tenant for Life, during his Life, and *Confirmation* of him in Remainder: But after the Death of Tenant for Life, it is the Lease of him in Remainder, and *Confirmation* of Tenant for Life. 6 *Rep. 15. 1 Nels. Abr. 481.* If Lessee for Years, without Impeachment of Waste, accepts a *Confirmation* of his Estate for Life; by this he hath lost the Privilege annexed to his Estate for Years. 8 *Rep. 76.* Acceptance of Rent in some Cases makes a *Confirmation* of a Lease: And if a Man leases for Life, reserving Rent upon a Condition of Re-entry; if after the Condition is broke, by Nonpayment of the Rent, the Lessor distrains for the said Rent, this Act shall be a *Confirmation* of the Lease, so as he cannot enter. 2 *Danv. 128, 129.* What a Person may defeat by his Entry, he may make good by his *Confirmation*. *Co. Lit. 300.* But none can confirm, unless he hath a Right at the Time of the Grant; he that hath but a Right in Reversion, cannot enlarge the Estate of a Lessee. 2 *Danv. 140, 141.* And where a Person hath but *Interesse termini*, he hath no Estate in him, upon which a *Confirmation* may enure. *Co. Lit. 296.* A *Confirmation* is to bind the Right of him who makes it; but not alter the Nature of the Estate of him to whom made; it shall not discharge a Condition. *Poph. 51.* If A. enfeoffs B. upon Condition, and after A. confirms the Estate of B. yet the Condition remains: Though if B. had enfeoffed C. so that the Estate of C. had been only subject to the Condition in another Deed, and after A. had confirmed the Estate of C. this would have extinguished the Condition, which was annexed to the Estate of B. 1 *Rep. 147.* *Confirmations* may make a voidable or defeasible Estate good; but cannot work upon an Estate that is void in Law. *Co. Lit. 295.* A *Confirmation* of Letters Patent, which are void as they are against Law, is a void *Confirmation*. 1 *L. H. 44r. 295.* If there be Lord and Tenant, and the Tenant having Issue is attainted of Felony; if the King pardons him, and the Lord confirms his Estate, and the Tenant dies, his Issue shall not inherit, but the Lord shall have it against his own *Confirmation*: For that could not enable him to take by Descent, who by the Attainder of his Father was disabled. 9 *Rep. 141.* Grants and Leases of Bishops not warranted by the Stat. 32 *H. 8.* must be confirmed by Dean and Chapter: And Grants and Leases of Parsons, &c. by Patron and Ordinary. 1 *Inst. 297, 300, 301.* Bishops may grant Leases of their Church-Lands for three Lives, or 21 Years, having the Qualities required by 32 *H. 8.* and concurrent Leases for 21 Years, with *Confirmation* of Dean and Chapter. If a Prebend leases Parcel of his Prebendary, and the Bishop, who is Patron, confirms it; this shall not bind the succeeding Bishop, without *Confirmation* of Dean and Chapter, because the Patronage is Parcel of the Possessions of the Bishoprick; but it shall bind the present Bishop, &c. 2 *Danv. 139.* If a Parson

grants a Rent, the Confirmation of the Patron and Bishop, is sufficient without the Dean and Chapter, and shall be good against the Successor Bishop. *Ibid.* 140. The Dean of *Wells* may pass his Possessions, with the Assent of the Chapter, without any Confirmation of the Bishop. *Ibid.* 135. Leases of Bishops are affirmed, *ex assensu & consensu Decani & totius Capituli*. A Confirmation is in Nature of a Release: And in this Deed, it is good to recite the Estate of the Tenant, as of him that is to confirm it; and to mention the Consideration: The Words *Ratify* and *Confirm*, are commonly made Use of; but Words *Give*, *Grant*, *Demise*, &c. by Implication of Law, may enure as a Confirmation. 1 Inst. 295. West. Symb. 1. pag. 457.

CONFISCATE, From the Lat. *Confiscare*, and that from *Fiscus*, which signifies metonymically the Emperor's Treasure: And as the Romans say such Goods as are forfeited to the Emperor's Treasury for any Offence are *Bona Confiscata*; so we say of those that are forfeited to our King's Exchequer. And the Title to have these Goods is given to the King by the Law, when they are not claimed by some other: As if a Man be indicted for stealing the Goods of another Person, when they are in Truth his own proper Goods, and when the Goods are brought in Court against him, and he is asked what he says to the said Goods, if he disclaims them, he shall lose the Goods, although that afterwards he be acquitted of the Felony, and the King shall have them as *confiscated*; but it is otherwise if he do not disclaim them. The Law is the same where Goods are found in the Possession of a Felon, if he disavows them, and afterwards is attainted of other Goods, and not of them; for there the Goods which he disavows, are *confiscate* to the King; but had he been attainted of the same Goods, they should have been said to be *forfeited* and not *confiscate*. So if an Appeal of Robbery be brought, and the Plaintiff leaves out some of his Goods, he shall not be received to enlarge his Appeal; and forasmuch as there is none to have the Goods so left out, the King shall have them as *confiscate*, according to the Rule, *Quod non capit Christus, capit Fiscus*. Staund. P. C. lib. 3. cap. 24. Goods *confiscated* are such as are arrested and seised for the King's Use: But *Confiscare* and *Forisfacere* are said to be Synonyma; and *Bona Confiscata* are *Bona Forisfacta*. 3 Inst. 227.

CONTOUMITY to the Church of England. See Stat. 35 Eliz. &c. and *Recusant*.

CONFRATRIE, (*Confraternitas*) A Fraternity, Brotherhood, or Society; as the *Confratrie de St. George*, or *Les Chevaliers de la bleu Gartier*, the Honourable Society of the Knights of the Garter.

CONFRERES, (*Confratres*) Brethren in a Religious House; Fellows of one and the same Society. Stat. 32 H. 8. c. 24.

CONGEABLE, (from the Fr. *Conge*, i. e. Leave, Licence or Permission) Signifies in our Law as much as lawful, or lawfully done, or done with Leave or Permission: As *Entry Congeable*, &c. Litt. Sect. 420.

CONGE D'ACORDER, (Fr.) Leave to accord or agree, mentioned in the Statute of *Fines* 18 Ed. 1. in these Words. — When the Original Writ is delivered in the Presence of the Parties before Justices, a Pleader shall say this, Sir Justice *Conge d'Acorder*; and the Justice shall say to him, what saith Sir R. and name one of the Parties, &c.

CONGE D'ESLIRE, (Fr. i. e. Leave to choose) Is the King's Licence or Permission sent to a Dean and Chapter to proceed to the Election of a Bishop, when any Bishoprick becomes vacant. According to *Gwin*, in his Preface to his *Readings*, the King of England, as Sovereign Patron of all Bishopricks, and other Ecclesiastical Benefices, had of ancient Time free Appointment of all Church Dignities, when ever they became void, investing them first *per Baculum & Annulum*, and afterwards by his Letters Patent; and in Process of Time, he made the Election over to others, under certain Forms and Conditions; as, that they should at every Vacation, before they chuse, demand of the King *Conge d'Eslire*; that is, Leave to proceed to Election, and then after the Election, to crave his Royal Assent, &c. And he affirms that King *John* was the First that granted this; which was afterwards confirmed by Stat. *Westm.* 1. 3 Ed. 1. cap. 1. And by *Articuli Cleri*, 25 Ed. 3. cap. 1. All the Prelacies in England were conferred at the Pleasure of the King, and the Persons invested by the King's Delivery of a Staff and Ring, till Archbishop *Anselm* denied this Royal Prerogative; and prevailed with Pope *Paschal* to abrogate this Custom by a solemn Canon: After which, the first Bishop who came in by a regular Election, was *Roger* Bishop of *Salisbury*, Anno 3 H. 1. By Statute, no Man is to be presented to the See of *Rome* for the Dignity of a Bishop, &c. but Election is to be by the King's *Conge d'Eslire* or Licence, to elect the Person named by the King; which the Dean and Chapter must do in twenty Days, or they will incur a *Pramunire*: And if they fail to make Election, the King is to nominate, &c. by Letters Patent. 25 H. 8. cap. 20. The 1 Ed. 6. c. 2. ousted the Writ of *Conge d'Eslire*, and empowered the King to collate to an Archbishoprick or Bishoprick, absolutely by Letters Patent. But this Statute was repealed by 1 M. cap. 2. though the Election by *Conge d'Eslire* as now made, seems to be little more than Form.

CONGIDON, Signifies Joint-Payment; or one who is a Companion with another in such a Payment: It is mentioned in *Leg. Ine*, c. 23.

CONGIUS, An ancient Measure, containing about a Gallon and a Pint. — *Et reddat quinque Congios cera, & unum Ydromelli*, &c. Charta *Edmundi Regis*, Anno 946.

CONINGERIA, A Coney-Borough, or Warren of Conies. — *Item dicunt, quod idem Dominus potest capere in duabus Coningeriis quas habet infra*, &c. 100. *Cuniculos per Annum, & valet quilibet Cuniculus 2 d.* Inquis. Anno 47 H. 3.

CONJURATION, Is an Oath; and *Conjuratus*, the same with *Conjurator*, viz. one who is bound by the same Oath. *Conjurare* is where several affirm a Thing by Oath. *Mon. Angl. Tom.* 1. p. 207.

CONJURATION, (*Conjuratio*) Signifies a Plot or Compact, made by Persons combining by Oath, to do any publick Harm: But it is more especially used for the having personal Conference with the Devil, or some evil Spirit, to know any Secret, or effect any Purpose. The Difference between *Conjuratio* and *Witchcraft* is, that the one endeavours by Prayers and Invocations to compel the Devil to say or do what he commands him; the other deals rather by friendly and voluntary Conference, or Agreement with the Devil or Familiar, to have his Desires served, in Lieu of Blood, or other Gift offered. And both these differ from *Enchantment* or *Sorcery*; because they

they are personal Conferences with the Devil, and these are as it were but Medicines and ceremonial Fornis of Words, usually called *Charms*, without Apparition. *Cowel. Hawkins, in his Pleas of the Crown, lib. 1. pa. 5.* says that *Conjurers* are those who by Force of certain Magick Words, endeavour to raise the Devil, and oblige him to execute their Commands: *Witches* are such who by way of Conference bargain with an evil Spirit, to do what they desire of him: And *Sorcerers*, are those who by the Use of certain superstitious Words, or by the Means of Images, &c. are said to produce strange Effects above the ordinary Course of Nature. All these were anciently punished in the same Manner as *Hereticks*, by the Writ *de Heretico comburendo*, after a Sentence in the Ecclesiastical Court: And they might be condemned to the Pillory, &c. upon an Indictment at Common Law. 3 *Inst.* 44. H. P. C. 38. But by Stat. 1 *Fac.* 1. c. 12. These Offenders are divided into two Degrees; and those in the first Degree, and their Accessaries before, shall suffer as Felons, without Benefit of Clergy: And of these, there are the four following Species. 1. Such as shall use any Invocation or Conjurat[i]on of any evil Spirit. 2. That consult, covenant with, entertain, employ, or reward any evil Spirit, to any Intent. 3. As take up any dead Person's Body, or any Part thereof, to be used in any manner of Witchcraft. 4. Or that exercise any Witchcraft, Inchantment, Charm or Sorcery, whereby any Person shall be killed, destroyed, consumed, or lamed in his Body, or any Part thereof. And if a Spirit doth not actually appear, upon Invocation, &c. Or if a dead Person, or Part of it, be taken up to be used, and not actually used; these are within the Statute: But one must actually effect the Mischief, to be within the Clause of killing, laming, &c. 3 *Inst.* 45. H. P. C. 6, 7. Those in the second Degree shall for the first Offence, suffer a Year's Imprisonment, and the Pillory; and for the Second, be adjudged Felons, excluded Clergy: And these Offenders are divided into the following Kinds. Such as take upon them by Witchcraft, Charm, &c. to tell where Treasure, or Things lost or stolen, may be found; or to do any Thing to the Intent to provoke any Person to unlawful Love; or to hurt any Person in his Body; or whereby any Cattle or Goods, of any Person, shall be destroyed or impaired, &c. But those who take upon them to do the Last, are not within the Act, unless they actually accomplish it. 3 *Inst.* 46. Stat. 1 *Fac.* 1. c. 12.

Conquest, Countries got by, what Laws to have for Government. See *King*.

Consanguineus, Is a Writ mentioned in *Reg. Orig. de Avo, Proavo & Consanguineo, &c. f. 226.*

Conservator, (Lat.) A Protector, Preserver, or Maintainer; or a standing Arbitrator, chosen and appointed as a Guarantee to compose and adjust Differences that should arise between two Parties, &c. *Paroch. Antiq. p. 513.*

Conservator of the Peace, (*Conservator vel Custos Pacis*) Is he that hath an especial Charge to see King's Peace kept: And of these *Conservators* *Lambard* saith, That before the Reign of King *Ed. 3.* who first created *Justices of Peace*, there were divers Persons that by the Common Law had Interest in keeping the Peace; some whereof had that Charge by Tenure, as holding Lands of the King by this Service, &c. And others as incident to their Offices which they bore, and so

included in the same, that they were nevertheless called by the Name of their Office only: Also some had it simply, as of it self, and were thereof named *Custodes Pacis, Wardens* or *Conservators of the Peace*. The Chamberlain of Chester is a *Conservator of the Peace* in that County, by Virtue of his Office. 4 *Inst.* 212. Sheriffs of Counties at Common Law are *Conservators of the Peace*; and *Constables*, by the Common Law were *Conservators*, but some say these were only subordinate to the *Conservators of the Peace*, as they are now to the *Justices*.

Conservator of the Truce and Safe Conducts, (*Conservator Induciarum & saluorum Regis Conductuum*) Was an Officer appointed by the King's Letters Patent, whose Charge was to inquire of all Offences done against the King's Truce and Safe Conducts upon the main Sea, out of the Liberties of the *Cinque Ports*, as the Admirals customably were wont to do, and such other Things as are declared 3 *Hem.* 5. c. 6. See also the Statute 4 H. 5. c. 7.

There was anciently a *Conservator of the Privileges of the Hospitalers and Templers*. *West.* 2. ca. 43. And the Corporation of the Great Level of the Fens consists of a Governor, six Bailiffs, twenty *Conservators*, and Commonalty. Stat. 15 *Car.* 2. cap. 17.

Consideratio Curiae, Is often mentioned in Law Pleadings, and where Matters are determined by the Court. *Idem* Consideratum est per Curiam, i. e. 'Tis adjudged by the Court; for *Consideratio Curiae* is the Judgment of the Court. In the Entry of a Judgment for Debt, it concludes thus: *Ideo Consideratum est per Cur. quod præd. A. recuperet versus præfat. B. Debitum suum, necnon, &c. pro Damnis suis, &c. quam pro Mis. & Custag. &c. Et præd. B. in mia. &c.*

Consideration, (*Consideratio*) Is the material Cause, or *Quid pro quo*, of any Contract, without which it will not be effectual or binding. This *Consideration* is either expressed, as if a Man bargains to give so much for a Thing bought; or implied, where a Person comes to an Inn, and there staying eats and drinks, and takes Lodging for himself and Horse, the Law presumes he intends to pay for both, though there be no express Contract for it; and therefore if he discharge not the House, the Host may stay his Horse. Also there is a *Consideration of Nature and Blood*; and valuable *Consideration* in Deeds and Conveyances: But if a Man be indebted to divers others, and in *Consideration* of natural Affection, gives all his Goods to his Son, or other Relation, this shall be construed a fraudulent Gift, within the Stat. 13 *Eliz.* cap. 5. because that Act intends a valuable *Consideration*. *Terms de Ley* 165, 166. *Considerations* of natural Love, Affection, Marriage, &c. are good to raise Uses to a Man's Family: If the Uses are limited to a Stranger, then it must be for valuable *Consideration*, not for Love, Affection, &c. 1 *Inst.* 271. 1 *Rep.* 176. A Sale can never be without a valuable *Consideration*: Tho' the Law establishes free Gifts without *Consideration*. *Noy's Max.* 87. *Hob.* 230. One may sell his Freedom and Privilege, for a *Consideration*; for by the *Consideration* it is intended he hath a full Recompence for it, by Reason of his own Contract: And a Man may, upon a valuable *Consideration*, restrain himself by Contract from using his Trade, in such a particular Place. 1 *Lill. Abr.* 297, 298. A *Consideration* ought to be Matter of Profit and Benefit to him to whom it is done; by

Rea-

Reason of the Charge or Trouble of him who doth it. *Cro. Car. 8.* Considerations altogether past; as if a Person hath disbursed several Sums for another, without his Request, and afterwards such other say, that in Consideration he hath paid the said Sums for him, he promises to pay them: This is no Consideration, because it was executed before. But it will be otherwise, if the Sums were paid, at the Request of the other. *Moor 220. Cro. El. 282.* It is a Rule, that every Thing which is a Ground for Equity, is a sufficient Consideration. *Latch. 21.* A Consideration that is void in Part, is void in the Whole: And if two Considerations be alledged, and one of them is found false by the Jury, the Action fails. *Hob. 126. Cro. El. 848.* But if there be a double Consideration, for the Grounding of a Promise, for the Breach whereof an Action is brought; tho' one of the Considerations be not good, yet if the other be good, and the Promise broken, the Action will lie upon that Breach: For one Consideration is enough to support the Promise. *1 Lill. 297.* A Consideration must be lawful, to ground an Assumpsit. *2 Lev. 161.* Where Considerations are valuable, and consist of two or more Parts, there the Performance of every Part ought to be shewn. *Cro. El. 579.* If a Deed expresses a Consideration of Money, on a Purchase, it is said this will be no Proof on a Trial that the Money was actually paid; but it is to be made out by Proof of Witnesses. *Stile's Rep. 169.* In case a Deed of Feoffment be made of Lands; or a Fine and Recovery be passed, and no Consideration is expressed in the Deed, &c. for the doing thereof, it shall be intended by the Law, that it was made in Trust, for the Use of the Feoffor or Conusor; for it shall be presumed he would not part with his Land without a Consideration, and yet the Deed shall be construed to operate something, and that which is most reasonable. *1 Lill. Abr. 299.*

Consign, Is a Word used by Merchants, where Goods are assigned or delivered over to a Factor, &c.

Consilium, (*Dies Consilii*) Was a Time allowed for the accused to make his Defence, and answer the Charge of the Accuser. — *In aliis quarant Accusatus Consilium, & habeat ab amicis & paribus suis, quod nullo jure debet defendi, &c. Leg. H. 1. c. 46.* It is now used for a speedy Day appointed to argue a Demurrer; which the Court grants after the Demurrer joined on reading the Record of the Cause, &c.

Consistor, A Magistrate, so called: *Testibus Rogero de Gant, Willielmo Consistore Cestrie, &c. Blount.*

Consistory, (*Consistorium*) Signifies as much as *Prætorium*, or Tribunal: It is commonly used for a Council-House of Ecclesiastical Persons, or Place of Justice in the Court Christian or Spiritual Court; a Session or Assembly of Prelates. And 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. *4 Inst. 338.* The Bishop's Chancellor is the Judge of this Court, supposed to be skilled in the Civil and Canon Law: And in Places of the Diocese far remote from the Bishop's Consistory, the Bishop appoints a Commissary, (*Commissarius Foraneus*) to judge in all Causes within a certain District, and a Register

to enter his Decrees, &c. *2 Roll. Abr. 286. Sel-den's Hist. of Tithes, 413, 414.*

Consolidation, (*Consolidatio*) Is used for the uniting of two Benefices into one. *Stat. 37 Hen. 8. cap. 21.* Which Union is to be by the Assent of the Ordinary, Patron, and Incumbent, &c. and to be of small Churches, lying near together. *Vide Church.* This Word is taken from the *Civil Law*, where it signifies properly an Uniting of the Possession, Occupancy or Profit of Lands, &c. with the Property. *Cowel. See Extinguishment.*

Conspiracy, (*Conspiratio*) Is used for an Agreement of two or more Persons falsely to indict one, or to procure him to be indicted of Felony; who after Acquittal, shall have Writ of Conspiracy: And Writ of Conspiracy lies for him that is indicted of a Trespass, and acquitted, though it was not Felony: Also upon an Indictment for a Riot. *5 Mod. 405.* Where a Man is falsely indicted of any Crime, which may prejudice his Fame or Reputation; or though it doth not import Slander, if it endangers his Liberty; or if the Indictment be injurious to his Property, &c. Writ of Conspiracy lieth. *3 Salk. 97.* Conspiracy to maintain Suits and Quarrels, is punishable by Statute: So is Conspiracy of Victuallers, to sell their Victuals, at certain Prices: And of Labourers, Artificers &c. concerning their Work or Wages. *Stat. 23 E. 1. c. 10. 37 H. 8. c. 23. 2 & 3 E. 6. c. 15.* Not only Writ of Conspiracy, which is a civil Action at the Suit of the Party; but also Action of the Case, in the Nature of a Writ of Conspiracy, doth lie for a false and malicious Accusation of any Crime, whether Capital, or not Capital, even of High Treason; and though the Bill of Indictment is found *Ignoramus*, or it does not go so far as an Indictment, &c. And the same Damages may be recovered in such Action, as in a Writ of Conspiracy, where the Party is lawfully acquitted by Verdict. *1 Roll. Abr. 111, 112. 9 Rep. 56.* If one falsely and maliciously procure another to be arrested and brought before a Justice of Peace to be examined concerning a Felony, &c. on purpose to vex and disgrace him, and put him to Charge and Trouble, although he is not indicted for the same, yet he may have an Action of the Case; in which he need not aver that he was lawfully acquitted, as he ought to do in a Writ of Conspiracy: But he must aver that the Accusation was *Falso & Malitiose*, which Words are necessary in the Declaration; and it must appear that there was no Ground for it. And as Action on the Case may be prosecuted against one Person, where the Writ of Conspiracy or Indictment doth not lie but against two, this Action is most commonly brought. *1 Danv. Abr. 208, 213. 2 Inst. 562, 638.* Conspirators may be indicted at the Suit of the King; and at the Common Law, one may prefer an Indictment against Conspirators, tho' they only conspire together, and nothing is executed: Though the Conspiracy ought to be declared by some Act, as by Promise to stand by one another, &c. But a bare Conspiracy will not maintain a Writ of Conspiracy, at the Suit of the Party grieved, because he is not damaged by it; though it is a Ground for an Indictment. *9 Rep. 56. 2 Roll. Abr. 77.* If the Defendants can shew any Foundation or probable Cause of Suspicion, they shall be discharged: And if a Man hath good Cause of Suspicion, that a Person is guilty of Felony, and causes him to be indicted, in Prosecution of Justice, notwithstanding

standing there be no Felony committed, Action of *Conspiracy* will not lie: But 'tis otherwise if the Prosecutor imposes the Crime of Felony, where no Felony was committed. 1 *Roll. Abr.* 115. and *Rep.* 438. An Action lies not against a Justice of Peace, who sends out his Warrant upon a false Accusation; but it lies if he make it out without any Accusation. 1 *Leon.* 187. *Conspiracies* ought to be out of Court; for if a Prosecution be ordered in a Course of Justice, and Witnesses appear against a Party, &c. there shall be no Punishment: And if Persons, acted only as Jurors in a criminal Matter; or Judges in open Court, there is no Ground for Prosecution. *S. P. C.* 173. 12 *Rep.* 24. If all the Defendants but one are acquitted on Indictment for *Conspiracy*, that one must be acquitted also; because one Person alone cannot be indicted for this Crime: And Husband and Wife being but one Person, may not be indicted. 2 *Roll. Abr.* 708. The Acquittal of one Person is the Acquittal of another upon Indictment of *Conspiracy*. 3 *Mcd.* 220. Tho' where one is found guilty, according to the Opinion of the Lord Chief Justice *Hale*; if the other doth not come in upon Process, or if he dies pending the Suit, Judgment shall be had against the other. 1 *Vent.* 234. Writ of *Conspiracy* was brought against two Persons, and one found Not guilty; the other shall not have Judgment: But in Action on the Case, it had been good. *Cro. Eliz.* 701. If the Parties are found guilty of the *Conspiracy*, upon an Indictment of Felony, at the King's Suit; the Judgment is, that they shall lose their *Frank Law*; (which disables them to be put upon any Jury, to be sworn as Witnesses, or to appear in Person in any of the King's Courts) and that their Lands, Goods and Chattels be seized as forfeited, and their Bodies committed to Prison; which is called a *villanous Judgment*. 3 *Inst.* 143, 222. *Cromp. Just.* 156. The Matter of the *Conspiracy* ought to touch a Man's Life, where this Judgment is imposed. 1 *Hawk. P. C.* 193. For *conspiring* to charge a Person with poisoning another, &c. one of the Parties was fined 1000*l.* and some others had Judgment of the Pillory, and to be burnt in the Cheek with the Letters *F.* and *C.* to signify False Conspirators. *Moor* 816. Fine and Imprisonment is the usual Punishment at this Day on Indictment for *Conspiracy*: And on Writ of *Conspiracy*, &c. the Party shall be fined, and render Damages.

Conspirators, (*Conspiratores*) By 33 *E.* 1. are defined to be those that do bind themselves by Oath, Covenant, or other Alliance, that every of them shall aid the other falsely and maliciously to indict Persons; or falsely to move or maintain Pleas, &c. And such as retain Men in the Country, with Liveries or Fees, to maintain their malicious Enterprizes; which extends as well to the Takers, as the Givers; and Stewards and Bailiffs of great Lords, which by their Office or Power, undertake to bear and maintain Quarrels, Pleas or Debates, that concern other Parties than such as relate to the Estate of their Lords or themselves. 2 *Inst.* 384, 562. From this Description of *Conspirators*, in several of our old Law Books, *Conspiracy* is taken generally, and confounded with *Maintenance* and *Champerty*. Besides these, there are *Conspirators* in *Treason*; by plotting against the Government, &c. See *Treason*.

Conspirations, Is a Writ that lies against *Conspirators*. Reg. Orig. 134. *F. N. B.* 114,

Constable, (*Constabularius*) Is a Saxon Word, compounded of *Coning*, i. e. King and *Staple*, which signify the Stay or Hold of the King. This Word is diversly used in our Law; first, for the Lord Constable of England, whose Power was anciently so extensive, that some Time since that Office hath been thought too great for any Subject; unless at a Coronation to compleat the Grandeur of that Ceremony, and for the ancient Trials by Combat, &c. In the first Year of Henry the Fourth, the Lord North was made Lord Constable for Life: And this Office being formerly of Inheritance, by Tenure of certain Manors, the Line of the *Bobuns*, Earls of Hereford and Essex, enjoyed it in Right of the Manors of *Harlefield*, *Newnam*, and *Whitenhurst*, and afterwards it came to the *Staffords*, and Dukes of *Buckingham*, as Heirs general of them; but Edward Duke of *Buckingham* being attainted of High Treason ann. 13 Hen. 8. this Office became forfeited to the Crown, and since that Time it was never granted but *pro hac vice*, to be exercised at a Coronation, &c. The Power and Jurisdiction of the Lord High Constable, was the same with the Earl Marshal, and he sat as Judge having Precedence of the Earl Marshal in the Marshal's Court: But the Constable of England is by some of our Books also called *Marshal*; who takes Cognizance of all Matters of War and Arms, and had originally several Courts under him; but has now only the *Marshalsea*; and his Office is in Force both in Time of Peace and War, so that though the Lord Constable had the Precedency, yet the Court held before them was called the Marshal's Court. See my *Lex Constitutionis*, p. 175, 176. Of this Officer or Magistrate, *Gwyn* saith to this Effect; The Court of the Constable and Marshal determineth Contracts touching Deeds of Arms out of the Realm upon Land, and handleth Things concerning War within the Realm, as Combats Blazons of Armory, &c. which cannot be determined by the Common Law; and in these Matters is commonly guided by the Civil Law. By Statute, the Constable of England hath Cognizance of Things concerning Arms and Wars, which cannot be discussed by the Common Law: And when a Plea is commenced before the Constable and Marshal, which may be tried at the Common Law, the Party grieved shall have a Privy Seal to cause the Constable and Marshal to cease, until it be decided by the King's Council whether it may be tried there or at the Common Law. 13 R. 2. c. 2. The Constable and Marshal shall not have Cognizance of Pleas or Suits that ought to be tried at Common Law. Stat. 8 R. 2. c. 5. Appeals of Things done out of the Realm, are to be tried by the Constable and Marshal of England. 1 H. 4. c. 14. And if a Man be wounded on the High Sea, and die of the same Wound in a foreign Country, though this be done in the Seas belonging to England, yet it cannot be inquired of by the Common Law, because it is not within any of the Counties of the Realm: Neither can the Admiral hear and determine this Murder; for though the Stroke was within his Jurisdiction, the Death was *Infra Corpus Comitatus*, whereof he cannot Inquire: Nor is it within the Statute 28 H. 8. because the Murder was not committed on the Sea. But by 13 R. 2. the Constable and Marshal may hear and determine the same. 3 *Inst.* 48. The Office of Constable of England is said to consist in the Care of the Com-

Common Peace of the Land, in Deeds of Arms, and Matters of War: And there is a *Constable of the Tower*; a *Constable of Dover Castle* and of divers other Castles; but these are more properly called *Castellanes*. Out of the High Magistracy of the *Constable of England* (says *Lambard*) were drawn those inferior *Constables*, which we call *Constables of Hundreds and Franchises*; and the Statute of *Winchester* 13 E. 1. appoints for Conservation of the Peace, and view of Armor, two *Constables* in every Hundred and Franchise, who in Latin are called *Constabularii Capitales*, *High Constables*; because Continuance of Time, and increase of People and Offences, hath under these made others necessary in every Town, called *Petty Constables*, in Latin *Sub-Constabularii*, which are of like Nature, but of inferior Authority to the other. And there are other Officers whose Duty is much the same with *Constables*, as *Headboroughs*, *Tithingmen*, &c. And of these the *Petty Constable* seems to be the principal Officer, but in his Absence or where there is no *Petty Constable*, their Duty is the same. It has been held that both *High Constables*, and *Petty Constables*, were Officers at Common Law, before the Statute of *Winton*. 13 E. 1. cap. 6. And that by the Common Law they might arrest Persons for a Breach of the Peace, and carry them before a Justice to find Sureties for their good Behaviour, &c. But my Lord *Coke* says, That they were created by 13 Ed. 1. and their Duty was thereby limited, though subsequent Statutes have enlarged their Power; but being created by Act of Parliament, they have no more Authority than the Act that created them, or some other Acts have given them, and cannot prescribe as Officers by the Common Law may. 4 *Inst.* 267. 2 *Danv. Abr.* 148. Anciently *High* and *Petty Constables* were appointed by the Sheriff in his Tourn, and sworn there, as well as in the Leet: And by the Common Law, they ought to be chosen in the Turn or Leet. *Dalt. cap.* 28. 4 *Inst.* 267. Of common Right, a *Constable* is to be chosen by the Jury in the Leet; and if he be present, and refuse to be sworn, the Steward may fine him: If he be absent, he shall be sworn before the Justices of Peace; and if such *Constable* refuse to be sworn, the Homage must present his Refusal at the next Court, and then he shall be amerced. 1 *Salk.* 175. A *High Constable* may be chosen at a Court-Leet by the Steward, on Presentment of the Jury, where Custom warrants it; but where such Courts are not kept, or that there is a Neglect in chusing him, the Justices at their Quarter-Sessions may chuse and swear a *High Constable*; and this is the usual Way observed at this Time. *Mich.* 21 Car. 1. *Mod. Justice* 133. And he may be sworn out of Sessions, by Warrant from thence; and be elected out of the Session, by the greater Number of Justices in the Division. *Ibid.* If one that is elected to the Office of *Constable*, refuse to take the Oath to serve in that Office, the Court of B. R. may send forth a Writ of *Mandamus* to compel him to do it. 1 *Lill. Abr.* 303. The Justices of Peace may appoint a *Constable* in such Place where there was never any before. 1 *Mod.* 13. If *Constables*, *Headboroughs*, &c. die, or go out of the Parish, two Justices of Peace are to swear new ones till the Lord of the Manor hold a Court-Leet, or till the next Quarter-Sessions, who shall approve of them, or appoint others: And if any of them continue above a Year, the Justices of Peace may discharge them, and put

in others till the Lord of the Manor holds a Court. By Stat. 13 & 14 Car. 2. cap. 12. A *Constable's* Oath runs thus: 'You shall well and truly serve our Sovereign Lord the King, and the Lord of this Leet (if sworn in a Court-Leet) in the Office of *Constable*, in and for the Hundred of, &c. or Parish of, &c. for the Year ensuing, or until you shall be thereof discharged according to due Course of Law: You shall well and truly do and execute all Things belonging to the said Office, according to the best of our Knowledge, So help you God.' Formerly the Oath of a *Constable* was very long, he being sworn to several Articles, which included his particular Duty. *High Constables* are now generally chosen and sworn by the Justices of Peace in their Sessions: And *Petty Constables*, who are their Assistants, in each Town, Parish or Vill, the Choice of them properly belongs to the Court-Leet; but at this Day they are usually elected by the Parishioners, and sworn by a Justice of Peace, who on just Cause may remove them. 4 *Inst.* 267. These *Constables* are appointed yearly; and are to be Men of Honesty, Knowledge and Ability; not Infants, Lunatics, &c. And if they refuse to serve, they may be bound over to the Sessions, and indicted, and fined and imprisoned. 8 *Rep.* 41. 5 *Mod.* 96. But Physicians, Apothecaries, &c. are excused by Statute from bearing the Office of *Constable*, or other Parish Offices: Also Attornies, and Officers of the Courts at *Westminster*, Barristers at Law, Aldermen of *London*, &c. are privileged from serving the Office of *Constable*: And if a Gentleman of Quality be chose *Constable*, where there are sufficient Persons beside, and no special Custom concerning it, tis said such Persons may be relieved in B. R. 2 *Hawk. P. C.* 63, 64. A *Constable* may make a Deputy; but the *Constable* is answerable, and his Deputy must be sworn. *Sid.* 355. Dissenters chosen to the Office of *Constables*, &c. scrupling to take the Oaths, may execute the Office by Deputy, who shall comply with the Law in this Behalf. 1 *W. & M. cap.* 18. *Constables* may appoint a Deputy, or Person to execute a Warrant when by Reason of Sickness, &c. they cannot do it themselves. A Woman made *Constable*, by Virtue of a Custom that the Inhabitants of a Town shall serve by Turns, on Account of their Estates or Houses, may procure another to serve for her, and the Custom is good. 2 *Hawk. P. C.* 63. The *High Constable* has the Direction of the *Petty Constables*, *Headboroughs*, and *Tithingmen*, within his Hundred: His Duty is to keep the Peace; and apprehend Felons, Rioters, &c. to make Hue and Cry after Felons; and take Care that the Watch be duly kept in his Hundred; and that the Statutes for punishing Rogues and Vagrants, be put in Execution. He ought to prevent unlawful Games; Tipling, and Drunkenness; Bloodshed, Affrays, &c. He is to execute Precepts and Warrants, directed to him by Justices of the Peace, and make Returns to the Sessions of the Justices to all the Articles contained in his Oath, or that concern his Office: And he is also to cause the *Petty Constables* to make their Returns. He is to return all Victuallers and Alehouse-keepers that are unlicensed; and all such Persons as entertain Idlers, who are likely to be a Charge to the Parish. He must likewise present the Faults of *Petty Constables*, *Headboroughs*, &c. who neglect to apprehend Rogues, Vagrants, and idle Persons, Whores, Night-

Night-walkers, Mothers of Bastard Children who are likely to be chargeable to the Parish, &c. And also all Defects of Highways and Bridges, and the Names of those who ought to repair them; Scavengers who neglect their Duty; and all common Nuisances in Streets and Highways; Bakers who sell Bread under Weight; Brewers selling Beer to unlicensed Alehouses; Foreftallers, Regrators, Ingrossers, &c. And at every Quarter-Sessions they are to pay to the Treasurer of the County, all such Money as hath been levied and received by them, of the Church-wardens, &c. for the Relief of Prisons and Hospitals. *Dalt. ca. 28. Lamb. 125.* The Duty and Authority of Petty Constables, in their several Towns, Tithings, and Boroughs, are much the same as the High Constable hath in his Hundred: They are to keep the Peace in the Absence of the High Constable, and assist him in making Presentments at the Assizes and Quarter-Sessions, of every Thing that is amiss: As Conservators of the Peace, they may command Affrayers to keep the Peace, and depart, &c. And may break into a House to see the Peace kept; make fresh Pursuit into another County, &c. They may command all Persons to assist them, to prevent a Breach of the Peace; justify Beating another if assaulted; and if they happen to be killed, doing their Duty, it will be taken to be premeditated Murder. They may, without Warrant from a Justice of Peace, take into Custody any Persons whom they see committing a Felony or Breach of the Peace; but if it be out of their Sight, as where a Person is seized by another, &c. they may not do it without Warrant from a Justice. And a Constable cannot detain a Man at his Pleasure; but only stay him to bring him before a Justice, to be examined, &c. *Dalt. c. 1, 8. Lamb. 125. H. P. C. 135, 92. 1 Lill. Abr. 304. 1 Leon. 307.* Constables may justify the Detaining of an Offender for a Day, without Warrant; the Justice then not having an Opportunity to examine him. *Moor 408.* If one abuses a Constable in the Execution of his Office, he cannot commit him to Prison, there to remain till punished for the Offence; but must carry him before a Justice, who may commit him, &c. *2 Darr. Abr. 149.* Petty Constables are to execute Warrants of Justices, and not dispute it where the Justice hath Jurisdiction, and the Warrant is lawful: And being sworn Officers, they need not shew their Warrants when they come to arrest any one. *10 Rep. 76.* If any Justice sends his Warrant to a Constable, &c. to bring a Person before him to answer all such Matters as shall be objected against him by another, and doth not set forth the special Matter in the Warrant, the Warrant is unlawful, because it doth not give the Offender Time and Opportunity to find Sureties: And the Constable, if he executes it, is liable to Action of false Imprisonment. *2 Inst. 591.* So if a Justice of Peace sends a Warrant to a Constable to take up one for Slander, &c. the Justice having no Jurisdiction in such Cases, the Constable ought not to execute it. The Constable is the proper Officer to a Justice of Peace, and bound to execute his lawful Warrants; and therefore where a Statute authorizes a Justice to convict a Person of any Crime, and to levy the Penalty, &c. without saying to whom such Warrant shall be directed, the Constable is the Officer to execute the Warrant, and must obey it. *5 Mod. 130. 1 Salk. 381.* If a Warrant be directed to a Constable by Name, commanding him to execute it,

though he is not compellable to go out of his own Parish, yet he may if he will, and execute it in any Place in the County, and shall be justified by the Warrant for so doing; but if the Warrant be directed to all Constables, &c. generally, no Constable can execute the same out of his Precinct. *1 Salk. 175. 3 Salk. 99.* It is at the Election of a Constable to carry an Offender before any other Justice than him who issued the Warrant; if the Warrant be not special, to bring the Offender before the Justice that granted it. *5 Rep. 59.* Constables, Headboroughs, &c. out of Purse in their Offices, they and the Inhabitants may tax all Persons chargeable by the *43 El. c. 2.* as every Occupier of Land, &c. which Rate being confirmed by two Justices, the Constables may levy it by Distress and Sale of Goods. *Stat. 13 & 14 Car. 2.* A Constable by Warrant from a Justice of Peace, may sell the Goods of an Offender apprehended, to discharge the Expence of carrying him to Prison: If the Offender hath no Goods, then the Town where he was apprehended must be at the Expence; and the Constable, with three or four of the Principal Inhabitants, may impose a Tax on every Inhabitant, &c. which being allowed by a Justice, the Constable by his Warrant may levy it: And if the Inhabitants refuse to make a Tax, two Justices may by Warrant compel them to it. *3 Fac. 1. c. 10.* Constables sued may plead the General Issue, and give the special Matter in Evidence, for any Thing done in their Offices. *21 Fac. 1. c. 15.* And if a Constable doth not his Duty, he may be indicted and fined by the Justices of Peace.

The particular Duty of Constables, is further as follows: They are not only to command Affrayers to depart, but call others to their Assistance to suppress Affrays; and they may put Affrayers in the Stocks, till they can convey them before a Justice, &c. *Dalt. 33. Lamb. 135, 141.* Constables are to levy the Penalties of Persons keeping Ale-houses without License, selling less than Measure, &c. or forfeit *40 s. &c. 1 Fac. 1.* They are to stop Persons as go or ride unlawfully armed, in Terror of the People; take away their Arms, and carry them before a Justice of Peace. *Dalt. 338.* A Constable may with others called to his Assistance enter Bawdy-Houses, and arrest Persons with lewd Women, for Breach of the Peace. *Mich. 13 Hen. 7.* The Constable and two most able Inhabitants in the Parish, are to make an Assessment for the Repairs of Bridges, to be allowed by Justices. *22 H. 8.* High Constables may hear and determine Complaints of Clothiers, and their work People: Search for and seize Ropes, Engins, &c. for the stretching of Cloth. *4 Ed. 4. 39 Eliz. Constables, Headborough, &c.* are to levy the Fines imposed on those who shall be present at unlawful Conventicles; and by Virtue of a Justice's Warrant may enter such Places, break open Doors upon their being refused Entrance, and take into Custody Persons unlawfully assembled, &c. *22 Car. 2.* They are to be assisting to all Persons appointed by the King for the Collecting and Management of the Customs. *14 Car. 2.* The Penalties on Deer-stealers are to be levied by Constables, by Virtue of a Justice's Warrant: And the Penalties are *20 l.* for hunting Deer in any Place enclosed; and *30 l.* for each Deer killed, &c. *13 Car. 2.* Constables are to assist Landlords in taking Distresses for Rent in Arrear; and in the Appraisement of the Goods Sale, &c. if the same are not replevied in five Days.

Days. 2 *W. & M.* They are to levy the Penalty of 5 s. on Drunkards, for the Use of the Poor; or shall forfeit 10 s. 4. *Fac.* 1. *Constables* are to attend Officers of the *Excise*, and enter with them Brew-houses, private Houses, &c. for Discovery of Frauds: And by Warrant from Justices, they are to levy the Penalties on Offenders against any Law of *Excise*, by Distress, &c. 12 *Car.* 2. and 7 & 8 *W.* 3. A *Constable* permitting a Felon to escape, before arrested, is guilty of a Misdemeanor, for which he may be indicted and fined, and if the Felon be actually in Custody, and then he voluntarily permits him to escape, 'tis Felony in the *Constable*; but if the Escape be involuntary, it is only fineable: A *Constable* may discharge any Person arrested on Suspicion of Felony, where no Felony is actually committed. *Dalt.* 272. *Cro. Eliz.* 202, 752. *Constables ex Officio* are to apprehend Felons, call others to their Assistance therein, and apprehend Persons upon Suspicion, and carry them before a Justice, &c. A *Constable* may justify Breaking open a House, to take a Felon; and if the Felon fly, he is to make an Inventory of his Goods, send Hue and Cry after him, &c. *Dalt.* 289, 340. 27 *Eliz.* *Constables* must levy the Penalty of 10 s. for fishing in a River, without the Owner's Consent; and search for unlawful Nets, Engines, &c. 22 & 23 *Car.* 2. They are to give Assistance to Justices of Peace, in removing forcible Entries, &c. or shall be committed and fined 5 R. 2. *Constables* are to carry Higlers, Chapmen, Victuallers, &c. before a Justice, who have in their Custody any Hare, or other Game; and by a Justice's Warrant are to search suspected Houses for Game, &c. They may carry Persons, not qualified to kill Game, before a Justice, for keeping Greyhounds, setting Dogs, &c. 4 & 5 *W. & M.* 5 *Ann.* 3 *Geo.* They are to make a Search monthly for Gaming-Houses, where unlawful Games shall be kept; and they may commit the Masters of such Houses, and the Gamesters found therein: Though it is best to carry them before a Justice of Peace: And *Constables* neglecting their Duties in this particular, forfeit 40 s. 33 *H. 8. cap.* 14. If *Gaolers* refuse to receive a Felon, the *Constable* may either secure the Prisoner in his own House, or carry him back to the Town where apprehended: And to defray the Charge of carrying him to Gaol, &c. *Constables* have Power to sell the Offender's Goods, &c. 10 *H. 4. Dalt.* 340. 3 *Fac.* 1. *Constables* are to whip Hedgebreakers, Robbers of Orchards, &c. for not making Satisfaction ordered by a Justice: They may apprehend Persons suspected of Hedgebreaking, or of having in their Possession any Underwood, Poles, Gates, Stiles, &c. and carry them before a Justice, &c. 43 *El.* 15 *Car.* 2. To be aiding and assisting in putting the Acts in Executing relating to the Repairing of the Highways; under the Penalty of 40 s. And they are to return Lists of Persons qualified for the Office of Surveyor, to the Justices in their Sessions on the 3d of January yearly, under the Penalty of 20 s. 22 *Car.* 2. 3 & 4 *W. & M.* *Constables* are to be assisting in driving of Commons, Forests, &c. of Horses and Cattle; on Pain of 40 s. 32 *H. 8.* They are to make Hue and Cry after Offenders where a Felony is committed: To call upon the Parishioners to assist in the Pursuit; and if the Criminal be not found in the Precinct of the first *Constable*, he is to give Notice to the next *Constable*, and he to the next, who are to do as the First, and continue the Pursuit from

Town to Town, and County to County, &c. 13 *Ed.* 1. 27 *Eliz.* Pursuers of the Hue and Cry may search suspected Houses, and arrest suspicious Persons. *Constables* must give in to the Justices at Michaelmas Sessions yearly, a List of Persons qualified to serve on *Juries*; and neglecting to return Lists, incurs a Forfeiture of 5 l. 7 & 8 *W.* 3. In the Time of Harvest, a *Constable* may set Labourers, Artificers, and ordinary Tradesmen on Work, and put those in the Stocks who refuse. 5 *Eliz.* *Constables* are to give their Assistance in collecting the Land-Tax, and taking of Distresses, &c. when refused Payment. 2 *W. & M.* They have Power to search for bad Malt, and if they find any bad mingled with good, they may with the Advice of a Justice cause the same to be sold at reasonable Rates. 2 & 3 *Ed.* 6. *Constables* are to search and examine if any Persons use other Measures than such as are Winchester Measure, and agreeable to the Standard. 22 *Car.* 2. By Warrant from the Lieutenantcy, *Constables* are to commit Persons to Gaol, refusing to provide Arms for Horse and Foot Soldiers, for the Militia, if no Distress can be taken. 13 & 14 *Car.* 2. They may command Persons infected with the Plague, to keep within their Houses, &c. And are to levy Money appointed by Justices, for Relief of poor Persons infected. 1 *Fac.* 1. *Constables* shall present Popish Recusants, within their Liberties, &c. And neglecting, to forfeit 20 s. 35 *El.* 7 *Fac.* 1. They are likewise at the Quarter-Sessions to make Presentment of all Things against the Peace, and belonging to their Offices, &c. *Constables* are to suppress Riots, and they may ex Officio commit Offenders, &c. 17 *R.* 2. And by 1 *Geo.* Rioting, where twelve Rioters continue together an Hour after Proclamation, is made Felony. They are to make a Tax, by Warrant from two Justices, on the Inhabitants of their Parishes, where a Robbery on the Highway is committed in the Hundred. 17 *Eliz.* *Constables* and two Householders of Towns, Parishes, &c. by an old Law were to give Testimonials to Servants; Servants not procuring such were not to be retained, but punished as Vagrants. 5 *El.* *Constables*, &c. are to quarter Soldiers in Inns, Ale-houses, Victualling-Houses, &c. Refusing to billet Soldiers, they are to be fined not exceeding 40 s. nor less than 10 s. and receiving any Reward to excuse Quarterage; or if Victuallers, &c. refuse Soldiers quartered, they shall forfeit not above 5 l. nor under 40 s. 1 *Geo. cap.* 3, 34. 7 *Geo. c.* 6. Persons suspected of Desertion, may be taken up by *Constables*, and carried before a Justice: And 20 s. Reward is given for taking up a Deserter. They are to levy the Penalty of 5 s. on Persons resorting to Wrestling, Dancing, or other Sports on a Sunday; and also on Persons doing any worldly Labour on that Day, &c. 1 *Car.* 1. 29 *Car.* 2. To levy the Penalty for profane Swearing; which is 1 s. for a Servant, Labourer, &c. and 2 s. for others; and as the Crime is repeated, the Penalty is to be doubled. 6 & 7 *W.* 3. By Warrant from two Justices, *Constables*, &c. are to levy small Tithes, refused Payment, by Distress and Sale. 10 & 11 *W.* 3. *Constables*, upon Information, are to destroy Tobacco planted contrary to the Stat. 22 & 23 *Car.* 2. or be liable to a Forfeiture of 5 s. for every Rod not destroyed. *Constables*, &c. are to apprehend Vagrants, and carry them before a Justice; and to convey them by the Justice's Pass and Certificate, to their Place of Birth or Settlement, &c. being paid

paid the Allowances mentioned in the Certificates: They are to cause Beggars, &c. to be whipped, on Complaint of two Inhabitants; and if they neglect it, shall forfeit 10 s. and failing in their Duties in other Respects, to forfeit 20 s. 12 Ann. c. 23.

Constables of London, (which City is divided into twenty-six Wards, and every Ward into the like Number of Precincts, over each whereof is a *Constable*) are nominated by the Inhabitants of each Precinct on St. Thomas's Day, and confirmed, or otherwise at the Court of Wardmote; and after they are confirmed, they are sworn in their Offices at a Court of Aldermen, on the next Monday after Twelfth Day. The Substance of their Oath is, 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 Counter of one of the Sheriffs; and in case of Resistance, to make Outcry on 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; to certify once a Month into the Mayor's Court, the Names and Surnames of all Freemen deceased; and also of the Children of such Freemen, being Orphans: And by the Articles of the Wardmote Inquest, *Constables* are to certify the Name, Surname, Place of Dwelling, Possession and Trade of every Person, who shall newly come to inhabit in their Precincts, and to keep a Roll thereof; in order to which, they are to make Inquiry at least once a Month into what Persons are come to lodge and sojourn there; and if they find by their own Confessions, or the Record of the Aldermen's Books, that such new Comers are ejected from any other Ward for bad living, or any Misdemeanor, and refuse to find Sureties for their good Behaviour, Warning is to be given to them and their Landlords, that they depart; and on Refusal, they may be imprisoned, and the Landlords fined a Year's Rent agreed for by such new Comers. *Calth. Rep.* 129, 138. *Constables of London* in each Ward are to attend the Watch by Turns, and go the Rounds; and with the Beadles every Night are to warn such Persons as are to serve upon the Watch in their several Precincts; and if they refuse to appear, the *Constable* may hire others in his stead, and they shall pay him according to the Custom of the City: But the Common Council appoint the Watchmen. Watchmen are to apprehend Night-walkers, Vagabonds, Persons going armed, &c. and may arrest Strangers in the Night, and carry them before the *Constable* to be examined, and finding Cause of Suspicion secure them till the Morning; and whether they are Horsemen or Footmen, or Drivers of Carriages, or that shall carry Burthens, the Watch may stay them till the Morning, unless they can render a good Account of themselves, their Company, and Carriage, &c. and *Constables*, &c. are to be aiding and assisting to the Watch; and the Watchmen are to obey their Orders, in conveying Offenders to the Compter, which is the common Prison for Offenders for the Breach of the Peace, till they are ex-

amined, and punished by the Lord Mayor, &c. But *Constables* ought to be careful whom they send to the Compter, for fear of Actions for false Imprisonment; Prosecution for Damages, &c. If any will not obey the Arrest of the Watch, they may make Hue and Cry after them; and for such Arrest of a Stranger, (especially one suspected) none is liable to Punishment. *Dalt.* 240. *Constables* are to certify to the Lord Mayor, and Common Council of the City, the Names of all such Persons as shall interrupt them in the Discharge of their Offices: And a *Constable of London* has Power to execute Warrants, &c. throughout the whole City, upon Occasion. Such as are chosen into the Office, are obliged to Place the King's Arms, and the Arms of the City over their Doors; and if they reside in Alleys, at the End of such Alleys, towards the Street; to signify that a *Constable* lives there, and that they may be the more easily found when wanted. See *Comp. Parish-Officer*, p. 7, 8, &c.

Constat, (*Lat.*) Is the Name of a Certificate, which the Clerk of the Pipe, and Auditors of the Exchequer, make at the Request of any Person who intends to plead or move in that Court, for Discharge of any Thing: And the Effect of it is the Certifying what does *Constare* upon Record, touching the Matter in Question. 3 & 4 Ed. 6. c. 4. and 13 El. c. 6. *Constat* is held to be superior to a Certificate, which may err or fail in its Contents, whereas this cannot, it having nothing but what is evident upon Record. The Exemplification under the great Seal, of the Inrolment of any Letters Patent, is called a *Constat*. Co. Lit. 225.

Consuetudinarius, A Ritual or Book, containing the Rites and Forms of Divine Offices, or the Customs of Abbeys and Monasteries: 'Tis mentioned in *Brompton*.

Consuetudinibus & Servitiis, Is a Writ of Right Close, which lies against the Tenant that desorceth his Lord of the Rent or Service due to him. *Reg. Orig.* 159. *F. N. B.* 151. When the Writ is brought by the Party in the Right only, he shall count of the Seisin of his Ancestor, and the Writ be in the *Debet*; but when he counts of his own Seisin, then the Writ is in the *Debet & solet*, &c. And if the Party say in the Writ *ut in Redditibus & Arveragiis*, these Words prove that the Demandant himself was seised of the Services; and then if he count in such Writ of Seisin of his Ancestors, and not of his own Seisin, the Writ shall abate: So that if he will bring a Writ of Customs and Services of the Seisin of his Ancestors, he ought to leave these Words *ut in Redditibus*, &c. out of the Writ. Where a Person brings a Writ of Customs and Services against any Tenant, and by his Count demands Homage, the Writ ought to make special Mention thereof; as *ut in Homagio*, &c. or the Writ will abate. *New Nat. Br.* 338. If the Writ be brought against Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, &c. The Writ, which is returnable in the Common Pleas, runs thus:

REX Vic. &c. *Prac.* A. quod, &c. faciat B. Consuetud. & Servic. quod ei facer. debet de Libero Tenemento suo, quod de eo tenet in, &c. Ut in Redditibus, Arveragiis, & aliis; vel sic, in Homag. releviis & al. vel sic, in feftis, Cur. &c. Nisi, &c.

Consulta Ecclesia, A Church full, or provided for, according to *Cowel*.

Consultation, (*Consultatio*) Is a Writ whereby a Cause being removed by Prohibition from the Ecclesiastical Court, to the King's Court, is returned thither again: For if the Judges of the King's Court, upon comparing the Libel with the Suggestion of the Party, find the Suggestion false, or not proved, and therefore the Cause to be wrongfully called from the Ecclesiastical Court, then upon this *Consultation* or Deliberation they Decree it to be returned; whereupon the Writ in this Case obtained is called a *Consultation*. *Reg. Orig.* 44, &c. Statute of *Writ of Consultations*, 24 *Ed.* 1. This Writ is in Nature of a *Procedendo*; but properly a *Consultation* ought not to be granted, but in Case where a Man cannot recover at the Common Law, in the King's Courts. *New Nat. Br.* 119. Causes of which the Ecclesiastical or Spiritual Courts, have Jurisdiction, are of Administrations, Admissions of Clerks, Adultery, Appeals in Ecclesiastical Causes, Apostacy, General Bastardy, Blasphemy, Solicitation of Chastity, Church Repairs, Dilapidations and Church Repairs, Celebration of Divine Service, Divorces, Fornication, Heresy, Incest, Institution of Clerks, Marriage Rites, Oblations, Obventions, Ordinations, Commutation of Penance, Penfions, Procurations, Schism, Simony, Tithes, Probate of Wills, &c. and where a Suit is in the Ecclesiastical Court, for any of these Causes, or the like, and not mixed with any temporal Thing; if a Suggestion is made for a Prohibition, a *Consultation* shall be awarded. 5 *Rep.* 9. To move for a Prohibition in another Court, after Motion in the Chancery, &c. for a Prohibition on the same Libel, which is granted, is merely vexatious, for which a *Consultation* shall be had. *Cro. Eliz.* 277. Where a *Consultation* is granted upon the Right of the Thing in Question, there a new Prohibition shall never be granted on the same Libel; but where granted upon any Default of the Prohibition, in Form, &c. there a Prohibition may be granted upon the same Libel again. 1 *Nelf. Abr.* 485. A *Consultation* must be pursuant to the Libel, &c. *Vide* Prohibition.

Consul, (*Lat.*) In our Law Books signifies an Earl. *Bract. lib.* 1. *cap.* 8. tells us that as *Comes* is derived from *Comitatu*, so *Consul* is derived from *Consulendo*; and in the Laws of Edward the Confessor, Mention is made of *Vicecomites* and *Viceconsules*. Blount. *Consuls* among the Romans, were chief Officers of which two were yearly chosen, to govern the City of Rome: But this Government of Rome, has long since be abrogated. Our *Consuls* abroad take Care of the Affairs and Interest of Merchants, in foreign Kingdoms where they are appointed by the King; as at Lisbon, &c.

Contempt, (*Contemptus*) Is a Disobedience to the Rules and Orders of a Court, which hath Power to punish such Offence: And one may be imprisoned for a *Contempt* done in Court; but not for a *Contempt* out of Court, or a private Abuse. *Cro. Eliz.* 689. Attachment also lies against one for *Contempt* to the Court, to bring in the Offender to answer on Interrogatories, &c. and if he cannot acquit himself, he shall be fined. 1 *Lill.* 305. See *Attachment*.

Contentment, (*Contentementum*) Is said to signify a Man's Countenance or Credit, which he hath together with, and by Reason of his Freehold: In which Sense, it is used in the Statute of

1 *Ed.* 3, and other Statutes: And *Spelman* in his *Glossary* says, *Contentementum est Estimatio & Conditionis forma, qua quis in Repub. subsistit*. But *Contentment* is more properly that which is necessary for the Support and Maintenance of Men, according to their several Qualities, Conditions or States of Life: And seems to be Freehold Land, which lieth to a Man's Tenement, or Dwelling-House, that is in his own Occupation. For by *Magna Charta*, *cap.* 14. it is enacted, that a Freeman shall not be amerced, but *secundum magnitudinem delicti, salvo sibi Contentamento suo*; & *Mercator eodem modo, salva Merchandisa*; & *vilanus salvo Wainagio*; that is, as *Glanvil* tells us, he should be amerced, *secundum quantitatem feodorum suorum, & secundum facultates, ne nimis gravari inde videantur vel suum Contentementum amittere*. *Lib.* 9. *c.* 8.

Contingent Use, Is 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: A Use in Contingency is such which by Possibility may happen in Possession, Reversion or Remainder. 1 *Rep.* 121. A *Contingent Remainder* is where an Estate is limited to take Place *in futuro*, upon an uncertain Event; as where a particular Estate which doth support a Remainder, may or may not determine before the Remainder may commence. 10 *Rep.* 85. A *Remainder Contingent* is said to be an Estate vested; but on such Remainder in executory Devises, the Estate descends till the Contingency happens, and nothing is vested till then. 1 *Ventr.* 189.

Continual Claim, Is a Claim made from Time to Time, within every Year and Day, to Land, or other Thing, which in some Respect we cannot attain without Danger: As if a Person be disseised of Land, into which though he hath a Right of Entry, he dare not enter for fear of Beating, &c. it behoves him to hold on his Right of Entry at his best Opportunity, by approaching as near it as he can once a Year, as long as he lives, and to save the Right of Entry to his Heir. *Lit. lib.* 3. *c.* 7. *Continual Claim* is where 'tis made, and repeated yearly, so as to be within a Year and a Day before the Death of him that hath the Lands; and if after he dies seized, so that his Heir is in by Descent, yet he that makes the Claim may enter, &c. but if no Claim be made, then the Entry of the Person disseised, &c. is taken away. 32 *Hen.* 8. *cap.* 33. Though by the Statute, the Disseisor is to have peaceable Possession five Years, without Entry or *Continual Claim*, for a Discent on his Death, to take away the Entry of the Disseisee, or his Heir: After the five Years, the Disseisee is to make *Continual Claim*, as before the Statute. The Feoffee of a Disseisor, Abators, &c. are out of the Statute.

Continuance, Is the Continuing of a Cause in Court, by an Entry upon the Records there for that Purpose. There is a *Continuance* of the *Affise*, &c. and *Continuance* of a Writ or Action, is from one Term to another, in Case where the Sheriff hath not returned a former Writ, issued out in the said Action. *Kitch.* 262. *Continuances* and *Essoins* are amendable upon the Roll, at any Time before Judgment: They are the Acts of the Court, and at Common Law they may amend their own Acts before Judgment, though in another Term; but their Judgments are only amendable in the same Term wherein they are given. 3 *Lep.* 431. Upon an Original, a Term

or two or three Terms, may be mesne between the Tette and the Return; and this shall be a good Continuance; for the Defendant is not at any Prejudice by it, and the Plaintiff may give a Day to the Defendant beyond the common Day if he will: But a Continuance by *Capias* ought to be made from Term to Term, and there cannot be any mesne Term, because the Defendant ought not to stay so long in Prison. 2 *Danv. Abr.* 150. If a Man recovers upon Demurrer, or by Default, &c. and a Writ of Inquiry of Damages is awarded, there ought to be Continuances between the first and second Judgment, otherwise it will be a Discontinuance; for the First is but an Award, and not compleat till the second Judgment upon the Return of the Writ of Inquiry of Damages. *Ibid.* 153. If the Plaintiff be nonsuit, by which the Defendant is to recover Costs; if the Plaintiff will not enter his Continuances, on Purpose to save the Costs, the Defendant shall be suffered to enter them. *Cro. Jac.* 316, 317. The Course of the Court of King's Bench is to enter no Continuance upon the Roll, till after Issue or Demurrer; and then to enter the Continuance of all upon the Back, before Judgment: And if it is not entered, it is Error. *Trin.* 16 *Jac. B. R. Vide Discontinuance.*

Continuando, Is a Word used in a special Declaration of Trespass, when the Plaintiff would recover Damages for several Trespases in the same Action: And to avoid Multiplicity of Suits, a Man may in one Action of Trespases recover Damages for many Trespases, laying the First to be done with a Continuando to the whole Time, in which the Rest of the Trespases were done; which is in this Form, *Continuando Transgressionem predictam, &c. a predicto die, &c. usque talem Diem*, including the last Trespases. *Terms de Ley* 173. In Trespases with a Continuando of divers Things, tho' of some of those Things there could be no Continuando; yet it shall be good for those Things for which the Continuando could be, and not for the others: But if the Continuando had been particularly of such Things whereof a Continuando could not be, then it had been naught. 3 *Lev.* 94. Every Day's Trespases is said to be a several Trespases; tho' a Continuando may not be of Men's continuing a Trespases Day and Night, for some Time together; for Mankind must take some Rest: Where Cattle do Trespases upon Ground, they are continually trespassing Night and Day, and therefore the Continuando in that Case is good. 1 *Lill. Abr.* 307. Trespases for Breaking an House with a Continuando, is good; and until a Re-entry is made, the Continuation of the Possession is a Continuing of the Trespases. *Lutw.* 1312. It is usual in Practice to lay the Continuando for longer Time than you can prove; but Damages shall be given only for what can be proved. 2 *Mod.* 253.

Contraband Goods, (from *Contra*, and the Ital. *Bando*, an Edict or Proclamation) Are those which are prohibited by Act of Parliament, or the King's Proclamation to be imported into, or exported out of this into any other Nation: As during the late War with France, French Wines, &c. were prohibited by Statute to be imported here from thence: And Wool, &c. is not to be exported from hence to other Kingdoms. *Stat.* 27 *E. 3. c. 3.* 13 & 14 *Car. 2.* 7 & 8 *W. 3.* &c.

Contracatus, A Criminal, or one prosecuted for a Crime: This Word is mentioned in *Leg. H. 1. c. 61.*

Contract, (*Contractus*) Is a Covenant or Agreement between Two or more Persons, with a lawful Consideration or Cause. *West. Symb.* As if a Man sells his Horse or other Thing to another, for a Sum of Money; or covenants, in Consideration of 20 *l.* to make him a Lease of a Farm, &c. these are good Contracts, because there is a *Quid pro quo*, or one Thing for another: But if a Person make a Promise to me, that I shall have 20 *s.* and that he will be Debtor to me therefore, and after I Demand the 20 *s.* and he will not give it me, yet I shall never have any Action to recover this 20 *s.* because this Promise was no Contract, but a bare Promise, or *Nudum Pactum*; tho' if any Thing were given for the 20 *s.* if it were but to the Value of a Penny, then it had been a good Contract. *Cowel.* Every Contract doth imply in it self an *Assumpsit* in Law, to perform the same; for a Contract would be to no Purpose, if there were not Means to enforce the Performance thereof. 1 *Lill. Abr.* 308. Where an Action is brought upon a Contract, and the Plaintiff mistakes the Sum agreed upon, he will fail in his Action: But if he brings his Action on the Promise in Law, which arises from the Debt, there, although he mistakes the Sum, he shall recover. *Aleyn* 29. There is a Diversity where a Day of Payment is limited on a Contract, and where not; for where it is limited, the Contract is good presently, and an Action lies upon it, without Payment; but in the other not: If a Man buys twenty Yards of Cloth, &c. the Contract is void if he do not pay the Money presently; but if Day of Payment be given, there the One may have an Action for the Money, and the other Trover for the Cloth. *Dyer* 30, 293. Where a Seller says to a Buyer, he will sell his Horse for so much, and the Buyer says he will give it; if he presently tell out the Money, it is a Contract; but if he do not, it is no Contract. *Noy's Max.* 87. *Hob.* 41. The Property of any Thing sold is in the Buyer immediately by the Contract; tho' regularly it must be delivered to the Buyer, before the Seller can bring his Action for the Money. *Noy* 88. Contracts, not to be performed in a Year, are to be in Writing, signed by the Party, &c. or no Action may be brought on them: But if no Day is set, or the Time is uncertain, they may be good without it. *Stat.* 29 *Car. 2. c. 3.* And by the same Statute, no Contract for the Sale of Goods for 10 *l.* or upwards, shall be good, unless the Buyer receive Part of the Goods sold; or gives something in Earnest to bind the Contract; or some Note thereof be made in Writing, signed by the Person charged with the Contract, &c. A Contract made and entered into upon good Consideration, may for good Considerations be dissolved. See *Sale. Usurious Contracts, vide Usury.*

Contrafaction, (*Contrafactio*) A Counterfeiting; as *Contrafactio sigilli Regis*, Counterfeiting the King's Seal. *Blount.*

Contra formam Collationis, Is a Writ that lay where a Man had given Lands in perpetual Alms, to any late Houses of Religion, as to an Abbot and Convent, or to the Warden or Master of any Hospital and his Convent, to find certain poor Men with Necessaries, and do Divine Service, &c. If they aliened the Land, to the Dishonour of the House and Church, then the Donor, or his Heirs, should bring this Writ to recover the Lands. It was had against the Abbot, or his Successor; not against the Alienee, tho' he were Tenant of the Land: And was founded upon the Statute

Statute of *Westm.* 2. c. 1. Reg. Orig. 238. Fitzh. N. B. 210.

Contra formam feoffamenti, A Writ that lies for the Heir of a Tenant infeoffed of certain Lands or Tenements, by Charter of Feoffment from a Lord, to make certain Services and Suits to his Court, who is afterwards distrained for more Services than are mentioned in the Charter. Reg. Orig. 176. *Old Nat. Br.* 162.

Contra formam Statuti, Is the usual Conclusion of every Indictment, &c. laid on an Offence created by Statute.

Contramandatio Placiti, Signifies a Respite or giving a Defendant further Time to answer; or a Countermand of what was formerly ordered. *Leg. Hen.* 1. c. 59.

Contramandatum, Is a lawful Excuse which the Defendant in a Suit by Attorney alledgeth for himself, to shew that the Plaintiff hath no Cause of Complaint. *Blount*.

Contrapositio, A Plea or Answer. — *Si quis in Placito per Justitiam posito sui vel suorum causam injustis Conterminationibus vel Contrapositionibus differet, hanc perdat.* *Leg. Hen.* 1. c. 34.

Contrarietatis. In the Reign of King *Edw.* 2. *Thomas Earl of Lancaster* taking Part with the *Bavons* against the King, it was not thought fit, in Respect of their great Power, to call them Rebels or Traitors, but *Contrarietatis*: And hence we have a Record of those Times, called *Rotulum Contrarietatum*.

Contratenere, To with-hold. *Si quis Decimas contratenear.* *Leg. Alfredi apud Brompton*, c. 9.

Contribules, *Contribunales*, Kindred or Cousins. *Lamb. pag.* 75.

Contribution, (*Contributio*) Is where every one pays his Share, or contributes his Part to any Thing. One Parcener shall have Contribution against another; one Heir have Contribution against another Heir, in equal Degree: And one Purchaser have Contribution against another. Also Coparceners in a Statute shall be equally charged, and not one of them solely extended. 3 *Rep.* 12, 13, &c. If Lands are mortgaged, and then devised to one Person for Life, with Remainder to another in Fee; both Devisees shall make Contribution to the Payment of the Mortgage-Money: And it has been adjudged in Chancery, that Tenant for Life shall pay one Third, and he in Remainder two Thirds. 1 *Chanc. Cas.* 224, 271. Where Goods are cast into the Sea, for the Safeguard of a Ship, or other Goods, &c. aboard, in a Tempest; there is a Contribution among Merchants, towards the Loss of the Owners. 32 *H.* 8. c. 14. And where a Robbery is committed on the Highway, and Damages are recovered against one or a few Persons, in Action against the Hundred, the Rest of the Inhabitants shall make Contribution to the same. 27 *Eliz.* c. 13.

Contributione facienda, Is a Writ that lieth where there are Tenants in Common, that are bound to one Thing, and one is put to the whole Burden; or who jointly hold a Mill *pro Indiviso*, and take the Profits equally, and the Mill falling into Decay, one of them will not repair the Mill; now the other shall have a Writ to compel him to contribute to the Reparations. And if there be three Coparceners of Land, that owe Suit to the Lord's Court, and the eldest performs the Whole; then may she have this Writ to compel the other to make their Contribution. And also where one Suit is required for Land, and that Land being sold to divers Persons, Suit is required of them

all, or some of them by Distress, as entirely as if all were still in one. Reg. Orig. 176. *F. N. B.* 162.

Form of the Writ of Contributione facienda.

REX Vic. &c. Si A. fecerit, &c. tunc Summ. &c. B. & C. quod sint apud, &c. ostens. quare cum iidem A. B. & C. quoddam molendinum in, &c. pro indiviso teneant, & ipsi exitus inde provenient. pro equali portione percipiant, & ad Reparationem & sustentat. ejusdem Molendini teneantur, ac iidem B. & C. licet Proportionem de exit. illis ipsi. contingen. percipiant, reparationi & sustentationi predict. molendini contribuere contradicunt, in ipsius A. damnum, &c. Et habeas, &c.

Controller, (*Fr. Contrerolleur*, *Lat. Contravotulator*) Is an Overseer or Officer relating to Publick Accounts, &c. And we have divers Officers of this Name; as Controller of the King's Household; of the Navy; of the Customs; of the Excise; of the Mint, &c. And in our Courts, there is the Controller of the Hamper; of the Pipe; and of the Pell, &c. The Office of Controller of the Household is to control the Accounts of the Green Cloth; and he sits with the Lord-Steward and other Officers in the Counting-house, for daily taking the Accounts of all Expences of the Household. The Controller of the Navy controls the Payments of Wages; examines and audits Accounts; and inquires into Rates of Stores for Shipping, &c. Controllers of the Customs and Excise, their Office is to control the Accounts of those Revenues: And the Controller of the Mint controls the Payment of Wages, and Accounts relating to the same. Controller of the Hamper is an Officer in the Chancery attending the Lord Chancellor daily in Term-time, and upon Seal-Days; whose Office is to take all Things sealed from the Clerk of the Hamper, inclos'd in Bags of Leather, and to note the just Number and Effect of all Things so received, and enter the same in a Book, with all the Duties appertaining to his Majesty, and other Officers for the same. The Controller of the Pipe is an Officer of Exchequer, who writes out Summons twice every Year to the Sheriffs to levy the Farms and Debts of the Pipe; and keeps a Controlment of the Pipe, &c. Controller of the Pell is also an Officer of the Exchequer; of which Sort there are Two, who are the Chamberlains Clerks, that do or should keep a Controlment of the Pell, of Receipts and Goings out: And this Officer was originally such as took Notes of other Officers Accounts or Receipts, to the Intent to discover if they dealt amiss, and was ordained for the Prince's better Security. *Fleta*, lib. 1. cap. 18. *Stat.* 12 *Ed.* 3. c. 3. This last seems to be the original Use and Design of all Controllers.

Controber, (*Fr. Controveur*) Signifies in our Law one that of his own Head devises or invents false News. 2 *Inst.* 227.

Condenable, (*Fr.*) Agreeable. *Stat.* 27 *Ed.* 3. c. 21. See Covenable.

Convent, (*Conventus*) Signifies the Fraternity of an Abbey or Priory; as *Societas* doth the Number of Fellows in a College. *Bract.* lib. 2. c. 35.

Conventicle, (*Conventiculum*) A private Assembly or Meeting for the Exercise of Religion; first attributed in Disgrace to the Meetings of *Wickliff* in this Nation, above Two hundred Years since; and now applied to the illegal Meetings of the *Nonconformists*: It is mentioned in the Statutes

tutes 2 Hen. 4. c. 15. 1 Hen. 6. c. 3. and 16 Car. 2. c. 4. which Statute was made to prevent and suppress *Conventicles*: And by 22 Car. 2. c. 1. It is enacted, That if any Persons of the Age of sixteen Years, Subjects of this Kingdom, shall be present at any *Conventicle*, where there are Five or more assembled, they shall be fined 5 s. for the first Offence, and 10 s. for the Second; and Persons Preaching incur a Penalty of 20 l. Also suffering a Meeting to be held in a House, &c. is liable to 20 l. Penalty. Justices of Peace have Power to enter such Houses, and seise Persons assembled, &c. And if they neglect their Duty, they shall forfeit 100 l. But the 1 W. & M. c. 18. ordains, that Protestant Dissenters shall be exempted from Penalties: Tho', if they meet in a House, with the Doors lock'd, barr'd, or bolted, such Dissenters shall have no Benefit from 1 W. & M. See *Herefy*.

Conventio, Is a Word used in antient and modern Law-Pleadings, for an Agreement or Covenant: As *A. B. queritur, &c. de C. D. &c. pro eo quod non teneat Conventionem, &c.* There is a pleasant Record of the Court of the Manor of Hatfield, in Com. Ebor. held Anno 11 Edw. 3. which runs thus: Robertus R. qui optulit se versus Johannem J. de eo quod non teneat Conventionem inter eos factam, & unde queritur, quod certo die & anno apud, &c. convenit inter predictum Robertum & Johannem, quod predictus Johannes vendidit predicto Roberto Diabolum ligatum in quodam ligamine pro iii d. ob. & predictus Robertus tradidit predicto Johanni quoddam obulum-earles (i. Earnest-Money) per quod Proprietas dicti Diaboli commoratur in Persona dicti Roberti ad habend. deliberationem dicti Diaboli, infra quartam diem prox. sequent. Ad quam diem idem Robertus venit ad prefatum Johannem, & petit deliberationem dicti Diaboli, secundum Conventionem inter eos factam; idem Johannes predictum Diabolum deliberare noluit, nec adhuc vult, &c. ad grave dampnum ipsius Roberti ix sol. Et inde producit secutam, &c. Et predictus Johannes venit, &c. Et non dedit Conventionem predictam. Et quia videtur Curie quod tale Placitum non jacet inter Christianos, Ideo partes predicti adjournantur usque in Infernum, ad audiendum Judicium suum, & utraque Pars in Misericordia, &c.

Conventione, Is a Writ that lies for the Breach of a any Covenant in Writing, whether Real or Personal: And it is called a *Writ of Covenant*. Reg. Orig. 185. F. N. B. 145.

Convention, Is properly where a Parliament is assembled, but no Act is passed, or Bill sign'd, &c. See *Parliament*.

Convention Parliament. On the Abdication of King James II. Anno 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*: And the Lords and Commons thus convened were declared the two Houses of Parliament, notwithstanding the Want of any Writ of Summons, &c. Stat. 1 W. & M.

Conventuals, Are those Religious Men who are united together in a *Convent* or Religious House. Cowel.

Conventual Church, Is a Church that consists of Regular Clerks, professing some Order of Religion; or of Dean and Chapter, or other Society of Spiritual Men.

Conversos. The *Jews* here in England were formerly called *Conversos*, because they were converted to the Christian Religion. King Hen. 3.

built an House for them in London, and allowed them a competent Provision or Subsistence for their Lives; and this House was called *Domus Conversorum*. But by Reason of the vast Expences of the Wars, and the Increase of these *Converts*, they became a Burthen to the Crown; so that they were placed in Abbeys and Monasteries, for their Support and Maintenance: And the *Jews* being afterwards banished, K. Edw. 3. in the 51st Year of his Reign, gave this House which had been used for the converted *Jews*, for the Keeping of the Rolls; and it is said to be the same which is at this Time enjoyed by the Master of the Rolls. Blount.

Conveyance, Is a Deed which passes Land from one Man to another. *Conveyance* by *Feoffment*, and *Livery*, was the general *Conveyance* at Common Law; and if there was a Tenant in Possession, so that *Livery* could not be made; then was the Reversion granted, and the Tenant always attorned: Also upon the same Reason, a *Lease* and *Release* was held to be a good *Conveyance*, to pass an Estate; but the Lessee was to be in actual Possession, before the Release. And by the Common Law, when an Estate did not pass by *Feoffment*, the Vendor made a *Lease* for Years, and the Lessee actually entered; and the Lessor granted the Reversion to another, and the Lessee attorn'd: Afterwards, when an Inheritance was to be granted, then likewise was a *Lease* for Years usually made, and the Lessee entered (as before) and then the Lessor released to him: But after the *Statute of Uses*, it became an Opinion, that if a *Lease for Years* was made upon a valuable Consideration, a *Release* might operate upon it without an actual Entry of the Lessee; because the Statute did execute the *Lease*, and raised an *Use* presently to the Lessee: And Serjeant Moor was the First who practised this Way. 2 Mod. 251, 252. 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 Son did give and grant Lands to his Mother, and her Heirs; tho' this was a defective *Conveyance* at Common Law, yet it was adjudged good by Way of *Use*, to support the Intention of the Donor, and therefore by these Words an *Use* did arise to the Mother by Way of Covenant to stand seised. 2 Lev. 225. A *Feoffment*, without *Livery and Seisin*, will not enure as a Grant; but where made in Consideration of a Marriage, &c. it has been adjudged, that it did enure as a Covenant to stand seised. 2 Lev. 213. Tenant in Fee, in Consideration of Marriage, covenanted, granted, and agreed, all that Messuage, to the Use of himself for Life, then to his Wife for Life for her Jointure, then to their first Son in Tail Male, &c. Now by these Words it appeared, that the Husband intended some Benefit for his Wife, wherefore the Court supplied other Words to make the *Conveyance* sensible. 1 Lutw. 782. The Words *Give* and *Grant*, &c. are Words proper for a *Conveyance* at Common Law; but it has been held, that tho' some Books warrant that *Conveyances* shall operate according to the Words, yet of late the Judges have a greater Consideration of the Passing the Estate, than the Manner by which 'tis passed. 2 Lutw. 1209. 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. 1 Lill. Abr. 311. Fraudulent *Conveyances* to deceive Creditors; defraud Purchasers, &c.

Ec. are void, by Stat. 50 Ed. 3. c. 6. 13 *Eliz.* c. 5. 27 *Eliz.* c. 4. Vide *Deeds*. See my *Accomplish'd Conveyancer*, Vol. 1. Edit. 2.

Convict, (*Convictus*) Is he that is found guilty of an Offence by Verdict of a Jury. *Staundf. P. C.* 186. *Crompton* saith, That *Conviction* is either when a Man is outlawed, or appeareth and confesseth, or is found guilty by the Inquest: And when a Statute excludes from Clergy Persons found guilty of Felony, *Ec.* it extends to those who are convicted by Confession. *Crompt. Just.* 9. The Law implies a *Conviction*, before Punishment, though not mentioned in a Statute: And where any Statute makes a second Offence Felony, or subject to a heavier Punishment than the First, it is always implied that such second Offence ought to be committed after a *Conviction* for the First. 1 *Hawk. P. C.* 13, 107. Judgment amounts to *Conviction*; tho' it doth not follow that every one who is convicted, is adjudged. *Ibid.* 14. A *Conviction* at the King's Suit, may be pleaded to a Suit by an Informer, on a Penal Statute; because while in Force it makes the Party liable to the Forfeiture, and no one ought to be punished twice for the same Offence: But *Conviction* may not be pleaded to a new Suit by the King. *Ibid.* 18. A Person convicted or attainted of one Felony, may be prosecuted for another, to bring Accessories to Punishment, *Ec.* *Fitz. Coro.* 379. On a Joint Indictment or Information, some of the Defendants may be acquitted, and others convicted. 2 *Hawk.* 240. Persons convicted of Felony by Verdict, *Ec.* are not to be admitted to Bail, unless there be some special Motive for granting it; as where a Man is not the same Person, *Ec.* for Bail ought to be before Trial, when it stands indifferent whether the Party be guilty, or not. *Ibid.* 99, 114. *Conviction* of Felony, and other Crimes, disables a Man to be a Juror, Witness, *Ec.* By our Books, *Conviction* and Attainder are often confounded.

Convict Recusant, Is one that hath been legally presented, indicted, and convicted, for refusing to come to Church to hear the Common Prayer, according to the Statutes of 1 *Eliz.* c. 2. 23 *Eliz.* c. 1. and 3 *Jac.* 1. c. 4.

Convivium, Signifies the same Thing among the Laity, as *Procuratio* doth with the Clergy, viz. When the Tenant, by Reason of his Tenure is bound to provide Meat and Drink for his Lord once or oftner in the Year. *Blount.*

Convocation, (*Convocatio*) Is the Assembly of all the Clergy, to consult of Ecclesiastical Matters in Time of Parliament: And as there are two Houses of Parliament, so there are two Houses of *Convocation*; the one called the *Higher or Upper House*, where the Archbishops and all the Bishops sit severally by themselves; and the other the *Lower House of Convocation*, where all the Rest of the Clergy sit, i. e. All Deans and Archdeacons, one Proctor for every Chapter, and two Proctors for all the Clergy of each Diocese, making in the whole Number One hundred and sixty-six Persons. Each *Convocation House* hath a Prolocutor, chosen from among themselves, and that of the Lower House is presented to the Bishops, *Ec.* The Archbishop of *Canterbury* is the President of the *Convocation*, and prorogues and dissolves it by Mandate from the King. The *Convocation* exercises Jurisdiction in making of Canons, with the King's Assent: For by the Stat. 25 *H. 8.* the *Convocation* is not only to be assembled by the King's Writ; but the Canons are to

have the Royal Assent: They have the Examining and Censuring of heretical and schismatical Books, and Persons, *Ec.* But Appeal lies to the King in Chancery, or to his Delegates. 4 *Inst.* 322. 2 *Roll. Abr.* 225. The Clergy called to the *Convocation*, and their Servants, *Ec.* have the same Privileges as Members of Parliament. Stat. 8 *H. 6.* c. 1.

Conusance of Pleas, A Privilege that a City or Town hath to hold Pleas. See *Cognisance*.

Conusant, (*Fr. Connoissant*) Knowing or Understanding: As if the Son be *Conusant*, and agree to the Feoffment, *Ec.* *Co. Litt.* 159.

Coopers, Shall mark their Vessels with their own Marks, on Pain of 3 s. 4 d. Forfeiture; and the Contents of Vessels are appointed to be observ'd under like Penalty: Also *Coopers* are to sell their Vessels at such Rates as shall be ordained by Justices, Mayors, *Ec.* 23 *H. 8.* c. 4. 8 *Eliz.* c. 9.

Coopertio, The Head or Branches of a Tree cut down; tho' *Coopertio Arborum* is rather the Bark of Timber-Trees felled, and the Chumps and broken Wood. *Coewel.*

Coopertura, A Thicket or Covert of Wood. *Chart. de Foresta*, c. 12.

Coparceners, (*Participes*) Otherwise called *Parceners*, are such as have equal Portion in the Inheritance of an Ancestor; and by Law are the Issue Female, which, in Default of Heirs Male, come in Equality to the Lands of their Ancestor. *Bract. lib. 2. cap.* 30. They are to make Partition of the Lands; which ought to be equal, and to be made by *Coparceners* of full Age, *Ec.* And if the Estate of a *Coparcener* be in Part evicted, the Partition shall be avoided in the Whole. *Lit.* 243: 1 *Inst.* 173. 1 *Rep.* 87. The Crown of *England* is not subject to *Coparcenary*; and there is no *Coparcenary* in Dignities; *Ec.* *Co. Litt.* 27. Stat. 25 *H. 8.* c. 22. Vide *Parceners*.

Copartnership, Is a Deed of Covenants between Merchants, or others, for carrying on a joint Trade, *Ec.*

Cope, Is a Custom or Tribute due to the King or Lord of the Soil, out of the Lead Mines in some Part of *Derbyshire*; of which *Manlove* saith thus:

*Egrefs and Regrefs to the King's Highway,
The Miners have; and Lot and Cope they Pay:
The thirteenth Dish of Oar within their Mine,
To the Lord, for Lote they pay at measuring Time;
Six-pence a Load for Cope the Lord demands,
And that is paid to the Berghmaster's Hands, &c.*

Agreeable to this you may find in Sir *John Pettus's Fodina Regales*, where he treats on this Subject. This Word, by *Domesday-Book*, as Mr. *Haggar* hath interpreted it, signifies a Hill: And *Cope* is taken for the supreme Cover, as the *Cope of Heaven*. Also it is the upper Garment of a Priest.

Copp, (*Copia*) Is in a legal Sense the Transcript of an original Writing; as the *Copy* of a *Patent*, of a *Charter*, *Deed*, *Ec.* A Clause out of a *Patent*, taken from the Chapel of the Rolls, cannot be given in Evidence; but you must have a true *Copy* of the whole *Charter* examined: It is the same of a *Record*. And if upon a Trial, you will give Part of a *Copy* of an Office in Evidence to prove a *Deed*, which *Deed* is to prove the Party's Title to the Land in Question that gives it in Evidence; if that Part of the Office given in Evidence, be not so much of it as doth any Ways concern the Lands in Question, the Court

CONUSOR.
STA-COGNI-
SOR.

Court will not admit of it: For the Court will have a Copy of the Whole given, or no Part of it shall be admitted. 1 *Lill. Abr.* 312, 313. Where a Deed is inrolled, Certifying an attested Copy is Proof of the Inrolment; and such Copy may be given in Evidence. 3 *Lev.* 387. A common Deed cannot be prov'd by a Copy or Counterpart, when the Original may be procured. 10 *Rep.* 92. A Copy of a Will of Lands, or the Probate, is not sufficient; but the Will must be shewn as Evidence. 2 *Roll. Abr.* 74. Sometimes Copies of Court-Rolls have been admitted as Evidence. See *Evidence*.

Copia Libelli deliberanda, Is a Writ that lies where a Man cannot get a Copy of a Libel at the Hands of a Judge Ecclesiastical, to have the same delivered to him. *Reg. Orig.* 51.

Coppa, A Cop of Grass, Hay, or Corn, divided into titheable Portions; as the tenth Cock, &c. *Du Fresne* seems to understand this Word to signify only the Cutting down of Corn; whereas in Strictness it denotes the Gathering or laying up the Corn in *Copes* or Heaps, as the Method is for Barley and Oats, &c. not bound up, that it may be the more fairly and justly tithed: In *Kent* they still retain the Word. A Cop or Cap of Hay, Straw, &c. *Thorn in Chron.*

Coppyhold, (*Tenura per Copiam Rotuli Curie*) Is a Tenure for which the Tenant hath nothing to shew but the Copy of the Rolls, made by the Steward of the Lord's Court; on such Tenant's being admitted to any Parcel of Land or Tenement belonging to the Manor. 4 *Rep.* 25. It is called *Base Tenure*, because held at the Will of the Lord: And *Fitzherbert* says, it was antiently *Tenure in Villenage*, and that *Coppyhold* is but a new Name. Some *Coppyholds* are held by the *Verge* in *Ancient Demesne*; and tho' they are by Copy, yet are they a Kind of Freehold; for if a Tenant of such a *Coppyhold* commit Felony, the King hath *Annum Diem & Vastum*, as in Case of Freeholders: Some other *Coppyholds* are such as the Tenants hold by common Tenure, called *Meer Coppyhold*, whose Land upon Felony committed, escheats to the Lord of the Manor. *Kitch.* 81. But *Coppyhold* Land cannot be made at this Day; for the Pillars of a *Coppyhold* Estate are, That it hath been demised Time out of Mind by Copy of Court-Roll; and that the Tenements are Parcel of or within the Manor. 1 *Inst.* 58. 4 *Rep.* 24. A *Coppyhold* Tenant had originally in Judgment of Law, but an Estate at Will; yet Custom so established his Estate, that by the Custom of the Manor it was descendible, and his Heirs inherited it: The Estate of the *Coppyholder* is not merely *ad voluntatem Domini*, but *ad voluntatem Domini secundum consuetudinem Manerii*; so that the Custom of the Manor is the Life of *Coppyhold* Estates; for without a Custom, or if *Coppyholders* break their Custom, they are subject to the Will of the Lord: And as a *Coppyhold* is created by Custom, so it is guided by Custom. 4 *Rep.* 21. A *Coppyholder* so long as he doth his Services, and doth not break the Custom of the Manor, cannot be ejected by the Lord; if he be, he shall have Trespass against him: But if the *Coppyholder* refuses to perform his Services, it is a Breach of the Custom, and Forfeiture of his Estate. *Coppyholds* descend according to the Rules and Maxims of the Common Law; but such customary Inheritances shall not be Assets, to charge the Heir in Action of Debt, &c. *Ibid.* Though a Lease for one Year of *Coppyhold* Lands, which is warranted by the Common Law, shall be Assets

in the Hands of an Executor. 1 *Vent.* 163. *Coppyholders* hold their Estates free from Charges of Dower, being created by Custom which is paramount to Title of Dower. 4 *Rep.* 24. *Coppyhold* Inheritances have no collateral Qualities, which do not concern the Discent; as to make them Assets; or whereof a Wife may be endowed; a Husband be Tenant by the Curtesy, &c. But by particular Custom, there may be Dower and Tenancy by the Curtesy. *Cro. El.* 361. There may be an *Estate-tail* in *Coppyhold* Lands by Custom, with the Co-operation of the Statute *W. 2.* And as a *Coppyhold* may be entailed by Custom, so by Custom the Tail may be cut off by Surrender. 1 *Inst.* 60. A *Coppyhold* may be barred by a Recovery, by special Custom; and a Surrender may bar the Issue by Custom. A Fine and Recovery at Common Law, will not destroy a *Coppyhold* Estate; because Common Law Assurances do not work upon the Assurance of the *Coppyhold*: Tho' *Coppyhold* Lands are within the Stat. 4 *H. 7.* of Fines with Proclamations, and five Years Non-claim, and shall be barred. 1 *Roll. Abr.* 506. A Plaintiff may be made in the Court of the Manor, in the Nature of a Real Action, and a Recovery shall be had in that Plaintiff against Tenant in Tail, and such a Recovery shall be a Discontinuance to the Estate-tail. 1 *Brownl.* 121. And the suffering a Recovery by a *Coppyholder* Tenant for Life in the Lord's Court, is no Forfeiture, unless there is a particular Custom for it. 1 *Nels. Abr.* 507. *Coppyholders* may entail *Coppyhold* Lands, and bar the Entails and Remainders, by committing a Forfeiture, as making a Lease without License, &c. and then the Lord is to make three Proclamations, and seise the *Coppyhold*, after which the Lands are granted to the *Coppyholder*, and his Heirs, &c. This is the Manner in some Places; but it must be warranted by Custom. 2 *Dane. Abr.* 191. *Sid.* 314. Customs ought to be Time out of Memory; to be reasonable, &c. And a Custom in Deprivation or Bar of a *Coppyhold* Estate, shall be taken strictly: But when for Making and Maintaining it, shall be construed favourably. *Comp. Cop. Sect.* 33. *Cro. El.* 879. An unreasonable Custom, as for a Lord to exact exorbitant Fines; for a *Coppyholder* for Life to cut down and sell Timber-Trees, &c. is void. A *Coppyholder* for Life pleaded a Custom, that every *Coppyholder* for Life, might in the Presence of two other *Coppyholders* appoint who should have his *Coppyhold* after his Death, without any Surrender to his Use; and that the two *Coppyholders* might assess a Fine, so as not to be less than had been usually paid; and it was adjudged a good Custom. 4 *Leon.* 238. But a Custom to compel a Lord to make a Grant, is said to be against Law; tho' it may be good to admit a Tenant. *Moor* 788. By the Custom of some Manors, where *Coppyhold* Lands are granted to Two or more Persons for Lives, the Person first named in the Copy may surrender all the Lands. 1 *Nels. Abr.* 497. There are Customs *Ratione loci*, different from other Places: But tho' a Custom may be applied to a particular Place; yet 'tis against the Nature of a Custom of a Manor to apply it to one particular Tenant. 1 *Nels.* 504. 1 *Lutw.* 126. There are usually *Custom-Rolls* of Manors, exhibited on Oath by the Tenants, setting forth the Bounds of the Manor, the Royalties of the Lord, Services of the *Coppyhold* Tenants, the Tenures granted, whether for Life, &c. concerning Admittances, Surrenders, the

the Rights of the Copyholders, as to taking Timber for Repairs, Fire-wood, &c. Common belonging to the Tenants, of Payment of Rent, suing in the Court of the Manor, taking Heriots, &c. All which Customs are to be observed. *Comp. Court-Keeper* 21. When an Act of Parliament altereth the Service, Customs, Tenure, and Interest of Land, in Prejudice of the Lord or Tenant, there the general Words of such an Act shall not extend to Copyholds. 3 *Rep.* 7. Copyholders are not within the Statute 27 H. 8. Of Jointures; nor the 32 H. 8. Of Leases, Copyholds being in their Nature demisable only by Copy: They are not within the Statute of Uses; nor are Copyholds extendible in Execution: But Copyholds are within the Statute 18 E. 1. of Limitation of Actions; and the 13 Eliz. &c. against Bankrupts. The Lord shall have the Custody of the Lands of Ideots; &c. And a Copyholder is not within the Act 12 Car. 2. to dispose of the Custody and Guardianship of the Heir; for if there be a Custom for it, it belongs to the Lord of the Manor. 3 *Lev.* 395. 1 *Nelf. Abr.* 492. 522. Copyholders shall neither implead nor be impleaded for their Tenements by Writ, but by Plaint in the Lord's Court, held within the Manor: And if on such Plaint, erroneous Judgment be given, no Writ of False Judgment lies, but Petition to the Lord in Nature of a Writ of False Judgment, wherein Errors are to be assign'd, and Remedy given according to Law. *Co. Litt.* 65. Where a Man holds Copyhold Lands in Trust to surrender to another, &c. if he refuses to surrender to the other accordingly, he may be compelled by Bill exhibited in the Lord's Court, who, as Chancellor, has Power to do Right. 1 *Leon.* 2. A Copyholder may have a Formedon in Descender in the Lord's Court. Lessee of a Copyholder for Life for one Year, shall maintain an Ejectment: But Ejectment will not lie for a Copyhold, unless the Plaintiff declare on the Custom, upon a Lease, &c. 4 *Rep.* 26. *Moor* 679. A Manor is lost when there are no customary Tenants or Copyholders: And if a Copyhold comes into the Hands of the Lord in Fee, and the Lord leases it for one Year, or Half a Year, or for any certain Time, it can never be granted by Copy after: But if the Lord aliens the Manor, &c. his Alienee may regrant Land by Copy. If the Lord keeps the Copyhold for a long Time in his Hand, it is no Impediment but that he may after grant it again by Copy. 2 *Danv.* *Abr.* 176. 177. If a Copyholder in Fee accept of a Lease, Grant, or Confirmation of the same Land from the Lord, this determines his Copyhold Estate. 2 *Cro.* 16. *Cro. Jac.* 253. If a Copyholder bargains and sells his Copyhold to a Lessee for Years, &c. of the Manor, his Copyhold is extinguished. 2 *Danv.* 205. A Copyholder may grant his Estate to his Lord, by Bargain and Sale, Release, &c. for between Lord and Tenant the Conveyance need not be according to Custom. 1 *Nelf.* 504. A Copyholder in other Cases cannot alien by Deed: Tho' he that hath a Right only to a Copyhold, may release it by Deed. And if a Copyholder surrenders upon Condition, he may afterwards release the Condition by Deed. 2 *Danv.* 205. *Cro. Jac.* 36. Also one joint Copyholder may release to another, which will be good without any Admittance, &c. *Ibid.* The customary Grant of a Copyhold from Lord to Tenant is in this Form:

A Grant and Admittance by Copy of Court-Roll.

Maner' } Ad Cur. Baron. Thomæ B. Ar. Dom.
de A. } Manerii præd. Tent. pro Manerio præd.
Vicesimo sexto die Octobris Anno Regni
Dom. nostri Georgii Dei Gra. Magn.
Britan. Franciæ & Hiberniæ Regis,
Fidei Defensor, &c. Duodecimo Annoq;
Dom. 1725. Coram Ægidio J. Gen. Se-
nescchal. ibid. Inter alia irrotulatur ut se-
quitur.

AD hanc Cur. venit Johannes C. & Cepit de Dom. Manerii præd. extra di' con' Seneschal. præd. un. Tenement. ac quadragint. Acr. terr. prat. & pastur. cum pertin. infra Maner. præd. nuper in tenur. Willielmi D. defuncti. Habend. & Tenend. Tenement. ac quadragint. acr. terr. præd. cum omnibus & singulis suis pertin. præfat. Johanni C. necnon Johanni & Thomæ fil. ejus pro termino vitar. eor. & eor. alter. diutius successive viven. ad voluntat. Dom. secund. consuetud. Maner. præd. Per Redd. inde per Annum Decem solid. Ac pro Herriot. cum accid. trigint. solid. Ac per omnia alia Redd. onera opera sect. consuetud. & servic. inde prius debet. & de jure consuet. Ac pro tali Stat. & ingressu sic in præmiss. habend. præfat. Johannes C. Dat Dom. de Fine nonaginta libras præmanibus solut. Et sic admitt. est inde tenen. & fecit Domin. Fidelitat. sed fidelitat. alior. respectuantur quousq; &c. Dat. per Copiam Rotulor. præd. Cur. die & anno prius supradicti.

Examinat. & Concordat
cum Rotul. Cur'.

Per me Ægidium J. Seneschal. ibid.

A Copyholder cannot convey or transfer his Copyhold Estate to another, otherwise than by Surrender; which is the Yielding up of the Land by the Tenant to the Lord, according to the Custom of the Manor, to the Use of him that is to have the Estate: Or it is in Order to a new Grant, and further Estate in the same: And these Surrenders are as follow:

Form of a Surrender of a Copyhold Estate in Fee.

AD hanc Curiam A. B. customar. tenen. huius Manerii sursumredd. in manus Domini per manus seneschal. præd. un. customar. Messuagium sive Tenementum, &c. vocat. &c. ad opus & usum C. D. hared. & assign. suor. imperpetuum Qui quidem C. D. Præsens hic in Cur. petit se admitti tenen. ad tenement. præd. cum pertin. Cui Dominus per seneschallum præd. concessit & liberavit ei inde seisinam per Virgam Habend. & Tenend. tenement. præd. cum pertin. eid. C. D. hared. & assign. suis ad voluntat. Domini secund. consuetud. Manerii præd. Et dat Domino de Fine, &c. Admiss. & inde tenen', & fecit fidelitat', &c.

A Surrender and New Grant of Copyhold Lands for Life.

AD hanc Cur. venit Willielmus E. qui clam. tenere pro termino vit. suæ & vit. Johannis fil. ejus per Cop. Rotulorum Cur. Maner. ibid. geren. Dat', &c. Unum claus. pastur. sive Ar. voc', &c. continen. per Estimation. vigint. Acr. cum pertin. infra Maner. præd. Et illa omnia & singula præmiss. ac tot. inde Stat. titul. Interest. Possessionem Reversionem clam. & demand. tam ipsius Willielmi & Johannis

hannis fil. ejus, (ipse Willielmus E. sol. premiss. r. perquisitor. existens.) in manus Dom. in prad. Cur. sursumredd. ut Dom. inde faceret voluntat. su'. Unde accid. Dom. un. her. quod includit. in Fine subscript. Super quo in ista eadem Cur. vener. prefat. Willielmus E. & Willielmus fil. ejus & ceperunt de Dom. in prad. Cur. omnia & singul. premiss. prad. cum su. pertinent. Habend. & Tenend. omnia & singul. premiss. prad. cum pertin. prefat. Willielmo E. le pat. & Willielmo fil. ejus necnon Annæ fil. prad. Willielmi E. le fil. pro termino vitarum eorum & eorum alter. diutius successive viven. ad voluntat. Dom. secund. consuetud. Maner. prad. Per Redd. inde per Annum vi s. ac un. Heriot. cum accid. ac per omnia al. Redd. onera opera fest. consuetud. & servic. inde prius debet. & de jure consuet. Ac pro tal. stat. & ingr. sic in premiss. habend. prefat. Willielmus E. le pat. & Willielmus E. le fil. dant Dom. de Fine quinquagint. libr. premanibus solut. Et sic prad. Willielmus le pat. Admiss. est inde tenen. & fecit Dom. fidelitat. su. sed fidelitat. dict. Willielmi le fil. & Annæ respectuantur quousq; &c.

As to Copyhold Grants; which are made either in Fee, or for three Lives, &c. the Lord of the Manor that hath a lawful Estate therein, whether he be Tenant for Life or Years, Tenant by Statute-Merchant, &c. or at Will, is *Dominus pro tempore*, and may grant Lands, Herbage of Lands, a Fair, Mill, Tithes, &c. and any Thing that concerns Lands, by Copy of Court-Roll, according to Custom; and such Grants shall bind those in Remainder: The Rents and Services reserved by them shall be annexed to the Manor, and attend the Owner thereof after their particular Estates are ended. 4 Rep. 23. 11 Rep. 18. And if a Lord of a Manor for the Time being, Lessee for Life, Years, &c. take a Surrender, and before Admittance he dieth, or the Years or Interest determine, tho' the next Lord comes in above the Lease for Life or Years, or other particular Interest, yet shall he be compelled to make Admittance according to the Surrender. Co. Litt. 59. But a Lord at Will, of a Copyhold Manor, cannot license a Copyhold Tenant to make a Lease for Years; tho' he may grant a Copyhold for Life according to the Custom: If a Lord for Life, gives License to a Tenant to make a Lease for Years, this Lease shall continue no longer than the Life of the Lord. 2 Danv. Abr. 202. If he that is *Dominus pro tempore* of the Manor admits one to a Copyhold, he dispenses with all precedent Forfeitures, not only as to himself, but also as to him in Reversion; for such Grant and Admittance amount to an Entry for the Forfeiture, and a new Grant; but a Lord by Tort cannot by such Admittance purge the Forfeiture as to the rightful Lord. 1 Lev. 26. Grants by Copy of Court-Roll by Infants, &c. will be binding: And if a Guardian in Socage grants a Copyhold in Reversion, according to the Custom of the Manor, this shall be a good Grant; for he is *Dominus pro tempore*. 2 Roll. Abr. 41. If Baron and Feme seised of a Manor in Right of the Feme grant a Copyhold, this shall bind the Feme notwithstanding her Coverture. 4 Rep. 23. An Executor may make Grants of Copyhold Estates, according to the Custom of the Manor, where a Devise is made that the Executor shall grant Copies for Payment of Debts. 2 Danv. 178. A Manor may be held by Copy of Court-Roll, and the Lord of such Manor grant Copies; and such customary Manor may pass by Surrender and Admittance, &c. A Customary Manor may be holden of another

Manor, and such Customary Lord may grant Copies and hold Courts: But a Copyholder Lord of such a Manor cannot hold a Court-Baron to have Forfeitures, and hold Pleas in a Writ of Right, &c. 1 Nelf. Abr. 524. All Grants of Copyhold Estates are to be according to the Custom of the Manor; and Rents and Services Customary, must be reserved; for what Acts of the Lord in granting Copyholds are not confirmed by Custom, but only strengthened by the Power and Interest of the Lord, have no longer Duration than the Lord's Estate continueth. Comp. Court-Keeper 421. If by the Custom, a Copyhold may be granted for three Lives, and the Lord grants it to one for Life, Remainder to such Woman as he shall marry, and to the first Son of his Body; both these Remainders are void: And a Remainder limited upon a void Estate in the Creation, will be likewise void. But if by Custom it is demisable in Fee, a Surrender may be to the Use of one for Life, Remainder in Tail, Remainder in Fee. 2 Danv. Abr. 203. Cro. El. 373. The Lord of a Manor may himself grant a Copyhold Estate at any Place out of the Manor; but the Steward cannot grant a Copyhold at a Court held out of the Manor. 4 Rep. 26. Though the Steward may take Surrenders out of the Manor, as well as the Lord. 2 Danv. Abr. 181. A Steward is in Place of the Lord, and without a Command to the contrary may grant Lands by Copy, &c. But if a Lord command a Steward that he shall not grant such a Copy, if he grants it, it is void: And if the Steward diminishes the antient Rents and Services, the Grant will be void. Cro. Eliz. 699. Things of Necessity done by a Steward, who is but in reputed Authority, are good if they come in by Presentment of the Jury; as the Admittance of an Heir upon Presentment, &c. But Acts voluntary, as Grants of Copyholds, &c. are not good by such Steward. Ibid. If an Under-Steward hold a Court without any Disturbance of the Lord of the Manor, tho' he hath no Patent nor Deputation to hold it, yet it is good; because the Tenants are not to examine what Authority he hath, nor is he bound to give them any Account of it. Moor 110. A Deputy-Steward may authorize another to do a particular Act; but cannot make a Deputy to act in general. 1 Salk. 95. In Admittances, in Court upon voluntary Grants, the Lord is Proprietor; in Admittances upon Surrender, the Lord is not Proprietor of the Lands but only a necessary Instrument of Conveyance; and in Admittances by Descent, the Lord is a meer Instrument, not being necessary to strengthen the Heir's Title, but only to give the Lord his Fine. 4 Rep. 21, 22. The Heir of a Copyholder may enter, and bring Trespass, before Admittance, being in by Descent; and he may surrender before Admittance: But he is not a compleat Tenant to be sworn of the Homage, or to maintain a Plaint in the Lord's Court. And if the Heir do not come in and be admitted, on the Death of his Ancestor, where the same is presented and Proclamation made, he may forfeit his Estate. Cro. El. 90. 4 Rep. 22, 27. On Surrender of a Copyhold, the Surrenderer or Person making the same continues Tenant 'till the Admittance of the Surrenderee; and the Surrenderee may not enter upon the Lands, or Surrender before Admittance, for he hath no Estate 'till then; tho' 'tis otherwise of the Heir by Descent, who is in by Course of Law, and the Custom casts the Possession upon him.

him. *Comp. Court-Keep.* 436. A Surrender is not of any Effect until Admittance, and yet the Surrenderee cannot be defrauded of the Benefit of the Surrender; for the Surrenderor cannot pass away the Land to any other, or make it subject to any other Incumbrances; and if the Lord refuse the Surrenderee Admittance, he is compellable in Chancery. *Comp. Cop. Sect.* 39. A Grantee hath no Interest vested in him 'till he is admitted: But Admittance of a Copyholder for Life is an Admittance of him in Remainder, for they are but one Estate; and the Remainder-Man may, after the Death of Tenant for Life, surrender without Admittance. 3 *Lev.* 308. *Cro. El.* 504. Every Admittance upon a Descent or Surrender, may be pleaded as a Grant; and a Person may alledge the Admittance of his Ancestor as a Grant, and shew the Descent to him, and that he entered, &c. But he cannot plead that his Father was seised in Fee, &c. and that he died seised, and the Land descended to him. 2 *Danv.* 208. Admittance on Surrender must in all Respects agree with the Surrender; the Lord having only a customary Power to admit *secundum formam & effectum sursumrestitutionis*. 4 *Rep.* 26. If any are admitted otherwise, they shall be seised according to the Surrender: But where a voluntary Surrender is general, without saying to whose Use, a subsequent Admittance may explain it. 2 *Danv.* 187, 204. In voluntary Admittances, if the Lord admits any one contrary to Custom, it shall not bind his Heir or Successor. If a Copyholder surrender to the Use of another, and after the Lord having Knowledge of it, accepts the Rent of such other out of Court, this is an Admittance in Law: And any Act implying the Consent of the Lord to the Surrender, shall be adjudg'd a good Admittance. 1 *Nelf. Abr.* 493. If the Steward accept a Fine of a Copyholder, it amounts to an Admittance. 2 *Danv.* 189. But delivering a Copy is no Admittance. Where a Widow's Estate is created by Custom, that shall be an Admittance in Law: And her Estate arising out of that of her Husband's, his Admittance is the Admittance of her. *Hutt.* 18. And she who hath a Widow's Estate by the Custom of the Manor, upon the Death of her Husband, need not pay a Fine to the Lord for the Estate; for this is only a Branch of the Husband's. *Hob.* 181. When a Custom is, that the Wife of every Copyholder for Life shall have her Free-Bench, after the Death of the Baron, the Law casts the Estate upon the Wife, so that she shall have it before Admittance, &c. 2 *Danv.* 184. But if a Wife is entitled to her Free-Bench by Custom, and a Copyholder in Fee surrenders to the Use of another, and then dies, it has been adjudged that the Surrenderee should have the Land, and not the Wife; because the Wife's Title doth not commence till after the Death of her Husband; but the Plaintiff's Title begins by the Surrender, and the Admittance relates to that. 1 *Inst.* 59. 1 *Salk.* 185. Admittances are never by Attorney, for the Tenant ought to do Fealty: Though Surrenders are oftentimes by Attorney, 2 *Danv.* 189. A Copyholder in Fee may surrender in Court, by Letter of Attorney: But not out of Court, without a special Custom. 9 *Rep.* 75, 76. If one cannot come into Court to surrender in Person, the Lord may appoint a Special Steward to go to him, and take the Surrender. 1 *Leon.* 36. A Copyholder being in Ireland, the Steward of a Manor here made a Commission to one to receive a Sur-

render from him there, and it was held good. 2 *Danv.* 181. The Intent of Surrenders is, that the Lord may not be a Stranger to his Tenant, and the Alteration of the Estate. As a Copyholder cannot transfer his Estate to a Stranger by any other Conveyance than Surrender; so if one would exchange a Copyhold with another, both must surrender to each other's Use, and the Lord admit accordingly: And if any Person would devise a Copyhold Estate, he cannot do it by his Will; but he must surrender to the Use of his Last Will and Testament, and in his Will declare his Intent. *Comp. Cop. Sect.* 36, 39. Also where a Copyholder surrenders to the Use of his Will, the Lands do not pass by the Will, but by the Surrender; the Will being only declaratory of the Uses of the Surrender. 1 *Bulst.* 200. But in Case of a Will, the Chancery will supply the Defect of a Surrender, in the Behalf of Children, if not to disinherit the eldest Son; and for the Benefit of Creditors, where a Copyhold Estate is charged by Will with the Payment of Debts, tho' there be no Surrender to these Uses, it will be good in Equity. 4 *Rep.* 25. 1 *Salk.* 187. 3 *Salk.* 84. One Jointenant may surrender his Part in the Lands to the Use of his Will, &c. And where there are two Jointenants of a Copyhold in Fee, if one of them make a Surrender to the Use of his Will, and die, and the Devisee is admitted; the Surrender and Admittance shall bind the Survivor. 2 *Cro.* 100. A Surrender may not be to commence in futuro; as after the Death of the Surrenderor, &c. tho' Copyholds may be surrendered to the Use of a Man's Will. *March* 177. A Copyholder cannot surrender an Estate absolutely to another, and leave a particular Estate in himself. A Copyholder surrender'd to the Use of his Wife and younger Son, without mentioning what Estate; and adjudged that they had an Estate for Life. 4 *Rep.* 29. A Feme Covert may receive a Copyhold Estate by Surrender from her Husband, because she comes not in immediately by him, but by the Admittance of the Lord according to the Surrender. *Ibid.* A Feme Covert is to be secretly examined by the Steward, on her surrendering her Estate. *Co. Lit.* 59. An Infant surrendered his Copyhold, and afterwards entered at full Age, and it was held lawful, tho' the Surrenderee was admitted. *Moor* 597. By the general Custom of Copyhold Estates, Copyholders may surrender in Court, and need not alledge any particular Custom to warrant it: But where they surrender out of Court, into the Hands of the Lord by Customary Tenants, &c. Custom must be pleaded. 9 *Rep.* 75. 1 *Roll. Abr.* 500. And Surrenders out of Court are to be presented at the next Court; for it is not an effectual Surrender 'till presented in Court. Where a Copyholder in Fee surrenders out of Court, and dies before it is presented, yet the Surrender being presented at the next Court will stand good, and *Cestui que Use* shall be admitted: So if *Cestui que Use* dies before it is presented, his Heir shall be admitted. But if the Surrender be not presented at the next Court, it is void. *Co. Litt.* 62. 2 *Danv.* 188. If the Tenants by whose Hands the Surrender was made shall die, and this upon Proof is presented in Court, it is well enough. 4 *Rep.* 29. Tenants refusing to make Presentment, are compellable in the Lord's Court. And by Surrender of Copyhold Lands to the Use of a Mortgagee, the Lands are bound in Equity, tho' the Surrender be not presented at the next Court. 2 *Salk.* 449. When a

Copyholder surrenders upon Condition, and this is presented absolutely, the Presentment is void; But where a conditional Surrender is presented, and the Steward omits entering the Condition, upon Proof thereof the Condition shall not be avoided; but the Rolls shall be amended. 4 Rep. 25. A *Copyholder* may surrender to the Use of another, reserving Rent with a Condition of Re-entry for Non-payment, and in Default of Payment may re-enter. *Ibid.* 21. If a *Copyholder* of Inheritance, takes a Lease for Years of his *Copyhold* Estate, this is a Surrender in Law of his *Copyhold*. Where there is Tenant for Life, and Remainder in Fee, he in Remainder may surrender his Estate, if there be no Custom to the contrary. 3 Leon. 329. If a Surrender is made with Remainders over, Case lies for him in Remainder against a *Copyholder* for Life, who commits Waste, &c. 3 Lev. 128. A Surrendree of a Reversion of a *Copyhold*, is an Affignee within the Equity of the Statute 32 H. 8. to bring Action of Debt or Covenant against a Lessee, &c. 1 Sal. 185. A *Copyholder* in Fee, surrenders to the Use of one for Life, with Remainder to another for Life, Remainder to another in Fee; as the particular Estates and Remainders make but one Estate, there is but one Fine due to the Lord. 2 Danv. 191. Fines are paid to the Lord on Admittances; and may be due on every Change of the Estate by Lord or Tenant: In case of a Surrender, the Lord may make what Fine he pleases; but Fines are to be reasonable: They are either certain, by Custom, or uncertain; a Fine certain is to be paid presently; but if it be uncertain, the *Copyholder* is to have Notice, and Time to pay it. The Lord may have Action of Debt for his Fine; or may distrain by Custom. 4 Rep. 27. 13 Rep. 2. A *Heriot* is a Duty to the Lord, rendered at the Death of the Tenant, or on a Surrender and Alienation of an Estate; and is the best Beast or Goods, found in the Possession of the Tenant deceased, or otherwise, according to Custom. And for Heriots, Reliefs, &c. the Lord may distrain, or bring Action of Debt. Plowd. 96. Relief is a certain Sum of Money which every *Copyholder* in Fee or Freeholder of a Manor pays to the Lord, on the Death of his Ancestor; and is generally a Year's Profits of the Land. Services signify any Duty whatsoever accruing unto the Lord; and are not only annual and accidental; but corporal, as Homage, Fealty, &c. Comp. Court-Keep. 7, 8, 9, &c.

Copyholds escheat, and are forfeited in many Cases: Escheat of a *Copyhold* Estate, is either where the Lands fall into the Hands of the Lord, for Want of an Heir to inherit them; or where the *Copyholder* commits Felony, &c. But before the Lord can enter on an Estate escheated, the Homage Jury ought to present it. Forfeitures proceeding from Treasons, Felonies, Alienation by Deed, &c. a Presentment of them must be also made in Court; that the Lord may have Notice of them. A *Copyholder* refusing to do Suit of Court, being sufficiently warned, is a Forfeiture of his Estate; unless he be prevented by Sickness, Inundations of Water, &c. If the Lord demandeth his Rent, and the *Copyholder* being present denies to pay it at the Time required, this is a Forfeiture; but if the Tenant be not upon the Ground when demanded, the Lord must continue his Demand upon the Land, so that by a continual Denial in Law, it may amount to a Denial in Fact: Tho' it

is said there must be a Demand from the Person of the *Copyholder*, and a wilful Denial, to make a Forfeiture. A *Copyholder* not performing the Services due to his Lord; or if he sue a Replevin against the Lord, upon the Lord's lawful Distress for his Rent or Services, these are Forfeitures. If the Lord upon Admittance of a *Copyholder*, the Fine by the Custom of the Manor being certain, demandeth his Fine, and the *Copyholder* denieth to pay it upon Demand, this is a Forfeiture. Upon the Descent of any *Copyhold* of Inheritance, the Heir by the general Custom is tied, upon three solemn Proclamations, made at three several Courts, to come in and be admitted to his *Copyhold*; or if he faileth therein, this Failure worketh a Forfeiture; but if an Infant come not in to be admitted at three Proclamations, it is no Forfeiture: So of one beyond Sea, &c. An Ideot, Lunatick, &c. tho' able to take *Copyholds*, yet are they unable to forfeit them: And in Respect to others, Forfeitures may be mitigated by Custom, and the *Copyholder* only amerced. By Stat. 9 Geo. c. 29. On Default of Infants, and Feme Coverts appearing to be admitted Tenants to *Copyhold* Lands, the Lord or his Steward may name a Person to be Guardian or Attorney for them, and by such Guardian, &c. admit them: And if the usual Fine thereon be not paid in three Months, being demanded in Writing, the Lord may enter on the *Copyhold*, and receive the Rents, &c. till the Fine is paid with all Charges. And by this Statute, no Infant or Feme Covert shall forfeit any *Copyhold* Lands for their Neglect to come to Court to be admitted, or Refusal to pay any Fine. The general Custom of *Copyholds* allows a *Copyholder* to make a Lease for one Year of his *Copyhold* Estate, and no more, without incurring a Forfeiture: But a *Copyholder* may make a Lease for one Year, and covenant with the Lessee that after the End of that Year, he shall have the same for another Year, and so *de anno in annum* during the Space of seven Years, &c. and be no Forfeiture. Cro. Jac. 300. Tho' a *Copyholder* may not make a Lease to hold for one Year, and so from Year to Year during his Life, excepting one Day yearly, &c. which will be a Forfeiture, being a meer Evasion. A Woman who was a *Copyholder* in Fee married, her Husband made a Lease for Years, not warranted by the Custom, which was a Forfeiture; the Husband died; and adjudged that the Lord shall not take Advantage of this Forfeiture after his Death, but the Wife shall enjoy the Estate. Cro. Car. 7. Livery upon any Conveyance of a *Copyhold* Estate amounts to a Forfeiture. And yet if a *Copyholder* for Life surrender to another in Fee, this is no Forfeiture; for it passeth by Surrender to the Lord, and not by Livery. If *Copyholder* for Life cuts down Timber-Trees, it is a Forfeiture of his *Copyhold*: A *Copyholder* may take House-boot, Hedge-boot, and Plough-boot, upon his *Copyhold*, of common Right, as a Thing incident to the Grant; if he be not restrained by Custom to take them by the Assignment of the Lord or his Bailiff. Where a *Copyholder* for Life fells Timber-Trees, the Lord may take them, and the Estate is forfeited: But if Under-Lessee for Years of a *Copyholder* cut down Timber, this shall not be a Forfeiture of the *Copyhold* Estate, but the Lord is put to his Action of the Case against the Lessee. 1 Bulst. 150. Style 233. A *Copyhold* granted to Two for their Lives successively, where the Custom of the Manor is, that

that they shall not fell Trees; if the first Copyholder for Life cut down Trees, &c. 'tis not only a Forfeiture of his own Estate for Life, but of him in Remainder. *Moor* 49. So if a Stranger cut down the Trees. But in other Cases, a Copyholder for Life committing Waste, shall not forfeit the Estate of him in Remainder. *Cro. Eliz.* 880. If Copyholder for Life, where the Remainder is over for Life, commits a Forfeiture by Waste, &c. he in Remainder shall not enter, but the Lord. 2 *Danv.* 198. A Copyholder committing Waste voluntary, or permissive, this is a Forfeiture: Voluntary, as if he pluck down any House, though built by himself; lop Trees, and sell them; plough up Meadow, whereby the Ground is made worse, &c. Permissive, if he suffer the Roof of the House to let in Rain, or the House to fall; or if he permit his Meadow Ground to be surrounded with Water, so that it becomes marshy, or his arable Land to be thus surrounded and become unprofitable, &c. These and the like are Forfeitures. See 2 *Danv. Abr.* 192, 193, 196, &c. 1 *Nelf. Abr.* 509, 510, &c. If a Feme Copyholder for Life takes Husband, who commits Waste, and dies, the Estate of the Feme is forfeited: But not if a Stranger commit the Waste, without the Assent of the Husband. 4 *Rep.* 37. Most Forfeitures are caused by Acts contrary to the Tenure: But a succeeding Lord of a Manor, shall not have any Advantage of a Forfeiture by Waste done by a Copyholder in the Time of his Predecessor. 2 *Sid.* 8. And if a present Lord doth any Thing whereby he acknowledges the Person to be his Tenant after Forfeiture, this Acknowledgment amounts to a Confirmation of his Estate. *Coke's Cop.* 61. Where Copyhold Lands are purchased in Fee, in Trust for an Alien, the Lands are not seizable by the King, nor is the Trust forfeited to him; for if the Lands were forfeited as purchased for such Alien, then the Lord of the Manor would lose his Fines, and Services, &c. *Hardr.* 436. See my *Comp. Court-Keeper.* 3d Edit. throughout, and *Nelson's Lex Manerior.* 2d Edit.

Cozaage, (*Coragium*) Is a Kind of extraordinary Imposition, growing upon some unusual Occasion, and seems to be of certain Measures of Corn: For *Corus tritici* is a Measure of Wheat. *Bract. lib. 2. cap.* 116. *Numb.* 6. Who in the same Chapter *Numb.* 8. hath these Words. — *Sunt etiam quadam communes Prestationes, quæ servitia non dicuntur, nec de Consuetudine veniunt, nisi cum necessitas intervenerit, vel cum Rex venerit; sicut sunt Hidagia, Coraagia & Carvagia, &c. alia plura de necessitate, & ex consensu communi totius Regni introducta, &c.* Blount.

Cozacle, A small Boat used by Fishermen on some Parts of the River *Severn*, made of an oval Form, of split Sally Twigs interwoven, and on that Part next the Water covered with Leather, in which one Man being seated in the Middle, will row himself swiftly with one Hand, while with the other he manages his Net or Fish-Tackle; and coming off the Water he will take the light Vessel on his Back, and carry it Home. This Boat is of the Nature of the Indian *Canoos*; though not of the same Form, or employed to the like Use.

Cozam non Judice, Is when a Cause is brought and determined in a Court, whereof the Judges have not any Jurisdiction; then it is said to be *Coram non Judice*, and void. 2 *Cro.* 351.

Corbel Stones, Are Stones wherein Images stand: The old English *Corbel*, was properly a Nich in the Wall of a Church, or other Structure, in which an Image was placed for Ornament or Superstition; and the *Corbel Stones* were the smooth polished Stones, laid for the Front and Outside of the *Corbels* or Niches. These Niches remain on the Outside of very many Churches and Steeples in *England*, though the little Statues and Reliques are most of them broken down. *Paroch. Antiq.* 575.

Cozd of Wood, Is a Quantity of Wood eight Foot long, four Foot broad, and four Foot high, ordained by Statute.

Cozdage, (*Fr.*) Is a general Appellation for all Stuff to make Ropes, and for all Kind of Ropes belonging to the Rigging of a Ship: It is mentioned in 15 *Car.* 2. c. 13.

Cozdiner, From the *Fr. Cordouannier*, a Shoemaker; we call him vulgarly a *Cordwainer*; and so this Word is used in divers Statutes, as 3 *Hen.* 8. c. 10. 5 *H.* 8. c. 7. 27 *H.* 8. c. 14. 5 & 6 *Ed.* 6. c. 3. 1 *Fac.* 1. c. 22, &c. By which last Statute, the Masters and Wardens of the *Cordwainers* Company in *London*, and Mayors, &c. of Towns, are to appoint Searchers and Triers of Leather; and Leather is not to be sold before searched and sealed, &c.

Cozdubanarius, Also signifies a Shoe-maker. *Corwel.*

Cozetes, From the *Brit. Cored*, Pools, Ponds, &c. — *Et cum suis Piscibus & Coretibz anguillarum & cum toto Territorio suo.* Du Fresnoie.

Cozum forisfacere, Was where a Person was condemned to be whipp'd; which was anciently the Punishment of a Servant. *Si quis Corium suum forisfaciat & ad Ecclesiam incurrat, sit ei verberatio condonata.* *Corium* perdere, & *Corio* Carere, the same: And *Corium redimere* is to compound for a Whipping.

Cozn, As Wheat, Barley, Oats, &c. may be transported to States in Amity when they exceed not such and such Prizes, &c. Wheat 48 s. the Quarter, Barley 24 s. Oats 16 s. &c. by many Statutes; and it shall pay no Duty or Custom, but be entitled to a *Premium* or Encouragement for Exportation. 3 *Car.* 1. 12, 15 & 22 *Car.* 2. 2 *W. & M.* &c. But the Transportation of Corn to foreign Parts, was prohibited by 8 *Ann.* c. 2.

Coznage, (*Cornagium*, from the *Lat. Cornu*, a Horn) Was a Kind of Tenure in grand Serjeanty; the Service of which was to blow a Horn when any Invasion of the *Scots* was perceived: And by this Tenure many Persons held their Lands Northward, about the Wall commonly called the *Pitts Wall.* *Cambd. Britan.* 609. This old Service of Horn-blowing was afterwards paid in Money, and the Sheriffs accounted for it under the Title of *Cornagium*. — *Memorandum quod cum vicecomes Cambriæ sederet compotum ad Scaccarium apud Salop, idem vicecomes fecit Tallagium sub nomine suo lx. lib. tam de Cornagio, quam de aliis debitis.* *Mem.* in *Scacc.* 6 *Ed.* 1. Sir Edward Coke in his first Institute, pag. 107. says *Cornage* is also called in the old Books *Horngeld*; but they seem to differ much. See *Horngeld*, and *Wardecorne*.

Coznare, To blow in the Horn. — *Faciat Cornare ne vedeatur furtive facere.* *Mat. Paris.* pag. 181.

Coznu, A drinking Horn. *Et Cornu mense meo ut senes Monasterii bibant inde in Festis sanctorum.* Du Cange.

Cozodp,

Corody, (*Corrodium*) Signifies a Sum of Money, or Allowance of Meat, Drink, and Cloathing, due to the King from an Abbey, or other House of Religion, whereof he is Founder, towards the Sustainment of such a one of his Servants as he thinks fit to bestow it upon. The Difference between a *Corody* and *Pension* seems to be, that a *Corody* is allowed towards the Maintenance of any of the King's Servants in an Abbey: A *Pension* is given to one of the King's Chaplains, for his better Maintenance, till he may be provided of a Benefice: And of both these you may read *Fitz. Nat. Br. fol. 250.* where are set down all the *Corodies* and *Pensions* that our Abbeyes, when they were standing, were obliged to pay to the King. *Corody* is ancient in our Laws: And it is mentioned in *Staundf. Prærog. 44.* And by the Stat. of *Westm. 2. c. 25.* it is ordained that an Affise shall lie for a *Corody*. It is also apparent by 34 & 35 H. 8. cap. 26. that *Corodies* belonged sometimes to Bishops, and Noblemen, from Monasteries: And in the *new Terms of Law*, it is said that a *Corody* may be due to a common Person, by Grant from one to another; or of common Right, to him that is Founder of a Religious House, not holden in *Frank-Almoine*; for that Tenure was a Discharge of all *Corodies* in itself: By this Book it likewise appears, that a *Corody* is either certain or uncertain, and may be not only for Life or Years, but in Fee. *Terms de Ley 182. 2 Inst. 630.* In the *Monasticon Anglicanum*, there is recorded the following Grant of a *Corody*.

Form of a Grant of a Corody.

SCiant, &c. quod nos Radulphus Abbas Monasterii Sti. Johannis de Haghmon & ejusdem Loci Conventus, ad instantiam & speciale rogatum Excellentissimi & Reverendissimi Domini nostri Thomæ Comitis Arundellie & Surreie, Dedimus, &c. Roberto Lee unum Corrodium pro termino vite sue, essendo cum Abbate Monasterii prædicti Armigerum cum uno Garcione & duobus Equis; capiendo ibidem Esculentia & poculentia sufficientia pro seipso, sicut Armigeri Abbatis, qui pro tempore fuerint, capiunt & percipiunt; & pro Garcione suo, sicut Garciones Abbatis & Armigerorum suorum capiunt & percipiunt; capiendo etiam pro Equis suis sænum & præbendam. — Et quod idem Robertus habeat vesturam Armigerorum, &c. Dat. 3 Hen. 5. Mon. Angl. Tom. 2. pag. 933.

Corodio Habendo, Is a Writ to exact a *Corody* of an Abbey or Religious House. *Reg. Orig. 264.*

Corona Mala, or **Mala Corona**. The Clergy, who abused their Character, were formerly so called. *Blount.*

Coronare filium, To make one's Son a Priest. Anciently Lords of Manors whose Tenants held by *Villanage*, did prohibit them *Coronare Filios*, lest such Lords should lose a Villain by their Entering into Holy Orders: For 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. — *Homo Coronatus* was one who had received the first Tonsure, as preparatory to superior Orders; and the Tonsure was in Form of a *Corona*, or Crown of Thorns. *Cowel.*

Coronatoze Eligendo, Is a Writ which lies after the Death or Discharge of any Coroner,

directed to the Sheriff out of the Chancery, to call together the Freeholders of the County, for the Choice of a new Coroner; and to certify into the Chancery both the Election, and the Name of the Party elected; and also to give him his Oath, &c. *Reg. Orig. 177. F. N. B. 163.* There are generally four Coroners in a County, in some Counties fewer, and in some Counties but one, according as the Usage is; and if any of them dieth, or is discharged, then shall issue this Writ; which is in this Form: *Rex Vic. &c. Quia A. B. nup. unus Coronatorum nostrorum in Com. tuo diem clausit extremum, ut accepimus; Tibi præcipimus, quod si ita est, tunc in pleno Com. tuo de assensu ejusdem Com. in loco ipsius A. B. Elegi fac. unum alium Coronatorem juxta formam Statuti inde editi & Provis. qui præfatio Sacrament. prout moris est, extunc ea fac. & conservet, que ad Officium Coronatoris pertinent in Com. prædict. & talem eum eligi fac. quo melius sciat & possit officio illi intendere, & nomen ejus nobis Scire fac. Teste, &c.*

Coronatoze Exonerando, Is a Writ for the Discharge of a Coroner, for Negligence, or Insufficiency in the Discharge of his Duty: And where Coroners are so far engaged in any other publick Business, that they cannot attend the Office; or if they are disabled by old Age or Disease, to execute it; or have not sufficient Lands, &c. they may be discharged by this Writ. *2 Inst. 32. 2 Hawk. P. C. 44.* But if any such Writ be grounded on an untrue Suggestion, the Coroner may procure a Commission from the Chancery to inquire thereof; and if the Suggestion be disproved, the King may make a *Superfedeas* to the Sheriff, that he do not remove the Coroner; or if he have removed him, that he suffer him to execute the Office. *Reg. Orig. 177, 178. F. N. B. 164.*

Coroner, (*Coronator*, à *Corona*) Is an ancient Officer of this Realm, Mention being made of him in King *Athelstan's* Charter to *Beverley*, Anno 925. and is so called, because he deals wholly for the King and Crown. This Officer by the Statute of *Westm. cap. 10.* ought to be a sufficient Person, that is the wisest and discreetest Knight, that best would and might attend upon such an Office: And there is a Writ in the Register, *Nisi sit Miles, &c.* whereby it appears it was good Cause to remove a Coroner chosen, if he were not a Knight, and had not an hundred Shillings Rent of Freehold. Coroners are to be Men of good Ability, and have Lands in Fee in the County where chosen, to answer all People: And if insufficient, the County shall answer for them. *2 Inst. 174.* The Lord Chief Justice of the King's Bench, is the *Sovereign Coroner* of the whole Kingdom in Person wheresoever he is. *4 Rep. 57.* There are also special Coroners, within divers Liberties, as well as the ordinary Officers in every County; as the *Coroner of the Verge*, which is a certain Compass about the King's Court; who is likewise called *Coroner of the King's House*. *Crompt. Jurisd. 102.* And some Corporations and Colleges are licensed by Charter to appoint their Coroners within their own Precincts. *4 Inst. 271.* The Office of Coroners especially concerns the Pleas of the Crown; and they are Conservators of the Peace in the County where elected. Their Authority is *Judicial* and *Ministerial*; Judicial, where one comes to a violent Death, and to take and enter Appeals of Murder, pronounce Judgment upon Outlawries, &c. And to enquire of Lands and Goods, and Escapes of Murderers, Treas-

Treasure Trove, Wreck of the Sea, Deodands, &c. The Ministerial Power is where *Coroners* execute the King's Writs, on Exception to the Sheriff, as being Party to a Suit, Kin to either of the Parties, on Default of the Sheriff, &c. 4 *Inst.* 271. 1 *Plowd.* 73. And the Authority of *Coroners* does not determine by the Demise of the King; as that of Judges, &c. doth, who act by the King's Commission. 2 *Inst.* 1-4. Where *Coroners* are impowered to act as Judges, as in Taking an Inquisition of Death, or receiving an Appeal of Felony, &c. The Act of one of them, is of the same Force as if they had all joined; but after one of them has proceeded to act, the Act of another of them will be void: And where they are authorized to act only ministerially, in the Execution of a Process directed to them upon the Incapacity of the Sheriff, their Acts are void if they do not all join. 2 *Hawk. P. C.* 52. *Hob.* 70. So that *Coroners* as Ministers must all join; but as Judges, they may divide. If the Sheriff is either Plaintiff, or Defendant, or one of the Cognisees, the Writ must be directed to the *Coroner*. *Cro. Car.* 300. But the *Coroner* is not the Officer of B. R. but where the Sheriff is improper; not where there is no Sheriff; for if the Sheriff die, the *Coroner* cannot execute the Writ. In Case of two *Coroners*, if one is challenged, the other may execute the Writ, &c. yet both make but one Officer: It is the same of two Sheriffs of a City, &c. 1 *Salk.* 144. A *Venire facias* shall go to the *Coroner*, where the Sheriff is a Party, or the Defendant is Servant to the Sheriff, &c. but it ought to be on principal Challenge to the Favour. *Moor* 470. On Defaults of Sheriffs, *Coroners* are to impanel Juries, and return Issues on Juries not appearing, &c. 2 *H.* 5. cap. 8. As the Sheriff in his Turn, might inquire of all Felonies by the Common Law, saving the Death of a Man; so the *Coroner* can inquire of no Felony but of the Death of a Person, and that *super visum Corporis*. 4 *Inst.* 271. By *Magna Charta*, cap. 17. no Sheriff, &c. or *Coroner*, shall hold Pleas of the Crown: But by Stat. *Westm.* 1. 3 *Ed.* 1. cap. 10. it is enacted, that *Coroners* shall lawfully attach and present Pleas of the Crown; and that Sheriffs shall have Counter-Rolls with the *Coroners*, as well of Appeals, as of Inquests, &c. *Coroners* before the Stat. *Magn. Chart.* might not only receive Accusations against Offenders, but might try them: But since that Statute, they cannot proceed so far; and Appeals before them, are removable into B. R. &c. by *Certiorari*, directed to the *Coroners* and Sheriff, &c. Though Process may be awarded by the Sheriff and *Coroner*, or the *Coroner* only, in the County-Court on Appeals, till the Exigent, &c. 2 *Hawk. P. C.* 51. By the Statute *de Officio Coronatoris*, 4 *Ed.* 1. The *Coroner* is to go to the Place where any Person is slain or suddenly dead, and shall by his Warrant to the Bailiffs, Constables, &c. summon a Jury out of the four or five neighbouring Towns, to make Inquiry upon View of the Body; and the *Coroner* and Jury are to inquire into the Manner of Killing, and all Circumstances that occasioned the Party's Death, who were present, whether the dead Person were known, where he lay the Night before, &c. Examine the Body, if there be any Signs of Strangling about the Neck, or of Cords about the Members, &c. Also all Wounds ought to be viewed, and Enquiry made with what Weapons, &c. And the *Coroner* may send his War-

rant for Witnesses, and take their Examination in Writing; and if any appear guilty of the Murder, he shall enquire what Goods and Lands he hath, and then the dead Body is to be buried. A *Coroner* may likewise commit the Person to Prison who is by his Inquisition found Guilty of the Murder; and the Witnesses are to be bound by Recognizance to appear at the next Assizes, &c. When the Jury have brought in their Verdict, the *Coroner* is to enrol and return the Inquisition, whether it be brought in Murder, Manslaughter, &c. to the Justices of the next Gaol-delivery of the County, or certify it into B. R. where the Murderers shall be proceeded against. 2 *Roll. Abr.* 32. Upon an Inquisition taken before the *Coroner*, he must put into Writing the Effect of the Evidence given to the Jury before him; and bind the Evidence to appear, &c. which is to be certified to the Court with the Inquisition; and neglecting it shall be fined. 1 & 2 *P. & M. cap.* 13. 1 *Litt. Abr.* 327. Depositions of Witnesses before a *Coroner*, have been admitted as Evidence, the Witnesses being dead. 1 *Lev.* 180. The Word *Murdravit* is not necessary in a *Coroner's* Inquisition; though 'tis in an Indictment for killing another Person. 1 *Salk.* 377. It is not necessary that the Inquisition be taken in the Place where the Body was viewed. 2 *Hawk.* 48. But a *Coroner* has no Authority to take an Inquisition of Death without a View of the Body; and if the Inquest be taken by him without such View, it is void. 2 *Lev.* 140. The *Coroner* may in convenient Time take up a dead Body that hath been buried, in Order to view it; but if it be buried so long that he can discover nothing from the Viewing it; or if there be Danger of Infection, the Inquest ought not to be taken by the *Coroner*, but by Justices of Peace, by the Testimony of Witnesses; for none can take it on View, but the *Coroner*. *Bro. Coron.* 167, 173. If the Body is buried, the Town shall be amerced; as it shall be if the Body is suffered to lie so long that it stinks. 2 *Danv. Abr.* 209, &c. Where the Body hath lain for some Time, that it cannot be judged how it came by its Death, that must be recorded, that at the Coming of the Justices of Assize, the Town where, &c. may be amerced on Sight of the *Coroner's* Rolls. A *Coroner* may find any Nuisance by which the Death of a Man happens; and the Township shall be amerced on such Finding. 1 *Nelf. Abr.* 536. If one is slain in the Day, and the Murderer escapes, the Town where done shall be amerced, and the *Coroner* is to enquire thereof on View of the Body. 3 *Hen.* 7. cap. 1. A *Coroner* may take an Indictment upon View of the Body; as also an Appeal, within a Year after the Death of one slain. *Wood's Inst.* 491. But a *Coroner super visum Corporis*, cannot make an Inquisition of an Accusation after the Murder; tho he may of Accessories before the Fact. *Moor* 29. *Coroners* ought to sit and inquire on the Body of every Prisoner that dies in Prison: They have no Jurisdiction within the Verge of the King's Courts; nor of Offences committed on the open Sea, or between high and low Water Mark, when the Tide is in; though they have in Arms and Creeks of the Sea. 3 *Inst.* 134. If a Body is drowned, and cannot be found to be viewed, the Inquisition must be taken by Justices of Peace, on the Examination of Witnesses, &c. 5 *Rep.* 110. Where a *Coroner's* Inquest is quashed, he must make a new one *super visum Corporis*: And a *Coroner* may attend

attend and amend his Inquisition, in Matters of Form : But if he misbehaves himself, and a *Melius Inquirendum* is granted upon it, that Inquisition must be taken by the Sheriffs or Commissioners, upon Affidavits, and not *super visum Corporis*, because none but a Coroner can take Inquisition *super visum*, &c. and he is not to be trusted again. 1 Salk. 190. 2 Danv. Abr. 210. If a Coroner hath been Guilty of any corrupt Practice, Bribery, &c. in taking the Inquisition, a *Melius Inquirendum* may be awarded for taking a new one by special Commissioners, &c. Coroners concealing Felonies, &c. are to be fined, and suffer one Year's Imprisonment. 3 Ed. 1. cap. 9. Also for Mismanagement in the Coroner, Filing the Inquisition may be stopped. 1 Mod. 82. A Coroner's Inquisition is not traversable : If it be found before the Coroner *super visum Corporis*, that one was *Felo de se*, the Executors or Administrators of the Deceased, it is said, cannot traverse it. 3 Inst. 55. But it has been held that the Inquest being moved into B. R. by *Certiorari*, may be there traversed by the Executor or Administrator of the Deceased. 2 Hawk. 54. And it hath been adjudged that the Inquisition of *Felo de se* is traversable ; though *Fugam fecit* is not. 2 Leon. 152. A Coroner's Inquisition being final, the Coroner ought to hear Council, and Evidence on both Sides. 2 Sid. 90, 101. By the Stat. 3 Ed. 1. cap. 10. Coroners shall demand or take nothing for doing their Office : And by the ancient Law of England, none having any Office concerning the Administration of Justice, could take any Fee or Reward for doing his Office ; and therefore this Statute was only in Affirmance of the Common Law. By 3 H. 7. cap. 1. upon an Inquisition taken on View of the Body, the Coroner shall have 13 s. 4 d. Fee of the Goods of the Murderer ; and if he be gone, out of the Amercement of the Town for the Escape. Though the 1 H. 8. cap. 7. enacts that where a Person is slain by Misadventure, the Coroner is to take no Fee, on Pain of 40 s. Justices of Assize and of Peace have Power to enquire of and punish Extortions of Coroners, and also their Defaults. Stat. Ibid.

Coroner of the King's Household, Hath an exempt Jurisdiction within the Verge, and the Coroner of the County cannot intermeddle within it ; as the Coroner of the King's House may not intermeddle within the County out of the Verge. 2 Hawk. 45. But if a Murder be committed within the Verge, and the King removes before any Indictment taken by the Coroner of the King's Household ; the Coroner of the County, and the Coroner of the King's House shall enquire of the same : And according to Sir Edw. Coke, the Coroner of the County might enquire thereof at the Common Law. 2 Hawk. 45. 2 Inst. 550. If the same Person be Coroner of the County, and also of the King's House, an Indictment of Death taken before him as Coroner, both of the King's House and of the County, is good. 4 Rep. 46. 3 Inst. 134. By the Stat. 33 H. 8. 12. Par. 1 & 3. It is ordained, That all Inquisitions upon the View of Persons slain, within any of the King's Palaces or Houses, or any other House or Houses wherein his Majesty shall happen to be abiding in his Royal Person, shall be taken by the Coroner for the Time being of the King's Household, without any Assisting of another Coroner of any Shire within this Realm, by the Oaths of Twelve or more of the Yeomen Officers of the King's Household, returned by the two Clerks Controllers, the Clerks of the Check, and the Clerks Marshal, or one of them,

of the said Household, to whom the said Coroner of the Household shall direct his Precept ; and the said Coroner shall certify under his Seal, and the Seals of such Persons as shall be sworn before him, all such Inquisitions before the Master or Lord Steward of the Household ; who hath the Appointment of such Coroner, &c.

Coroner of London. The Coroners in London and Middlesex, and in other Cities, &c. may bail Felons and Prisoners in such Manner as hath been heretofore accustomed. 1 & 2 P. & M. cap. 13. Sect. 6. 1 Lill. Abr. 327. What anciently belonged to Coroners, you may read at large in Bracton, lib. 3. tract. 2. cap. 5, 6, 7 & 8. Briton, c. 1. and Fleta, lib. 1. c. 18.

Corporal Oath, Is so called, because the Party swearing toucheth with his right Hand the Book of the new Testament. See Oath.

Corporation, (*Corporatio*) Is a Body Politick or Incorporate, so called, as the Persons are made into a Body, and of Capacity to take and grant, &c. or it is an Assembly and Joining together of many into one Fellowship and Brotherhood, whereof one is Head and Chief, and the Rest are the Body ; and this Head and Body knit together, make the Corporation : Also it is constituted of several Members like unto the natural Body, and framed by Fiction of Law to endure in perpetual Succession. And of Corporations some are Sole, some Aggregate ; Sole, when in one single Person, as the King, a Bishop, Dean, &c. Aggregate, which is the most usual, consisting of many Persons, as Mayors and Commonalty, Dean and Chapter, &c. Likewise Corporations are Spiritual or Temporal ; Spiritual, of Bishops, Deans, Archdeacons, Parsons, Vicars, &c. Temporal, as Mayor, Commonalty, Bailiffs and Burghesses, &c. And some Corporations are of a mixt Nature, composed of Spiritual and Temporal Persons, such as Heads of Colleges and Hospitals, &c. All Corporations are said to be Ecclesiastical or Lay : And Bodies Politick or Incorporate may commence and be established three Manner of Ways, viz. by Prescription, by Letters Patent, or by Act of Parliament ; but are most commonly by Patent, or Charter. 1 Inst. 250. 3 Inst. 202. 3 Rep. 73. There may be a Corporation without a Head : But where there is a Head, all Acts ought to be by and to the Head ; nor can they sue without such Head ; and if he dies, nothing can be done in the Vacancy. 10 Rep. 30, 32. 1 Inst. 264. If Land be given to a Mayor and Commonalty, for their Lives, they have an Estate by Intendment not determinable : So it is, if a Feoffment be made of Land to a Dean and Chapter, without Mention of Successors. In case of a sole Corporation, as Bishop, Dean, Parson, &c. no Chattel either in Action or Possession shall go in Succession ; but the Executors or Administrators of the Bishop, Parson, &c. shall have them : But it is otherwise of a Corporation aggregate, as a Dean and Chapter, Mayor and Commonalty, and the like ; for they in Judgment of Law never die. And yet the Case of the Chamberlain of London differs from all these ; his Successor may in his own Name have Execution of a Recognizance acknowledged to his Predecessor, for Orphanage Money ; and the Reason is, because the Corporation of the Chamberlain is by Custom, which hath enabled the Successor to take such Recognizances, Obligations, &c. that are made to his Predecessor. Terms de Ley 187, 188. Though a sole Corpora-

tion cannot take in Succession Goods and Chattels, &c. yet it may take a Fee-simple in Succession, by the Word Successors. 1 Inst. 8, 9, 46. And a sole Corporation by Custom, may be enabled to take a Chattel in Succession. Hob. 64. Aggregate Corporations may take not only Goods and Chattels, but Lands in Fee-simple, without the Word Successors, for the Reason aforementioned. 4 Inst. 249. Succession in a Body Politick is as Inheritance in a Body private. If a Lease for Years be made to a Bishop and his Successors, yet 'tis said his Executors shall have it in *ante-droit*; for regularly no Chattel can go in Succession in case of a sole Corporation, no more than if a Lease be made to a Man and his Heirs, it can go to his Heirs. 1 Inst. 46. In making aggregate Corporations, there must be, 1. Lawful Authority. 2. Proper Persons to be incorporated. 3. A Name of Incorporation. 4. A Place, without which no Corporation can be made. 5. Words sufficient in Law to make a Corporation. 10 Rep. 29, 123. 3 Rep. 73. The Words *Incorpo, Fundo, &c.* are not of Necessity to be used in making Corporations; but other Words equivalent are sufficient: And of ancient Time, the Inhabitants of a Town were incorporated, when the King granted to them to have *Guildam Mercatoriam*. 2 Danv. Abr. 214. He that gave the first Possessions to the Corporation, is the Founder. If the King grants Lands to the Inhabitants of B. *Hereditibus & Successoribus suis*, rendring a Rent for any Thing touching these Lands, this is a Corporation; though not to other Purposes. But if the King grants Lands *Inhabitantibus de B.* and they be not incorporated before, if no Rent be reserved to the King, the Grant is void. 2 Danv. 214. If the King grants *Hominibus de Islington* to be discharged of Toll, this is a good Corporation to this Intent; but not to purchase, &c. And by special Words the King may make a limited Corporation, or a Corporation for a special Purpose. *Ibid.* London is a Corporation by Prescription; but tho' a Corporation may be by Prescription, it shall be intended that it did originally derive its Authority by Grant from the King; for the King is the Head of the Common-wealth, and all the Common-wealth in Respect of him is but as one Corporation; and all other Corporations are but as Limbs of the greater Body. 1 Lill. Abr. 330. A Mayor and Commonalty or Corporation, cannot make another Corporation, or Commonalty. 1 Sid. 290. The City of London cannot make a Corporation, because that can only be created by the Crown; but London, or any other Corporation, may make a Fraternity. 1 Salk. 193. A Corporation is properly an Investing the People of the Place with the local Government thereof, and therefore their Laws shall be binding to Strangers; but a Fraternity is some People of a Place united together in Respect of a Mystery and Business into a Company, and their Laws and Ordinances cannot bind Strangers, for they have not a local Power. *Salk. Ibid.* No Masters and Wardens, &c. of any Mystery, or other Corporation, shall make any By-Laws or Ordinances in Diminution of the King's Prerogative, or against the common Profit of the People; except the same be approved by the Lord Chancellor, or Chief Justices, &c. on Pain of 40 l. And such Bodies Corporate shall not make any Acts or Ordinances, to restrain any Person to sue in the King's Courts for Remedy, &c. under the like Penalty. Stat. 19 H. 7. c. 7. Ordinances made

by Corporations, to be observed on Pain of Imprisonment, or of Forfeiture of Goods, &c. are contrary to *Magna Charta*. 2 Inst. 47, 54. But Penalties may be inflicted by By-Laws, which may be recovered by Distress, on Action of Debt: And a Custom for the Lord Mayor and Aldermen of London, to commit a Citizen for not accepting of the Livery, &c. was held a good Custom, being for the good Government of the City. 5 Mod. 320. Corporations may not, by Bond or otherwise, restrain any Apprentice, &c. from keeping Shop in the Corporation, under the Penalty of 40 l. Stat. 28 H. 8. c. 5. When a Corporation is duly created, all Incidents, as to purchase and grant, sue and be sued, &c. are tacitly annexed to it: And altho' no Power to make Laws is given by a special Clause to a Corporation, yet it is included by Law in the very Act of Incorporating. 1 Inst. 264. A new Charter doth not merge or extinguish any of the ancient Privileges of the old Charter. And if an ancient Corporation is incorporated by a new Name, yet their new Body shall enjoy all the Privileges that the old Corporation had. Raym. 439. 4 Rep. 37. There are usually granted in Charters to Corporations, divers Franchises; as Felons Goods, Waifs, Elstrays, Treasure Trove, Deodands, Courts, and Cognisance of Pleas, Fairs, Markets, Assise of Bread and Beer, &c. 4 Rep. 65. Actions arising in Corporations, may be tried in the Corporation Courts; but if they try Actions which arise not within their Jurisdictions, and encroach upon the Common Law, they shall be punished for it. Lutw. 1571, 1572. The Corporation of the City of London is to answer for all particular Misdemeanors, which are committed in any of the Courts of Justice within the City; and for all other general Misdemeanors committed within the City: So 'tis conceived of all other Corporations. 1 Lill. Abr. 329. If a common Officer of a Town doth any Thing for their common Use, it is reasonable the Corporate Town be answerable for it. 1 Leon. 215. A Corporation may be dissolved, for it is created upon a Trust; and if that be broken, 'tis forfeited. 4 Mod. 58. Corporations are dissolved by Forfeiture of their Charter, Usurpation, Misuser, &c. upon the Writ *Quo Warranto* brought; by Surrender, or by Act of Parliament: And if they neglect to choose Officers, or make false Elections, &c. it is a Forfeiture of the Corporation. 4 Rep. 77. But by Stat. 11 Geo. c. 4. no Corporation shall be dissolved, for any Default to chuse a Mayor, &c. but the Electors are still to proceed to Election; and if no Election be made, the Court of King's Bench shall issue a *Mandamus* requiring the Electors to chuse such Mayor, &c. By 9 Ann. c. 20. where Persons intrude into the Office of Mayor, &c. of a Corporation, a *Quo Warranto* shall be brought against the Usurpers, who shall be ousted, and fined: Also none are to execute an Office in a Corporation for more than a Year. No Persons shall bear Office in any Corporation, &c. but such as have received the Sacrament of the Church, and taken the Oaths. Stat. 13 Car 2. c. 1. But see the Stat. 5 Geo. c. 6. confirming Officers in Corporations. In Acts done by Corporations, the Consent of the major Part shall be binding, by 33 H. 8. cap. 27. Grants of Corporations are to be by Deed, under their common Seal, and are good without Delivery; for the common Seal gives Perfection to Corporation Deeds. Dav. 44. An Obligation sealed with the common Seal of a Corporation, if

the Mayor signs it, he is suable if the *Corporation* be dissolved: But if two of the Members sign it, the particular Persons are not bound by it. 2 *Lev.* 137. *Raym.* 152. A Release of a Mayor for any Sum of Money due to the *Corporation*, made in his own Name, is not good in Law. *Terms de Ley.* A *Corporation* which hath a Head, may make a personal Command without Writing; but a *Corporation* aggregate without a Head, cannot. *Lutw.* 1497. A *Corporation* aggregate may employ any one in ordinary Services, without Deed; though not to appear for them, in any Act which concerns their Interest or Title. 1 *Ventr.* 47, 48. Such a *Corporation* may appoint a Bailiff to take a Distress, without Deed or Warrant, 1 *Salk.* 191. but cannot without Deed command a Bailiff to enter into Lands for a Condition broken; for such Command without Deed is void. *Cro. Eliz.* 815. Though a *Corporation* cannot do an Act *in pais* without their common Seal, they may do an Act upon Record; and the Reason is, because they are estopped by the Record to say it is not their Act. 1 *Salk.* 192. A Promise to a *Corporation* is good without Deed. 2 *Lev.* 252. A *Corporation* cannot sue, or appear in Person, but by Attorney: They cannot commit Treason, or be outlawed, excommunicate, &c. They may not be Executors, or Administrators, be Jointenants, Trustees, &c. Nor shall the Members of a *Corporation* be regularly Witnesses for the *Corporation.* 10 *Rep.* 32. 11 *Rep.* 98. 1 *Inst.* 134. But they may be disfranchised, and then be Witnesses; tho' not surrender by Consent. Attachment doth not lie against a *Corporation.* *Raym.* 152. *Corporations* may have Power not only to infranchise Freemen, but to disfranchise a Member, and deprive him of his Freedom; if he doth any Act to the Prejudice of the Body, or contrary to his Oath, &c. Though for conspiring to do any Thing contrary to his Duty; or for Words of Contempt against the Chief Officers, he may not be disfranchised, but may be committed till he find Sureties for his good Behaviour. 11 *Rep.* 98. 5 *Mod.* 257. A *Corporation* cannot disfranchise for Breach of a By-Law. 1 *Litt.* 331. And one wrongfully disfranchised, may be restored, and have his Remedy by *Mandamus*, &c. in B. R. An Alderman, or Freeman of a *Corporation*, cannot be removed from his Freedom, or Place, without good Cause; and a Custom to remove them *ad Libitum* is void, because the Party hath a Freehold therein. *Cro. Jac.* 540. Head Officers of *Corporations* are to redress Abuses of Merchant Strangers, &c. or the Franchise shall be seised. *Stat.* 9 *Eliz.* 3. *sect.* 1. and have Authority in many Cases by Statute; for which see *Mayors.* No Strangers shall sell by Retail any Woollen or Linen Cloth, or Mercery Wares, in Corporate Towns, except at Fairs, on Pain of Forfeiture, &c. But such Persons may sell Wares by Wholesale, and Cloth of their own Making by Retail. 1 & 2 *P. & M. c.* 7. Bodies Politick Ecclesiastical may make Leases for three Lives, or twenty-one Years, under the Restrictions in the Acts. 1 & 13 *Eliz.* &c. If Land is given in Fee-simple to a Dean and Chapter, or to a Mayor and Commonalty, &c. and after such Body Politick or Incorporate is dissolved, the Donor shall have the Land again, and not the Lord by Escheat. 1 *Inst.* 13.

Corporal Inheritance, In Houses, Lands, &c. Vide *Inheritance.*

Corpus Christi Day, Is a Feast instituted in the Year 1264. in Honour of the blessed *Sacrament*: To which also a *College* in *Oxford* is dedicated. It is mentioned in the *Stat.* 32 *Hen.* 8. *cap.* 21.

Corpus cum Causa, Is a Writ issuing out of the *Chancery*, to remove both the *Body* and *Record*, touching the *Cause* of any Man lying in Execution upon a Judgment for Debt, into the *King's Bench*, &c. there to lie till he have satisfied the Judgment. *F. N. B.* 251. See *Habeas Corpus.*

Corrector of the Staple, Is a Clerk belonging to the *Staple*, that writeth and recordeth the Bargains of Merchants there made. 27 *Ed.* 3. *Stat.* 2. *cap.* 22 & 23.

Corredium and Conredium, The same with *Corrodium.* See *Corrody.*

Corruption of Blood, (*Corruptio Sanguinis*) Is an Infection growing to the State of Man, and to his Issue; and is where a Person is attainted of Treason or Felony, by Means whereof his Blood is said to be corrupted, and neither his Children, nor any of his Blood, can be Heirs to him or any other Ancestor: Also if he is of the Nobility, or a Gentleman, he and all his Posterity by the Attainder are rendered base and ignoble. But by Pardon of the King, the Children born afterwards may inherit the Land of their Ancestor, purchased at the Time of the Pardon, or after; and so cannot they, who were born before the Pardon. *Terms de Ley* 189. If a Man that hath Land in Right of his Wife hath Issue, and his Blood is corrupt by Attainder of Felony, and the King pardons him; in this Case if the Wife dies before him, he shall not be Tenant by the Curtesy, for the *Corruption of the Blood* of that Issue: Tho' it is otherwise, if he hath Issue after the Pardon; for then he should be Tenant by the Curtesy, although the Issue which he had before the Pardon be not inheritable. 13 *Hen.* 7. *c.* 17. A Son attainted of Treason or Felony in the Life of his Ancestor, obtains the King's Pardon before the Death of his Ancestor, he shall not be Heir to the said Ancestor; but the Land shall rather escheat to the Lord of the Fee by the *Corruption of Blood.* 26 *Aff.* *pt.* 2. 32 *H.* 8. But if a Man seised of Lands hath Issue two Sons, and the Eldest is attainted in the Life-time of his Father, and after the Father dies seised; the youngest Son shall inherit the Lands as Heir unto his Father, if the eldest Son leaves no Issue alive: *Contra*, if he hath Issue, which should have inherited but for the Attainder; then the Land shall escheat. 1 *Inst.* 8. 391. *Dyer* 48. 3 *Inst.* 211. If the Father of a Person attainted die seised of an Estate of Inheritance, during his Life, no younger Brother can be Heir; for the elder Brother tho' attainted, is still a Brother, and no other can be Heir to the Father while he is alive; but if he die before the Father, the younger Brother shall be Heir. 2 *Hawk.* *P. C.* 457. *Corruption of Blood* from an Attainder is so high that it cannot be absolutely salved but by Act of Parliament; for the King's Pardon doth not restore the Blood so as to make the Person attainted capable either of inheriting others, or being inherited himself by any one born before the Pardon. 1 *Inst.* 391, 392. 2 *Hawk.* 458. A Statute which saves the *Corruption of Blood*, impliedly saves the Descent of the Land to the Heir; and it prevents the *Corruption of Blood* so far: Also

it saves the Wife's Dower, &c. But nevertheless the Land shall be forfeited for the Life of the Offender. 3 *Inft.* 47. 1 *Hawk.* 107. For Counterfeiting the Coin or Clipping, there is no Corruption of Blood. *Stat.* 5 *Eliz.* cap. 11. So on Attainder of Piracy, &c. Also in Felony by imbezling the King's Ordnance, Armour, &c. 22 *Car.* 2. And therefore it shall not make any Disinheritance of an Heir, &c. See *Attainder*.

Corpslet, (Fr. in Lat. *Corpusculum*) Signifies a little Body: And it is used with us for an Armour to cover the Body or Trunk of a Man, wherewith Pike-men commonly set in the Front and Flanks of the Battle were formerly armed, for the better Resistance of the Assaults of the Enemy, and the surer Guard of the Soldiers placed behind, who were more slightly armed for their speedier Advancing and Retreating to Fire. *Stat.* 4 & 5 *P. & M.* cap. 2.

Corpsesment, (From the Fr. *Corps present*) Is a Word signifying a Mortuary: And the Reason why it was thus termed seems to be, that where a Mortuary became due on the Death of any Man, the Best or second Beast was, according to Custom, offered or presented to the Priest, and carried with the Corps. — *Ego* Brianus de Brompton, &c. *Volo Corpus meum sepeliri in Prioratu Majoris Malvernia inter Predecessores meos, & cum Corpore meo Palefridum meum, cum hernefo & Equum Summarium, cum lecto meo, &c.* In *Codice M.S.* penes Gul. Dugdale, Mil. See *Stat.* 21 *H.* 8. c. 6. and *Mortuary*.

Corfined Bread, (*Panis conjuratus*) Ordeal Bread: It was a Kind of superstitious Trial used among the Saxons, to purge themselves of any Accusation, by taking a Piece of Barley Bread, and eating it with solemn Oaths and Execrations, that it might prove Poyson, or their last Morsel, if what they asserted or denied were not punctually true. These Pieces of Bread were first execrated by the Priest, and then offered to the suspected guilty Person, to be swallowed in Way of Purgation: For they believed a Person, if guilty, could not swallow a Morsel so accursed; or if he did, it would choak him. The Form was thus: *We beseech Thee, O Lord, that he who is guilty of this Theft, when the Exorcised Bread is offered to him in Order to discover the Truth, that his Jaws may be shut, his Throat so narrow that he may not swallow, and that he may cast it out of his Mouth, and not eat it. Du Cange.* The old Form, or *Exorcismus panis hordeacei vel casei ad Probationem veri*, is extant in *Lindenbrogius*, pag. 107. And the Laws of King Canute, cap. 6. — *Si quis altari ministrantium accusetur, & amicis Destitutus sit, cum Sacramentales non habeat, vadat ad Judicium quod Anglice dicitur Corfined, & fiat sicut Deus velit, nisi super Sanctum Corpus Domini permittatur ut se Purget*: From which it is conjectured, that *Corfined Bread* was originally the very sacramental Bread, consecrated and devoted by the Priest, and received with solemn Adjuration, and devout Expectance that it would prove Mortal to those who dared to swallow it with a Lie in their Mouth; till at length the Bishops and Clergy were afraid to prostitute the Communion Bread to such rash and conceited Utes, when to indulge the People in their superstitious Fancies, and idle Customs, they allowed them to practise the same judicial Rite, in eating some other Morsels of Bread, blest or cursd to the like Utes. It is recorded of the perfidious Godwyn Earl of Kent, in the Time of King Edward the Confessor, that, on his Abjuring the Murder of the King's

Brother, by this Way of Trial, as a just Judgment of his solemn Perjury, the Bread stuck in his Throat, and choaked him. — *Cum* Godwinus Comes in mensa Regis de nece sui fratris impetretur, ille post multa Sacramenta, tandem per Buccellam deglutiendam abjuravit, & buccella gustata continuo suffocatus interiit. — *Ingulph.* This, with other barbarous Ways of Purgation, was by Degrees abolished: Though we have still some Remembrance of this superstitious Custom, in our usual Phrases of Adjuration; as, *I will take the Sacrament upon it*; — *May this Bread be my Poyson*; — or, *May this Bit be my last*, &c.

Courtis, (*Curtis*) A Court or Yard before a House. *Blount.*

Coxtularium, *Curtilagium*, Is also a Yard or Court adjoining to a Country Farm. *Cartul. Glasston. M.S.* f. 42.

Cozus, A certain Corn-Measure heaped up, from the Hebr. *Cora*, a Hill: Eight Bushels of Wheat in a Heap, making a Quarter, are of the Shape of a little Hill; and probably a *Corus* of Wheat was eight Bushels; for we read in *Bracton*, *Decem Coros tritici sive decem Quarteria.* *Bract. lib.* 2. c. 6.

Colces and **Colcet**, Are of the same Signification with *Cottage*.

Coloduna, An ancient Word for Custom or Tribute. *Mon. Angl. Tom.* 1. pag. 562.

Cosenage, (Fr. *Cousinage*, i. e. Kindred, Cousinship) Is used for a Writ that lies where the Tresail, that is, the Father of the Besail or Great Grandfather, being seised of Lands and Tenements in Fee at his Death, and a Stranger enters upon the Heir and abates; then shall his Heir have this Writ of *Cosenage*. *Britt. c.* 89. *F. N. B.* 221. A Man shall not have a Writ of *Cosenage* of the Seisin of his Great Grandfather, but shall be put to his Writ of *Besail*: And if a Person may have a Writ of *Aiel*, he shall not bring a Writ of *Cosenage*. Also on the Death of an Uncle, Writ of *Cosenage* doth not lie, because *Affise of Mort d'Ancestor* may be had of his Seisin: And *Cosenage* lieth not between Privies in Blood, no more than *Affise of Mort d'Ancestor*, but the Party must bring *Nuper Obiit*. *New. Nat. Br.* 492.

Cosening, Is an Offence, where any Thing is done deceitfully, whether belonging to Contracts or not, which cannot be properly termed by any special Name. *West. Symb.* pag. 2. sect. 68.

Coshering. As there were many Privileges inherent by Right and Custom, allowed in the Feudal Laws; so were there several grievous Exactions imposed by the Lords on their Tenants, by a Sort of Prerogative or seigniorial Authority, as to lie and feast themselves and their Followers at their Tenant's House, which were called *Coshering*. *Spelm.* of Parliaments, *M.S.*

Cosmus, A Word mentioned by *Blount* for Clean.

Costard, Apple, whence *Costard-monger*, i. e. Seller of Apples. *Cartular. Abbat. Rading. M.S.* fol. 916.

Costrellus, (*Costarez*) A Flaggon. — *Habebit de Cellerario 5. albos panes & Costrellos suos plenos Cervisia.* *Mon. Ang. Tom.* 2. p. 550.

Costera, Coast, Sea-Coast. — *Ricardum T. ad Custodiam Costeræ Maris in Com. Essex, per Litteras nostras Patentes assignavimus, &c.* — *Memor.* in *Seaccar.* Pasch. 24 *E.* 1.

Costs, As *Expense Litis*, recovered by the Plaintiff in a Suit, together with his Damages: And if the Plaintiff be nonsuit, or overthrown by lawful Trial in any Action, the Defendant

shall have *Costs*. 4 *Jac.* 1. *cap.* 3. Also not only Nonsuits, Verdicts, &c. but putting off Trials, insufficient Pleas, &c. on their Amendment, are liable to *Costs*: But *Costs* ought not to be paid for the putting off a Trial, where no Fault was in the Party against whom it was moved; for *Costs* are only to be paid by such Persons which by their Occasion have caused the other Party to have been at extraordinary Charges: And *Costs* are not to be allowed for unreasonable Motions, but only for such as the Party was necessarily put into. 1 *Lill. Abr.* 335, 337. The Common Law doth not give *Costs* in any Case; but they are given by Statute. 2 *Inst.* 288. For the Defendant on a Writ of Error, brought to delay Execution, if Judgment be affirmed, *Costs* are allowed. 3 *H. 7. c.* 10. So in Actions of Waste; Debt upon the Statute for Tithes; in all Suits by *Scire facias*; for malicious Trespasses, &c. 13 *Car.* 2. *cap.* 2. And by some Statutes double and treble *Costs*, and Damages, are given: But in Personal Actions, Actions of Trespass, Assault and Battery, Actions on the Case for Words, &c. if the Debt or Damage amount not to 40 s. or the Judge do not certify that the Battery was sufficiently proved, &c. no more *Costs* shall be allowed than Damages. 43 *Eliz. c.* 6. 21 *Jac.* 1. *c.* 16. 22 & 23 *Car.* 2. Where several are made Defendants in Action of Trespass, Assault, &c. and one or more is acquitted, all of them shall have *Costs*; unless the Judge certify there was reasonable Cause for making them Defendants. 8 & 9 *W. 3. cap.* 11. No *Costs* shall be allowed the Defendant where the Suit is commenced for the Use of the King. 24 *H. 8. cap.* 8. And *Costs* are not awarded against Executors or Administrators. *Ibid.* Nor for or against one that sues in *Forma Pauperis*. But it has been adjudged that the King shall pay *Costs* for an Amendment; but not for going to Trial, &c. 1 *Salk.* 193. And if Executors bring an Action in their own Right, as for Conversion or Trespass, &c. in their own Time, and a Verdict pass against them, they shall pay *Costs*. 2 *Danv. Abr.* 224. Also if a Plaintiff being admitted in *Forma Pauperis*, be afterward nonsuited, the usual Course is to tax *Costs*, and if not paid, to punish the Plaintiff by Whipping; but it is in the Discretion of the Court to spare both. 2 *Sid.* 261. Where there is a Fault in the Original Writ, if a Plaintiff be afterwards Nonsuit, 'tis said he shall pay no *Costs*; because when the Original is abated, it is as if no Suit had been between the Parties. 1 *Leon.* 105. 1 *Nelf. Abr.* 547. If a Sum certain is given to a Stranger by Statute, as where 'tis given to the Prosecutor, he shall have no *Costs*, as he had no Right of Action till he commenced it; so in popular Actions, whether the Penalty is certain or not, there shall be no *Costs*. 1 *Salk.* 206. 1 *Lutw.* 201. Where *Costs* are allowed, it is not necessary that the Jury should give the *Costs*; but they may leave it to the Court to do it, who are best able to judge of what *Costs* are fitting to be given. 23 *Car. B. R.* It is the Course of the Court of B. R. to refer the Taxing of the *Costs* to the Secondary of the Office, and not to make any special Rules for such Matters; except it be in extraordinary Cases. 1 *Lill. Abr.* 338. Attachment lies where *Costs* are refused Payment: And where a Plaintiff is Nonsuit, Action of Debt may be brought for the *Costs*; also the Defendant may have a *Capias ad satisfaciendum* against him for the *Costs*. 1 *Nelf. Abr.* 550.

Where *Costs* are given after a Verdict, the Court will stop Proceedings in the same Court till they are paid, on Motion made: But where *Costs* are given for not going on to Trial, a Party may proceed, though they are not paid. *Sid.* 279. See *Damages, &c.*

Costs are allowed in Chancery, for Failing to make Answer to a Bill exhibited; or making an insufficient Answer: And if a first Answer be certified by a Master to be insufficient, the Defendant is to pay 40 s. *Costs*; 3 l. for a second insufficient Answer; 4 l. for a Third, &c. But if the Answer be reported good, the Plaintiff shall pay the Defendant 40 s. *Costs*. An Answer is not to be filed, (till when it is not reputed an Answer) until *Costs* for Contempt in not Answering are paid. *Practif. Attorn.* 1 *Edit.* p. 210, 212. If a Plaintiff in Chancery dismisses his own Bill, or the Defendant; or if a Decree be obtained for the Defendant, *Costs* are allowed by Stat. 4 & 5 *Ann. c.* 16.

Cot. In the old Saxon signifies Cottage, and so is still used in many Parts of England.

Cotarius, A Cottager: The *Cotarii*, or Cottagers, are mentioned in *Domesday*.

Cote and *Cot.* The Names of Places which begin or end with these Words or Syllables, have the Signification of a little House or Cottage: There are likewise Dove-Cotes, which are small Houses or Places for the Keeping of Doves or Pigeons. *Game Law.* 2 *par. fol.* 133, 135. See *Pigeon-House*.

Cotellus, *Coteria*, Both signify a small Cottage, House, or Homestead. *Coovel.*

Coterellus. *Cotarius* and *Coterellus*, according to *Spelman* and *Du Fresne*, are servile Tenants: But in *Domesday* and other ancient M.S. there appears a Distinction, as well in their Tenure and Quality, as in their Name. For the *Cotarius* had a free Socage-Tenure, and paid a stated Firm or Rent in Provisions or Money, with some occasional customary Services; whereas the *Coterellus* seems to have held in mere Villenage, and his Person, Issue and Goods, were disposable at the Pleasure of the Lord. — *Edmund* Earl of Cornwall, gave to the *Bon-hommes* of *Ashrugge*, his Manor of *Chesterton* and *Ambrosden*. — *Una cum Villanis*, *Coterellis eorum Catallis*, *Servitiis*, *Seclis*, & *omnibus suis ubicunque pertinentibus*. *Paroch. Antiq.* 310.

Cotestwold, Signifies Sheep-Cotes, and Sheep feeding on Hills: From the Sax. *Cote* and *Wold*, a Place where there is no Wood. *Blunt.*

Cot-gare, Is a Kind of refuse Wool, so clung or clotted together, that it cannot be pulled asunder. By Stat. 13 *R. 2. cap.* 9. it is provided, that neither Denizen or Foreigner shall make any other Refuse of Wools but *Cot-gare* and *Villein*.

Cotland or *Cottethland*, Land held by a Cottager, whether in Socage or Villenage. — *Dimidia acra terra jacet ibidem inter Cotland, quam Johannes Goldering tenet, ex una parte, & Cotland quam Thomas Webbe tenet ex altera.* *Paroch. Antiq.* 532.

Cotlanda and *Cotlandum*, The same with *Cot-tagium*. *Mon. Ang. Tom.* 1. *pag.* 325.

Cotstethla, *Cotsteth*, The little Seat or Mansion belonging to a small Farm. — *Ego Thomas de C. Dedi Deo & Ecclesie Malmsbury unam Cotstethle in Culern, cum omnibus pertinentiis.* *Cartular. Malmsbur.* M.S.

Cottethus, A Cottager, or Cottage-Holder, who by servile Tenure was bound to Work for the Lord. *Corwel.* **Cotsetts** are the meanest Sort of Men, now term'd **Cottagers**. And **Cotseti** are those who live in Cottages. — *Villani vero vel Cotseti, vel Perdingi, vel qui sunt hujusmodi viles, vel inopes persone non sunt inter legum Judices numerandi.* Leg. H. 1. c. 30.

Cottage, (*Cotagium*) Is properly a little House for Habitation, without Land belonging to it. *Stat. 4 Ed. 1.* But by a later Statute, the 31 *El. c. 7.* No Man may build a **Cottage**, unless he lay four Acres of Land to it; except it be in Market-Towns or Cities, or within a Mile of the Sea, or for the Habitation of Labourers in Mines, Sailors, Foresters, Shepherds, &c. and **Cottages** erected by Order of Justices of Peace, &c. for poor impotent People, are excepted out of the Statute. The four Acres of Land to make it a **Cottage** within this Law, are to be Freehold, and Land of Inheritance: And four Acres of Ground holden by Copy, or for Life or Lives, or for any Number of Years, will not be sufficient to make it lawful **Cottage**. 2 *Inst.* 737. Also the four Acres in Fee-simple, or Fee-Tail, must lie near the **Cottage**, and be occupied therewith, so long as the **Cottage** shall be inhabited. 2 *Roll. Abr.* 139. But this Statute doth not extend to Houses that are Copyhold. 1 *Bull.* 50. The Penalty of erecting **Cottages** contrary to the Statute, is 10 l. for every Erection, and 40 s. a Month for the Continuance of it; which is inquirable in the Leet, or the Offenders may be punished by Indictment at the Quarter-Sessions of the Peace, &c. and no Owner or Occupier of any **Cottage** shall suffer any *Inmates*, or more Families than one to inhabit therein, in Pain to forfeit to the Lord of the Leet 10 s. a Month: But in **Cottages** built for the Poor, more Families than one may be placed. **Cottages** are oftentimes erected on Waste at the Charge of Parishes, for poor impotent Persons, by the Church-wardens and Overseers of the Poor, having obtained Leave of the Lord of the Manor, in Writing under Hand and Seal; but then it must be confirmed by the Justices in Sessions. *Mod. Just.* 152. **Cottagers** of new erected **Cottages** within the Memory of Man, ought not to have Common in the Lord's Waste, though they have four Acres of Land laid to them. *Wood's Inst.* 445. Every **Cottager**, &c. is obliged to work towards the Repairs of the Highways, or to hire an able Labourer to work on the Days appointed by the Statute, on Pain of forfeiting 1 s. 6 d. per Day. *Stat. 22 Car. 2.*

Cotuca, Coat-Armour. *Ad Arma profiliunt & Milites quidem super Armatura Cotucas induerant vocat.* Quarteloy. *Walsingh.* 114.

Cotuchans, Boors or Husbandmen, of which Mention is made in *Domesd.*

Coucher, or **Courcher**, Signifies a Factor that continues abroad in some Place or Country for Traffick; as formerly in *Gascon*, for buying of Wines, &c. *Stat. 37 Ed. 3. cap. 16.* This Word is also used for the General Book wherein any Corporation, &c. register their particular Acts. 3 & 4 *Ed. 6. c. 10.*

Covenable, (Fr. *Convenable*, Lat. *Rationabilis*) Is what is convenient or suitable. — *Every of the same three Sorts of Fish, &c. shall be good and covenable, as in old Time hath been used.* *Stat. 31 Ed. 3. c. 2.* **Covenably** endowed, that is indowed as is fitting. 4 *H. 8. c. 12.* See *Plowd.* 472.

Covenant, (*Conventio*) Is the Consent or Agreement of two or more Persons in one Thing, to do or not to do some Act or Thing, contracted between them. It seems to be as much as *Pactum*, or *Conventum*, with the *Civilians*; and **Covenant** is either in Fact, or in Law: In *Fact* is that which is expressly agreed between the Parties, and inserted in the Deed; and in *Law*, is that **Covenant** which in Law intends and implies, though it be not expressed in Words; as if a Lessor demise and grant to his Lessee a House or Lands, &c. for a certain Term, the Law will intend a **Covenant** on the Lessor's Part, that the Lessee shall during the Term quietly enjoy the same against all Incumbrances. 1 *Inst.* 384. There is also a **Covenant Real**, and **Covenant Personal**: A real **Covenant** is that whereby a Man ties himself to pass a Thing real, as Lands or Tenements; or to levy a Fine of Lands, &c. and **Covenant Personal** is where the same is merely Personal; as if a Person **Covenants** with another by Deed to build him a House, or to serve him, &c. *F. N. B.* 145. 5 *Rep.* 10. **Covenants** are likewise *Inherent*, which tend to the Support of the Thing granted; or are *collateral* to it; and are *affirmative*, or *negative*: *executed*, of what is already done, or *executory*. But a **Covenant** being generally to bind a Man, to do something *in futuro*, is for the most Part *executory*. 1 *Ventr.* 176. *Dyer* 112, 271. Further, **Covenant** is the Name of a *Writ*; for which see *Conventione*: And this Word is taken for the *solemn League and Covenant*; which hath a seditious Conspiracy, invented in *Scotland*, and voted illegal by Parliament, and Provision is made against it; by *Stat. 14 Car. 2. cap. 4.* All **Covenants** between Persons must be to do what is lawful, or they will not be binding: And if the Thing to be done be impossible, the **Covenant** is void. *Dyer* 112. But if a Man **covenants** to do a Thing before a certain Time; and it becomes impossible by the Act of God, this shall not excuse him, in as much as he hath bound himself precisely to do it. 2 *Danv. Abr.* 84. If a Person **covenants** expressly to repair a House, and it is burnt down by Lightning, or any other Accident, yet he ought to repair it; for it was in his Power to have provided against it by his Contract. *Aleyn* 26, 27, 1 *Lill. Abr.* 349. But he is not so bound by **Covenant** in Law. Where Houses are blown down by Tempest, the Law excuses the Lessee in Action of Waste; though in a **Covenant** to repair and uphold, it will not. 1 *Plowd.* 29. If a Lessee for Years, rendering Rent, **covenants** for him and his Assigns to repair the House, and after the Lessee Assigns over the Term, and the Lessor accepts the Rent from the Assignee, and then the **Covenant** is broken; notwithstanding Acceptance of Rent from the Assignee, Action of **Covenant** lies against the first Lessee, on his express **Covenant** to repair: And this Personal **Covenant** cannot be transferred by the Acceptance of the Rent. 2 *Danv. Abr.* 240. Action of **Covenant** likewise lies on **Covenant** for Payment of Rent against such a Lessee; but not Action of Debt, after Acceptance. 3 *Rep.* 24. There may be an Agreement and **Covenant**, only to be performed by the Parties themselves: There are some **Covenants** which none but the Party and his Heirs, may take Advantage of being such as concern the Inheritance, and descend to the Heir, as knit to the Estate: And **Covenants** in gross go to the Executors, &c. 1 *Roll. Abr.* 320. 2 *Danv.* 235. But

But not only Parties to Deeds, but their Executors and Administrators, shall take Advantage of inherent *Covenants*, though not named; and every Assignee of the Land, may have the Benefit of such *Covenants*: Likewise Executors and Assigns, &c. are bound by them, although not named as a *Covenant* to repair, &c. 5 *Rep.* 16, 17. 1 *Cro.* 552. If a Man *covenants* with another to do any Thing, his Heir shall not be bound, unless he be expressly named: And yet where a Lessee *covenants* to repair, &c. the Heir shall have the Benefit of the *Covenant*, though not named, because it runs with the Land. 2 *Levi* 92. 5 *Rep.* 8. And Grantees of Reversions, have the like Remedy by Action of *Covenant*, &c. against Termors, as the Lessors and their Heirs, &c. by Stat. 32 H. 8. A Person *covenants* with another, to pay him Money at a Time to come, and doth not say to his Executors, &c. if the *Covenantee* die before the Day, yet his Executors or Administrators shall have the Money. *Dyer* 112, 257. And in every Case where the Testator is bound by a *Covenant*, the Executor shall be bound by it; if it be not determined by his Death. 48 *Ed.* 3. 2. 2 *Danv.* 232. Assignees shall not have an Action upon Breach of any *Covenant*, before their Time. *Cro. Eliz.* 863. Nor shall an Assignee be charged in a Writ of *Covenant* for any Breach, after the Death of the first Lessee; as it is personal to the Lessee himself. 2 *Danv.* 238. If A. seised of Land in Fee; conveys it to B. and *covenants* with B. his Heirs and Assigns, to make any other Assurance upon Request; and after B. conveys it to C. who conveys it to D. and then D. requires A. to make another Assurance, according to the *Covenant*; if he refuses, D. shall have Action of *Covenant* against him, as Assignee to B. *Ibid.* 236. A Lessor made a Lease of an House for Years, excepting two Rooms, and free Passage to them; the Lessee assigned the Term, and the Lessor brought *Covenant* against the Assignee for disturbing him in his Passage to those Rooms; and adjudged that the Action lies: For the *Covenant* goes with the Tenement, and binds the Assignee. 1 *Salk.* 196. If a Man leases for Years, and ousts the Lessee, he shall have *Covenant* against him, though there be no express *Covenant* in the Deed. 48 *Ed.* 3. 2. But if, where a Person leases Lands for Years, a Stranger enters before the Lessee, such Lessee shall not have an Action of *Covenant* upon this Ouster, because he was never a Lessee in Privy to have the Action. 2 *Danv.* 234. A Man grants a Watercourse, and afterwards stops it; for this voluntary Misfeasance, *Covenant* lies. 1 *Saund.* 322. Though where the Use of a Thing is demised, and it runs to Decay, so that the Lessee cannot have the Benefit of it, for this Nonfeasance no Action of *Covenant* lieth: Nor may *Covenant* be brought for a Thing which was not *in esse*, at the Making of the Lease. 2 *Danv.* 233. If one makes a Lease for Years, reserving a Rent, Action of *Covenant* lies for Non-payment of the Rent; for the *Reddendum* of the Rent is an Agreement for Payment of it, which will make a *Covenant*. *Ibid.* 230. Where there is any Agreement under Hand and Seal, Action of *Covenant* may be brought on it: And if a Man is Party to a Deed, his Agreement to pay, amounts to a *Covenant*, though formal Words are wanting. 2 *Mod.* 91, 269. Action of *Covenant* lies on a Deed indented, or Poll: Also on a Bond, it proving an Agreement. 2 *Danv.* 228. 1 *Lill. Abr.* 346. And if one Man *covenants* to

pay another 20 *l.* at a Day; though he may have Action of Debt for the 20 *l.* yet 'tis said he may have a Writ of *Covenant* at his Election. 2 *Danv.* 229. It is agreed that A. B. shall pay to C. D. 100 *l.* for Lands in E. this is a mutual *Covenant*, whereon Action of *Covenant* may be brought if C. D. will not convey. 1 *Sid.* 423. But where there are mutual *Covenants*, and the one not to be performed before a Precedent *Covenant*, in such Case the *Covenant* is not suable till the other is perform'd: Though if the *Covenants* are distinct and mutual, several Actions may be brought by and against the Parties. 1 *Lill. Abr.* 350. 2 *Mod.* 74. If a Person *covenants* that he hath good Right to grant, &c. and he hath no Right, it is a Breach of *Covenant*, for which Action of *Covenant* lies. 2 *Bull.* 12. Where a Man *covenants* that he hath Power to grant, and that the Grantee, shall quietly enjoy from any claiming under him; these are distinct *Covenants*, for one goes to the Title, and the other to the Possession. 1 *Mod.* 101. A *Covenant* for the Lessee to enjoy against all Men; this extends not to tortious Acts and Entries, &c. for which the Lessee hath his proper Remedy against the Aggressors. *Vaugh.* 111, 123. Where there is a *Covenant* to save Harmless against a certain Person, there the *Covenantor* must save the *Covenantee* harmless against the Entry of that Person, be it by wrong or rightful Title: But if it be to save harmless against all Persons, the Entry and Ejection must be by lawful Title. *Cro. Eliz.* 213. *Covenant* that Lands shall continue of such a Value, notwithstanding any Act done, or to be done, extendeth only to the Time of the *Covenant* made; and not to the Time future. *Ibid.* 39, 479. A *Covenant* was enter'd into that Lands settled on a Woman for her Jointure, were of the Value of 100 *l.* per ann. and so should continue notwithstanding any Act done by the *Covenantor*; in Action of *Covenant* for that the Lands were not of that yearly Value, adjudged that the Action did not lie, except some Act done by the *Covenantor* was the Cause which made them not of that Value. *Cro. Eliz.* 43. 1 *Nelf. Abr.* 557. No Duty nor Cause of Action arises on a *Covenant*, till it is broken: And as to Breaches of *Covenant*, if a Person by his own Act disables himself to perform a *Covenant*, it is a Breach thereof. 5 *Rep.* 21. Though if a Lease, &c. is void, there can be no *Covenant*, nor any Breach. *Yelv.* 18, 19. If *Covenants* perpetual are once broken, and an Action is brought, and Recovery thereupon; upon a new Breach, a *Scire facias* shall be had on that Judgment, and the Plaintiff need not bring a new Writ of *Covenant*. *Cro. Eliz.* 5. Where the Intent of the Parties can be collected out of a Deed or Agreement, for the Doing, or not doing of the Thing, *Covenant* may be had thereupon. *Chanc. Rep.* 294. And in a *Covenant* the last Words, that are general, shall be expounded by the first Words, which are special and particular. *Ventr.* 218. Also a later *Covenant* cannot be pleaded in Bar to a former. Where a *Covenant* is to two jointly, one of them may not bring Action of *Covenant*, or plead alone, but both must join. 1 *Nelf.* 558. If a Man is bound to perform all the *Covenants* in an Indenture, and they are all in the Affirmative, he may plead Performance generally. *Co. Lit.* 303. *Covenants* in the Negative must be pleaded specially. *Ibid.* 330. When some *Covenants* are in the Negative, and some in the Affirmative, the Defendant is to plead specially to the Negative *Covenants*,

nants, that he had not done the Thing, and Performance generally as to the Affirmative: And where the Negative Covenants are against Law, and the Affirmative agreeable to Law, Performance generally may be pleaded. *Moor* 856. If any of the Covenants are in the Disjunctive, so that 'tis in the Election of the Covenantor to perform the one, or the other, the Performance ought to be specially pleaded, that it may appear what Part hath been performed. *Cro. Eliz.* 23. *1 Nelf.* 573. And commonly where an Act is to be done, according to a Covenant, he who pleads Performance, ought to do it specially. *1 Leon.* 136. In Debt upon Bond for Performance of Covenants, one whereof for peaceable Enjoyment, and free from all Incumbrances, and another for farther Assurance, &c. the Defendant should plead specially, that the House was free from Incumbrances at the Time of the Conveyance made, and not charged at any Time since, and that no farther Assurance had been required, or such an Assurance which he had executed, &c. yet where a Defendant pleaded generally in this Case, it was held good. *1 Lutw.* 603. Covenants are generally taken most strongly against the Covenantor, and for the Covenantee. *Plowd.* 287. But it is a Rule in Law, that where one Thing may have several Intendments, it shall be construed in the most favourable Manner for the Covenantor. *1 Lutw.* 490. The common Use of Covenants is for assuring of Land; quiet Enjoyment free from Incumbrances; for Payment of Rent reserved; and concerning Repairs, &c. and in Deeds of Covenant, sometimes a Clause for Performance with a Penalty, is inserted in the Body of the Deed: Other Times, and more frequently Bonds for Performance, with a sufficient Penalty, are given separate; which last being sued, the Jury must find the Penalty; but on Covenant, only the Damages. *Wood's Inst.* 230. The Words of Covenanting are Covenant, Grant, Promise and Agree, &c. but there needs no great Exactness in Words to make a Covenant.

Covenant to stand seised to Uses, Is when a Man that hath a Wife, Children, Brother, or Kindred, doth by Covenant in Writing under Hand and Seal agree that for their or any of their Provision or Preferment, he and his Heirs will stand seised of Land to their Use, either in Fee-simple, Fee-tail, or for Life. The Use being created by the Stat. 27 H. 8. c. 10. which conveyeth the Estate as the Uses directed; this Covenant to stand seised is become a Conveyance of the Land since the said Statute. The Considerations of these Deeds are natural Love and Affection, Marriage, &c. and the Law allows in such Cases Consideration of Blood and Marriage, to raise Uses, as well as Money and other valuable Consideration when a Use is to a Stranger. *Plowd.* 302. There are no Considerations now to raise Uses upon Covenants to stand seised, but natural Love and Affection, which is for Advancement of Blood; and Consideration of Marriage, which is the Joining of the Blood and Marriage together: Other Considerations, as Money, &c. for Land, tho' the Words in the Deeds are stand seised, yet they are Bargains and Sales, and without Inrolment they raise no Use. *Carter* 138. *1 Lill. Abr.* 353. The usual Covenant to stand seised to Uses need not be by Deed indented and inrolled: And where a Man limits his Estate to the Use of his Wife for Life, this imports a sufficient Considera-

tion in it self: Also if a Person covenant to stand seised to the Use of his Wife, Son, or Cousin, this will raise an Use without any express Words of Consideration, for sufficient Consideration appears. *7 Rep.* 40. In case of a Covenant to stand seised, so much of the Use as the Owner doth not dispose of, remains still in him. *1 Ventr.* 374. And where an Use is raised by way of Covenant, the Covenantor continues in Possession; and there the Uses limited, if they are according to Law, shall rise and draw the Possession out of him: But if they are not, the Possession shall remain in him until a lawful Use ariseth. *1 Leon.* 197. *1 Mod.* 159, 160.

Coberture, (Fr.) Any Thing that covers; as Apparel, a Coverlet, &c. but it is by our Law particularly apply'd to the State and Condition of a married Woman, who is *sub potestate viri*; and therefore disabled to contract with any to the Prejudice of her self or Husband, without his Consent and Privy, or his Allowance and Confirmation thereof. *Brook. Vir est caput mulieris: Sine viro respondere non potest. Bract. lib. 4. cap. 24. And lib. 2. cap. 15. Omnia quæ sunt Uxoris, sunt ipsius viri, nec habet uxor potestatem sui, sed vir. And lib. 1. cap. 10. Uxores sunt sub virga viri.* When a Woman is married, she is called a Feme Covert; and whatever is done concerning her, during the Marriage, is said to be during the Coberture: All Things that are the Wife's, are the Husband's; nor hath the Wife Power over her self, but the Husband: And if the Husband alien the Wife's Land, during the Coberture, she cannot gainsay it during his Life: But after his Death, she may recover by *Cui in vita*. *Terms de Ley* 195. See *Baron and Feme*.

Covin, (Covina) Is a deceitful Compact between two or more Persons to deceive or prejudice some others; as if Tenant for Life conspires with another, that he shall recover the Land which he the Tenant holds, in Prejudice of him in Reversion. *Plowd.* 546. If a Man that has a Right to certain Lands, by Covin causes another to oust the Tenant of the Land, to the Intent to recover it from him, and he recovers accordingly against him by Action tried, yet he shall not be remitted to his ancient Right, but is in of the Estate of him who was the Ouster: And an Assise lies against him. *2 Danv. Abr.* 309. Land is aliened, pending a Writ of Debt, by Covin, to avoid the Extent thereof for the Debt; the Land so aliened shall be extended, when the Covin appears upon the Return of the *Elegit* by the Sheriff. *Ibid.* 311. If a Man makes a Deed of Gift of his Goods in his Life-time by Covin, to oust his Creditors of their Debts, after his Death the Vendee shall be charged for them. *13 H.* 4. And if Goods are sold in Market overt by Covin, on Purpose to bar him that hath Right, this shall not bar him thereof. *2 Inst.* 713.

Counsellor, (Consiliarius) Is a Person retained by a Client to plead his Cause in a Court of Judicature. A Counsellor at Law hath a Privilege to enforce any Thing which is informed him by his Client, if pertinent to the Matter, and is not to examine whether it be true or false; for it is at the Peril of him who informs him. *Cro. Jac.* 90. But after the Court hath delivered their Opinions of the Matter in Law depending before them, the Counsel at the Bar are not to urge any Thing further in that Cause. *1 Lill. Abr.* 355. A Counsellor ought not to set his Hand to a frivolous Plea, to delay a Trial; which argues Ignorance,

or foul Practice. *Ibid.* And as *Counsellors* have a special Privilege to practice the Law, they are punishable by Attachment, &c. for Misbehaviour. 2 *Hawk. P. C.* 157. No Recusant Convict, or Nonjuror, shall practice the Law, under Penalties, by Stat. 3 *Fac. 1. cap. 5.* 13 & 14 *W. 3. cap. 6.*

Counsel, Is not allowed a Prisoner upon a General Issue, on Indictment of Felony, &c. unless some doubtful Point of Law arise: The Court is the Prisoner's only Counsel; and the Behaviour of the Prisoner in his own Defence, is one Means of discovering the Truth. But in Appeals, and upon special Pleas, &c. the Prisoner shall have Counsel assigned him by the Court: Counsel is not to prompt the Prisoner in Matters of Fact. 2 *Hawk.* 400, 401. Provision is made for Counsel for Prisoners in Treason, by Stat. 7 *W. 3.*

Count, (Fr. *Conte*) Signifies the original Declaration of Complaint in a real Action: As Declaration is applied to personal, so Count is applied to real Causes. But Count and Declaration are oftentimes confounded, and made to signify the same Thing. *F. N. B.* 16, 60. The Word *Libellus* with the *Civilians*, comprehends both. In passing a Recovery at the Common Pleas Bar, a Serjeant at Law counts upon the *Præcipe*, &c. See *Countors* and *Declaration*.

Countee, (Fr. *Comte à Comitando*, as they accompany the King) 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: For which Reason, and because the Law intends that they assist the King with their Counsel for the Publick Good, and preserve the Realm by their Valour, they had great Privileges. Of old the Countee was *Præfectus*, or *Præpositus Comitatus*, and had the Charge and Custody of the County; but this Authority the Sheriff now hath. 9 *Rep.* 46.

Countenance. This Word seems to be used for Credit or Estimation. *Old Nat. Br.* 111. And in the Stat. 1 *Ed. 3. c. 4.* See *Contentement*.

Counter, (*Computatorium* from the Lat. *Computare*) Is the Name of two Prisons in London, the *Poultry Counter*, and *Woodstreet Counter*, for the Use of the City, to confine Debtors, Peace-breakers, &c. wherein if any enter, he is like to account before he gets out. *Cowel*.

Counterfeits. Persons obtaining any Money, Goods, &c. by Counterfeit Letters or False Tokens, being convicted before Justices of Assize, or Justices of Peace, &c. are to suffer such Punishment as shall be thought fit, under Death; as Imprisonment, Pillory, &c. Stat. 33 *H. 8. cap. 1.* It was the Opinion of Sir Edward Coke, that upon this Statute the Offender could not be fined; and that only corporal Pains ought to be inflicted: But it hath been otherwise adjudged in *Terrrey's Case*, who by a false Note in the Name of another obtained into his Hands a Wedge of Silver, of the Value of Two hundred Pounds; and on Conviction thereof, was sentenced to stand in the Pillory, pay a Fine of Five hundred Pounds to the King, and be imprison'd during the King's Pleasure. *Cro. Car.* 407. The Obtaining of Money from one Man to another's Use, upon a false Pretence of having a Messuage and verbal Order to that Purpose, is not punishable by a criminal Prosecution; it depending on a bare naked Lie against which common Prudence and Caution may be a Security. 6 *Mod.* 105. 1 *Hawk. P. C.* 188. Counterfeiting the King's Seal, or Money,

&c. which is Treason. *Vide Treason*: And Counterfeiting Exchequer Bills, Bank-Bills, Lottery Orders, &c. which are Felony. See *Felony*.

Countermand, Is where a Thing formerly executed, is afterward by some Act or Ceremony made void by the Party that first did it. And it is either actual by Deed, or implied: *Actual*, where a Power to execute any Authority, &c. is by a formal Writing for that very Purpose put off for a Time, or made void: And *implied* is where a Man makes his last Will and Testament, and thereby devises his Land to A. B. if he afterwards enfeoffs another of the same Land, here this Feoffment is a Countermand to the Will, without any express Words for the same, and the Will is void as to the Disposition of the Land: Also if a Woman seised of Land in Fee-simple, makes a Will, and deviseth the same to C. D. and his Heirs, if he survives her; and after she intermarries with the said C. D. there by taking him to Husband and Coverture, at the Time of her Death, the Will is countermanded. *Terms de Ley.* 198. But if a Woman makes a Lease at Will, and then marries, this Marriage is no Countermand to the Lease, without express Matter done by the Husband to determine the Will. There is a Countermand of Notice of Trial, &c. in Law Proceedings.

Counterplea, Is when the Tenant in any real Action, Tenant by Curtesy, &c. in his Answer and Plea, vouches any one to warrant his Title, or prays in Aid of another who hath a larger Estate; as of him in Reversion, &c. or where one that is a Stranger to the Action, comes and prays to be received to save his Estate; then that which the Demandant alledgeth against it, why it should not be admitted, is called a Counterplea: In which Sense it is used Stat. 25 *E. 3. cap. 7.* So that Counterplea is in Law a Replication to *Aid Prier*; and is called Counterplea to the Voucher: But when the Voucher is allowed, and the Vouchee comes and demands what Cause the Tenant hath to vouch him, and the Tenant shews his Cause, whereupon the Vouchee pleads any Thing to avoid the Warranty; that is termed a Counterplea of the Warranty. *Terms de Ley* 199. Stat. 3 *E. 1. cap. 39.*

Counter-Rolls, Are the Rolls which Sheriffs of Counties have with the Coroners of their Proceedings, as well of Appeals, as of Inquests, &c. Stat. 3 *Ed. 1. c. 10.*

Countors, (Fr. *Contours*) Have been taken for such Serjeants at Law, which a Man retains to defend his Cause, and speak for him in any Court, for their Fees. *Horn's Mirror*, lib. 2. And as in the Court of C. B. none but Serjeants at Law may plead; they were anciently called *Serjeant-Countors*. 1 *Inst.* 17.

County, (*Comitatus*) Signifies the same with *Shire*, the one coming from the French, the other the Saxons; 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 Kingdom, that lies not within some County; and every County is governed by a yearly Officer whom we call a Sheriff. *Fortescue cap. 24.* Of these Counties, there are in England forty, besides twelve in Wales, making in all fifty-two: And four of them are of special Note, which are therefore termed *Counties Palatine*; as *Lancaster*, *Chester*, *Durham*, and *Ely*; and we read anciently of the *Counties Palatine*.

time of *Pembroke* and *Hexam*, but they have long since lost their Privileges. The chief Governors of the *Counties Palatine*, by special Charter from the King, heretofore did all Things touching the Administration of Justice as absolutely as the Prince himself in other *Counties*, only acknowledging him their Superior and Sovereign: But by the Stat. 27 Hen. 8. ca. 24. their Power is abridged. 4 Inst. 204. 221. The *Counties Palatine* are reckoned among the superior Courts: And are privileged as to Pleas, so as no Inhabitant of such *Counties* shall be compelled by any Writ to appear or answer out of the same; except for Error, and in Cases of Treason, &c. and the *Counties Palatine of Chester and Durham*, are by Prescription, where the King's Writs ought not to come, but under the Seal of the *Counties Palatine*; unless it be Writs of Proclamation. *Crompt. Jurisd.* 137. 1 *Danv. Abr.* 750. But *Certiorari* lies, out of B. R. to Justices of a *County Palatine*, &c. to remove Indictments, and Proceedings before them. 2 *Hawk. P. C.* 286. There is a Court of Chancery in the *Counties Palatine of Lancaster and Durham*, over which there are Chancellors; that of *Lancaster* called Chancellor of the Dutchy, &c. and there is a Court of Exchequer at *Chester*, of a mixt 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. The Bishops of *Durham* and *Ely*, have those *Counties Palatine*; and if any erroneous Judgment be given in the Courts of the Bishoprick of *Durham*, a Writ of Error shall be brought before the Bishop himself; and if he give an erroneous Judgment thereon, a Writ of Error shall be sued out returnable in B. R. 4 Inst. 218. *Counties Palatine*, with *Fura Regalia*, were probably erected at first, because they were adjacent to the Enemies Countries heretofore; as *Lancaster* and *Durham* to *Scotland*, and *Chester* to *Wales*; that the Inhabitants might have Administration of Justice at home, and remain there to secure the Country from Incurfions. 1 *Ventr.* 155. The King may make a *County Palatine* by his Letters Patent without Parliament. 4 Inst. 201. Besides these *Counties*, of both Sorts, there are *Counties Corporate*, Stat. 3 E. 4. ca. 5. And they are certain *Cities*, with Lands and Territories, having Liberties and Jurisdiction by Grant from the King: As the *County of Middlesex* annexed to the City of *London* by King Hen. 1. the *County of the City of York*, Anno 32 H. 8. The *County of the City of Chester* 42 Eliz. The *County of the City of Bristol*, *Norwch*, *Worcester*, &c. and the *County of the Town of Kingston upon Hull*; *New-Castle*, &c. *Lamb. Eiren. lib.* 1. *Crompt. Just.* 59. And *County* in another Signification, is used for the *County-Court*, kept by the Sheriff within his Charge, or by his Deputy. Stat. 2 Ed. 6. cap. 25. *Bract. lib.* 3. cap. 7. See *Comitatus*.

County-Court, (*Curia Comitatus*) Is by *Lambard* otherwise called *Conventus*, in his Explication of *Saxon Words*, and divided into two Sorts; one retaining the general Name, as the *County-Court* held every Month, by the Sheriff or his Deputy: The other called the *Turn*, held twice in every Year, viz. within a Month after *Easter*, and *Michaelmas*; of both which you may read in *Crompt. Jurisd. fol.* 241. Before the Courts at *Westminster* were erected, the *County-Courts* were the chief Courts of the Kingdom: And among the Laws of

King *Edgar* it is ordained, that there be two *County Courts* kept in the Year, in which there shall be a Bishop and an Alderman, or Earl as Judges; one to Judge according to the Common Law, and the other according to the Ecclesiastical Law: But these united Powers of a Bishop and Earl, to try Causes, were separated by *William* the First, called the Conqueror, and soon after the Business of Ecclesiastical Cognizance was brought into its proper Courts, and the Common Law Business into the *King's Bench*. *Blount*. That the *County Court* in ancient Times had the Cognition of great Matters, appears by *Glanvil lib.* 1. cap. 2, 3, 4. by *Bracton*, and *Britton*, in divers Places, and by *Fleta, lib.* 2. c. 62. But the Power of this Court was much reduced by *Magn. Chart. c.* 17. And by 1 Ed. 4. cap. 1. It had formerly, and now hath the Determination of certain Trespasses, and Debts under 40 s. *Brit. c.* 27 & 28. And this Court holdeth not Plea of any Debt or Damage to the Value of 40 s. or above; nor of Trespass *Vi & Armis*, &c. But of Debt and other Actions personal above 40 s. the Sheriff may hold Plea by Force of a Writ of *Fuſſices*, which is in Nature of a Commission to him to do it. 4 Inst. 266. Here the Plaintiff takes out a Summons, and if the Defendant do not appear, an Attachment or *Distingas* is to be made out; but if the Defendant appears, the Plaintiff is to file his Declaration, and after the Defendant is to put in his answer or Plea; and the Plaintiff having joined issue, the Trial proceeds, &c. whereupon, if Verdict is given for the Plaintiff, Judgment is entered, and a *Fieri facias* may be awarded against the Defendant's Goods, which may be taken by Virtue thereof, and be appraised and sold to satisfy the Plaintiff: But if the Defendant hath no Goods, the Plaintiff is without Remedy in this Court; for no *Capias* lies therein, but an Action may be brought at Common Law, upon the Judgment entered. *Greenwood of Courts pag.* 22. No Sheriff is to enter in the *County-Court*, any Plaintiff in the Absence of the Plaintiff; nor above one Plaintiff for one Cause, on Pain of 40 s. the Defendant in the *County-Court* is to have lawful Summons; and two Justices of Peace are to view the Extreats of Sheriffs, before they issue them out of the *County-Court*, &c. by Stat. 11 Hen. 7. cap. 15. Causes are removed out of the *County-Court*, by *Recordare*, *Pone*, and Writ of *False Judgment*, into B. R. &c.

Counting-House of the King's Household, (*Domus Computus Hospitii Regis*) Is usually called the *Green-Cloth*; where sit the Lord Steward, and Treasurer of the King's House, the Comptroller, Master of the Household, Cofferer, and two Clerks of the *Green-Cloth*, &c. for daily taking the Accounts of all Expences of the Household, making Provisions, and ordering Payment for the same; and for the good Government of the King's Household Servants, and paying the Wages of those below Stairs. Stat. 39 Eliz. cap. 7.

Courracier, A French Word signifying a Horse-Courier. 2 Inst. 719.

Court, (*Curia*) Signifies the King's Palace, or Mansion; and is more especially the Place where Justice is judicially administered. Of Courts some are of Record, and some not, which are accounted *Base Courts*, in Comparison of the Rest: The Courts Superior are those at *Westminster*; then there are the Court of Admiralty, Courts Martial, Ecclesiastical, &c. A Court of Record is that Court which hath Power to hold Plea, according to

the Courſe of the Common Law, of real, perſonal, and mixed Actions, where the Debt or Damage is 40 s. or above; as the *King's Bench*, *Common Pleas*, &c. A Court not of Record is where it cannot hold Plea of Debt or Damages amounting to 40 s. but of Pleas under that Sum; or where the Proceedings are not according to the Courſe of the Common Law, nor inrolled; as the *County-Court*, *Hundred-Court*, *Court-Baron*, &c. 1 *Inf.* 117, 260. 4 *Rep.* 52. 2 *Roll. Abr.* 574. Every Court of Record is the *King's Court*: And the *Leet* and *Tourn* are the *King's Courts*, and of Record. 2 *Danv. Abr.* 259. The *Rolls* of the ſuperior Courts of Record are of ſuch Authority, as no Proof will be admitted againſt them; and they are only triable by themſelves. 3 *Inf.* 71. But the *County-Court*, *Court-Baron*, &c. as they are no Courts of Record, the Proceedings therein may be denied, and tried by a Jury: And upon their Judgments, a Writ of Error lies not; but Writ of Faſe Judgment. 1 *Inf.* 117. At the Courts at *Weſtmiſter*, the Plaintiff need not ſhew at large in his Declaration, that the Cauſe of Action ariſes within their Jurisdiction, it being general: Inferior Courts are to ſhew it at large, becauſe they have particular Juridiſctions. 1 *Lill. Abr.* 371. Alſo nothing ſhall be intended to be within the Juridiſtion of an inferior Court, but what is expreſſly ſo alledged: And if Part of the Cauſe ariſes within the inferior Juridiſtion, and Part thereof without it, the inferior Court ought not to hold Plea. 1 *Lev.* 104. 2 *Rep.* 16. An inferior Court not of Record cannot impoſe a Fine, or impriſon: But the Courts of Record at *Weſtmiſter* may fine, impriſon, and amerce. 11 *Rep.* 43. The King being the Supreme Magiſtrate of the Kingdom, and intruſted with the executive Power of the Law, all Courts Superior and Inferior ought to derive their Authority from the Crown. *Staund.* 54. 2 *Hawk. P. C.* 2. Though the King himſelf cannot ſit in Judgment in any Court upon an Indiſtment, becauſe he is one of the Parties to the Suit. *Hawk. Ibid.* The King hath committed all his Power Judicial to one Court or other. 4 *Inf.* 71. And by Statute it is enacted, that all Perſons ſhall receive Juſtice in the King's Courts, and none take any Diſtreſs, &c. of his own Authority, without Award of the King's Courts. *Stat.* 52 H. 3. c. 1. The Court of B. R. regulates all the Courts of Law in the Kingdom, ſo that they do not exceed their Juridiſctions, nor alter their Forms, &c. 22 *Car. B. R.* And as the Court of King's Bench hath a general Superintendency over all Inferior Courts, it may award an Attachment againſt any ſuch Court, uſurping a Juridiſtion not belonging to it: But it is ſome times uſual firſt to award a Writ of Prohibition, and afterwards an Attachment, upon its continuing to proceed. 2 *Hawk.* 149, 150. If a Court having no Juridiſtion of a Cauſe depending therein, do nevertheless proceed, the Judgment in ſuch Court is *coram non Judice*, and void; and an Action lies againſt the Judges who give the Judgment, and any Officer that executes the Proceſs under them: Though where they have Authority, and give an ill Judgment, there the Party who executes the Proceſs, &c. upon the Judgment, ſhall be excuſed. 1 *Lill. Abr.* 370. Action on the Caſe lies againſt the Plaintiff in an Action for ſuing one in an Inferior Court, where the Cauſe of Action is out of its Juridiſtion. 1 *Vent.* 369. Striking in the Courts at *Weſtmiſter*, is puniſhed by cutting off the right Hand, and For-

feiture of Goods, &c. How Contempts to Courts are puniſhable by Fine and Impriſonment, &c. *Vide Attachment*: See more of Courts, under Judges.

Court of Admiralty, (*Curia Admiralitatis*) Was erected, as generally held, by King Ed. 3. for deciding Maritime Cauſes; and the Title of its Judge is, *Suprema Curia Admiralitatis Angliæ Locum-tenens, Juxta ſive Præſidens*. The Admiralty Court is not allowed to be a Court of Record, becauſe it proceeds by the Civil Law; and the Judge has no Power to take ſuch a Recognizance, as a Court of Record may. The Proceſs and Proceedings are in the Name of the Lord Admiral, and by Libel; and the Plaintiff and Defendant enter into a Stipulation, or Bail, for Appearance, and to abide the Sentence. 4 *Inf.* 134, 135. this Court hath Juridiſtion to determine all Maritime Cauſes; or Cauſes ariſing wholly upon the Sea; out of the Juridiſtion of a County. And a Judgment of a Thing done upon Land, is void. 1 *Inf.* 260. By the Cuſtom of the Admiralty, Goods may be attached in the Hands of a third Perſon in *Cauſa civili & maritima*. March. 204.

Court-Baron, (*Curia Baronis*) Is a Court which every Lord of a Manor, (who in ancient Times were called *Barons*) hath within his own Precinct. A Court-Baron is an inſeparable Incident to a Manor: And it muſt be held by Preſcription; for it cannot be created at this Day. 1 *Inf.* 58. 4 *Inf.* 268. A Court-Baron muſt be kept on ſome Part of the Manor: And is of two Natures. 1. By Common Law, which is the *Barons* or *Freeholders Court*, of which the Freeholders being Suitors are the Judges; and this cannot be a Court-Baron, without two Suitors at leaſt. 2. By Cuſtom, which is called the *Customary Court*: And concerns the Customary Tenants and Copyholders, whereof the Lord, or his Steward is Judge. The Court-Baron may be of this double Nature, or one may be without the other: But there can be no Court-Baron at Common Law without Freeholders; ſo there cannot be a Customary Court, without Copyholders or Customary Tenants. 4 *Rep.* 26. 6 *Rep.* 11, 12. 2 *Inf.* 119. The Freeholders Court, which hath Juridiſtion for trying of Actions of Debt, Treſpaſſes, &c. under 40 s. may be held every three Weeks; and is ſomething like a County-Court, and the Proceedings much the ſame: But on Recovery of Debt, they have not Power to make Execution, but are to diſtrain the Defendant's Goods, and retain them till Satisfaction is made. The other Court-Baron, for taking and paſſing of Eſtates, Surrenders, Admittances, &c. is held but once or twice in a Year, (uſually with the Court-Leet) unleſs it be on purpoſe to grant an Eſtate; and then it is holden as often as requiſite. In this Court, the *Homage Jury* are to inquire that their Lords do not loſe their Services, Duties, or Cuſtoms; but that the Tenants make their Suits of Court; pay their Rents, Heriots, &c. and keep their Lands and Tenements in Repair, &c. they are to preſent all common and private Nuſances, which may prejudice the Lord's Manor; and every publick Treſpaſs muſt be puniſhed in this Court, by Amercement, on preſenting the ſame. See my *Compleat Court-Keeper*. 3^d Edit.

Court of Chivalry, (*Curia Militaris*) Otherwiſe called the *Marshal Court*; the Judges of it are the Lord Conſtable of England, and the Earl Marshal: This Court is ſaid to be the Fountain of the *Marshal Law*, and the Earl Marshal hath both a judicial and miniſterial Power; for he is

not only one of the Judges, but to see Execution done. 4 *Inst.* 123. See *Constable*.

Court Christian, (*Curia Christianitatis*) Is an Ecclesiastical Judicature, opposed to the Civil Court, or Lay Tribunal: And as in secular Courts, Human Laws are maintained, so in the *Court Christian*, the Laws of *Christ* should be the Rule. And therefore the Judges are Divines; as Archbishops, Bishops, Archdeacons, &c. 2 *Inst.* 488. *Courts Christian* are so called, because they handle Matters especially appertaining to *Christianity*; and were held heretofore by our Bishops from the *Pope*, as he challenged the Superiority in all Causes Spiritual: But since his Ejection, they hold them by the King's Authority, *Virtute Magistratus sui*, &c. and as the Appeal from these Courts did lie to *Rome*, now by the Statute 25 H. 8. cap. 19. it lies to the King in his Chancery. 4 *Inst.* These Courts were complained against long before the Reformation, the Bishops having extended their Jurisdiction so far, that they had left very little Business for the secular Judges; for they assumed an Authority over the Clergy, even in criminal Cases, though they had no legal Power, but only in the Execution of the Sentence of Degradation, &c. and took upon them to Judge in a great many other Things, that did not belong to them.

Court of Conscience, (*Curia Conscientie*) In the 9th Year of King Hen. 8. the Court of Conscience in London was erected; there was then made an Act of Common Council, that the Lord Mayor and Aldermen should assign monthly two Aldermen, and four discreet Commoners, to be Commissioners to sit in this Court twice a Week, to hear and determine all Matters brought before them between Party and Party, being Citizens and Freemen of London, in all Cases where the Debt or Damage was under 40 s. And this Act of Common Council is confirmed by the Stat. 1 Jac. 1. which impowers the Commissioners of this Court, to make such Orders between the Parties touching such Debts, as they shall find stand to Equity and good Conscience. Also the Stat. 3 Jac. 1. c. 15. further establishes this Court; the Course and Practice whereof is by Summons, to which the Parties appear; the Commissioners proceed summarily; examining the Witnesses of both Parties on Oath, and as they see Cause give Judgment. And if the Party summoned appear not, the Commissioners may commit him to the Compter Prison till he does; also the Commissioners have Power to commit a Person refusing to obey their Orders, &c. Vide Stat. 3 Jac. 1.

Court of Delegates, (*Curia Delegatorum*) Is so called, because the Judges are delegated, and sit by Force of the King's Commission, under the Great Seal, upon Appeals to the King, in three Cases. 1. When a Decree or Sentence is given in an Ecclesiastical Cause, by the Archbishop, or any of his Officials. 2. When any Decree or Sentence is given in any Ecclesiastical Cause in Places exempt, or Peculiars, belonging to the King, or an Archbishop. 3. When a Sentence is given in the Court of Admiralty in a civil and marine Cause, according to the Civil Law. 4 *Inst.* 339. Stat. 25 Hen. 8. cap. 19. If the Delegates in Ecclesiastical Causes are Spiritual Persons, they may proceed to Excommunication, &c. this is the highest Court for civil Affairs that concern the Church. See *Appeal of Rome*.

Courts Ecclesiastical, (*Curia Ecclesiastici*) Are those Courts which are held by the King's Autho-

rity as supream Governor of the Church, for Matters which chiefly concern Religion. 4 *Inst.* 321. And the Laws and Constitutions whereby the Church of England is governed, are, 1. Divers immemorial Customs. 2. Our own Provincial Constitutions; and the Canons made in Convocations, especially those in the Year 1603. 3. Statutes or Acts of Parliament concerning the Affairs of Religion, or Causes of Ecclesiastical Cognizance; particularly the Rubricks in our Common Prayer-Book, founded upon the Statutes of Uniformity. 4. The Articles of Religion, drawn up in the Year 1562. and established by 13 Eliz. cap. 12. 5. And 'tis said, by the General Canon Law, where all others fail. See the 25 Hen. 8. c. 28. The Proceedings in the Ecclesiastical Courts are according to the Civil and Canon Laws; by Citation, Libel, Answer upon Oath, Proof by Witnesses, and Presumptions, &c. and after Sentence, for Contempt, by Excommunication: And if the Sentence is disliked, by Appeal. The Jurisdiction of these Courts, is voluntary; or contentious: And the Punishments inflicted by them, are Censures and Punishments pro salute Animæ, by way of Penance, &c. they are not Courts of Record. Vide Consultation and Prohibition.

Court of Hustings, (*Curia Hustingi*) Is 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, personal, and mixt: 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 Plea of Lands, and the other Hustings of Common Pleas. In the Hustings of Plea of Lands, are brought Writs of right Patent directed to the Sheriffs of London, on which Writs the Tenant shall have three Summons at the three Hustings next following; and after the three Summons, there shall be three Effoins at three other Hustings next ensuing; and at the next Hustings after the third Effoin, if the Tenant makes Default, Process shall be had against him by Grand Cape, or Petit Cape, &c. and if the Tenant appears, the Demandant is to declare in the Nature of what Writ he will; without making Protestation to sue in Nature of any Writ: Then the Tenant shall have the View, &c. and if the Parties plead to Judgment, the Judgment shall be given by the Recorder: But no Damages, by the Custom of the City, are recoverable in any such Writ of right Patent. *Practif. Solic.* 416, 417. In the Hustings of Common Pleas, are pleadable Writs Ex gravi Querela, Writs of Gavetlet, of Dowry, Waste, &c. also Writs of Exigent are taken out in the Hustings; and at the fifth Hustings the Outlawries are awarded, and Judgment pronounced by the Recorder. If an erroneous Judgment is given in the Hustings, the Party grieved may sue a Commission out of Chancery directed to certain Persons to examine the Record, and thereupon to do Right. 1 *Roll. Abr.* 745.

Court Leet, (*Leta, Visus franci plegii*) Is a Court of Record, ordained for punishing Offences against the Crown; and is said to be the most ancient Court of the Land. 2 *Danv. Abr.* 289. It inquires of all Offences under High Treason; but those which are to be punished with Loss of Life or Member, are only inquirable and presentable here, and to be certified over to the Justices of Assize. Stat. 1 Ed. 3. And this Court is called

the *View of Frank-Pledge*, because the King is to be there certified by the View of the Steward, how many People are within every Leet, and have an Account of their good Manners and Government; and every Person of the Age of twelve Years, which hath remained there for a Year and a Day, may be sworn to be faithful to the King, and the People are to be kept in Peace, &c. Also every one, from the Age of twelve to sixty Years, that dwells within the Leet, is obliged to do Suit in this Court; except Peers, Clergymen, &c. unless they are under the *Sheriff's Turn*. 4 *Inst.* 261, 263, &c. A Leet is incident to a Hundred, as a Court-Baron to a Manor; for by Grant of a Hundred, a Leet passeth, and a Hundred cannot be without a Leet. *Kitch.* 70. Leets may be held by Charter or Prescription; but are commonly claimed by Prescription; and are to be kept twice in every Year, one Time within a Month after *Easter*, and the other within a Month after *Michaelmas*, at a certain Place within the Precinct: These are the usual Times of holding the Leet; but if it hath been a Custom to keep this Court at any other Time in the Year, it is good if due Warning be given. 1 *Inst.* 115. 2 *Inst.* 72. The Steward is the Judge of this Court, as the Sheriff is in the Turn: And he hath Power to elect Officers, as Constables, Tithingmen, &c. as well as punish Offenders. 6 *Rep.* 12. 2 *Inst.* 199. A Presentment in a Court-Leet, or Sheriff's Turn, after the Day of Presentment, subjects the Party to a Fine or Amerciament; and is not traversable, except it toucheth the Party's Freehold; as that one ought to cleanse the Highways &c. by Reason of his Tenure: Though such Presentment may be removed into B. R. by *Certiorari*, where it may be traversed. *Dyer* 13. 2 *Inst.* 52. *Kitch.* 86, 91, &c. A Court-Leet may fine, but not imprison: A Steward may impose a reasonable Fine, for a Contempt in Court; or commit those who make an Affray before him, in the Execution of his Office, or bind them to the Peace or Good Behaviour: But he may not grant Surety of the Peace, unless by Prescription. 8 *Rep.* 38. 1 *Saund.* 135. The usual Method of Punishment in the Court-Leet, is by Fine and Amerciament; the former assessed by the Steward, and the latter by the Jury: For both of which, the Lord may have an Action of Debt, or take a Distress, &c. Twelve Freeholders or Resiants, are to be of the Jury: And the particular *Articles* to be enquired into, by Statute, are, if all that owe Suit of Court are present; of Customs withdrawn; Purprestures in Lands, Woods, &c. of Houses set up, or beat down; Cottages erected contrary to Law, and other Annoyances; of Bounds taken away; Ways or Waters turn'd or stopp'd; of Thieves, and Hues and Cries not pursued; of Bloodshed, Escapes, Persons outlaw'd, Money Coiners, Treasure found; Affise of Bread and Ale, Persons keeping Ale-houses without Licence; False Weights and Measures, Unlawful Games, Offences relating to the Game; Offences of Tanners in selling insufficient Leather, of Foresters, &c. of Markets, Victuallers and Labourers, unlawful Fishing, idle Persons, &c. *Stat.* 18 Ed. 2. 14 & 15 H. 8. 2 & 3 Ed. 6. 31 Eliz. 1 *Fac.* &c. All these Articles are drawn up in Form, and given in Charge by the Steward. The Lord of the Leet ought to have a Pillory and Tumbrel, &c. to punish Offenders by Statute; and for Want thereof, the Lord may be fined, or the Liberty seized. 2 *Danv.*

289. And all Towns in the Leet are to have Stocks in Repair; and the Town that hath none shall forfeit 5 *l.* *Ibid.* Stewards of Leets, &c. are not to receive Profits to their own Use, belonging to the Lord, on Pain of 40 *l.* *Stat.* 1 *Fac.* 1. c. 5. Vide my *Compleat Court-Keeper*.

Court of Marshalsea, (*Curia Palatii*) Is a Court of Record to hear and determine Causes between the Servants of the King's Household and others within the Verge; and hath Jurisdiction of all Matters within the Verge of the Court, and of Pleas of Trespass, where either Party is of the King's Family; and of all other Actions personal, wherein both Parties are the King's Servants; and this is the original Jurisdiction of the Court of Marshalsea: But the *Curia Palatii*, erected by K. Charles I. by Letters Patent, in the 6th Year of his Reign, and made a Court of Record, hath Power to try all Personal Actions, as Debt, Trespass, Slander, Trover, Actions on the Case, &c. between Party and Party, the Liberty whereof extends twelve Miles about *Whitehall*; which Jurisdiction hath since been confirmed by King Charles the Second. And the Judges of this Court, are the Steward of the King's Household, and Knight-Marshal for the Time being, and the Steward of the Court, or his Deputy, being always a Lawyer. *Crompt. Jurisd.* 102. *Kitch.* 199, &c. 2 *Inst.* 548. This Court is kept once a Week, in *Southwark*: And the Proceedings here are either by *Capias* or Attachment; which is to be served on the Defendant, by one of the Knight Marshal's Men, who takes Bond with Sureties for his Appearance at the next Court; upon which Appearance, he must give Bail, to answer the Condemnation of the Court; and the next Court after the Bail is taken, the Plaintiff is to declare, and set forth the Cause of his Action, and afterwards proceed to Issue and Trial by a Jury, according to the Custom of the Common Law Courts. If a Cause is considerable, it is usually removed into B. R. or C. B. by an *Habeas Corpus cum causa*: Otherwise Causes are here brought to Trial in four or five Court-Days. *Prattif. Solic.* 409, 410. This Marshalsea is that of the Household; not the King's Marshalsea, which belongs to the King's Bench.

Court Martial, (*Curia Martialis*) Is a Court for Punishing the Offences of Officers and Soldiers in Time of War. And it appears by our Books, that if any Person in Commission, in Time of Peace, put to Death any Man by Martial Law, it is against *Magna Charta*, and Murder. 3 *Inst.* 52. Tho' temporary Acts of Parliament have of late enabled our Kings to hold Courts Martial in Time of Peace, &c. By 4 & 5 W & M. c. 13. Desertion and Mutiny is punishable by a Court Martial: And the King, or the General of the Army, may grant Commissions to any Field-Officer, &c. to call a Court Martial, of thirteen at least Commission Officers, who are to take an Oath for trying truly; and Sentence of Death is not to be given unless Nine concur: And a Field-Officer is not to be tried by any under the Degree of a Captain. By a subsequent Act, Court Martials may be called within the Realm, for trying Offenders against the Laws of War out of the Realm; or a Deserter abroad may be sent back to his Regiment to be proceeded against. And an Acquittal or Conviction in a Court Martial, is a good Bar to an Indictment. *Stat.* 7 Ann. c. 4. Sec 1 *Geo.* c. 9. 7 *Geo.* c. 6. Court Martial at Sea, see Navy.

Court of Piepowders, (*Curia Pedis pulverisati*) Is 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 Plaintiffs and Defendants. 4 *Inst.* 272. It is a Court of Record incident to every Fair and Market; and to be held only during the Time that the Fair is kept. *Doff. & Stud.* c. 5. As to the Jurisdiction, the Cause of Action for Contract, Slander, &c. must arise in the Fair or Market; and not before at any former Fair, nor after the Fair: It is to be for some Matter concerning the same Fair or Market; and be done, complained of, heard and determined the same Day. Also the Plaintiff must make Oath that the Contract, &c. was within the Jurisdiction and Time of the Fair. *Stat.* 17 *Ed.* 4. c. 2. 2 *Inst.* 220. 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 Amerciatur*. If the Steward proceeds contrary to the Statute 17 *Ed.* 4. he shall forfeit 5 *l.*

Court of Requests, (*Curia Requisitionum*) Was a Court of Equity, of the same Nature with the Court of Chancery, but inferior to it; principally instituted for the Relief of such Petitioners, as in conscionable Cases addressed themselves by Supplication to his Majesty. Of this Court, the Lord Privy Seal was Chief Judge, assisted by the Masters of Requests; and it had Beginning about the 9 *Hen.* 7. according to Sir Julius Caesar's Tractate on this Subject: Tho' Mr. Gwynn, in his Preface to his Readings, saith it began from a Commission first granted by King *Hen.* 8. This Court having assum'd great Power to it self, so that it became burdensome, *Mich.* Anno 40 & 41 *Eliz.* in the Court of Common Pleas, it was adjudged upon solemn Argument, that the Court of Requests was no Court of Judicature, &c. And by *Stat.* 16 & 17 *Car.* 1. c. 10. it was taken away. 4 *Inst.* 97.

Court of the Lord Steward of the King's House. The Lord Steward, or in his Absence, the Treasurer and Controller of the King's House, and Steward of the Marshalsea, may enquire of, hear and determine in this Court, all Treasons, Murders, Manlaughters, Bloodsheds, and other malicious Strikings, whereby Blood may be shed, in any of the Palaces and Houses of the King, or in any other House where his Royal Person shall abide. And this Jurisdiction was given by *Stat.* 33 *H.* 8. c. 12. 3 *Inst.* 140. But this Court was at first intended only to inquire of and punish Felonies, &c. by the King's Servants, against any Lord or other Person of the King's Council, &c. 3 *H.* 7. c. 14.

Court of Star-Chamber, (*Curia Camera Stellata*) A Court erected by 3 *H.* 7. c. 1. which ordained, That the Lord Chancellor, Treasurer, and Lord Privy Seal, calling a Bishop, and Lord of the King's Council, and the Two Chief Justices to their Assistance, on Bill or Information might make Process against Maintainors, Rioters, Persons unlawfully Assembling, and for other Misdemeanors, which through the Power and Countenance of such as did commit them lifted up their Heads above their Faults, and punish them as if the Offenders had been convicted

at Law, by a Jury, &c. But this Act was repealed, and the Court dissolved, by Statute 17 *Car.* 1. c. 10.

Courts of the Universities. The Courts of the Universities of Oxford and Cambridge are of a particular Nature: They were granted by Charters, and confirmed by Authority of Parliament. See *Stat.* 13 *Eliz.* 4 *Inst.* 227. These Courts are called the Chancellor's Courts, and are kept by the Vice-Chancellors of the Universities: Their Jurisdiction extends to all Causes Ecclesiastical and Civil, (except for Maihem, Felony, and relating to Freehold) where a Scholar, Servant, or Minister of the Universities is one of the Parties to the Suit. The Causes are managed by Advocates and Proctors: And 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. 3 *Cro.* 73. If any erroneous Judgment be given in these Courts, Appeal lies to the Congregation; thence to the Convocation; and thence to the King in Chancery, by his Delegates. *Wool's Inst.* 526.

Courts of Wales, (*Curia Principalitys Wallie*) The Courts of the Principality of Wales, and their Jurisdiction, are settled by Acts of Parliament: And besides County-Courts, Hundred-Courts, Courts-Leet, &c. by 34 & 35 *H.* 8. c. 26. it is enacted, that there shall be a Court of Grand Sessions, kept twice in every Year in every of the twelve Counties of Wales; and the Justices of those Courts may hold Pleas for the Crown in as large a Manner as the King's Bench, &c. And also Pleas of Assises, and all other Pleas and Actions Real, Personal, &c. in as large a Manner as the Common Pleas, &c. And Errors in Judgments before any of the Justices in the Great Sessions, shall be redressed by Writ of Error out of the Chancery of England returnable in B. R. The Proceedings in these Courts are according to the Laws of England: And the King's Writs ought not to go into Wales; tho' a Quo Minus out of the Exchequer is often sent thither.

Court-Lands, (*Terre Curtiles*) Demains, or Lands kept in the Lord's Hands, to serve his Family. See *Curtiles Terra*.

Couthutlaugh, (from the Sax. *Couth*, i. e. *Siens*, and *Utlough*, exlex) Is a Person that willingly and knowingly receives a Man outlawed, and cherishes or conceals him: For which Offence he was, in antient Time, to undergo the same Punishment as the Outlaw himself. *Bract. lib.* 3. *tract.* 2. *cap.* 13.

Cows, One Milch Cow is to be kept to every ten Beasts, and sixty Sheep, by Farmers, &c. on Pain of 20 *s.* *Stat.* 2 & 3 *P. & M.* c. 3.

Craiera, Crayer, A Vessel of Lading or Burden; a Hoy or Smack. *Pat.* 2 *R.* 2. 14 *Car.* 2. c. 27.

Crail, An Engine made use of to catch Fish. *Blount*.

Crannage, (*Cranagium*) Is a Liberty to use a Crane for drawing up of Goods and Wares of Burden from Ships and Vessels, at any Creek of the Sea or Wharf, unto the Land, and to make Profit of it: It also signifies the Money paid and taken for the same. *Stat.* 22 *Car.* 2. c. 11.

Crannok, or Crennoc, An antient Measure of Corn. — *Quilibet debet flagellare dimid um Crannock*

Crannock *frumenti ad semen, & duos Buffellos frumenti, &c. in firma sua.* Cartular. Abbat. Glatton. M.S. f. 39.

Craspidis, Is a Word signifying a Whale, viz. *Piscis crassus.*

Crastino Santi Vincentii, The Morrow after the Feast of St. Vincent the Martyr, i. e. the 22d of January; which is the Date of the Statutes made at Merton, Anno 20 Hen. 3. There are likewise certain Return Days of Writs in Terms, in the Courts at Westminster, beginning with *Crastino*, &c. as *Crastino Animarum*, in Michaelmas-Term; *Crastino Purificationis beatae Mariae Virginis*, in Hillary-Term; *Crastino Ascensionis Domini*, in Easter-Term; and *Crastino Sanctae Trinitatis*, in Trinity-Term. Stat. 52 H. 8. 16 & 17 Car. 1.

Crabare, To impeach. *Si Homicida divadietur ibi vel Cravetur, &c.* Leg. H. 1. c. 30.

Cravent, or **Craben**, Was a Word of Obloquy, where in the antient Trial by Battel, the Victory should be proclaimed, and the Vanquished acknowledge his Fault, or pronounce the Word *Cravent*, in the Name of *Recreantisse*, &c. and thereupon Judgment was given forthwith; after which the *Recreant* should become infamous, &c. 2 Inst. 248. If the Appellant join'd Battel, and cry'd *Cravent*, he should lose *Liberam Legem*; but if the Appellee cry'd out *Cravent*, he was to be hanged. 3 Inst. 221.

Cramer, A Foreign Merchant; but generally taken for one who hath a Stall in a Fair or Market, &c.

Cransoz, Creditor, (of the Fr. *Croyance*) Signifies him that trusts another with any Debt, Money, or Wares: In which Sense it is used in *Old Nat. Br.* 66. and 38 Ed. 3. c. 5. See *Fraud*.

Craff, or **Cress**, (*Crista*) Any Imagery, or carved Work, to adorn the Head of Wainscot, &c. like our modern *Cornice*: But this Word is now apply'd by the *Heralds* to their Devices set over a Coat of Arms. *Kennet's Paroch. Antiq.* 573.

Creation-Money. This is mentioned in Stat. Car. 2. c. 1.

Creek, (*Creca*, *Crecca*) Is a Part of a Haven, where any Thing is landed from the Sea: So that it is observed, if when you are out of the main Sea within the Haven, you look round and see how many landing Places there are, so many *Creeks* may be said to belong to that Haven. It may be also said to be a Shore or Bank whereon the Water beats, running in a small Channel from any Part of the Sea; from the Lat. *Crepidum*. This Word is used in the Stat. 4 Hen. 4. c. 20. and 5 Eliz. c. 5.

Crementum Comitatus. The Sheriffs of Counties antiently answered in their Accounts for the Improvement of the King's Rents above the antient Vicontiel Rents, under the Title of *Crementum Comitatus*, or *Firma de Cremento Comitatus*. *Hale's Sher. Acco.* p. 36.

Crepare Oculum, To put out an Eye; which had a pecuniary Punishment annexed to it. — *Si quis alii crepat Oculum solvat ei sexaginta solid.* Leg. H. 1. c. 78.

Crestinus, *Cretena*, A sudden Stream or Torrent. *Histor. Croyland contin.* 485, 617.

Crocards, A Sort of old base Money. See *Pollards*.

Crois, The *Crozier* or Pastoral Staff, so called à *similitudine Crucis*, which Bishops, &c. had the Privilege to carry as the common Ensign of their Religious Office; and being invested in their Prelacies, by the Delivery of such a *Crozier*: Hence

the Word *Crocia* did sometimes denote the Collation to, or Disposal of Bishopricks and Abbies, by the Donation of such Pastoral Staff: So as when the King granted large Jurisdictions, *Exceptis Crociis*, it is meant, except the Collation or Investiture of Episcopal Sees, &c. *Addit. to Cowel.*

Crociarius, The *Crociary* or Cross-bearer, who, like our Virger, went before the Prelate, and bore his Cross. — Robertus de Wycombe, *Clericus Episcopi Dunelm. quem vulgo Crociarium ejus vocant.* Liber de Miraculis Tho. Episc. Heref. M.S. Anno 1290.

Crocium A Mulct or Compensation for a Fault: *Pretium Hominis occisi.* Chart. K. Hen. 2. Du Cange.

Croft, (Sax. *Croftum*, and *Crofta*) A little Close adjoining to a Dwelling-house; and enclosed for Pasture or Arable, or any particular Use. In some antient Deeds *Crusta* occurs, as the *Latin* Word for a *Croft*; but *cum* Toftis & Croftis is most frequent. *Ingulph.* It seems to be derived from the old *English* Word *Craeft*, signifying *Handy Craft*; because such Grounds are usually manured and extraordinarily drest by the Hand and Skill of the Owner.

Crok, (*Crocus*) Turning up the Hair into Curls or Crops; whence comes *Crook*, *crooked*, &c. — *Sciatis quod Potestatem vobis Dedimus sciendendi Capillos Clericorum nostrorum, longos crines habentium, & ad Crocos capillorum suorum deponendos, &c.* Pat. 21 H. 3.

Crop, *Crappa*, The Seeds or Products of the Harvest in Corn, &c. *Fleta*, lib. 2. c. 82.

Crosses. By Stat. 15 Eliz. c. 2. *Crosses*, Beads, &c. used by the Roman Catholicicks, are prohibited to be brought into this Kingdom, on Pain of a *Premunire*, &c. And it was usual in former Times, for Men to erect *Crosses* on their Houses, by which they would claim the Privileges of the *Templars*, to defend themselves against their rightful Lords; but this was condemned by the Stat. *Westm.* 2. c. 37. It was likewise customary in those Days, to set up *Crosses* in Places where the Corps of any of the Nobility rested, as it was carried to be buried, that à *Transseuntibus pro ejus animo deprecetur.* *Walsingh.* Anno 1291. There were several of these *Crosses* erected over England, especially in Honour to the Resting-places of our Kings, on their Bodies being transmitted to any distant Place for Burial: But these Superstitions sunk in this Kingdom with the *Romish Religion*.

Crosses, or *Croises*, (*Cruce Signati*) Is used by Briton for Pilgrims, because they wear the Sign of the Cross upon their Garments. Of these and their Privileges, *Bracton* hath treated, lib. 5. par. 2. cap. 2. and par. 5. cap. 9. Under this Word are also signified the Knights of St. John of Jerusalem, created for the Defence of Pilgrims; and those Persons of the Nobility and Gentry of England, who in the Reigns of K. Hen. 2. Rich. 1. Hen. 3. and Edw. 1. *Cruce Signati*, took upon them the *Croisado*, dedicating and lifting themselves to the Wars, for the Recovery of Jerusalem and the Holy Land. *Greg. Syntag.* Lib. 15. cap. 13, 14.

Croy, Signifieth Marsh Land. — *Et quia palustris bujus Croyland ipsum nomen indicat, nam crudam terram & cœnosam significat.* *Ingulphus*, p. 853.

Crown, (*Corona*) Signifies the Possessions and Dignity of a King of any Kingdom. The *Crown* of England has from the Beginning been successive, by Right of Inheritance; but sometimes our Kings, for political Reasons, have conferred their

their Principalities on whom they pleas'd, esteeming it lawful to appoint their Successors after them. For *Edward the Confessor* appointed the *Crown*, after his Decease, at several Times, to *William* called the *Conqueror*, and *Edgar* and *Harold*; and *Harold*, after the Decease of his Father, upon the Title left him, was crown'd by the Archbishop of *York*; but *William of Normandy* having slain *Harold* at the Battle of *Hastings*, he claimed the Kingdom as well by the Nomination of *Edward the Confessor*, as by Right of Conquest, and he was crown'd and enjoyed the Kingdom for his Time. *Bac. Coron. 4, 27.* And to come further down, we find that the Parliament, (which had the best Right) have asserted their Authority in these Cases: The *Crowns* of *England* and *France* were entailed on King *Henry the Fourth*, and his four Sons by Act of Parliament. *Stat. 7 Hen. 4. c. 2.* And the Parliament entailed the *Crown* on *Henry the Sixth*, and his Issue; also *Richard the Third* was recognized by Parliament. But the most extraordinary Instance of this Nature was, the Nomination and Appointment of King *Henry the Eighth*, to whom the Parliament granted Power by his Last Will and Testament to make Conditions and Limitations at his Pleasure, for settling the Inheritance of the *Crown*; and he by his Will ordained, that his Son *Edward* should succeed him, and he dying without Issue, his Daughter *Mary*, and for her Want of Issue, his Daughter *Elizabeth* to enjoy the *Crown* in Succession; with Remainders to such as the King by his Letters Patent, &c. should appoint. *Stat. 35 H. 8. c. 1.* After the Death of King *Hen. 8.* his Son *Edward the Sixth* succeeded; and he was prevailed upon to appoint the Lady *Jane*, Daughter to the Duke of *Suffolk*, (who married K. *Henry's* Sister) a Protestant Lady, by his Letters Patent to succeed him: But this Appointment, soon after the Death of King *Edward*, was vacated by Queen *Mary*; the Lady *Jane* beheaded, and the Protestant Reform'd Religion eclipsed during her Reign; but it revived again and received Perfection, by her Successor the glorious Queen *Elizabeth*. By the *Stat. 1 Eliz. c. 1.* the Parliament acknowledged the Queen to be right Heir to the *Crown*; and by this Act the Limitation of the *Crown* contained in 35 H. 8. is declared to stand and remain Law for ever. And when K. *James the First* came to the *Crown*, the Parliament made a Recognition, that upon Queen *Elizabeth's* Death, the *Crown* of *England*, and all the Kingdoms, Dominions, and Rights belonging to the same, did by lawful Birth-right and Succession descend to King *James*. *Stat. 1 Jac. 1. c. 1.* After this, I do not find that the Parliament intermeddled in settling the Succession of the *Crown* till the Abdication of King *James the Second*; when the Lords Spiritual and Temporal, and Commons, lawfully representing all the Estates of the People of the Realm, invited over *William, Prince of Orange*, and the Princess *Mary*, (eldest Daughter of King *James II.*) to take Care of their Rights and Liberties; whom they declared to be King and Queen of *England*. And by *Stat. 1 W. & M. c. 2.* reciting the Declaration of the Lords and Commons for securing the Liberties of the Kingdom, upon which the Prince and Princess of *Orange* accepted the *Crown*, the said Prince and Princess were recogniz'd King and Queen of *England*, &c. for their Lives, and the Life of the Survivor of them; and after their Deaths, the *Crown* was settled on the Heirs of the Body of

the said Princess; and for Want of such Issue to the Princess *Anne* of *Denmark*, Sister to the Queen, and the Heirs of her Body. Also by 12 W. 3. c. 2. (after the Decease of Q. *Mary* without Issue) the Princess *Sophia* of *Hanover*, (Daughter of *Elizabeth*, eldest Daughter of King *James the First*) was declared next in Succession after King *William*, and the Princess *Anne*, and their Issue; and the *Crown* to remain to the Princess *Sophia*, and the Heirs of her Body being Protestants. By Virtue of which last Statute, his Majesty King *George*, eldest Son of the Princess *Sophia*, on the Death of her Majesty Queen *Anne* without Issue, the said Princess *Sophia* being likewise dead, came to the Possession of the *Crown* of these Realms: By these last Acts, Papists are rendered incapable to inherit the *Crown* of *England*; and subjects are absolved of their Allegiance to such; Persons coming to the *Crown*, are to join in the Communion of the Church of *England*. And this Nation is not to be engaged in a War for Defence of Dominions not belonging to the *Crown*. Persons endeavouring to deprive the next in Succession to the *Crown* from succeeding, and who attempt it by any Overt-act, are guilty of High Treason. *Stat. 1 Ann. c. 2.* And if any affirm by Writing, &c. that the King or Queen of *England* cannot make Laws by the Authority of Parliament to bind the *Crown*, they are guilty of Treason: And Preaching or Speaking it incur a *Premunire*. 4 Ann. c. 3. Affirming by Writing or Printing, that any other Person hath Right to the *Crown*, otherwise than according to the *Stat. 1 W. & M. &c.* is declared High Treason. *Stat. Ibid.* There is no *Inter-regnum* in this Kingdom; for when the *Crown* descends to the right Heir, he is *Rex* before Coronation, as there must always be a King in whose Name Laws are to be maintained and executed. *Hill. 1 Jac.* See *Descent of the Crown and King*.

Crown Office. This is an Office under the King's Bench, of which the King's Coroner or Attorney there is commonly Master. The Attorney General, and Clerk of the Crown, exhibit Informations in this Office, for Crimes and Misdemeanors; the one *Ex Officio*, and the other usually by Order of Court: And Information may be laid for Offences and Misdemeanors at Common Law, as for *Batteries*, *Conspiracies*, *Libelling*, *Nusances*, *Contempts*, *Seditious Words*, &c. wherein the Offender is liable to pay a Fine to the King. *Finch. 340. Show. 109.* By *Stat. 4 & 5 W. & M. c. 18.* The Clerk of the Crown in *B. R.* is not to receive or file any Information for *Trespass*, *Battery*, &c. without express Order of Court; nor to issue any Process, without taking a Recognizance in 20 l. Penalty to prosecute with Effect, &c. And if the Party appear, and the Plaintiff do not procure a Trial in a Year, or if Verdict pass for the Defendant, &c. the Court shall award the Defendant Costs: But this Act doth not extend to Informations in the Name of the King's Coroner or Attorney, &c. Where a *Battery* is committed privately, so that the Person receiving it can make no Proof thereof by Witnesses at Law; it is usual to bring an Information in this Office, where the Party may be a Witness for the King, it being his Suit. Informations in the Nature of *Quo Warranto's* brought by the Attorney General, against Corporations, &c. See *Quo Warranto*.

Crustum, Was a Garment of Purple, mixed with many Colours. — *Duas Patenas argenteas*

auro ornatas, cum duobus Urceolis & Cruſto aureo. Mon. Angl. Tom. 1. pag. 210.

Crypta, A Chapel or Oratory under Ground: *Egreſſo toto Conventu, accepta abſconſa ſi nox eſt vadit per Cryptam.* Du Cange.

Duckingſtool, (*Tumbrellum*) Is an Engine invented for the Punishment of Scolds, and unquiet Women, by Ducking them in the Water, called in antient Time a *Tumbrel*; and ſometimes a *Trebuchet*. Lamb. Eiren. lib. 1. cap. 12. And Bracton writes this Word *Tymbovella*. In *Domeſday* it is called *Cathedra Stercoris*: And it was in Uſe even in our Saxons Time, by whom it was deſcribed to be *Cathedra, in qua rixoſe Mulieres ſedentes aquis demergebantur*. It was antiently alſo a Punishment inflicted upon Brewers and Bakers, tranſgreſſing the Laws; who were thereupon in ſuch a Stool immerged over Head and Ears in *Stercore*, ſome ſtinking Water. Some think it is a Corruption from *Duckingſtool*; others from *Choakingſtool*; *quia hoc modo demerſa aquis ſere ſuffocantur*. Blount.

Cude. A *Cude Cloth* is a Chryſom or Face-Cloth for a Child baptized. *Vide Chriſmale*.

Cudgeach, A Word ſignifying a Pledge or Surety.

Cui ante Divortium, Is a Writ that a Woman divorced from her Husband hath to recover her Lands and Tenements which ſhe had in Fee-ſimple, or in Tail, or for Life, from him to whom her Husband did alienate them during the Marriage, when ſhe could not gainsay it. *Reg. Orig.* 233. *F. N. B.* 240. And the Heir ſhall have a *Sur cui ante Divortium*, where the Wife dieth before the Action brought; as well as ſhe ſhall have a *Sur cui in Vita*: But of an Eſtate-tail, the Heir ſhall not have *Sur cui in Vita ante Divortium*, but ſhall be put to his *Formedon* in the Deſcender. *New Nat. Br.* 454.

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 ſhe could not withſtand it. *Reg. Orig.* 232. *F. N. B.* 193. If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land, and dieth, ſhe ſhall have a *Cui in Vita* for a Moiety, and no more: But if they are joint Purchaſers, during the Coverture, and he alien all the Land, and dieth, his Wife ſhall have a *Cui in Vita* of the whole Land; becauſe that during the Coverture, as to Purchase, they are but one Perſon in Law. *F. N. B.* 187. And from this Reaſon, if Husband and Wife, and a third Perſon, purchaſe jointly, and the Husband alieneth all in Fee, and dieth, the Wife ſhall have a *Cui in Vita* of a Moiety. *Ibid.* Where the Husband and Wife exchange the Lands of the Wife for other Lands, if the Wife agree unto the Exchange after the Husband's Death, ſhe ſhall not have a *Cui in Vita*. Alſo if the Wife do accept of Parcel of the Land in Dower, of which ſhe hath a *Cui in Vita*, by that Acceptance ſhe ſhall be barred of the Reſidue. *New Nat. Br.* 430. If the Husband and Wife loſe by Default the Wife's Lands, after the Death of her Husband, ſhe ſhall have a *Cui in Vita* to recover thoſe Lands ſo loſt by Default. *F. N. B.* 187. By Stat. 13 Ed. 1. c. 3. *Cui in Vita* is given to the Wife where the deceased Husband loſt her Lands by Default, in his Life-time: And ſhe ſhall be admitted to defend her Right during his Life, if he come in before Judgment. Likewise if Tenant in Dower, by the Curteſy, or for Life, do make Default, &c. the Heirs and

they to whom the Reverſion belongeth, ſhall be admitted to their Answer, if they come before Judgment: And if on Default Judgment happen to be given, ſuch Heirs, &c. ſhall have a Writ of Entry for Recovery of the ſame, after the Death of ſuch Tenants. The Form of the Writ *Cui in Vita* runs thus:

REX Vic. &c. *Præcipe A. B. quod Juſte, &c. reddat C. D. qua fuit Uxor T. D. unum Meſſuagiu. cum pertin. in, &c. qd' clamat eſſe juſ & hered. ſuam. Et quod idem A. B. non habet ingreſſum niſi per præd. T. D. quondam virum ipſius C. qui illud ei Dimiſit, Cui ipſa in Vita ſua contradicere non potuit, &c.*

Culagium, Is when a Ship is laid up in the Dock to be repaired. *M. S. Arth. Trevor Arm. de Plac. Edw.* 3.

Culpit, Is a Reply of a proper Officer in Behalf of the King, affirming a Criminal to be Guilty, after he hath pleaded Not guilty, without which the Iſſue to be tried is not joined: It is compounded of two Words, *viz. Cul*, and *Prit*; the one an Abbreviation of *Culpabilis*, and the other derived from the French Word *Preſt*, *i. e.* Ready; and 'tis as much as to ſay, That he is ready to prove the Offender guilty.

Cultura, This Word often occurs in old Writings, and ſignifies a Parcel of arable Land. *Blount.*

Culbertage, (*Culvertagium*) Is ſaid by ſome Perſons to be derived from *Culum* and *Vertere*, to turn Tail: And in this Senſe, *ſub nomine Culvertagii*, was taken to be on Pain of Cowardiſe, or being accounted Cowards. But, in the Opinion of others, it rather ſignifies ſome baſe Slavery, or the Conſiſcation of an Eſtate; being a Feudal Term for the Lands of the Vaſſal forfeited and eſchearing to the Lord: And *ſub nomine Culvertagii*, in this Signification, was under Pain of Conſiſcation. *Matt. Pariſ. Anno* 1212. It ſeems to be the ſame with *Couvrir le feu*, for when a Lord ſeiſes his Vaſſal's Eſtate as forfeited, he is ſaid *Couvrir le feu*, to coyer or put out his Fire. *Du Cange.*

Culward, and **Culberd**, Words uſed for a Coward, or Cowardiſe. *Chart. Temp. Ed.* 1.

Cuna Cerviſiæ, A Tub of Ale. *Domeſday*. But this Word is truly *Curva*, Fr. *Curve*, Angl. *Keeve*, whence comes *Keeper*, a Tub or Fat for Brewing. *Cowel.*

Cuneus, A Mint or Place to coin Money: *Cuneum monetum* ſignifies the King's Stamp for Coinage; and from the Word *Cunæ*, is derived Coin. See *Coin*.

Cuntey-Cuntey, Is a Kind of Trial, as appears by Bracton, in theſe Words; *In Brevi de Reſto, negotium terminabitur per Cuntey-Cuntey, &c.* which is taken to be the Ordinary Jury. *Bract. lib.* 4. traſt. 3. c. 18.

Curagulus, One who taketh Care of a Thing. *Mon. Angl. Tom.* 2.

Cura Monafterii, An Officer ſo called, who had the Charge of a Monaftery.

Curate, (*Curatus*) 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 liſenced and admitted by the Biſhop of the Dioceſe, or by an Ordinary, having Episcopalian Jurisdiction: And when a Curate hath the Approbation

bation of the Bishop, he usually appoints the Salary too, and in such Case, if it 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 hath no License from the Bishop, he is put to his Remedy at Common Law, where he must prove the Agreement, &c. *Right Clerg.* 127. By Statute, where Curates are licensed by the Bishop, they are to be appointed by him a Stipend not exceeding 50*l.* per Ann. nor less than 20*l.* a Year, according to the Value of the Livings, to be paid by the Rector or Vicar: And the same may be done on any Complaint made. *Stat.* 12 Ann. c. 2. One Person cannot be Curate in two Churches, unless such may satisfy the Law, by Reading both Morning and Evening Prayers at each Place: Nor can he serve one Cure on one Sunday, and another Cure on the next; for he must not neglect to read Morning and Evening Prayer in his Church every Lord's Day; if he doth he is liable to Punishment. *Comp. Incumb.* 572. But it is otherwise where a Church or Chapel is a Member of the Parish-Church; and where one Church is not able to maintain a Curate. *Can.* 48. A Curate having no fixed Estate in his Curacy; not being instituted and inducted, may be removed at Pleasure by the Bishop or Incumbent. *Noy.* But there are Perpetual Curates, as well as temporary, who are appointed where all the Tithes are inappropriate, and no Vicarage endow'd: These are not removable; and the Impropriators are obliged to find them, some whereof have certain Portions of Tithes settled on them. *Stat.* 29 Car. 2. Every Clergyman that officiates in a Church, (whether Incumbent or Substitute) is in our Liturgy called a Curate: Curates must subscribe the Declaration, according to the Act of Uniformity, or are liable to Imprisonment, &c.

Curfeu, (of the Fr. *Couvir*, i. e. *Tegere*, and *Fen*, Ignis) Signifies the Ringing of a Bell, or Evening Peal, by which William the First, called the Conqueror, commanded every Person to rake up or cover over his Fire, and put out his Light: And in many Places of England at this Day, where a Bell is customarily rung towards Bed-time, it is said to Ring Curfeu. *Stow's Annals.*

Curia. The Word was sometimes taken for the Persons, as feudatory and other customary Tenants, who did their Suit and Service at the Court of the Lord. *Kennet's Paroch. Antiq.* 139. And it was usual for the Kings of England, in ancient Times, to assemble the Bishops, Peers, and great Men of the Kingdom to some particular Place, at the chief Festivals in the Year; and this Assembly is called by our Historians Curia; because there they consulted about the weighty Affairs of the Nation. And it was therefore called *Solemnis Curia*, *Augustalis Curia*, *Curia Publica*, &c. See Court.

Curia advisare vult, Is a Deliberation which a Court of Judicature sometimes takes, where there is any Point of Difficulty, before they give Judgment in a Cause. *New Book of Entries.*

Curia claudenda, Is a Writ to compel another to make a Fence or Wall, which he ought to make between his Land and the Plaintiff's, on his refusing or deferring to do the same. *Reg. Orig.* 155. This Writ doth not lie but against him who hath a Close adjoining to the Plaintiff's Land, who is obliged to enclose it; and it lieth not but for him who hath a Freehold, &c. It may be sued before the Sheriff in the County-

Court, or in the Common Pleas: And the Judgment is to recover the Inclosure and Damages. *New Nat. Br.* 282, 283.

Curia Domini, The Lord's House, Hall or Court, where all the Tenants attend at the Time of keeping Courts.

Curia Penticiarum, Is a Court held by the Sheriff of Chester, in the Place there called the Pentic or Pentice: And 'tis probable its being originally kept under a Pent-house, or open Shed cover'd with Boards, gave it its Denomination.

Curnock, A Measure containing four Bushels, or Half a Quarter of Corn. *Fleta, lib.* 2. cap. 12.

Curriculus, The Year, or Course of a Year: *Actum est hoc annorum Dominice incarnationis quatuor quinquagenis & quinquies, quinis Lustris, & tribus Curriculis.* This is the Year 1028; for four Times 50 makes 200, and five Times 200 makes 1000. Then five Lustra are twenty-five Years, and three Curriculi, three Years, making in all the very Year.

Curatores, (*Clerici de Cursu*) Clerks belonging to the Chancery, who make out original Writs; and are called Clerks of Course, in their Oath appointed 18 Ed. 3. There are of these Clerks twenty-four in Number, which make a Corporation of themselves; and to each Clerk is allotted a Division of certain Counties, in which they exercise their Functions. 2 *Inst.* 670.

Curtones terræ, Is taken for Ridges of Land. 14 Ed. 2.

Cursoz, A Courier; an express Messenger of Haste. *Chart. H.* 3.

Cursozæ, A Sort of light Ships, or swift Sailers: This Word is mentioned in *Hoveden R.* 1. *Appliquerunt ibi Naves & Buscia 500. exceptis Galeis & Curforiis, &c.*

Curtesy of England, (*Jus Curialitatis Angliæ*) Is where a Man taketh a Wife seized in Fee-simple, or Fee-tail general, or as Heiress in special Tail, and hath Issue by her, Male or Female, born alive, which by any Possibility may inherit, and the Wife dies; the Husband holds the Lands during his Life, and is called Tenens per Legem Angliæ, or Tenant by the Curtesy of England; because this Privilege is not allowed in any other Country, except Scotland, now belonging to England. And four Things are requisite to give an Estate by the Curtesy, viz. Marriage, Seisin of the Wife, Issue, and Death of the Wife. 1 *Inst.* 30. If Land descend to the Wife, after the Husband hath Issue by her; or if the Issue be dead at the Time of her Death, being born alive; the Husband shall be Tenant by the Curtesy. Also if a Child is born alive, 'tis not material whether 'tis baptised, or ever heard to cry, to make the Husband Tenant by the Curtesy; for if 'tis born alive, 'tis enough. 1 *Nels. Abr.* 578. But the Child must be such as by Possibility may inherit; and therefore if Land be given to a Woman, and the Heirs Male of her Body, and she takes Husband and hath Issue a Daughter, and dies; as this Issue cannot possibly inherit, the Husband shall not be Tenant by the Curtesy. *Terms de Ley* 206. If the Child is rip'd forth of the Mother's Belly, after her Death, tho' it be alive, it will not entitle Tenancy by the Curtesy; for this ought to begin by the Issue, and be consummate by the Death of the Wife; and the Estate of Tenant by the Curtesy should avoid the immediate Descent. *Ibid.* A Man shall not be Tenant by the Curtesy of a bare Right, Title, Use, Reversion, &c. expectant upon an Estate of

Freehold, unless the particular Estate is determined during the Coverture; nor of a Seisin in Law: But if a Wife dies before a Rent becomes due; or in the Case of an Advowson, before the Church becomes void; the Husband shall be Tenant by the *Curtsey*, though the Wife had only a Seisin in Law; for in this Case no other Seisin could be attained. *F. N. B.* 149. 1 *Inst.* 29, 30, 40. There is no Tenancy by the *Curtsey* of Copyhold Lands, except there be a special Custom for it.

Curteyn, (*Curtana*) Was the Name of King Edward the Confessor's Sword, which is the first Sword carried before the King's of England at their Coronation: And it is said the Point of it is broken, as an Emblem of Mercy. *Mat. Paris. in Hen. 3.*

Curtilage, (*Curtilagium*, from the Fr. *Cour*, Court, and Sax. *Leagh*, locus) Is a Yard, Backside, or Piece of Ground lying near and belonging to a Dwelling-house. 4 *Ed. 1. c. 1.* 35 *H. 8. c. 4.* 39 *Eliz. c. 10.* 6 *Rep.* 64. — *Mibi dici videtur Curtilagium à Curtillum & ago, scil. locus ubi Cuitis vel Curtilli negotium agitur. Spelm.* And tho' it is said to be a Yard, or a Garden, belonging to a House; it seems to differ from a Garden, for we find, *Cum quodam Gardino, & Curtilagio.* 15 *Ed. 1. n. 34.*

Curtiles Terræ, Court-Lands. It is recorded, that among our Saxon Ancestors, the *Thanes* or Nobles who possess'd *Bockland*, or hereditary Lands, divided them into *Inland* and *Outland*: The *Inland* was, that which lay most convenient for the Lord's Mansion-house; and therefore the Lords kept that Part in their own Hands, for Support of their Families, and for Hospitality: Afterwards the *Normans* called these Lands *Terras Dominicales*, the Demains, or Lord's Lands: The *Germans* term'd them *Terras Indominicatas*, Lands in the Lord's own Use: And the *Feudists*, *Terras Curtiles*, Lands appropriate to the Court or House of the Lord. *Spelm. of Feuds, c. 5.*

Custantia, The same with *Custagium*, which signifies Costs.

Custode admittendo, and **Custode amovendo**, Writs for the Admitting or Removing of Guardians. *Reg. Orig.*

Custodes Libertatis Angliæ Authozitate Parliamenti, Was the Style in which Writs and all judicial Process did run during the Grand Rebellion, from the Murder of King Charles I. 'till the Usurper *Oliver* was declared Protector, &c. mentioned and declared traitorous, by Statute 12 *Car. c. 3.*

Custodiam dare, Was taken for a Gift or Grant for Life. *Du Cange.*

Custom, (*Consuetudo*) Is a Law not written, established by long Usage, and the Consent of our Ancestors. No Law can oblige a People without their Consent; so where-ever they consent and use a certain Rule or Method as a Law, such Rule, &c. gives it the Power of a Law; and if 'tis universal, then 'tis Common Law; if particular to this or that Place, then 'tis Custom. 3 *Salk.* 112. And as to the Rise of Customs, when a reasonable Act once done was found to be good and beneficial to the People, then did they use it often, and by frequent Repetition of the Act, it became a Custom; which being continued without Interruption Time out of Mind, it obtained the Force of a Law, to bind the particular Places, Persons, and Things concern'd therein. Thus a Custom had Beginning, and grew to Perfection: And a good Custom must be grounded on Antiquity, Continuance, Certainty, and Reason;

son; *Antiquity*, for that it hath been Time out of Memory, or threescore Years, as limited by Statute; and Time out of Mind is where no Man then living hath heard or known any Proof to the contrary: If Two or more Witnesses can depose that they heard their Fathers say it was a Custom all their Time, and that their Fathers heard their Grandfathers say it was so also in their Time; it is enough for the Proof of a Custom. *Blount. Davis Rep.* 32. Continuance of a Custom ought to be without any Interruption Time out of Memory, for if it be discontinued within Time of Memory, the Custom is gone. Certainty, a Custom must be certain, because an uncertain Thing may not be continued Time out of Mind: And Custom must be reasonable, for unreasonable Things are unlawful. Customs have four inseparable Incidents: They are to have a reasonable Commencement; to be certain, and not ambiguous; to have uninterrupted Continuance; and not be against the King's Prerogative. And the two Pillars of Customs, are common Usage, and that they be Time out of Mind. *Davis* 32. 4 *Leon.* 384. A Custom contrary to the publick Good; or injurious to a Multitude, and beneficial only to some particular Persons, such Custom is repugnant to the Law of Reason, and consequently void. *Dav.* 1. Customs ought to be beneficial to all, but may be good where against the Interest of a particular Person, if for the publick Good. *Dyer* 60. A Custom is not unreasonable for being injurious to private Persons or Interests, so as it tends to the general Advantage of the People. 3 *Salk.* Customs must be construed according to vulgar Apprehension: And are to be taken strictly, being in Derogation of the Common Law. 2 *Roll. Abr.* 270. They are not good which are merely in the Negative; but if mix'd with an Affirmative, they may be good. 1 *Roll.* 565. A Custom which may be intended to have had lawful Beginning, is a good Custom; otherwise not: Nor will Continuance of Time make *Malum in se* good. 1 *Lill. Abr.* 375. Customs against common Right, and the Rule of Law, are held good. 8 *Rep.* 126. The Law takes Notice of Customs of *Gavelkind*, &c. which alter Descents from the Common Law, in Favour of all the Sons, &c. And Custom for an eldest Daughter to inherit, or a youngest Son, may be good: For these, though contrary to a particular Rule of Law, may have a reasonable Beginning. 1 *Nelf. Abr.* 579. And by Custom a Woman may be endowed of a Moiety of the Husband's Lands, &c. Also by Custom, an Infant may make a Feoffment at the Age of Fifteen. And Infants may bind themselves Apprentices, &c. 2 *Danv. Abr.* 438. Regularly a Man cannot alledge a Custom against a Statute, because that is the highest Matter of Record in Law: But a Custom may be alledged against a negative Statute, which is made in Affirmance of the Common Law. 1 *Inst.* 115. And Acts of Parliament do not always take away the Force of Customs. Custom pleaded against Custom is not good. 2 *Danv.* 436. A Custom is to be positively alledged, by Usage in Fact. *Lutw.* 1319. 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 Town, Borough, City, &c. shall be determined by Jury. *Doct. & Stud. c. 7, 10.* 1 *Inst.* 110. *Consuetudo pro Lege servatur*, &c. saith *Bracton*, lib. 3. c. 3. And Custom is said to be *altera Lex*.

Custom of London. The City of London hath divers particular Customs, different from any other Place. By the *Custom of London*, when a Citizen and Freeman dies, his Goods and Chattels shall be divided into three Parts; the Wife to have one Part; the Executors another, to discharge Legacies, &c. and the Children unprovided for the other third Part. 2 *Danv. Abr.* 311, 312. If a Freeman of London hath no Wife, but Children, the Half of his Personal Estate goes to them, and he may dispose of the other Moiety; so if he have a Wife and no Children, the Half belongs to her; but if he have both Wife and Children, then one third Part belongs to the Wife, another Third to the Children, and he may dispose of the other Third; and if he die Intestate, the remaining Third is to be distributed according to the Statute. 1 *Nelf.* 1139. But see Stat. 11 *Geo.* And where a Freeman dies, and leaves Orphan-Children under Age, unmarried, the Court of Orphans hath the Custody of their Bodies and Goods, by the *Custom of London*: It is also the same, tho' he dies, or the Children were born out of London. 1 *Mod.* 80. By the City Custom, Action on the Case lies for calling a married Woman Whore; for in London such Woman may be carted: And this reaches to all the Inhabitants within London. 2 *Danv.* 310. 1 *Lill.* 378. A Woman that useth a Trade in London, without her Husband, is chargeable without him as a *Feme Sole Merchant*: She shall plead as sole, and if condemned, be put in Prison 'till she pay the Debt; also the Bail for her are liable, if she absent her self; and the Husband shall not be charged. *Privil. Londini.* And if Action of Trespass be brought against a Man and his Wife, and the Wife only arrested, &c. by the *Custom of London*, the Plaintiff may proceed against the Wife. It is the Custom of the City of London, that where a Person is educated in one Trade, he may set up another. 1 *Saund.* 312. Where two Persons are bound as Sureties for another, and Recovery is had against one of them, he may have Contribution against the other, by the City Laws. 2 *Danv. Abr.* 310. By the *Custom of London* and *Bristol*, Action is maintainable upon a bare Promise to pay Money; this is in Regard to the ready Way in Bargaining and Commerce. 1 *Lill. Abr.* 378. There is a Foreign Attachment, by the *Custom of London*, of Money, &c. in the Hands of a third Person, where one Man owes another any Debt, &c. See *Attachment*. Trial of a *Custom in London*, must be by Certificate from the Mouth of the Recorder. 1 *Lill.* 375.

Custom of Merchants. Merchants giving Characters of Strangers to those who sell them Goods, are liable to the Debts of such Strangers for the Goods sold; by the *Custom of Merchants*. *Lex Mercat.* c. 10. fol. 69. If two Persons be found in arrear, upon an Account grounded on the *Custom of Merchants*, any one of them may be charged to pay the whole Sum, that both were found in arrear. 1 *Lill. Abr.* 376. And if Two joint Merchants occupy their Stock and Merchandize in Common, one of them naming himself a Merchant, shall have an Account against the other, and charge him as Receiver. *Co. Lit.* 172. By the *Custom of Merchants*, where a Merchant orders his Factor to buy Goods of a particular Person, there the Merchant is Debtor, and not the Factor: But 'tis otherwise where the Merchant orders his Factor to buy Goods generally, without saying of whom; here the Factor is Debtor,

tho' the Goods come to the Use of the Merchant. 1 *Lill.* 376. The *Custom of Merchants* as to Bills of Exchange, that the Indorsee shall charge the first Drawer before the Indorsor, &c. See *Bill of Exchange*.

Customs, (Custuma) Are used for the Tribute or Toll that Merchants pay to the King, for carrying out and bringing in Merchandize. *Stat.* 14 *Ed.* 3. c. 21. They are Duties payable to the Crown for Goods exported and imported, and are due to the King of common Right; first, because the Subject hath Leave to depart the Kingdom, and to export the Commodities thereof; secondly, For the Interest which the King hath in the Sea, and as he is Guardian of, and maintains all the Ports, wherein the Commodities are exported or imported; and lastly, for that the King protects Merchants from Enemies and Pirates. *Dyer* 43. The Word *Customs* comprehends *Magna & Antiqua Custuma*, which is payable out of our own native Commodities, as for Wool, Woolfells, and Leather; and *Parva Custuma*, which are *Customs* payable by Merchants, Strangers and Denizens; and these began in the Reign of Edward I. when the Parliament granted him 3 *d.* in the Pound for all Merchandizes exported and imported. *Ibid.* 165. But that which is granted by Parliament, is properly called a *Subsidy*; and sometimes granted to the King for Life; and there are several Sorts of these Subsidies, as *Tonnage*, a Duty granted out of every Ton of Wine imported, which was first granted by Parliament to King Edward III. And *Poundage*, a Subsidy granted for all Goods exported and imported, except Wines, &c. and is usually the twentieth Part of the Value of the Goods, or 12 *d.* in the Pound, and this was first given to Hen. 6. for Life. 1 *Nelf. Abr.* 583, 584. In the Reign of Edw. 3. the Great Charter for free Traffick was confirmed: And Anno 6 *E.* 3. it was enacted, that no new *Customs* could be levied, nor antient increased, but by Authority of Parliament. 2 *Inst.* 60. But tho' the King cannot lay any Imposition on Merchandize without Consent of Parliament; yet by his Prerogative he may restrain Merchants from Trading without his Royal License. In the 14th Year of Ed. 3. it was enacted in Parliament, that a Mark should be paid as *Custom* for a Sack of Wool. Anno 4 *H.* 8. Collectors were appointed of the Subsidy of Cloth of Gold, Silver, Velvet, &c. And 1 *Eliz.* Duties were granted on Sweets, Wines, &c. And An. 12 *Car.* 2. The Subsidies of *Tonnage* and *Poundage*, &c. were granted to King Charles during his Life; as they have been since to his Royal Successors, down to his Majesty King Geo. And many and various are the Duties of *Customs* granted on foreign Goods and Merchandize, in the Reigns of King James 2. K. William, Queen Anne, and his present Majesty. Ships and Vessels outward-bound are not to take in any Goods, 'till the Vessel, &c. is entered with the Collector of the *Customs*; and before Departure, the Contents of the Lading is to be brought in under the Hands of the Laders, &c. Also when Ships arrive from beyond Sea, the Masters are to make a true Entry upon Oath, of the Lading, Goods, Ship, &c. under the Penalty of 100 *l.* And if any concealed Goods are found after Clearing, for which the Duties have not been paid, the Master of the Vessel shall likewise forfeit 100 *l.* *Stat.* 13 & 14 *Car.* 2. Keepers of Wharfs, Keys, &c. landing or shipping Goods, without the Presence of some

Officer of the *Customs*, shall forfeit 100 l. And resisting Officers of the *Customs* in the Execution of their Office, is liable to a Fine not exceeding 100 l. *Stat. Ibid.* But by 6 Geo. Where Officers of the *Customs* are hindered in the Execution of their Duty, by Persons armed to the Number of Eight, the Offenders are to be transported for seven Years. If any Goods are put into any Vessel to be carried beyond Sea; or be brought from beyond Sea, and unshipped to be landed, the Duties not being paid nor agreed for at the Custom-House; the same shall be forfeited, one Moiety to the King, the other to the Seisor, &c. And by late Statutes, Foreign Goods taken in at Sea, by any Coasting Vessel, &c. shall be forfeited, and treble Value. There is a *Drawback* allowed Merchants for some Goods and Merchandize; and they have Allowances of so much *per Cent.* &c. out of the *Customs*, where Goods are defective, or receive Damage, &c.

Customs and Services, Belonging to Tenure of Lands, are such as Tenants owe unto their Lord; which being withheld from the Lord, he may have a Writ of *Customs and Services*. See *Consuetudinibus & Servitiis*.

Custos Breuium, Is the 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 upon Files, every Return by it self; and to receive of the *Prothonotaries* all the Records of *Nisi prius*, called the *Postea's*; for they are first brought in by the Clerks of Assize of every Circuit to the Prothonotary, who entered the Issue in the Causes, to enter the Judgment: And four Days after the Return thereof, the Prothonotary enters the Verdict and Judgment thereupon, into the Rolls of the Court; whereupon he afterwards delivers them over to the *Custos Breuium*, who binds them into a Bundle. He makes Entry likewise of all Writs of Covenant, and the Concord upon every Fine; and maketh forth Exemplifications, and Copies of all Writs and Records in his Office, and of all Fines levied. The *Fines* after they are engrossed, are divided between the *Custos Breuium* and the *Chirographer*; the *Chirographer* always keeps the Writ of Covenant and the Note, and the *Custos Breuium*, the Concord and Foot of the Fine; upon which Foot of the Fine, the *Chirographer* causeth the Proclamations to be indorsed, when they are proclaimed. This Officer is made by the King's Letters Patent: And in the Court of *King's Bench*, there is also a *Custos Breuium & Rotulorum*, who fileth such Writs as are in that Court filed, and all Warrants of Attorney, &c. and whose Business it is to make out the Records of *Nisi prius*, &c.

Custos Placitorum Coronæ, An Officer which seems to be the same with him we now call *Custos Rotulorum*. *Bract. lib. 2. c. 5.*

Custos Rotulorum, Is he who hath the Custody of the Rolls or Records of the Sessions of the Peace, and also of the Commission of the Peace it self. He is always a Justice of the Peace of the *Quorum* in the County where appointed; and is usually some Person of Quality: But he is rather termed an Officer or Minister, than a Judge. *Lamb. Eiren. lib. 4. cap. 3. p. 373.* The *Custos Rotulorum* in every County is appointed by a Writing signed by the King's Hand, which shall be a Warrant to the Lord Chancellor to put him in Commission: And he may execute his Office by Deputy; and hath Power to ap-

point the Clerk of the Peace, &c. *Stat. 37 Hen. 8. cap. 1.* By *Stat. 1 W. & M. c. 21.* The *Custos Rotulorum* is to nominate and appoint the Clerk of the Peace; but not to sell the Place, on Pain of forfeiting the Office of *Custos Rotulorum*, and other Penalties, &c.

Custos of the Spiritualities, (*Custos Spiritualitatis*) Is he that exerciseth the Spiritual or Ecclesiastical Jurisdiction of a Diocese, during the Vacancy of any See; who with us in *England*, is the Archbishop by Prescription: But (according to *Gwin*) some Deans and Chapters challenge this Right by ancient Charters from the Kings of this Land. *Coovel.*

Custos of the Temporalities, (*Custos Temporalium*) The Person to whose Custody a vacant See or Abbey was committed by the King, as supreme Lord; who, as a Steward of the Goods and Profits, was to give an Account to the *Escheator*, and he into the *Exchequer*. His Trust continued till the Vacancy was supplied, and the Successor obtained the King's Writ *De Restitutione Temporalium*, which was usually after Consecration.

Cut-purse. If any Person *clam & secrete* and without the Knowledge of another, cut his Purse, or pick his Pocket, and steal from thence to the Value of 12 d. it is Felony excluded Clergy. 8 Eliz. 3 Inst. 68. See *Felony*.

Cuts, Flat-bottomed Boats, built low and commodiously, used in the Channel for transporting of Horses. *Stow. Annal. p. 412.*

Cutter of the Tallies, Is an Officer of the *Exchequer*, to whom it belongs to provide Wood for the *Tallies*, and to cut the Sum paid upon them, &c.

Cyclas, A long Garment, close upwards, and open or large below. *Matt. Paris. Anno 1236.* speaking of the Citizens of *London*, tells us, they were *Sericis vestimentis ornati, Cycladibus anri textis circumdati.*

Cynebote. This Word signifies the same with *Cenegild*. *Blount.*

Cyricbyrce, (Sax.) *Irruptio in Ecclesiam*. *Leg. Eccl. Canuti Regis.*

D.

Dagus or Deis, The chief or upper Table in a Monastery; from a Cloth called *Dais*, with which the Tables of Kings were covered.

Dakir. The *Stat. 51 H. 3. De Compositione Ponderum & Mensurarum* ascertains a *Last* of Hides to consist of twenty *Dakirs*, and every *Dakir* of ten Hides. See *Dicker*.

Dalmatica, A Garment with large open Sleeves, at first worn only by *Bishops*, tho' since made a Distinction of Degrees; so called, because it came originally from *Dalmatia*.

Dalus, Dailus, Daila, A certain Measure of Land. — *Et totam Dailam Marisi tam de rossa quam de prato, &c. Mon. Ang. Tom. 2. p. 211.* In some Places it is taken for a Ditch or *Vale*, whence comes *Dale*: The *Dali prati* have been esteemed such narrow Slips of Pasture, left between the ploughed Furrows in arable Land, which in some Parts of *England* are still called *Doles*: The old Brit. *Dol*, was a *Vale*; and the present *Welsh* use this Word for a low Meadow by the River Side. And this seems to be the original Name and Nature of *Deal* in *Kent*, where *Cæsar* landed, and fought the *Britains*: *Cæsar ad Dole Bellum pugnavit.* *Nennius.*

Damage,

Damage, (*Dammum*) Signifies generally any Hurt or Hinderance that a Man receives in his Estate: But particularly, a Part of what the Jurors are to inquire of and bring in, when an Action passeth for the Plaintiff: For after Verdict given of the principal Cause, the Jury are asked touching *Costs* and *Damages*, which comprehend a Recompence for what the Plaintiff hath suffered, by Means of the Wrong done him by the Defendant. *Co. Litt.* 257. This Word *Damage* is taken in the Law, in two several Significations, the one *Properly* and *Generally*, the other *Relatively*: *Properly*, as it is in Cases wherein *Damages* are founded upon the Statute of 2 Hen. 4. cap. 1. and 8 H. 6. c. 9. where *Costs* are included within the Word *Damages*, and taken as *Damages*: But when the Plaintiff declares for the Wrong done to him, to the *Damage* of such a Sum, this is to be taken *relatively* for the Wrong which passed before the Writ brought, and is assessed by Reason of the foregoing Trespass, and cannot extend to *Costs* of Suit, which are future and of another Nature. 10 Rep. 116, 117. Greater *Costs* may be given in some Cases, than the *Damages* laid in the Plaintiff's Declaration; for the Plaintiff's Declaration is only for the *Damage* done him by the Defendant: But the *Costs* are given in Respect of the Plaintiff's Suit to recover his *Damages*, which may be sometimes greater than the *Damage*. 1 Lill. Abr. 384. Where the Plaintiff shall have no more *Costs* than *Damages*, unless the Jury finds more than 40 s. in Actions of Trespass, on the Case, &c. See Stat. 43 Eliz. c. 6. 21 Jac. 1. cap. 16. In Action upon the Case, the Jury may find less *Damages* than the Plaintiff lays in his Declaration; though they cannot find more than is laid therein; if they do, it is Error: But *Costs* may be increased beyond the Sum mentioned in the Declaration for *Damages*: Also the Plaintiff may release Part of the *Damages*, upon entering up his Judgment. 10 Rep. 115. In Actions upon any Bond or penal Sum for Nonperformance of Covenants, the Jury shall assess *Damages* for those the Plaintiff should prove broken; and the Plaintiff may assign as many Breaches as he thinks fit. 8 & 9 W. 3. c. 11. *Damages* are not to be given for that which is not contained in the Plaintiff's Declaration; and only for what is materially alledged. 1 Lill. 381. In personal and mix'd Actions, *Damages* were recovered at Common Law: But in real Actions, no *Damages* were recoverable, because none were demanded by the Court or Writ; whereas in Actions Personal, the Plaintiff counts *Ad Dammum* for the Injury; and if he recovers no *Damages*, he hath no *Costs*. 10 Rep. 111, 117. In a personal Action, the Plaintiff shall recover *Damages* only for the Tort done before the Action brought; and therein the Plaintiff counts for his *Damage*: In a real Action, he recovers his *Damages* pending the Writ; and therefore never counts for his *Damage*. 10 Rep. 117. By the Stat. of Glouc. 6 Ed. 1. cap. 1. *Damages* are given in real Actions, Assises of *Novel Disseisin*, *Mort d'Ancestor*, &c. and shall be recovered against the Alienee of a Disseisor, as well as against the Disseisor himself: And the Demandant shall have of the Tenant likewise *Costs* of Suit; but not Expences of Trouble and Loss of Time. 2 Inst. 288. If the Disseisor make a Feoffment in Fee, and the Disseisee dieth, the Heir of the Disseisee shall not recover *Damages* against the Alienee, because that Branch of the Stat. 6 Ed. 1. only

provides for the Disseisee's Remedy against the Alienee, and not for his Heirs; though if a Person be disseised, and the Disseisee dies, his Heirs shall recover *Damages* against the Disseisor, from the Death of his Ancestor. 2 Inst. 286. And it is a Rule upon this Statute, that in none of the Writs or Actions therein mentioned, the Demandant shall recover *Damages* but from the Death of his next immediate Ancestor. *Ibid.* 288. For the Insufficiency of the Disseisor, the Tenant shall answer the *Damages* by this Act: And if the Disseisor be able to yield Part, and not the whole *Damages*, both the Disseisor and Tenant shall be charged; and Judgment is given against the Disseisor, and against the Tenant generally. 2 Inst. 284. 2 Danv. Abr. 448. When *Damages* double or treble are given in an Action newly created by Statute; if no *Damages* were formerly recoverable, there the Demandant or Tenant shall recover those *Damages* only, and shall not have *Costs*, being a new Creation in Recompence where there was none before: As upon the Stat. 1 & 2 P. & M. for driving of Distresses out of the Hundred, &c. whereby *Damages* are given, the Plaintiff shall recover no *Costs*, only his *Damages*, because this Action is newly given. But in an Action upon the Stat. 8 H. 6. of Forcible Entry, which giveth treble *Damages*, the Plaintiff shall recover his *Damages* and his *Costs* to the Treble, by Reason he was entitled to single *Damages* before by the Common Law; and the Statute, as Part of the *Damages*, encreases the *Costs* to treble; and when a Statute increases *Damages*, *Costs* shall likewise be increased. 2 Inst. 289. 10 Rep. 116. In some Cases, double, treble *Damages*, &c. are allowed: For not setting forth Tithes; Distresses wrongfully taken; Rescous, &c. Treble *Damages* are incurred by Statute. But if it be not found by the Jury that the Plaintiff hath sustained some *Damage* in Cases where treble *Damages*, &c. are inflicted by Law, no *Damages* can be awarded. 2 Danv. Abr. 449. No *Damages* could be recovered at the Common Law, but against the wrong Doer, and by him to whom the Wrong was done. 2 Inst. 284. *Damages* shall be recovered in Writ of Admeasurement of Dower; but not in Writ of Admeasurement of Pasture. 2 Danv. 457. In Writ of Partition, by one Coparcener against another, 'tis said no *Damages* shall be had: In a Formedon, no *Damages* shall be recovered; so in a *Nuper Obiit*, Writ of Account, Writ of Execution, &c. *Ibid.* 455, 456. Where *Damages* are awarded for Delay of Execution, and being kept out of the Money, they are usually assessed by allowing the Party what lawful Interest he might have. 1 Salk. 208. In real Actions, *Damages* are assessed by Writ of Enquiry: When the Jury find the Issue for the Plaintiff, they are to assess the *Damages*. And in Actions upon the Case, &c. where *Damages* are uncertain, it is left to the Jury to enquire of and tax them: In Debt, which appears certain to the Court what it is, the *Damages* assessed by the Jury are small, and the Master in B. R. taxeth the *Costs*; which is added thereto, and called *Damages*. 1 Lill. 390. When Judgment is given by Default, in Action of Debt, the Court is to assess the *Damages*, and not the Jury: So if Judgment by *Nil dicit*, in Action of Debt. And if on Demurrer for taking Goods, &c. it is adjudged for the Plaintiff, though *Damages* are found by Writ of Enquiry, the Court may increase or mitigate the *Damages*; because the

the Court might have awarded them without such Writ. 2 *Danv.* 452. In Batteries and Wounding, the Court may increase *Damages* given by the Jury, on View of the Wound, or upon Affidavits made thereof, &c. But it is said, the Courts at *Westminster* only can increase *Damages* in Action of Assault and Wounding on View, &c. and not Justices of *Nisi Prius*; though they may endorse the Evidence on the *Posse*, and on such Evidence the *Damages* may be increased in the Courts above. 3 *Salk.* 115. If *Damages* are too small, the Court hath Power to increase them: Or if the Jury assesses no *Damages*, where Verdict is found for the Plaintiff in Action of Debt on Bond, &c. the Court may tax the *Damages*; though 'tis otherwise in Action on the Case, &c. 2 *Inst.* 200. 2 *Danv.* 449. It has been holden that the Judges may increase, but not decrease *Damages*; and this is, because the Party may have an Attaint. 2 *Danv.* 452. But where excessive *Damages* have been given, or there hath been any Misdemeanor in executing a Writ of Enquiry; the Court hath sometimes relieved the Defendant by a new Writ of Enquiry. 2 *Danv.* 464. And where *Damages* are excessive, on Motion the Defendant may have a new Trial. *Style* 465. 1 *Nelf. Abr.* 587. In Battery, Imprisonment, and taking of Goods, against three Persons; one commits the Battery, another the Imprisonment, the Third takes the Goods, all at one Time, all are Guilty and to be charged in *Damages*. 3 *Lev.* 324. But if several *Damages* are given, the Plaintiff shall have *Damages* but of one of them, &c. 10 *Rep.* 66, 69. In Trespass against two, one comes and pleads Not guilty, and it is found against him; and afterwards another comes and pleads the like, and is found guilty by another Inquest; in this Case, the first Jury shall assess all the *Damages* for the Trespass. *New Nat. Br.* 236. Trespass against divers Defendants, they plead not Guilty severally, and the Jury finds them all Guilty: The Jury must assess the *Damages* jointly, for it is but one entire Trespass, and made joint by the Declaration: But if in Trespass against two, the Jury finds one Guilty of the Trespass at one Time, and the other guilty thereof at another Time, there several *Damages* may be assessed. Tho' if the Plaintiff himself confesses that they committed the Trespass severally, then the Writ shall abate. 11 *Rep.* 5. *Damages* may be several, where one Action of Trespass is brought for two several Trespases: And in Action on the Case, *Damages* are divisible, and may be apportioned according to the Wrong. 1 *Saund.* 268. Also in Action on the Case upon two Promises, entire *Damages* may be given; tho' it be insisted that *Damages* should be several upon each Promise. 1 *Roll. Rep.* 423. But if Action is brought for two several Causes of Action, one of which is not actionable, if entire *Damages* are given, the Verdict is void: *Contra* if the *Damages* are severed. And where *Damages* are entirely assessed, and they ought not to be given for some Part; no Judgment can be given on the Verdict. 10 *Rep.* 130.

Damages-cleer, (*Damna Clericorum*) Was a Fee assessed by the tenth Part in the *Common Pleas*, and of the twentieth Part in the *King's Bench* and *Exchequer*, out of all *Damages*, exceeding five Marks, recovered in those Courts, in Actions upon the Case, Covenant, Trespass, Battery, &c. wherein the *Damages* were uncertain; which the Plaintiff was obliged to pay to the *Prothonotary*, or the Chief Officer of the Court wherein re-

covered, before he could have Execution for the *Damages*: This was originally a Gratuity given to the *Prothonotaries* and their Clerks, for drawing special Writs and Pleadings; it is taken away by Stat. 17 *Car.* 2. c. 6.

Damage-fesant, or *Faisant*, Is when a Stranger's Beasts are found in another Person's Ground without his Leave or Licence, and there doing *Damage*, by Feeding or otherwise, to the Grass, Corn, Woods, &c. In which Case, the Tenant whom they damage, may distrain and impound them, as well by Night as in the Day, least the Beasts escape before taken; which may not be done for Rent, Services, &c. only in the Day-time. Stat. 51 *Hen.* 3. 1 *Inst.* 142. If a Man takes my Cattle, and puts them into the Land of another, the Tenant of the Land may take these Cattle *Damage-fesant*, tho' I who was the Owner, was not privy to the Cattle's being there *Damage-fesant*; and he may keep them against me till Satisfaction of the *Damages*. 2 *Danv. Abr.* 634. But if one comes to distrain *Damage-fesant*, and to seize the Cattle, and the Owner drives them out before they are taken, he cannot distrain them *Damage-fesant*, but is put to his Action of Trespass; for the Cattle ought to be actually upon the Land *Damage-fesant*, at the Time of the Distress. 1 *Inst.* 161. 9 *Rep.* 22. Beasts belonging to the Plough, or Beasts of Husbandry, Sheep, Horses joined to a Cart, and 'tis said a Horse with a Rider on it, may be distrained *Damage-fesant*, though not for Rent, &c. 1 *Sid.* 422, 440. But the Owner may tender Amends, before the Cattle are impounded; and then the Detainer is unlawful: Also if when impounded the Pound-Door is open, the Owner may take them out. 5 *Rep.* 76. A Greyhound may be taken *Damage-fesant*, running after Conies in a Warren: So a Man may take a Ferret that another hath brought into his Warren, and taken Conies with. If a Person brings Nets and Gins through my Warren, I cannot take them out of his Hands. 2 *Danv.* 633. But if Men are rowing upon my Water, and endeavouring with Nets to catch Fish in my several Piscary, I may take their Oars and Nets, and detain them as *Damage-fesant*, to stop their further Fishing; tho' I cannot cut their Nets. *Cro. Car.* 228.

Dam, A Boundary, or Confinement; as to dam up, or dam out: *Infra Damnum suum*, within the Bounds or Limits of his own Property or Jurisdiction. *Bract. lib.* 2. c. 37.

Damifella, A light Damoasel or Mifs. Stat. 12 *Ed.* 1. See *Pimp Tenure*.

Damnum absque injuria. If one Man keeps a School in such a Place, another may do so likewise in the same Place, though he draw away the Scholars from the other School; and this is *Damnum absque injuria*; but he must not do any Thing to disturb the other School. 3 *Salk.* 10.

Dan. Anciently the better Sort of Men in this Kingdom had the Title of *Dan*; as the Spaniards *Don*, from the Lat. *Dominus*.

Danegelt or *Dane-gelt*, (*Danegildum*) Is compounded of the Words *Dane* and *Gelt*, the latter in *Dutch* signifying Money; and was a Tax or Tribute of 1 s. and after of 2 s. upon every Hide of Land through the Realm, laid upon our Ancestors the Saxons by the Danes, when they lorded it here. *Cambr. Brit.* 83, 142. According to some Accounts, this Tax was levied for clearing the Seas of Danish Pirates; which heretofore greatly annoyed our Coasts: But King *Etheldred* being much

much distressed by the continual Invasions of the Danes, to procure his Peace, was compelled to charge his People with very heavy Payments, called *Danegelt*, which he paid to the Danes at several Times. *Hoveden par. post. Annal. 344. Ingulph. 510. Selden's Mare Claus. 190.* This *Danegelt* was released by St. Edward the Confessor; but levied again by William the First and Second: Then it was released again by King Henry the First, and finally by King Stephen. *Blount.* It is probable that this ancient Tax might be a Precedent for our Land-Tax of 3 s. and 4 s. in the Pound, when first granted.

Danelage, Was the Law of the Danes when they governed a third Part of this Kingdom. See *Merchenlage*.

Dapifer, (*a Dapes ferendo*) Was at first a Domestick Officer, like unto our Steward of the Household; or rather Clerk of the Kitchen: But by Degrees it was used for any fiduciary Servant, especially the Chief Steward or Head Bailiff of an Honour or Manor. There is Mention made in our ancient Records of *Dapifer Regis*; which is taken for Steward of the King's Household. *Cowel.*

Dardus, i. e. A Dart: In Wales an Oak is called a *Dar*.

Dare ad Remanentiam, To give away in Fee, or for ever. *Glanv. lib. 7. cap. 1.* This seems to be only of a Remainder.

Darrein, Is a Corruption from the Fr. *Dernier*, viz. *Ultimus*; in which Sense we use it: As *Darrein Continuance*, &c.

Darrein Presentment, (*Ultima Presentatio*) See *Affise of Darrein Presentment*.

Date of a Deed, Is the Description of the Time, viz. the Day, Month, Year of our Lord, Year of the Reign, &c. in which the Deed was made. *1 Inst. 6.* But the ancient Deeds had no Dates, only of the Month and the Year; to signify that they were not made in Haste, or in the Space of a Day, but upon longer and more mature Deliberation. *Blount.* If in the Date of a Deed, the Year of the Lord is right, tho' the Year of the King's Reign be mistaken, it shall not hurt it. *Cro. Jac. 261.* A Deed was dated 30th March, 1701. without *Anno Domini* and *Anno Regni*; and it was adjudged that both the Year of the Lord and of the King, were implicitly in the Deed. *2 Salk. 658.* A Deed is good, tho' it hath no Date of the Day or Place, or if the Date be mistaken, or though it hath an impossible Date, as the 30th of February, &c. But he that doth plead such a Deed, without any Date, or with an impossible Date, must set forth the Time when it was delivered. *2 Rep. 5. 1 Inst. 46.* If no Date of a Deed be set forth, it shall be intended that it had none; and in such Case 'tis good from the Delivery; for every Deed or Writing hath a Date in Law, and that is the Day on which it is delivered: And a Deed is no Deed till the Delivery; and that is the Date of it. *Mod. Ca. 244. 1 Nels. Abr. 595.* An impossible Date of a Bond, &c. is no Date at all; but the Plaintiff must declare on the Bond as made at a certain Time: And if the express Date be insensible, the real Date is the Delivery. *2 Salk. 463.* Where there is none, or an impossible Date, the Plaintiff may count of any Date. *1 Lill. Abr. 393.* If there be a mistaken Date as to the King's Reign, &c. or a Date be impossible, &c. the Plaintiff may surmise a legal Date in the Declaration, whereupon the Defendant is to answer to the Deed, and not the Date. *Yelv. 194.* If a Deed bears

Date at a Place out of the Realm, it may be averred that the Place mentioned in the Deed, is in some County in England; and here the Place is not traversable; without this the Deed cannot be tried. *1 Inst. 261.* 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 same Day it bears Date, unless the contrary is proved. *2 Inst. 674.* Tho' there can be no Delivery of a Deed before the Day of the Date; yet after there may. *Yelv. 138.* So that a Deed may be dated back on a Time past, but not at a Day to come. See *Deed*.

Dative or Datif, (*Dativus*) Signifies that may be given or disposed of at Will and Pleasure. *Stat. 9 R. 2. c. 4.*

Dabata terræ, **Dawach**, A Portion of Land so called in Scotland. *Skene.*

Day, (*Dies*) Is a certain Space of Time, containing twenty-four Hours; and if a Fact be done in the Night, you must say in Law Proceedings in *Nocte ejusdem Diei. Dierum alii sunt Naturales, alii Artificiales: Dies Naturalis, constat de 24 horis, & continet Diem Solarem & Noctem, & est spaciū in quo sol progreditur ab Oriente in Occidentem, & ab occidente iterum in Orientem: Dies Artificialis, sive solaris, incipit in ortu solis & desinit in occasu. 1 Inst. 135.* By this Description, the natural Day consists of twenty-four Hours, and contains the solar Day and the Night; And the artificial Day begins from the Rising of the Sun, and ends when it sets. Day in legal Understanding, is the Day of Appearance of the Parties, or Continuance of the Suit where a Day is given, &c. And there is a Day of Appearance in Court by the Writ, and by the Roll; by Writ, when the Sheriff returns the Writ; by the Roll, when he hath a Day by the Roll, and the Sheriff returns not the Writ, there the Defendant to save his Freehold, prevent Loss of Issues, Imprisonment, &c. may appear by the Day he hath by the Roll. *1 Inst. 135.* In real Actions there are *Dies communes*, common Days; and in all Summons there must be fifteen Days after the Summons before the Appearance: Also before the Statute of *Articuli super Chartas*, in all Summons and Attachment in Plea of Land, there should be contained fifteen Days. *1 Inst. 134.* As to Offences in B. R. if the Offence be committed in another County than where the Court sits, and the Indictment be removed by *Certiorari*, there must be fifteen Days between every Process and the Return thereof; but if it be committed in the same County where the Bench sits, they may sit *de Die in Diem*; but this they will very rarely do. *Ibid.* There is a Day called *Dies speciales*, as in an Affise in the King's Bench or Common Pleas, the Attachment need not be fifteen Days before the Appearance; otherwise it is before Justices assigned: But generally in Affises the Judges may give a special Day at their Pleasure; and are not bound to the common Days; and these Days they may give as well out of Term as within. There is also a Day of Grace, *Dies Gratia*, and generally this is granted by the Court at the Prayer of the Demandant or Plaintiff, in whose Delay it is: But it is never granted where the King is Party by *Aid Prier* of the Tenant or Defendant; nor where any Lord of Parliament or Peer of the Realm is Tenant or Defendant. And sometimes the Day that is *quarto die post*, is called *Dies Gratia*; for the very Day of Return is the Day in Law, and to that Day the Judgment hath Relation, but no
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Default shall be recorded till the fourth Day be past; unless it be in a Writ of Right, where the Law alloweth no Day but the Day of the Return. 1 *Inst.* 135. There are several Return-Days in the Terms; and if either of them happen upon a Sunday, the Day following is taken instead of it: For Sunday is *Dies non Juridicus*; and so is Ascension-Day in Easter Term, St. John Baptist in Trinity Term, All-Saints and All Souls in Michaelmas Term, and the Purification of the Virgin Mary in Hillary Term. 2 *Inst.* 264. Days in Bank are Days set down by Statute, or Order of the Court, when Writs shall be returned, or when the Party shall appear upon the Writ served. Stat. 51 Hen. 3. 32 H. 8. c. 21. And by the Statute de Anno Bissextili 21 H. 3. the Day increasing in the Leap-Year, and the Day next going before, are to be accounted but one Day. It is said commonly that the Day of *Nisi prius*, and the Day in Bank, is all one Day; but this is to be understood as to Pleading, not to other Purposes. 1 *Inst.* 135. If a Defendant appears, and the Court gives a Day to another Term; at which Day he makes Default, no Judgment shall be given, but Process shall be awarded in this Case. 2 *Danv. Abr.* 476. But if after Issue found for the Plaintiff at the *Nisi prius*, if a Day be given in Banco, and the Defendant makes Default, Judgment shall be given against him. *Ibid.* 477. To be dismissed *without Day*, is to be finally dismissed the Court: And when the Justices before whom Causes were depending, do not come on the Day to which they were continued, whether such Absence be occasioned by Death or otherwise, they are said to be *put without Day*: But may be revived or re-continued by Re-summmons, Re-attachment, &c. 2 *Hawk. P. C.* 300. Also by the Common Law, all Proceedings upon any Indictment, &c. whereon no Judgment had been given, were determined by the Demise of the King, and nothing remained but the Indictment, Original Writ, &c. which were put *without Day*, till recontinued by Re-attachment to bring in the Defendants to plead *de novo*: But this is remedied by Stat. 4 & 5 W. 3. c. 18. and 1 Ann. c. 8. by which such Process, &c. are to continue in the same Force after the King's Demise, as they would have done if he had lived.

Day-light. In Respect to *Day-light*, before *Sun-rising* and after *Sun-setting*, is accounted Part of the Day by the Common Law; as to Robberies committed in the Day-time, when the Hundred is liable. 7 *Rep.* 6. The Law regularly rejects all Fractions and Divisions of a Day, for the Incertainty. 5 *Rep.* 1. 1 *Inst.* 135. See *Computation*.

Days-man. In the North of England, an Arbitrator or elected Judge is usually termed a *Dies-man* or *Days-man*: And Dr. Hammond saith, that the Word Day in all Idioms signifies Judgment.

Daveria, Dairy, from Day, *Deie*, Sax. *Dag*, was at first the Daily Yield of Milch-Cows, or Profit made of them. In Lorrain and Champaign they use the Word *Dayer*, for the Meeting of the Day labouring Women to give an Account of their daily Work, and receive the Wages of it. A Dairy in the North is called *Milkness*; as the Dairy-maid is in all Parts a *Milk maid*: She is termed *Androchia* by *Fleta*, lib. 2. cap. 87. — *Comptus Henrici D. & Johanne uxoris sue de omnibus Exitibus & Proventibus de Dayri Domini Prioris de Burncestre.* *Paroch. Antiq.* 548.

Daywre of Land. As much arable Land as could be ploughed up in one Day's Work; or one Journey, as the Farmers still call it. Hence any young Artificer who assists a Master Workman in Daily Labour, is called a *Journey-man*.

— *Confirmavi Abbati & Conventui de Rading, tres Acres & sexdecim Daywre, de terra Arabili.* Cartular. Rading. M.S. f. 90.

Deadly Feud, Is a Profession of an irreconcilable Hatred, till a Person is revenged even by the Death of his Enemy. It is mentioned in Stat. 43 Eliz. c. 13. And such Enmity and Revenge were allowed by the old Saxon Laws; for where any Man was killed, if a pecuniary Satisfaction was not made to the Kindred of the Slain, it was lawful for them to take up Arms against the Murderer, and revenge themselves on him: And this is called *Deadly Feud*; which 'tis conjectured was the Original of an *Appeal*. *Blount. Vide Feud.*

Dead Pledge, (Mortuum vadum) A Pledge of Lands or Goods. See *Mortgage*.

Deafforested. This Word signifies Discharged from being Forest; or that is freed and exempted from the Forest Laws. 17 Car. 1. cap. 16. — *Johannes Dei Gratia, &c. Volumus & firmiter precipimus quod Foresta de Brewood & homines in illa manentes & heredes eorum sint Deafforestati imperpetuum, &c. Dat. 13 Martii Anno Regni nostri 5.* — There is likewise used the Word *Deawarrenata*, as well as *Deafforestata*; which is when a Warren is *diswarrened*, or broke up and laid in Common. King Henry the Third, in a Charter to the Citizens of London, grants to them, — *Quod tota Warrena de Stanes cum pertin. suis sit Dewarrenata & Deafforestata in perpetuum.* *Placit. temp. Ed. 1. and Ed. 2. M.S. fol. 144.*

Dean, (Decanus, from the Greek Δέκα, Decem) Is an Ecclesiastical Governor or Dignitary, so called as he presides over ten Canons or Prebendaries at the least. And we call him a *Dean*, that is next under the Bishop, and Chief of the Chapter, ordinarily in a Cathedral Church; the Rest of the Society being called *Capitulum*, the Chapter. As there are two Foundations of Cathedral Churches in England, the Old and the New, the New erected by King Hen. 8. so there are two Means of creating these *Deans*: For those of the old Foundation, as the *Dean of St. Pauls, York, &c.* are exalted to their Dignity much like Bishops; the King first sending out his *Conge d'Esire* to the Chapter, and the Chapter then chusing, the King afterwards yielding his Royal Assent, and the Bishop confirming him, and giving his Mandate to instal him: Those of the new Foundation, whose Deaneries were translated from Priories and Convents, to Dean and Chapter, as the *Deans of Canterbury, Durham, Ely, Norwich, Winchester, &c.* are donative, and installed by a shorter Course, by Virtue of the King's Letters Patent, without either Election or Confirmation; and are visitable only by the Lord Chancellor, or by special Commission from the King: But the Letters Patent are presented to the Bishop for Institution, and a Mandate for Instalment goes forth. 1 *Inst.* 95. *Davis* 46, 47. There are some Cathedral Churches which never had a *Dean*; as that of St. David and Landaff, where the Bishop is Head of the Chapter, and in his Absence the Archdeacon: And there is also a *Dean* without a Chapter, such as the *Dean of Battel in Suffex*: Then there is

is a *Dean* without a Jurisdiction, as the *Dean* of the *Chapel Royal*, &c. In which Sense this Word is applied to the Chief of certain *peculiar* Churches or Chapels. *Nec Collegio alicui praefecti, nec Jurisdictione ulla Donati, nomine tamen velut honoris gratia insignes.* *Spelm.* There are four Sorts of *Deans*; a *Dean* who hath a Chapter, such as the *Dean* of *Canterbury*, &c. a *Dean* without a Chapter, as the *Dean* of *Bocking*, who hath a Court and Jurisdiction to hold Plea of all Ecclesiastical Matters arising in several Parishes within his *Peculiar*; and who is constituted by Commission from the Archbishop of *Canterbury*, like to the *Dean* of the *Archies*. The *Dean* of *Battel*, which was founded by *William* the First, styled the Conqueror, hath Ecclesiastical Jurisdiction within the Liberty of *Battel*, and is presentable by the Duke of *Montague*, and instituted and inducted by the Bishop of *Chichester*; but not subject to his Visitation. And *Rural Deans*, who had first Jurisdiction over *Deaneries*, as every *Diocese* is divided into *Archdeaconries* and *Deaneries*; but afterwards their Power was diminished, and they were only the Bishops Substitutes to grant Letters of Administration, Probate of Wills, &c. And now their Office is wholly extinguished, for the *Archdeacons* and *Chancellors* of Bishops, execute the Authority which *rural Deans* had thro' all the *Dioceses* of *England*. 1 *Nelf. Abr.* 596, 597. There are likewise *Deputy Deans*; and *Commendatory Deans*, who cannot confirm any Grants, &c. But a *Commendatory Dean* may with the Chapter chuse a Bishop. And if a *Dean* be elected Bishop, and before Consecration doth obtain Dispensation to hold his *Deanery* in *Commendam*, such *Dean* may well confirm, &c. for his old Title remains, and therefore Confirmations and other Acts done by him as *Dean*, are good in Law. *Latch.* 237, 250. *Palm. Rep.* 460. A *Dean* and Chapter are the Bishop's Council, to assist him in the Affairs of Religion, &c. to consult in deciding difficult Controversies, and consent to every Grant which the Bishop shall make to bind his Successors, &c. Though they have nothing to do with what he doth as Ordinary. *Dyer* 233. A *Dean* that is solely seised of a distinct Possession, hath an absolute Fee in him as well as a Bishop. 1 *Inst.* 325. As a *Deanery* is a spiritual Dignity, a Man cannot be *Dean* and *Prebendary* in the same Church. *Dyer* 273. See *Chapter*.

Death of Persons. There is a *natural* Death of a Man, and a *civil* Death: *Natural*, where Nature it self expires and extinguishes; and *Civil* is where a Man is not actually dead, but is adjudged so by Law; as where he enters into Religion, &c. If any Person for whose Life any Estate hath been granted, remain beyond Sea, or be otherwise absent seven Years, and no Proof made of his being Living, such Person shall be accounted naturally dead; though if the Party be after proved living at the Time of Ejection of any Person, then the Tenant, &c. may re-enter, and recover the Profits. *Stat.* 19 *Car.* 2. c. 6. And Persons in Reversion, or Remainder, &c. 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 *Ann.* c. 18. In Law Proceedings, the Death of either Party, between the Verdict and Judgment, shall not be Error; so Judgment be entered in two Terms. 17 *Car.*

2. c. 8. Where on the Death of Parties to a Suit, the Writ, &c. shall abate, see 8 & 9 *W.* 3. c. 10. and *Abatement*: Death of Judges, &c. Vide *Day*.

De bene esse. To take or to do any Thing *de bene esse*, is in Law Signification to accept or allow it as well done for the Present; but when it comes to be more fully examined or tried, to stand or fall according to the Merit of the Thing in its Nature. As in *Chancery*, upon Motion to have one of the less principal Defendants in a Cause examined as a Witness, the Court (not then thoroughly examining the Justice of it, or not hearing what may be objected on the other Side) will often order such a Defendant to be examined *de bene esse*, viz. That his Depositions shall be taken, and allowed or suppressed at the Hearing of the Cause, upon the full Debate of the Matter, as the Court shall think fit; but in the Interim, they have a *Well-being*, or conditional Allowance. 3 *Cro.* 68. Where a Complainant's Witnesses are aged, or sick, or going beyond Sea, whereby the Plaintiff thinks he is in Danger of losing their Testimony, the Court of *Chancery* will order them to be examined *de bene esse*; so as to be valid, if the Plaintiff hath not an Opportunity of examining them afterwards; as if they die before Answer, or do not return, &c. In either of which Cases, the Depositions taken may be made Use of in the Court of *Chancery*, or at Law: But if the Parties be alive and well, or do return, &c. after Answer, these Depositions are not to be of Force, for the Witnesses must be re-examined. *Practif. Attorn. Edit.* 1. pag. 232.

Debenture, A Soldier's *Debenture* (*Stipendia Debita*) is in the Nature of a Bond or Bill, to charge the Government to pay the *Soldier-Creditor*, or his Assigns, the Sum due upon the auditing the Account of his Arrears: It was first ordained by an Act made during *Oliver's* Usurpation, Anno 1649. and is mentioned in the Act of Oblivion, 12 *Car.* 2. cap. 8. They use *Debentures* likewise in the *Exchequer*; and *Debentures* are usually given to the *King's Servants*, for the Payment of their Wages, Board-Wages, &c. Also there are *Custom-house Debentures*, &c.

Debet & Detinet, Are *Latin* Words used in the Bringing of Writs and Actions: And an Action shall be always in the *Debet & Detinet*, when he who makes a Bargain or Contract, or lends Money to another, or he to whom the Bond is made, bringeth the Action against him who is bounden, or Party to the Contract or Bargain, or unto the Lending of the Money, &c. But if a Man sells to another a Horse, &c. if he brings Debt for the Horse, the Writ must be in the *Detinet* only. *New Nat. Br.* 265. In Debt against Husband and Wife, for a Debt due from the Wife before Coverture, the Writ shall be in the *Debet & Detinet*: So in Debt against or for the Successors, in Respect of Obligations made to the Predecessor, &c. *Ibid.* If an Heir be to bring Debt, it shall be in the *Detinet*: And if a Man be bound to another, and makes his Executor and dies, if the Money due in the Time of the Testator be refused to be paid by the Executor, the Action must be brought against him only in the *Detinet*; and so in all Actions brought by Executors as Executors, though the Duty accrued in their own Time. But *Debet & Detinet* lies by an Executor on his own Contract: Also if Lessee for Years makes his Executor and dies,

for Rent due after the Testator's Death, there the Action shall be in the *Debet & Detinet*. It is the like Law in Cases of Administrators, as it is not certain what shall be recovered, only according to the Assets. 5 Rep. 31. An Executor upon a *Devastavit* shall be charged in the *Debet & Detinet*, the Action being upon a Judgment. 1 Lill. Abr. 399. Debt against an Heir is to be in the *Debet & Detinet*, or it will be naught. In Action grounded on Privity of Contract, or Action of Escape, it must be brought in the *Detinet*. Cro. Jac. 545, 685. See *Executor*.

Debet & solet, Are also formal Words made Use of in Writs: And some Writs have these Words in them, which ought not to be omitted. Likewise according to the Diversity of the Case, both *Debet* and *solet* are used, or *Debet* alone: As a *Quod permittat* may be in the *Debet & solet*, or in the *Debet* only, as the Demandant claims. And if a Person sues to recover any Right, whereof his Ancestor was disseised by the Tenant or his Ancestor, then he useth the Word *Debet* alone in his Writ, because his Ancestor only was disseised, and the Custom discontinued: But if he sue for any Thing that is now first of all denied him, then he useth *Debet & solet*, by Reason his Ancestor before him, and he himself usually enjoyed the Thing sued for, until the present Refusal of the Tenant. Reg. Orig. 140. The Writ of *Seffa Molendini* is a Writ of Right, in the *Debet & solet*, &c. F. N. B. 98.

Debt, (*Debitum*) Is an Action which lieth where a Man oweth another a certain Sum of Money, by Obligation, or Bargain for a Thing sold, or by Contract, &c. and the Debtor will not pay the *Debt*, at the Day agreed; then the Creditor shall have Action of *Debt* against him for the same. And if Money be due upon any Specialty, Action of *Debt* only lies; for no other Action may be brought for it: If a Man contract to pay Money for a Thing which he hath bought; and the Seller takes Bond for the Money, the Contract is discharged, so that he shall not have Action of *Debt* upon the Contract, but on the Bond. New Nat. Br. 268. If a Man be bound by Bond to pay 20 l. in Manner following, viz. 10 l. at one Day, and 10 l. at another Day, Action of *Debt* will not lie till after the last Day, it being an entire Duty: But if one binds himself to pay A. B. 10 l. at one Day, and 10 l. at another, after the first Day Action of *Debt* lies for 10 l. being a several Duty. 2 Danv. Abr. 501. On a Bond, *Debt* lies against the Heir of an Obligor, who has Lands by Descent, if the Executors have not Sufficient; and the Obligee may bring his Action against the Heir or Executor, although the Executor have Assets. Anderf. 7. Action of *Debt* lies not against Executors, upon a simple Contract made by the Testator. 9 Rep. 87. But *Debt* lies for the Arrearages of an Account against Executors, of Receipts by the Testator. 2 Danv. 497. Before the Statute 32 H. 8. c. 37. the Heirs, or Executors, &c. of a Man seised of a Rent-service, Rent-charge, &c. in Fee-simple, or Fee-tail, had no Remedy for the Arrearages incurred in the Life-time of the Owner of such Rents: But by that Statute, the Executors and Administrators of Tenants in Fee-simple, Fee-tail, or for Life, of any Rent, shall have Action of *Debt* for all Arrearages of Rent due in the Life of the Testator. 1 Inst. 162. 2 Danv. 492. A Feme Sole seised of a Rent in Fee, &c. which is behind and unpaid, takes Husband, and

the Rent is behind again, and then the Wife dieth; the Husband by the Common Law should not have the Arrearages before the Marriage, but for the Arrears becoming due during the Coverture, he might have Action of *Debt*. Now by the Stat. 32 Hen. 8. the Husband shall have the Arrears due before Marriage, and he hath a double Remedy for the same. 1 Inst. 162. At the Common Law, *Debt* lieth not for Rent upon a Lease for Life, (though it doth on a Lease for Years) but the Remedy is Assise, if the Plaintiff have Seisin, or by Distress. 3 Rep. 65. But by Stat. 8 Ann. cap. 17. any Person having Rent in Arrear upon any Lease for Life or Lives, may bring Action of *Debt* for such Rent, as where Rent is due on a Lease for Years. Action of *Debt* will lie against a Lessee, for Rent due after the Assignment of the Lease; for the personal Privity of Contract remains, notwithstanding the Privity of Estate is gone. 3 Rep. 22. But after the Death of the Lessee, it is then a real Contract, and runs with the Land. Cro. Eliz. 555. When a Lease is ended, the Duty in Respect of the Rent remains, and *Debt* lieth by Reason of Privity of Contract between Lessor and Lessee. 2 Cro. 227. 1 Nelf. Abr. 604. In some Cases, Action of *Debt* will lie, although there be no Contract betwixt the Party that brings the Action, and him against whom brought; for there may be a Duty created by Law, for which Action will lie. 2 Saund. 343, 366. Action of *Debt* lies against a Gaoler for permitting a Prisoner committed in Execution to escape; because thereupon the Law makes the Gaoler Debtor: But where the Party is not in Execution, there Action on the Case only lies for Damages suffered by the Escape. 1 Saund. 218. 1 Lill. Abr. 402. *Debt* lies against a Sheriff, for Money levied in Execution. 1 Lill. 403. If I agree with a Taylor for a certain Price to make me a Suit of Clothes, the Taylor may have a general Action of *Debt* against me for the Money; but if the Price is not agreed on, there lies Action of the Case only, or special Action of *Debt* upon the special Contract, which the Law may imply on a *Quantum Meruit*. Wood's Inst. 544. And *Debt* may be made Action on the Case, by proving Money lent, or Goods delivered, &c. whereupon Promise of Payment is implied in Law. A Man owes another a Sum of Money, and hath his Note under Hand, without Seal, Action of *Debt* on a *Mutuuus* lies; but the Defendant may wage his Law: An Action of the Case brought upon Promise of Payment, the Defendant cannot wage his Law. 4 Rep. 93. An *Indebitatus* generally is not good in *Debt*, without shewing for what indebted. Action of *Debt* lies upon a parol Contract, and so doth Action on the Case. 1 Lill. 403. If Goods or Money are delivered to a third Person for my Use, I may have Action of *Debt* or Account for them. 2 Danv. 404. Where Money is delivered to a Person, to be redelivered again, the Property is altered, and *Debt* lies: But where a Horse, or any Goods are thus delivered, there *Detinue* lies, because the Property is not altered; and the Thing is known, whereas Money is not. Owen 86. 1 Nelf. Abr. 603. Action of *Debt* lies against the Husband, for Goods which were delivered or sold to the Wife, if they come to the Use of the Husband. 1 Lill. 400. If one delivers Meat, Drink, or Clothes, to an Infant, and he promises to pay for them, Action of *Debt* or on the Case, will lie against the Infant. Tho'

Tho' Debt may not be brought on an Account stated with an Infant. And what is deliver'd, must be a-
verr'd to be for the necessary Use of the Infant.
1 *Lill. Abr.* 401. An Attorney shall have Action of
Debt against his Client, for Money, which he hath
paid to any Person for the Client, for Costs of
Suit, or unto his Counsel, &c. A Person may have
Debt upon an Arbitrament; but not for Debt re-
ferr'd to Arbitration, which must be Action on
the Case: Also Debt lies for Money recover'd
upon a Judgment, &c. *New Nat. Br.* 267, 268,
&c. If a Man recovers Debt or Damages in Lon-
don, an Action brought there by the Custom of
the City, which lies not at Common Law; when
it is become a Debt by the Judgment, Action of
Debt lies in the Courts at Westminster upon this
Judgment. 2 *Danv.* 499. Action of Debt will lie
for Breach of a By-Law; or for Amercement in
a Court-Leet, &c. 1 *Lill.* 400. And Action of
Debt is sometimes grounded on an Act of Parlia-
ment; as upon the 2 *Ed. 6. cap.* 13. for not set-
ting out Tithes; the 27 *Eliz. cap.* 13. against the
Hundred for a Robbery, &c. For Debt to a Bi-
shop, Parson, &c. after his Death, his Execu-
tors shall have the Action: But of a Dean and
Chapter, Mayor and Commonalty, &c. the Suc-
cessors are intitled to the Action of Debt. *F. N. B.*
120. Action of Debt lieth on a Recognizance; so
upon a Statute-Merchant, it being in the Nature
of a Bond or Obligation: But it is otherwise in
Case of a Statute-Staple. 2 *Danv.* 497. In Debt
on single Bill, &c. the Defendant may plead
Payment (before the Action brought) in Bar:
And pending an Action, on Bond, &c. the De-
fendant may bring in Principal Interest and
Costs; and the Court shall give Judgment to di-
charge the Defendant. *Stat. 4 & 5 Ann. c.* 16.

Debt to the King. Under this Word *Debitum*,
all Things due to the King are comprehended;
as all Rents, Fines, Issues, Amerciaments, and
other Duties received or levied by the Sheriff; for
Debt in the larger Sense, signifies whatever any
Man owes. 2 *Inst.* 198. The King's Debt is to be
satisfied before that of a Subject; and until his
Debt be paid, he may protect the Debtor from the
Arrest of others. 1 *Inst.* 130. But by Statute,
notwithstanding the King's Protection, Creditors
may proceed to Judgment against his Debtor, with
a *cesset Executio* till the King's Debt be paid 25
Ed. 3. Lands, &c. of the King's Debtor and Ac-
countant, may be sold as well after his Death,
as in his Life-time: But if the Accountant or
Debtor to the King had a *Quietus* during his Life,
his Heir shall be discharged of the Debt. 27 *Eliz.*
cap. 3. By the Common Law, the King for his
Debt had Execution of the Body, Lands, and
Goods of the Debtor: But by *Magna Charta ca.* 8.
the King's Debt shall not be levied on Lands,
where the Goods and Chattles of the Debtor are
sufficient to levy the Debt; for in such Case, the
Sheriff ought not to extend the Lands and Tene-
ments of the King's Debtor, or of his Heir, &c.
2 *Inst.* 19. Also Pledges shall not be distrained,
when the Principal is sufficient: Though in both
Cases, it must be made appear to the Sheriff; in
the one, that there are Goods and Chattles e-
nough, and in the other, that the Sheriff may
levy the King's Debt on the Principal. *Ibid.* Sher-
iffs having receiv'd the King's Debts, upon their
next Account are to discharge the Debtors, on
Pain to forfeit treble Value; and the Sheriffs
are to give Tallies to the King's Debtors on Pay-
ment. *Stat. 3 Ed.* 1.

Debtors. By Statute 8 & 9 *W. 3. ca.* 18. Two
Thirds in Number and Value of Creditors might
make Compositions with Debtors, and bind all the
rest; making Oath how their Debts became due,
&c. But this Act was repealed by 9 & 10 *W. 3.*
And there have been several Statutes for dis-
charging poor Insolvent Debtors out of Prison,
where they have had no Estate or Effects to pay
their Creditors, &c. See *Prisoners*.

Deceit, (Deceptio) Is a subtle Trick or De-
vice, whereunto may be drawn all manner of
Craft and Collusion, used to deceive and defraud
another, by any Means whatsoever, which hath
no other or more proper Name than Deceit to di-
stinguish the Offence. *West. Symb. Sect.* 68. And
there is a Writ called *Breve Deceptione*, that lies
for one that receives Injury or Damage from
him that doth any Thing deceitfully in the Name
of another Person: Which Writ is either origi-
nal, or judicial. *Reg. Orig.* 112. *Old Nat. Br.* 50.
Deceit is an Offence at Common Law, and by Sta-
tute: And all Practices of defrauding or endea-
vouring to defraud another of his Right, are pu-
nishable by Fine and Imprisonment; and if for
Cheating, Pillory, &c. Serjeants, Counsellors,
Attornies and others, doing any Manner of De-
ceit, are to be imprisoned a Year and a Day, &c.
Stat. 3 Ed. 1. *cap.* 29. If a Fine be levied by De-
ceit; or if one recover Land by Deceit, the Fine,
and the Recovery, shall be void. 3 *Rep.* 77. And
if a Man be Attorney for another in a real Action
against the Demandant, and afterwards by
Covin between the Attorney and the Demandant,
the Attorney makes Default, by which the Land
is lost, the Tenant who lost the Land shall have
a Writ of Deceit against the Attorney. *F. N. B.* 96.
In a *Præcipe quod reddat*, if the Sheriff return the
Tenant summoned, where he was not summoned,
by which the Defendant loseth his Land by De-
fault at the Grand Cape returned; the Tenant shall
have a Writ of Deceit against him who recover'd,
and against the Sheriff for his False Return; and
by that Writ the Tenant shall be restored unto
his Land again: Also the Sheriff shall be punish-
ed for his Falsity. *Ibid.* 97. If any one forge
a Statute, &c. in my Name, and such a *Capias*
thereupon, for which I am arrested; I shall have
a Writ of Deceit against him that forged it, and
against him who sued forth the Writ of *Capias*,
&c. *Ibid.* And if a Person procure another to sue
an Action against me to trouble me, I shall have a
Writ of Deceit. There are many Frauds and De-
ceits provided against by Statute, relating to
Artificers, Bakers, Brewers, Vintners, false
Weights and Measures, &c. which are liable to
Penalties and Punishment in Proportion to the
Offence committed. And Writ of Deceit lies in
various Cases for not performing a Bargain; or
not selling good Commodities, &c. 1 *Inst.* 357.
See *Action on the Case*.

Decem Tales, Is when a full Jury doth not
appear at a Trial at Bar; then a Writ goes to
the Sheriff *Apponere Decem Tales*, &c. whereby a
supply is made of Jurymen to proceed in the
Trial.

Decies tantum, Is a Writ that lies against a
Furor, who hath taken Money of either Party for
giving his Verdict; so called, because it is to re-
cover ten Times as much as he took: And every
Person that will may bring this Writ and recover
the same, one Half whereof shall be to the Prose-
cutor, and the other to the King. This Writ al-

folies against *Embraceors* that procure such an Inquest; who shall be further punished by Imprisonment for a Year. *Reg. Orig.* 188. *F. N. B.* 171. *Stat.* 38 *Ed.* 3. *cap.* 13. But *Decies tantum* doth not lie against the Embraceor, if he embrace and take no Money; for he ought to take Money, and also Embrace. Yet it lies against the Jurors, although they do not give a Verdict, if they take Money; and so, 'tis said, if they give a true Verdict, *Decies tantum* lieth, if they take Money. *Dyer* 95. *New Nat. Br.* 380.

Decimation, (Decimatio) The punishing every tenth Soldier by Lot, was termed *Decimatio Legionis*: It also signifies Tithing, or Paying a tenth Part. There was a *Decimation* during the Time of the *Usurper* 1655. which will not easily be forgotten.

Deciners, Decenniers, or Doziners, (Decennarii) Derived from the *Fr. Dizeine, i. e. Decas, Ten*; signify in our ancient Law; such as were wont to have the Oversight of the *Friburghs*, or Views of *Frank-Pledge*, for the Maintenance of the King's Peace; and the Limits or Compasses of their Jurisdiction, being the Circuit of the *Frank-Pledge*, was called *Decenna*, because it commonly consisted of ten Households; as every Person bound for himself and his Neighbours to keep the Peace, was stiled *Decennier*. *Bract. lib.* 3. *Tract.* 2. *ca.* 15. These seemed to have large Authority in the Time of the *Saxons*, taking Knowledge of Causes within their Circuits, and redressing Wrongs by way of Judgment, and compelling Men thereunto, as appears in the Laws of *K. Edw. the Confessor*, published by *Lambard*, *Numb.* 32. But of late Times, *Decennier* is not used for the chief Man of a *Dozein*; but he that is sworn to the King's Peace, and by Oath of Loyalty to his Prince, is settled in the Society of a *Dozein*. A *Dozein* seemed to extend so far as a *Leet* extendeth; because in *Leets* the Oath of Loyalty is administered by the Steward, and taken by all such as are twelve Years old, and upwards, dwelling within the Precinct of the *Leet* where they are sworn. *F. N. B.* 161. There are now no other *Dozeins* but *Leets*; and there is a great Diversity between the ancient and these modern Times, in this Point of Law and Government. 2 *Inst.* 73.

Declaration, (Declaratio, Narratio) Is a Shewing in Writing the Cause of Complaint of the Plaintiff in an Action against the Defendant, wherein the Party is supposed to have received some Wrong. And this ought to be plain and certain, because it impeacheth the Defendant, and compels him to answer hereunto: It must set forth the Plaintiff's and Defendant's Names, the Nature and Cause of the Action, the Manner thereof Time and Place, and the Damage received. 1 *Inst.* 17. A Count or Declaration ought to contain *Demonstration, Declaration, and Conclusion*: In *Demonstration* are included three Things; *Quis queritur, contra quem, & pro qua Causa*: In *Declaration* there ought to be comprised, *Quomodo inter partes Actio accrevit, quando & qua die, anno & loco, & cui dabitur*: And in the Conclusion should be averred and offered to prove the Suit and Damage, &c. sustained. *Terms de Ley* 222. A Declaration is an Exposition of the Writ, with the Addition of Time, Circumstances, &c. and must be true and clear, for the Court is not to take Things in it by Implication: But it is not necessary to set forth Matters of Fact, as in a Bill in Chancery, &c. because they are to be tried by a

Jury. *Wood's Inst.* 582. A Declaration in English is not good: For it is required to be in Latin; and false Latin will not hurt a Declaration. Also where Words are significant, and have the Countenance of Latin, by adding an Anglice to them, they will be good. 10 *Rep.* 133. In Action of Debt, upon a Bond, the Plaintiff in his Declaration must alledge a Place where the Bond was made, because the Jury should come from that Place; and if this be omitted, the Declaration is ill. *Dyer* 15, 39. 1 *Nelf. Abr.* 619. In Action of Covenant, no more of the Deed need be mentioned in the Declaration, than the Covenant where the Breach is assigned: And if a Defendant pleads *Non est factum* to a Deed, he allows a Covenant therein to be broken, as laid in the Declaration, and makes the Declaration good, though the Breach be too generally assigned. 2 *Cro.* 369. In Slander there should be no more Inducement than is necessary: The like is to be observed in Actions upon general Statutes, concluding *contra formam Statuti, &c.* but in *Declarations* for Words, the Words spoke are to be laid expressly and positively; not with an *hac verba vel consimilia*, nor with a *Quorum tenor sequitur, &c.* *Cro. Eliz.* 645, 857. 5 *Mod.* 72. And where the Plaintiff declares on, and recites a Statute, he must recite it truly, and 'tis erroneous to misrecite it; though as to the Substance of the Declaration, the Plaintiff might have omitted to recite it all. 1 *Nelf.* 616. In Action on the Case upon *Assumpsit*, the Plaintiff is to declare upon the whole Promise made, and not on a Part of it; or on Trial he will be nonsuited. 1 *Danv. Abr.* 266, &c. If one declare upon an Obligation, with a *hic in Curia Probat*, he must on Oyer pray'd of it, shew the Obligation, or the Declaration will not be good. And a Plaintiff declaring as Executor or Administrator, ought to set forth the Probate of the Will, and Letters of Administration granted, with a *Profert in Curia*; or the Declaration will be naught. 2 *Lill. Abr.* 412. Where there are two Counts in a Declaration, for Things of the same Kind, and not averred to be different, it is not good; for the Defendant is twice charged, for the same Thing: But on Arrest of Judgment in such a Case, it was adjudged good after Verdict, and the Court will intend them to be the same. 1 *Salk.* 213. If a Declaration is bad, and the Defendant demurs, the Plaintiff may set it right in a second Action; but if the Defendant do not take Advantage of it, but pleads in Bar, and the Plaintiff proceeds to Issue thereon, if the Right is found for the Defendant, the Plaintiff is estopp'd by the Verdict from bringing a new Action: And so it is if he had demurred to the Plea in Bar. 1 *Mod.* 20, 207. Where a Declaration is defective, it is sometimes aided by the Statutes of *Jeofails, &c.* but they help only Matters of Form, not Matters of Substance; for Uncertainty in a Declaration, which is Matter of Substance, is not aided by Statute after Verdict, as in Case of *Trespass* for taking Fish, where their Number or Nature are not set forth. 5 *Rep.* 35. The Plaintiff after the Return of the Writ, hath two Terms to exhibit his Declaration against the Defendant, that Term being reckoned one wherein the Writ was returnable: And if no Declaration comes in before the Rising of the Court, the last Day of the second Term, on a Rule of Court given, the Plaintiff shall be nonsuited, and the Defendant sign a *Non Pros.* whereupon he shall have Costs: If the Defendant appears in Person, the Plaintiff is to declare

clare in three Days after Appearance in B. R. And in other Courts which fit not *De Die in Diem*, at the next Court, by Stat. 8 Eliz. cap. 2. The Plaintiff's Attorney is to file his Warrant the Term wherein he declares. Stat. 4 & 5 Ann. If one be in Custody of the Marshal of the Court, any Plaintiff may file a Declaration against him, and he is obliged to plead thereto; it is the same when he is out upon Bail, any other may declare against him: For when a Man is in Custody of the Law, he is bound to answer every one's Suit; and on *Hab. Corp.* a Stranger to the Writ by which the Prisoner is arrested, may take Notice of the Prisoner when he is turned over to the Marshal, though at the Suit of another, and declare against him, without taking out Process. 1 Lill. 413. By Statute, when a Defendant is taken or charged in Custody, upon any Writ out of the Courts at Westminster, or imprisoned for Want of Sureties for Appearance, the Plaintiff must declare against him before the End of the next Term, and cause a Copy to be deliver'd to the Prisoner or Gaoler; to which Declaration, the Prisoner is to plead, or the Plaintiff shall have Judgment. 4 & 5 W. & M. cap. 21. But if the Declaration be not enter'd, or left in the Office, before the End of the next Term; and Affidavit made thereof, and filed, before the End of twenty Days after, &c. the Prisoner, on entering his Appearance, shall be discharged by *Superseas*. 8 & 9 W. 3. If a Person is in Custody of the Marshal, &c. and a Plaintiff would charge him either with an Action, or Execution, (if in Term-time) he must file a Bill against him, and deliver a Declaration to the Turnkey, &c. and he shall lie in Custody two Terms, &c. but if in Vacation, the Plaintiff is to go to the Marshal's Book in the Office, and make an Entry quod Defenden. remaneat in Custodia ad festum A. B. &c. 1 Salk. 213. All Declarations are to be filed; for before filed, they are not of Record to warrant a Judgment: And if the Plaintiff's Attorney, cannot find the Defendant's Attorney to deliver him the Declaration, filing it in the Office, will be a good Delivery; and if the Defendant do not plead, Judgment shall be had against him. Pasch. 13 Car. B. R. On filing Declarations, Copies thereof are served on the Defendants, or their Attornies, &c. And by an Order of all the Judges, Anno 12 W. 3. the Plaintiff's Attorney is not obliged to deliver the Defendant's Attorney the original Declaration; but instead of it, is to deliver, a true Copy of the Declaration; upon Delivery or Tender whereof, the Defendant's Attorney shall pay for such Copy after the Rate of 4d. per Sheet, &c. and if any Person refuse to pay for the Copy tender'd, the said Copy is to be left in the Office, with the Clerk that keeps the Files of Declarations, and thereupon the Plaintiff's Attorney giving Rules to plead, may for Want of a Plea sign Judgment; and before any Plea shall be received, the Defendant's Attorney is to pay for the Copy of the Declaration. 1 Lill. 417. A Plaintiff's Attorney, may amend his Declaration in B. R. in Matter of Form, after the general Issue pleaded, before Entry thereof, without paying Costs, or giving Imparlance: But if he amend in Substance, he is to pay Costs, or give Imparlance: And if he amend in Substance, after a special Plea pleaded, though he would give Imparlance, he must pay Costs. 1 Lill. Abr. 409. A Mistake in a Declaration the Plaintiff may amend in C. B. on Notice

before the Effoin-Day, and the Defendant shall have no Advantage of it: Also before Demurrer, or Issue joined, the Plaintiff may amend paying 13s. 4d. Costs; and force the Defendant to plead presently, or give him a further Imparlance without paying Costs: But after Demurrer, or Issue joined, and when the Pleadings are entered on the Roll, the Plaintiff cannot amend his Declaration; but is to enter a Discontinuance, and proceed de novo. *Practif. Attorn. Edit.* 1. p. 147. On a *Latitat* in B. R. you may declare against the Defendant in as many Actions as you think fit; but you must have one Original, for every Action in C. B. The Declaration is grounded upon the Writ in the Common Pleas, and Bill of Middlesex in the King's Bench: And in C. B. it is usual to declare in Actions on *Quare Clausum fregit*, as is practised on a *Latitat* in B. R. 2 Ventr. 259. One may not regularly declare in B. R. against a Person that is not in *Custodia Mareschalli*, or hath not filed Bail; unless he be a privileged Person. 21 Car. B. R. If a Declaration begins, *Queritur de Placito Transgr. pro eo quod, &c.* it may be a Declaration in Case, or it will serve for either Trespas, or Case. Cro. Car. 325. The Plaintiff's Attorney is not obliged to set his Hand to his Declaration; for the Defendant's Attorney must receive it without, if he knows him to be the Attorney in the Cause.

Form of a Declaration in Debt in B. R.

London. ff. **W**illielmus B. Queritur de Georgio C. alias dict. Georgio C. de London. Mercat. in Custod. Mar. Maresc. Dom. Reg. coram ipso Rege existen. de Placito quod Reddat ei Quinquagint. Libr. legalis Monet. Magnæ Britan. quas ei debet & injuste detinet pro eo videlt. quod cum præd. Georgius die, &c. Anno Regn. Dom. Georgii nunc Regis Magnæ Britan. &c. Septimo apud London. præd. in Parochia Beate Mariæ de Arcubus in Ward. de Cheape per quoddam scriptum suum Obligator. sigillo ipsius Georgii sigillat. Cur' que dict. Dom. Regis nunc hic ostens. cujus Dat. est eisdem Die & Anno cogn. se teneri & firmiter obligari præfat. Willielmo in præd. Quinquagint. libr. solvend. eidem Willielmo cum inde postea requisit. esset, præd. tamen Georg. licet sæpius requisit. &c. præd. Quinquagint. libr. præfat. Willielmo nondum solvit sed ill. ei solver. hucusque omnino contradixit & adhuc contradicit ad Dampnum ipsius Willielmi Viginti Librar. Et inde produc. festam, &c.

Decretals, (*Decretales*) Are a Volume or Books of the Canon Law, so called, containing the Decrees of sundry Popes; or a Digest of the Canons of all the Councils that pertained to one Matter under one Head. See Canon Law.

Dedhana, *Ded-bane*, Sax. An actual Homicide, or Manslaughter. Leg. H. 1. c. 85.

Dedi, Is a Warranty in Law; as if it be said in a Deed or Conveyance, Hath Given, &c. to A. B. it is a Warranty to him and his Heirs. Co. Lit. 304.

Dedication Day, (*Festum Dedicationis*) The Feast of Dedication of Churches, or rather the Feast Day of the Saint and Patron of a Church; which was celebrated not only by the Inhabitants of the Place, but by those of all the neighbouring Villages, who usually came thither; and such Assemblies were allowed as lawful: It was usual for the People to feast and drink on those Days; and in many Parts of England, they still meet every Year

Year in Villages for this Purpose, which Days are called *Feasts or Wakes*.

Dedimus Potestatem, Is a Writ or Commission given to one or more private Persons, for the speeding some Act appertaining to a Judge, or some Court: And it is granted most commonly upon Suggestion, that the Party who is to do something before a Judge, or in Court, is so weak that he cannot travel; as where a Person lives in the Country, to take an Answer in *Chancery*; to examine Witnesses in a Cause depending in that Court; to levy a Fine in the *Common Pleas*, &c. *F. N. B.*

Dedimus Potestatem de Attoznato faciundo. As the Words of Writs do command the Defendant to appear, &c. anciently the Judges would not suffer the Parties to make Attornies in any Action or Suit, without the King's Writ of *Dedimus Potestatem*, to receive their Attornies: But now by Statutes, the Plaintiff or Defendant may make Attornies in Suits without such Writs. *New Nat. Br.* 55, 56.

Deed, (*Factum*) Is an Instrument in Parchment or Paper, but chiefly in Parchment, comprehending a Contract or Bargain, between Party and Party; or an Agreement of the Parties thereto, for the Matters therein contained: And it consists of three principal Points, *Writing, Sealing, and Delivery*; Writing, to express the Contents; Sealing, to testify the Consent of the Parties; and Delivery, to make it binding and perfect. *Terms de Ley*. Of *Deeds* there are two Sorts, *Deeds indented*, and *Deeds Poll*; which Names principally arise from the Form of them, the one being cut in and out at Top dentwise, and the other plain: And a *Deed indented* is defined to be a *Deed* consisting of two Parts, or more, for there are *Deeds Tripartite, Quadripartite, Sextipartite*, &c. in which it is expressed, that the Parties have to every Part thereof interchangeably set their several Seals; and for that it contains more Parts than one, each Part is *indented*, or cut one of them into the other, that thereby it may appear they belong to one Business or Contract. *West. Symb. Sect.* 47. A *Deed Poll* is a *Deed* testifying that only one of the Parties to the Agreement hath put his Seal to the same, where such Party is the Principal or only Person, whose Consent or Act is necessary to the *Deed*: And it is therefore a plain *Deed*, without indenting; and is used when the Vendor, for Example, only seals, and there is no need of the Vendee's Sealing a Counterpart, because the Nature of the Contract is such, as it requires no Covenant from the Vendee, &c. *Co. Lit.* 55. All *Deeds* are either indented, or Poll: The several Parts of *Deeds* by Indenture, are belonging to the Feoffor, Grantor, or Lessor, who have one; the Feoffee, Grantee, or Lessee, who have another; and some other Persons, as Trustees, &c. a Third, &c. and the *Deed Poll*, which is single, and of but one Part, is deliver'd to the Feoffee, or Grantee, &c. There are several Kinds of *Deeds*, by which Lands pass from one Man to another; as *Deeds of Bargain and Sale, Feoffment, Lease and Release, Indentures to lead the Uses of Fines and Recoveries, Settlements, Leases, Assignments, Exchanges, Mortgages*, &c. and *Deeds* have several formal Parts, viz. *The Premises, Habendum, Reddendum, Condition, Covenants, Warranty, Date, Sealing*, &c. the *Premises* set forth the proper Names of the Parties, with their Additions of Place and Quality, and comprehends the Certainty of the Lands

or Tenements to be convey'd, with the Consideration of the *Deed*, as Money, natural Love, &c. the *Premises* also contain the *Exceptions*, if there be any out of the Land granted; as of Timber, Mines, &c. and in many *Deeds* there may be an Occasion of a *Recital* of former *Deeds* in the *Premises*, particularly in Assignments of Leases, Mortgages, &c. the *Habendum* names the Certainty of the Estate granted, as for what Time the Grantee is to have it, and to what Use: And it sometimes qualifies the Estate, so that the general Implication of it, which by Construction of Law passes in the *Premises*, by the *Habendum* may be controlled; but not if the Estate is express'd in the *Premises*. Likewise an *Habendum* may sometimes explain the *Premises*, to prevent Wrong; and sometimes the *Premises* are thereby enlarged. A Freehold cannot be granted by *Deed* with *Habendum* at a Day to come: And a *Deed* or Lease, *Habendum* from henceforth, includes the Day on which it was dated: But *Habendum à Die Datus* excludes it. The *Reddendum* is that Clause in the *Deed*, which reserveth some new Thing to the Grantor; as Rent, Suit, Service, &c. and is usually made by the Words *Yielding, Paying, Doing*, &c. A Lessor cannot reserve to any but himself, his Heirs, &c. nor can he reserve to himself Parcel of the annual Profits, as the Herbage of the Land, &c. for that would be repugnant to the Grant, it being a Part thereof. *Conditions and Covenants* in *Deeds*, are for the Holding, or not holding of the Estate granted on Performance of some Act: And a Condition relating to a real Estate, is a Quality annexed by him that hath the Estate, Interest or Right in the same, whereby the Estate granted may be defeated, enlarged, or created, upon an uncertain Event. *Conditions* are express'd by these Words, viz. upon Condition, provided, so that, &c. And provided always, and it is covenanted, &c. is a Condition, by Force of the *Proviso*, and a Covenant by Virtue of the other Words; tho' sometimes a *Proviso* shall amount to a *Covenant*, and sometimes be taken for a *Limitation, Exception, Reservation, Explanation*, &c. The *Warranty* in *Deeds* is to secure the Estate to the Grantee and his Heirs, &c. and is a *Covenant* real, annexed to the Lands granted, by which the Grantor and his Heirs are bound to warrant the same to the Grantee and his Heirs, and that they shall quietly hold and enjoy it; or upon *Voucher*, &c. the Grantor shall yield other Lands, to the Value of what shall be evicted, &c. Where a Feoffor grants away all his Estate in the Land, and is not bound to warrant the Title, but the Feoffee is to defend it at his Peril; the Feoffee shall have all the *Deeds*, as Incidents to the Land, although not granted in express Words: But where the Feoffor warrants the Land, it is otherwise, the Feoffor shall have them to defend the Title; and the Feoffee must trust to his Warranty, and have only such *Deeds* as concern the Possession, &c. It hath been adjudged, that what is written in a *Deed* after *In Witness whereof*, &c. is as well Part of the *Deed*, as what is written before. *1 Inst.* 6, 47, 201, 365. *Plowd.* 152. *Wood's Inst.* 224, 225. &c. *1 Nels. Abr.* 624, &c. *Deeds* of Bargain and Sale are to be enrolled by Stat. 27 Hen. 8. And all *Deeds* are to be registered in the Counties of York, and Middlesex. Stat. 2 & 6 & 7 Ann. A *Deed* may be good without all the orderly and formal Parts; but without *Delivery* by the Party himself, or his Attorney lawfully au-

authorized, to the Party to whom made, or some other to his Use, it is no *Deed*: And the Delivery may be either absolute, or on Condition. 1 *Inst.* 35. 2 *Rep.* 5. If a *Deed* sealed lieth on the Table, and the Grantor saith to the Grantee, *Take that as my Deed, or this will serve, &c.* it is a good Delivery: But if it be thus left when sealed, &c. and the Party to whom made takes it up, this is no Delivery, without some Words. Thowhere Parties have come for that Purpose, and done every Thing but Delivery, it has been adjudged a good Delivery in Law. *Cro. El.* 7. 1 *Leon.* 140. A *Deed* sealed and delivered, 'tis said may be good without signing; for the Seal is the essential Part of the *Deed*: But 'tis usual to have *Deeds* signed; and there must be Witnesses to the Sealing and Delivery, who are to indorse or underwrite their Names thereon. 1 *Inst.* 7. 10 *Rep.* 93. If a Writing is not sealed, it cannot be a *Deed*: And if the Print of the Seal be utterly defaced, the *Deed* is insufficient, so that it cannot be pleaded; but it may be given in Evidence. 3 *Inst.* 169. 5 *Rep.* 23. If a *Deed* be read false to an illiterate Person, tho' he sign, seal, and deliver it, it shall not be his *Deed*, to bind him: But if he does not require the *Deed* to be read, and seal and deliver it, he is bound by the same. 2 *Rep.* 3. 2 *Roll. Abr.* 28. In *Deeds* the *Consideration* is a principal Thing to give them Effect: And the Foundation of *Deeds* ought always to be honest. *False Latin*, or *false English*, will not make a *Deed* void: But *Rasure* or *Interlineation* in a material Part, will render a *Deed* void, unless some *Memorandum* be made thereof on the Back of the *Deed*, testifying its being done before Sealing. 1 *Roll. Rep.* 40. If Words are blotted out in a *Deed*, by a Grantee or Lessee himself, although it be not in a Place material, it will make the *Deed* void. *Dyer* 261. And where an Estate cannot have its Essence without a *Deed*, there if the *Deed* is rased in any material Part, after the Delivery, it makes the Estate void: But if the Estate may have Essence without a *Deed*, then notwithstanding it is created by *Deed*, and that *Deed* is rased, it shall not destroy the Estate, but the *Deed*. 1 *Nelf. Abr.* 625. Where a Chose in Action is created by *Deed*, the Destruction of such *Deed* is the Destruction of the Duty it self; as in Case of a Bond, Bill, &c. but it is not so, where an Estate or Interest is created by a *Deed*. 3 *Salk.* 120. *Deeds*, if fraudulently made; when got by the *Corrupt Agreement*, as on usurious Contract; and when made by *Force or Duress*, &c. are void: So they are for Uncertainty; and by Reason of Infancy, Coverture, or other Disability in the Makers, &c. 2 *Roll. Abr.* 28. 1 *Inst.* 253. 11 *Rep.* 27. If all the Parts of a *Deed* may by Law stand together, no one Part of the same shall make the whole void. And if a *Deed* by any Construction of Law, can be construed to have legal Operation, the Law will not make it utterly void, though it may not operate according to the Purport of the *Deed*: Also the Law will transpose and marshal Clauses in *Deeds*, to come at their true Meaning; but not to confound them. Where the Words of a *Deed* may have a double Intendment, one standing with Law, and the other contrary to it; the Intendment that standeth with Law shall be taken. 1 *Lill. Abr.* 421. 1 *Inst.* 42. 217. There are four Grounds for the Exposition of *Deeds*. 1. That they may be beneficial to the Taker. 2. That where the Words may be employ'd to some Intent, they shall never be void. 3. That the Words be con-

strued according to the Intention of the Parties, and not otherwise; and the Intent of the Parties shall take Effect, if it may possibly stand with Law. 4. That they are to be consonant to the Rules of the Law. And *Deeds* are to have a reasonable Exposition, without Injury against the Grantor, to the greatest Advantage of the Grantee. They are to be expounded upon the Whole, so that all the Parts shall stand: And if the second Part contradicts the first, such second Part shall be void; but if the latter Part expounds or explains the former, which it may do, both of them shall stand together. *Plowd.* 160. *Raym.* 142. 6 *Rep.* 36. 1 *Inst.* 313. 1 *Roll. Rep.* 375. The first *Deed* of a Person, and last Will, stand in Force. In *Deeds* indented, all Parties are estopped, or concluded, so say any Thing against what is contained in the *Deed*. 1 *Inst.* 45. And where a *Deed* is by Indenture between Parties, none can have an Action upon that *Deed*, but he who is a Party to it; but where 'tis a *Deed* Poll, one may covenant with another who is not a Party to it, to do certain Acts, for the Non-performance whereof he may bring an Action. 2 *Lev.* 74. Where a Man justifies Title under a *Deed*, he must produce the *Deed*. 10 *Rep.* 88. If a *Deed* is alledged in Pleading, it must be shewed to the Court, that the Court may judge whether there are sufficient Words to make a good Contract: And when it is shewn to the Court, the *Deed* shall remain in Court all the Term, in the Hands of the *Custos Brevium*; but at the End of the Term, it shall be delivered to the Party. If the *Deed* is denied, it must remain in Court till the Plea is determined. *Wood* 235. A *Deed* set forth with a *Proferat hic in Curia*, remains in Court in Judgment of Law all that Term; and any Person may during that Time have Benefit by it, though he hath it not ready to shew. 5 *Rep.* 74. 1 *Nelf.* 625. *Deeds* sealed and delivered cannot be pleaded, &c. if not stamp'd according to Law. 5 & 6 *W. & M. cap.* 21. Every *Deed* that is pleaded, shall be intended to be a *Deed* Poll; except it be alledged to be indented: And if it begins, *This Indenture made, &c.* though it be not indented, it may be a good *Deed* Poll. 5 *Rep.* 20. A *Deed* Poll commonly begins thus: *To all People to whom these Presents shall come, &c. Or Know all Men by these Presents, &c. See Accomplish'd Conveyance.* Vol. 1. Edit. 2.

Deemsters, From the Sax. *Dema*, a Judge or Umpire, are a Kind of Judges in the *Ile of Man*, who without Process, or any Charge to the Parties decide all Controversies in that Island; and they are chosen from among themselves, *Camd. Brit.*

Deer-fold, A Park or Deer-fold; Sax. *Deor, Fera, Fald*, and *Stabulum*. *Cowel.*

Deer-hays, Are Engines, or great Nets made of Cords, to catch Deer; and no Person not having a Park, &c. of his own, shall keep any of these Nets, under the Penalty of 40*s.* a Month. *Stat.* 19 *H.* 7. *cap.* 11.

Deer-stealers. There are several Laws, for the Punishment of *Deer-stealers*; as by 3 *Jac.* 1. *cap.* 13. None shall kill or chase any *Deer, &c.* in any Park, or inclos'd Ground, on Pain of suffering three Months Imprisonment, and to pay treble Damages: And Persons not having 40*l.* per ann. in Lands, or worth 200*l.* in Goods, &c. are not to use any Gun, Bow, Dog, &c. to kill *Deer*; and their Guns, &c. may be taken from them. By the 13 *Car.* 2. *cap.* 10. It is ordained that

that whoever shall course, kill, hunt, or take away any Red or Fallow *Deer*, from any Park, &c. shall be liable to a Penalty of 20*l.* and the Stat. 3 & 4 M. & M. c. 10. inflicts a Penalty of 20*l.* for unlawful Hunting and Courfing of any *Deer*; and 30*l.* for Taking, Wounding, or Killing, to be levied by Distress; which is to be divided into three Parts; one whereof to go to the Informer, another to the Poor, and the other to the Owner of the *Deer*; and if no Distress can be had, the Offenders shall be imprison'd a Year, and set on the Pillory, &c. Pulling down Pales or Walls of Parks, &c. where *Deer* are inclosed, by this Act is punished within three Months Imprisonment: And the Offences are determined by Justices of Peace of the County where committed: Also by 5 Geo. c. 15 & 28. Persons guilty of *Deer-stealing*, may be indicted thereof before a Judge of Gaol-Delivery, and in that Case, be transported to the Plantations for seven Years: And Persons otherwise convicted before they are discharged, are to enter into Bond of 50*l.* Penalty to the Person injured for future good Behaviour. Keepers of Parks, &c. killing *Deer* without Consent of the Owners, incur a Forfeiture of 50*l.* and others pulling down Walls and Fences of Parks, are liable to the Penalties inflicted by 3 & 4 W. & M. for killing of *Deer*. Thus stood our Laws till the great Insolencies of the *Waltham Blacks* made a further Provision necessary; when by Statute 9 Geo. ca. 22. it was enacted, That if any Persons armed with Swords, Fire-Arms, or other Weapons, and having their Faces black'd, or being otherwise disguised, shall appear in any Forest, Park, &c. and unlawfully hunt or kill any *Deer*; rob any Warren, &c. or shall set Fire to any House, or shoot at any Person in any Dwelling House, or other Place; or send any Letter, without a Name subscribed, or with a fictitious Name, demanding Money of any Person, &c. they shall be guilty of Felony without Benefit of Clergy: And 50*l.* Reward is given by this Statute, for the Apprehension of the Offenders. Before the *Charta de Foresta* 9 Hen. 3. to hunt the King's *Deer*, in any Forest or Park was Felony; but that Charter ordained that none should lose either Life or Member, for killing the King's *Deer*. 2 Roll. Rep. 120. So that we may observe there is some Agreement between our ancient Laws and modern Statutes. A Person was convicted upon the Statute of *Deer-stealing*, and it appearing by the Conviction, that the *Deer* were not in a Park inclosed, &c. upon Motion in B. R. the Conviction was quash'd. Mich. 9 W. 3. Mod. Inst. 161. A Conviction of *Deer-stealing* may be removed by *Certiorari* into B. R. but the Party doing it, is to give Bond of 60*l.* Penalty to the Justice of Peace before whom convicted, to pay the Forfeiture due by the Conviction, or render his Person in a Month after the Conviction confirmed. 5 Geo.

Form of an Indictment for Hunting and Taking
Deer.

Midd. ff. J U R. &c. qd' A. B. de, &c. in Com. prædict. Yeoman, die & Anno, &c. circa horam duodecimam in nocte ejusdem diei aggregatis sibi diversis aliis malefactoribus & pacis Dom. Regis perturbatoribus ignotis Vi & Armis videlt. Faculis ferro munitis pugionibus & Cultellis & aliis Armis Clausum & Parcum cujusdam T. D. Armig. apud, &c. in Com. præd. illicite fregerunt & intrave-

runt & Damnis ipsius T. D. adtunc & ibidem Depascentes & cubantes in Parco præd. cum duobus Canibus Leporariis (Anglice Greyhounds) venatus est & cum reti vocat. a Buckstal quod præd. A. B. in Parco præd. adtunc habuit & Canibus præd. duas Damas adtunc & ibid. cepit occid. & o aspravit contra pacem, &c. ad grave Damnum ipsius T. D. Et contra formam Statuti, &c.

De essendo quietum de Tolonio, Is a Writ that lies for those who are by Privilege free from the Payment of Toll; on their being molested therein. F. N. B. 226.

De Errensis militum, A Writ commanding the Sheriff to levy the Expences of a Knight of the Shire, being 4*s.* per Diem, by Statute: And there is a like Writ *De Expensis Civium & Burgensium*, to levy 2*s.* per Diem, for the Expences of every Citizen and Burges of Parliament. Stat. 23 H. 6. c. 11. 4 Inst. 46.

De facto, Signifies a Thing actually done; that is done indeed. A King *de facto* is one that is in actual Possession of a Crown, and hath no lawful Right to the same; in which Sense, it is opposed to a King *de Jure*, who hath Right to a Crown, but is out of Possession. 3 Inst. 7.

Default, (Fr. *Defaut*) Is commonly taken for Non-Appearance in Court, at a Day assigned; tho' it extends to any Omission of that which we ought to do. *Bract. lib. 5. Tract. 3. Co. Lit. 259.* If a Plaintiff makes Default in Appearance in a Trial at Law, he will be nonsuited; and where a Defendant makes Default, Judgment shall be had against him by Default. In Action of Debt upon Bond, if the Defendant pleads a Release, and Issue is thereupon joined, if at the Trial the Defendant makes Default, the Plaintiff may pray Judgment by Default; because by the Plea the Duty is confessed, and therefore no Inquest need be taken by Default: But if the Defendant plead *Non est factum*, by that Plea the Duty is denied, and therefore if he make Default, Inquest must be taken by Default. In Trespass, if the Defendant plead a Release, and then make Default, the Plaintiff cannot pray Judgment by Default; but an Inquest is to be taken, because Damages are uncertain. 1 Salk. 216. Where Tenant in Tail, Tenant in Dower, by the Curtesy, or for Life, lose their Lands by Default, in a *Præcipe quod Reddat* brought against them; they are to have Remedy by the Writ *Quod ei deforceat*, &c. Stat. Westm. 2. cap. 4. And in a *Quod ei deforceat*, where the Tenant joined Issue upon the meer Right, and the Jury appearing, the Demandant made Default; it was adjudged, that in such Case final Judgment shall be given: But if the Tenant had made Default, it would be otherwise, for then a *Petit Cape* must issue against him, because it may so happen that he may save his Default. 1 Nels. Abr. 627. By Default of a Defendant, he is said to be generally out of Court to all Purposes, but only that Judgment may be given against him: And no Judgment can be afterwards given for the Defendant. *Ibid.* 628. When two are to recover a personal Thing, the Default of one is the Default of the other: *Contra*, where they are to discharge themselves of a Personality; there the Default of the one is not the Default of the other. 6 Rep. 25. 1 Lill. Abr. 425. In an Action against two, if the Process be determined against one, and the other appears; he shall be put to answer, notwithstanding the Default of his Companion. 2 Danv. Abr. 480. Where the

the Baron is to have a Corporal Punishment for a *Default*, there the *Default* of the Wife shall not be the *Default* of the Husband: But otherwise it is where the Husband is not to have any Corporal Punishment by the *Default*. *Ibid.* 472, 473. If a Defendant imparl to another Day in the same Term, and make *Default* at the Day, this is a Departure in Despite of the Court: And when the Defendant after Appearance, and being present in Court, upon Demand makes Departure, it is in Despite of the Court, and the Entry is, *Et præd. Tenens, licet solemniter exactus, non revenit, sed in contemptum Curia re essit, &c. Defaultum fecit, &c. Co. Lit. 139.* Before a Verdict is taken by *Default*, the Cryer of the Court calls the Defendant three Times, and if he doth not appear, the Plaintiff's Counsel prays, that the Inquest may be taken by *Default*: He is called three Times, to shew if he hath any Challenge to the Jurors; and if he doth not appear upon the Cryer's Calling, then the *Caplatur per Default* is indorsed on the Back of the Panel. 1 *Lill. 425.* *Default*, and Saver of *Default*, made a large Title in the old Books of Law.

Default of Jurors. If Jurors made *Default* in their Appearance for trying of Causes, they shall lose and forfeit *Issues*, unless they have any reasonable Excuse proved by Witnesses, in which Case the Justices may discharge the *Issues* for *Default*. Stat. 35 H. 8. c. 6.

Defamation, (Defamatio) Is when a Person speaks scandalous Words of another, or of a Magistrate, &c. whereby they are injur'd in their Reputation; for which the Party offending, shall be punish'd according to the Nature and Quality of his Offence; sometimes by Action on the Case at Common Law, sometimes by Statute, and sometimes by the Ecclesiastical Laws. But *Defamation* is properly punishable by the Spiritual Courts; in which Courts, it ought to have three Incidents, *viz.* First, It is to concern Matter Spiritual, and determinable in the Ecclesiastical Courts; as for calling a Man Heretick, Schismatick, Adulterer, Fornicator, &c. Secondly, That it be a Matter Spiritual only; for if the *Defamation* concern any Thing determinable at the Common Law, the Ecclesiastical Judges shall not have Conusance thereof. And Thirdly, Although such *Defamation* be merely Spiritual, yet he that is defamed cannot sue for Damages in the Ecclesiastical Courts; but the Suit ought to be only for Punishment of the Fault, by way of Penance. *Terms de Ley 224, 225.* See *Action of the Case for Words*, also *Prohibition*.

Defeasance, (from the Fr. Defaire, to defeat) Signifies a Condition relating to a Deed, which being perform'd, the Deed is defeated, and render'd void, as if it never had been made. The Difference between a common Condition and a *Defeasance* is, that the Condition is annex'd to, or inserted in the Deed; and a *Defeasance* is usually a Deed by it self concluded and agreed on between the Parties, and having Relation to another Deed. To make a good *Defeasance*, it must be 1. by Deed, for there cannot be a *Defeasance* of a Deed without Deed; and a Writing under Hand doth not imply it to be a Deed. 2. It must recite the Deed it relates to, or at least the most material Part thereof. 3. It is to be made between the same Persons that were Parties to the first Deed. 4. It must be made at the Time, or after the first Deed, and not before. 5. It ought to be made of a Thing *defeasible*.

1 *Inst. 236.* 3 *Lev. 234.* Inheritances executed by Livery, such as Estates in Fee, for Life, &c. cannot be subject to *Defeasance* afterwards, but at the Time of making the Feoffment, &c. only: But executory Inheritances, such as Leafes for Years, Rents, Annuities, Conditions, Covenants, &c. may be defeated by *Defeasance* made after the Things granted: And it is the same of Obligations, Recognizances, Statutes, Judgments, &c. which are most commonly the Subject of *Defeasance*, and usually made after the Deed where-to they have Relation. *Plowd. 137.* 1 *Rep. 113.* If a Man acknowledge a Statute to another, and enters into a *Defeasance*, that if his Lands in the County of, &c. should be extended, the Statute should be void; the *Defeasance* will be good, and not repugnant, because it is by another Deed: But the Condition of a Bond not to sue the Obligation, is void for Repugnancy, being in the same Deed. *Moor 1035.* A Statute, &c. may be *defeasanced* on Condition of performing a Will, and paying Legacies, &c. to other Persons. 1 *Cro. 837.* If a *Defeasance* of a Statute be made, and after another *Defeasance* is made by the same Parties, the first *Defeasance* becomes void thereby, and the second only is in Force, as in a Will. 2 *Danv. Abr. 481.* Where a Statute is acknowledged to two Persons, and one of them makes a *Defeasance*, it is said to be a good Discharge. *Ibid. 480.* If Execution be sued out before the Time in a *Defeasance* is past, it shall be set aside in B. R. 1 *Lill. 426.* In a *Defeasance* of a Deed of Lands, the Person to whom made, covenants that on Payment of such a Sum, on such a Day, he will transfer and reconvey the Estate back again; and that the Maker shall enjoy till *Default*, &c. If of a *Judgment*, he covenants that on Payment of the Money, he will enter Satisfaction on Record: If of a *Statute* or *Bond*, that on Payment it shall be void, &c. *Law of Securities 144, 146, 148, &c. Vide Mortgage.*

Defence, (from the Lat. Defendere, to defend) In a legal Signification is applicable to a Plea, and is that which the Defendant ought to make immediately after the Count or Declaration, *viz.* That he defends all the *Wrong*, *Force*, and *Damages*, where and when he ought, &c. and by defending the *Force* and *Wrong*, he excuses himself of the *Wrong* surmised against him, and makes himself Party to the Plea; and by defending the *Damage*, he affirms the Plaintiff able to be answer'd unto: So that if he will shew any Disability in the Plaintiff, then he ought to omit the *Defence* of the *Damage*, and demand Judgment if the Party shall be answered unto: For the Residue of the *Defence*, the Defendant accepts the Power of the Court to hear and determine their Pleas. *Terms de Ley 227.* *Defence* is sometimes a full *Defence*, and that is where the Plea begins with these Words, *Venit & Defendit vim & Injuriam quando*, &c. and this is usual in personal Actions: But there is another *Defence* in real Actions, where the Plea begins, *Venit & Dicit*, &c. In every *Præcipe*, where Land is demanded, there the *Defence* must be *Venit & Defendit jus suum*, &c. As in a *Writ of Intrusion*, *Writ of Formedon*, &c. 1 *Nelf. Abr. 629.* A Defendant cannot plead any Plea, before he hath made a *Defence*; but this must not be intended absolutely, for in a *Scire facias* a *Defence* is never made. 3 *Lev. 182.*

Defend, (Defendere) In our ancient Laws and Statutes signifies to forbid: And there is a Statute intitled, *Statutum de Defensione portandi Ar-*

ma, &c. 7 Ed. 1. In divers Parts of England, we commonly say *God defend*, instead of *God forbid*. Blount.

Defendant, (Defendens) Is the Party that is sued in a *Personal Action*; as *Tenant* is he that is sued in an *Action Real*.

Defendimus, Is an ordinary Word used in Grants and Donations; and hath this Force, that it binds the Donor and his Heirs to *Defend* the Donee, if any one go about to lay any Incumbrance on the Thing given, other than what is contain'd in the Deed of Donation. *Bract. lib. 2. c. 16.* See *Warranty*.

Defender of the Faith, (Fidei Defensor) Is a peculiar Title belonging to the *King of England*; as *Catholicus*, to the *King of Spain*; and *Christianissimus*, to the *King of France*, &c. These Titles were given by the *Popes of Rome*, and that of *Defensor fidei* was first conferred by *Pope Leo* the Tenth, on *King Henry* the Eighth, for Writing against *Martin Luther*, and the Bull for it bears Date *Quinto Idus Octob. 1521.* *Lord Herbert's Hist. Hen. 8. 105.* But the *Pope*, on *King Henry's* Suppressing the Houses of Religion, at the Time of the *Reformation*, not only depos'd him of his Title, but his Crown also; though in the 35 Year of his Reign, his Title, &c. was confirmed by *Parliament*; which hath continued to be used by all succeeding Kings to this Day. *Lex Constitutionis 47, 48.*

Defendere unica manu, Words signifying to Wage Law, and a Denial of the Accusation upon Oath. See *Manus*.

Defensa, A Park or Place fenced in for Deer, and defended as a Property for that Use and Service. — *Idem Dux facit instaurare pradiatum Parcum de feris Defensæ Leicestrensis.* *H. Knyghton, sub ann. 1352.*

Defensibiles. The Lords or *Earls* of the *Marches*, who were the Wardens or *Defenders* of their Country, had the Title of *Defensives*. *Cowel.*

Defenso. That Part of any open Field or Place that was allotted for Corn and Hay, and upon which there was no Common or Feeding, was anciently said to be *in Defenso*: So of any Meadow Ground that was laid in for Hay only. It was likewise the same of a Wood, where Part was inclosed and fenced up, to secure the Growth of the Underwood from the Injury of Cattle. *Mon. Angl. Tom. 3. p. 306.*

Defensum, An Inclosure of Land, or any fenced Ground. *Mon. Angl. Tom. 2. p. 114.*

Definito, A Word used in ancient Times for a Visitor.

Deforcement, (Deforciammentum) Is where any one is cast out of his Lands or Possessions by Force: Or it is a With-holding Lands or Tenements by Force from the right Owner. *Co. Lit. 331.* A *Deforceor* is one that overcomes and casts forth by Force and Violence, and differs from *Disseisor*; first, because a Man may disseise another without Force; and next, for that a Person may *deforce* another, who never was in Possession; as if several have Right to Lands as common Heirs, and one entering keeps out the rest, the Law saith he *deforceth* and disseiseth them: And (according to *Littleton*) he who is enfeoffed by Tenant in Tail, and put in Possession, by keeping out the Heir of him in Reversion who hath Right to the Land, the Tenant in Tail being dead, doth only *deforce* the Heir, because he entered during the Life of Tenant in Tail, when the Heir had no present Right. Also a

Deforceor differs from an *Intruder*, by Reason a Man is made an *Intruder* by a wrongful Entry only into Land void of a Possessor: And a *Deforceor* is he that holds out against the right Heir. *Bract. lib. 4. cap. 1. Britt. cap. 33. Litt. 138. F. N. B. 118.* As Force and Violence are opposite to the Peace and Justice of the Kingdom; and it is a Disgrace to the Law, that any Person should presume of his own Authority by Force and strong Hand to enter into the Possession of another, before the Law hath decided his Title therein; therefore divers Statutes have been made for Reformation of these Abuses, as among others the Stat. 5 R. 2. cap. 7. where the King defends any Entry into Lands or Tenements, but in Case where Entry is given by Law, &c. *Poult. de Pace Reg. 34, 35.* See *Forcible Entry*.

Deforciant, Mention'd in the Stat. 23 El. c. 3. is the same with a *Deforceor*.

Deforciantio, Is us'd for a Distress, or Holding of Goods for Satisfaction of a Debt. *Paroch. Antiq. 293.*

Degradation, (Degradatio) Is an Ecclesiastical Censure, whereby a Clergyman is devested of his Holy Orders. And there are two Sorts of *degrading*, by the *Canon Law*; one *Summary*, by Word only; the other *Solemn*, by stripping the Party degraded of those Ornaments and Rights, which are the Ensigns of his Order or Degree. *Selden's Titles of Hon. 787.* *Degradation* is otherwise called *Deposition*; and in former Times, the *Degrading* a Clerk was no more than a Displacing or Suspension from his Office: But the *Canonists* have since distinguish'd between a *Deposition* and a *Degradation*; the one being now used as a greater Punishment than the other, because the Bishop takes from the Criminal all the Badges of his Order, and afterwards delivers him to the secular Judge, where he cannot purge himself of the Offence, whereof he is convicted, &c. *Du Cange.* There is likewise a *Degradation* of a Lord, or a Knight, &c. at *Common Law*; when they are attainted of Treason; as *Hill. 18 Ed. 2. Andrew Harcla, Earl of Carlisle*, who was also a Knight, was degraded, and when Judgment of Treason was pronounced against him, his Sword was broken over his Head, and his Spurs hewn off his Heels, &c. And there is a *Degrading* by Act of Parliament; for by Stat. 13 Car. 2. cap. 15. *William Lord Monson, Sir Henry Mildmay*, and others, were degraded from all Titles of Honour, Dignities, and Preheminencies, and none of them to bear or use the Title of Lord, Knight, Esquire, or Gentleman, or any Coat of Arms for ever after, &c.

De Injuria sua propria, Absque tali causa, Are Words us'd in Replications, in Actions of Trespas, or on the Case for Words, &c. 1 *Lill. Abr. 427.* *De Injuria sua propria* is a good Plea in Trespas, &c. where it comes in Excuse of an Injury alledg'd to be done to the Person of the Plaintiff, or where a Defendant justifies in Defence of his Possession, if the Title doth not come in Question. 8 *Rep. 86.* When one justifies by Command or Authority deriv'd from another; or if a Defendant justifies by Authority at *Common Law*, as a Constable by Arrest for Breach of the Peace; or if he justifies by Act of Parliament, &c. *De Injuria sua propria* is a good Replication. *Cr. Eliz. 539. 2 Salk. 628.* See *De son Tort Demesne*.

Dei Judicium. The old *Saxon* Trial by *Ordeal* was so call'd; because they thought it an Appeal to God, for the Justice of a Cause, and verily believ'd that the Decision was according to the

the Will and Pleasure of Divine Providence.
Domes.

Deis, The high Table of a Monastery. See *Dagis*.

Delatura, A Saxon Word signifying an Accusation: And sometimes it hath been taken for the Reward of an Informer. *Leges H. 1. c. 64. Leges Ine 20 apud Brompton.*

Delegates, Are Commissioners of Appeal, appointed by the King under the Great Seal; in Cases of Appeals from the Ecclesiastical Court, &c. by Stat. 25 Hen. 8. cap. 19. See *Court of Delegates*.

Delf, (from the Sax. *Delpan*, to dig, or delve) Is a Quarry or Mine, where Stone, or Coal, &c. are dug. Stat. 31 Eliz. cap. 7. We still retain the Word *Delve* for dig, in some Parts of this Kingdom.

Deliverance. When a Criminal is brought to Trial, and the Clerk in Court asks him whether he is *Guilty*, or *Not Guilty*, to which he replies *Not guilty*, and puts himself on God and his Country, the Clerk wishes him a *Good Deliverance*.

Delivery of Deeds, On executing them, to give them Perfection, &c. See *Deed*.

Demand, (Fr. *Demande*, Lat. *Postulatum*) Signifies a Calling upon a Man for any Thing due. And there are two Manner of *Demands*, the one in *Deed*, the other in *Law*: In *Deed*, as in a *Præcipe quod Reddat*, there is an express *Demand*: In *Law*, every Entry on Land, Distress for Rent, Taking of Goods, &c. which may be done without Words, is a *Demand* in *Law*. 8 Rep. 153. Mr. Nelson, in his *Abridgment of the Law*, Vol. 1. pag. 630. says, there are three Sorts of *Demands*; one in Writing, without speaking, and that is in every *Præcipe*; one without Writing, being a verbal *Demand* of the Person, who is to do or perform the Thing; and another made without either Word or Writing, which is a *Demand* in *Law*, in Cases of Entries on Lands, &c. And as Entry on Land, and Taking a Distress, are a *Demand* in *Law* of the Land and Rent; so the Bringing an Action of Debt for Money due on an Obligation, is a *Demand* in *Law* of the Debt. 1 Lill. 432. Debts, Claims, &c. are to be *demanded* and made in Time, by the Statute of Limitations. 21 Jac. 1. cap. 16. and other Statutes; or they will be lost by *Law*. Where there is a Duty, which the *Law* makes payable on *Demand*, no *Demand* need be made; but if there is no Duty till *Demand*, in such Case there must be a *Demand* to make the Duty. Trin. 3 Ann. 1 Lill. 432. Debt upon Bond, to be paid presently upon *Demand*, is a Duty presently, and requires no *Demand*. Cro. El. 548. And upon a Penalty, the Party need not make a *Demand*, as he must in the Case of a *Nomine Pæne*; for if a Man be bound to pay 20 l. on such a Day, and in Default thereof to pay 40 l. the 40 l. must be paid without *Demand*. 1 Mod. 89. If a Man leases Land by Indenture for Years, reserving a Rent payable at certain Days, and the Lessee covenants to pay the said Rent at the Days limited; the Lessor is intitled to his Rent, without *Demand*, for the Lessee is obliged to pay it at the Days, by Force of his Covenant. 2 Dav. Abr. 101. But if a Lessor makes a Lease rendring Rent, and the Lessee covenants to pay the Rent, being lawfully *demanded*, the Lessee is not bound to pay the Rent, without a *Demand*. *Ibid* 102. A Person makes a Lease for Life, or Years, reserving a Rent upon Condition, that if the Lessee doth not pay the Rent at the Day,

that then without any *Demand* of the Lessor, it shall be lawful for the Lessor to re-enter; by this Special Agreement of the Parties, the Lessor may enter on Non-payment of the Rent, without any *Demand*. *Ibid*. 100. A Lease for Years, with Condition to be void, on Non-payment of the Rent, is not void unless the Rent be *demanded*, and an Entry made: And an Interest shall not be determined, without an actual *Demand*. Hob. 67, 331. 2 Mod. 264. A *Demand* is to be legal, and made in such Manner as the *Law* requires: If it be for Rent of a Messuage and Lands, it ought to be made at the Messuage, at the fore Door of the House, the most notorious Place: Where Lands and Wood are let together, the Rent is to be *demanded* on the Land, as the most worthy Thing, and on the most publick Part thereof: If Wood only be leased, the *Demand* must be at the Gate of the Wood, &c. 1 Inst. 201. Poph. 58. For Re-entry, the *Demand* is to be on the Day of Payment of the Rent, and it must be exactly observed: But a *Demand* at any Time after due, is sufficient to warrant a Distress. Dyer 51. If a Lessor in a *Demand* of Rent for Re-entry, demand one Penny more or less than due, or doth not shew the Certainty of the Rent, and the Day of Payment, and when due, the *Demand* will not be good: If the *Demand* be of all the Rent due generally, it is not good, without shewing what Rent, and for what Time, &c. 1 Leon. 425. Cro. Eliz. 209. In order to Re-entry for Non-payment of Rent on a Lease, the Lessor or some other Person by his Direction, is to go on the last Day of Payment, a little before Sun-set, and make the *Demand* thus: *I do here Demand the Sum of 10 l. for Half a Year's Rent for this Messuage due and ending at, &c. and yet unpaid, &c.* And after the *Demand*, continue at the Place till it be dark. He that would enter for a Condition broken, which tends to the Destruction of an Estate, must 1. demand the Rent. 2. Upon the Land, if there is no House. 3. If there is a House, at the fore Door; though it is not material whether any Person be in the House or no. 4. If the Appointment is at any other Place off from the Land, the *Demand* must be at that Place. 5. The Time of the *Demand* is to be certain, that the Tenant may be there, if he will, to pay the Rent: And the last Time of *Demand* of the Rent, must be such a convenient Time before the Sun-setting of the last Day of Payment, as the Money may be number'd. Also the Lessor or his sufficient Attorney is to remain upon the Land, the last Day on which the Rent due ought to be paid, until it be so dark that he cannot see to tell the Money: And if the Money thus *demanded* is not paid, this is a Denial in *Law*, tho' there are no Words of Denial; upon which a Re-entry may be made, &c. 1 Inst. 201, 202. 4 Rep. 73. A *Demand* ought to be in the Presence of Witnesses: And *Demands* are released by a Release of all *Demands*; which Discharges all Freeholds, Rights of Entry, Actions, &c. 8 Rep. 153.

Demandant, (*Petens*) All civil Actions are prosecuted either by *Demands* or *Plaints*, and the Pursuer is called *Demandant*, in Actions Real; and *Plaintiff*, in Personal Actions: In a Real Action, Lands, &c. are *demanded*. Co. Lit. 127.

Demesne, or **Deman**, (*Dominicum*, *Domanium*) Is a French Word otherwise written *Domaine*, and signifieth *Patrimonium Domini*. *Demains*, according to common Speech, are the Lord's chief

Manor-Place, with the Lands thereto belonging; which he and his Ancestors have from Time to Time kept in their own manual Occupation, for the Maintenance of themselves and their Families: And all the Parts of a Manor, except what is in the Hands of Freeholders, are said to be *Demains*. Copyhold Lands are accounted *Demains*, because they that are the Tenants thereof are judged in Law to have no other Estate but at the Will of the Lord; so that it is still reputed to be in a Manner in the Lord's Hands: But this Word is oftentimes used for a Distinction between those Lands that the Lord of the Manor hath in his own Hands, or in the Hands of his Lessee demised at a Rack-Rent, and such other Land appertaining to the Manor which belongeth to Free or Copyholders. *Bract. lib. 4. tract. 3. cap. 9. Fleta, lib. 5. cap. 5.* As *Demains* are Lands in the Lord's Hands manually occupied, some have thought this Word derived from *De manu*; but it is from the Fr. *Demaine*, which is used for an Inheritance, and that comes from *Dominium*, because a Man has a more absolute Dominion over that which he keeps in his Hands, than of that which he lets to his Tenants. *Blount. Dominium* properly signifies the King's Lands in *France*, appertaining to him in Property: And in like Manner do we in some Sort use it here in *England*; for all Lands 'tis said are either mediately or immediately from the Crown; and when a Man in Pleading would signify his Land to be his Own, he saith, that he is seised thereof in his *Demain*, as of Fee; whereby is meant, that altho' his Land be to him and his Heirs, it depends upon a superior Lord, and is held by Rent or Service, &c. *Litt. lib. 1. c. 1.* From this it hath been observed, that Lands in the Hands of a common Person, cannot be *true Demains*: And certain it is, that Lands in the Possession of a Subject are called *Demains* in a different Sense from the *Demain* Lands of the Crown. For *Demains* or *Domains* in the Hands of a Subject, have their Derivation à Domo, because they are Lands in his Possession for the Maintaining of his House: But the *Domains* of the Crown are held of the King, who is absolute Lord, having proper *Dominion*; and not by any feudal Tenure of a superior Lord, as of Fee. *Wood's Inst. 139.* *Demains* is sometimes taken in a *special* Signification, as opposite to *Frank-Fee*: For Example; those Lands which were in the Possession of *King Edward the Confessor*, are called *Ancient Demains*, and all others *Frank-Fee*; and the Tenants which hold any of those Lands are called *Tenants in Ancient Demain*, and the others *Tenants in Frank-Fee*, &c. *Kitch. 98.* See *Ancient Demesne*.

Demise, (*Demissio*) Is applied to an Estate either in Fee, for Term of Life, or Years, but commonly the latter: It is used in Writs for any Estate. *2 Inst. 483.* The King's Death is in Law termed the *Demise of the King*, to his Royal Successor of his Crown and Dignity, &c.

Demise and Redemise. The Conveyance by *Demise* and *Redemise* is where there are mutual *Leases* made from one to another on each Side of the same Land, or some Thing out of it; and is proper upon the Grant of a Rent-charge, &c.

Demurrer, (In Latin *Demorare*, from the Fr. *Demourer*) Is a Kind of Pause or Stop, put to any Action, upon a Point of Difficulty, which must be determined by the Court, before any farther Proceedings can be had therein: For in every Action the Controversy consists either in Fact or

in Law; if in Fact, that is try'd by the Jury; but if in Law, the Judge with his Associates proceeds to Judgment; and whatever they conclude stands firm, without any Appeal. *Smith de Repub. Angl. lib. 2. cap. 13.* This *Demurrer* is in our Records expressed in Latin by *Moratur in Lege*: And when any Action is brought, and the Defendant saith that the Plaintiff's Declaration is not sufficient for him to answer unto; or when the Defendant pleads, and the Plaintiff says, that it is not a sufficient Plea in Law, and the Defendant says, that it is a good Plea; and thereupon both Parties submit to the Judgment of the Court: This is a *Moratur in Lege*. *1 Lill. Abr. 435.* So that a *Demurrer* is an Issue join'd upon Matter of Law, to be determined by the Judges; and is an Abiding in Point of Law, and a Referring to the Judgment of the Court, whether the Declaration or Plea of the adverse Party is sufficient in Law to be maintained. *Finch. lib. 4. cap. 40. 1 Inst. 71.* And a *Demurrer* may be to the Writ, Count, or Declaration, or to any Part of the Pleadings: Also a *Demurrer* may be to a *Demurrer*; as where the *Demurrer* is double, and he that demurs assigns one Error in Fact and another in Law, which is ill, and may be demurr'd unto on the other Side. *1 Lill. 438.* *Demurrers* to Pleas, &c. are *General*, without shewing any particular Cause; or *Special*, where the Causes of *Demurrer* are particularly set down: And the Judgment of the Court is not to be pray'd upon an insufficient Declaration or Plea, otherwise than by *Demurrer*; when the Matter comes judicially before the Court. If in Pleadings, &c. a Matter is insufficiently alledged, that the Court cannot give certain Judgment upon it, a *General Demurrer* will suffice; and for Want of Substance, a *General Demurrer* is good: But for Want of Form, there must be a *Special Demurrer*, and the Causes specially assign'd. *Practis. Attorn. Edit. 1. p. 84.* And as he that demurs generally, confesseth all Matters of Fact that are well and sufficiently pleaded; so he that makes a *Special Demurrer*, can take no Advantage of any other Matter of Form, but what is expressed in his *Demurrer*; tho' he may take Advantage of Matter of Substance, if the *Demurrer* be *Special*, and the Causes not set down. *10 Rep. 88.* By Statute, Judges are to proceed to give Judgment in Actions, according to the Right of the Cause, after *Demurrer* join'd, without Regard to Defects of Proceedings, except such as are expressed with the *Demurrer*; but this not to extend to Indictments, &c. in criminal Prosecutions. *Stat. 27 Eliz. c. 5.* And by 4 & 5 Ann. c. 16. the Causes of *Demurrer* are to be specially set down, or the Judges shall give Judgment without regarding any Imperfections in Writs, Declarations, Pleadings, &c. A Defendant is to *demur* where he may do it; for if the Defendant pleads in any Case, where he can *demur*, he shall not afterwards take Advantage in Arrest of Judgment, Writ of Error, &c. *Plowd. 182.* If any *Special Matter* is pleaded, which hath the Colour of a Plea, but amounts to the *General Issue*; 'tis no Cause of *Demurrer*. *5 Mod. 18.* There cannot be a *Demurrer* in Abatement; and where a Defendant *demurs* in Abatement, the Court may give final Judgment: But it may be to a Plea in Abatement. *1 Salk. 220. 1 Nelf. Abr. 634.* After the Plaintiff and Defendant have join'd Issue, which goes to the Whole, neither of them can *demur*, without Consent of the other: But one may *demur* to one Part of a Declaration, and plead

plead to the other Part thereof, with a *Quoad*, &c. And where there is an Issue to Part of the Defendant's Plea, and a *Demurrer* to other Part of it, the Plaintiff before or after Judgment given on the *Demurrer*, may try the Issue; though 'tis usual to give Judgment on the *Demurrer* first. 1 *Lill. Abr.* 437. 1 *Inst.* 71. 1 *Saund.* 80. If a Defendant pleads to Part and *demurs* to Part; the *Demurrer* shall first be determined, and the Issue last; because upon the Trial of the Issue, the Jury may assess Damages as to both. *Palm.* 517. Where there is a *Demurrer* to Part, and Issue is joined to the other Part, and the Plaintiff hath Judgment on the *Demurrer*, he must enter a *Non Prof.* as to the Issue, otherwise he cannot proceed to a Writ of Enquiry upon the *Demurrer*. 1 *Salk.* 219. A *Demurrer* is to be signed, and argued on both Sides by Counsel; and if a Party be delay'd in his Proceedings by *Demurrer*, he may move the Court to appoint a short Day after to hear Counsel on the *Demurrer*; and the Court will grant it. *Trin.* 23 *Car. B. R.* After a *Demurrer* is join'd, the Plaintiff having enter'd it in the Roll, delivers the Roll to the Secondary, and makes a Motion for a *Consilium* or Day to argue it, which the Court grants of Course, on the Secondary's Reading the Record; then the *Demurrer* must be entered by the Plaintiff in the Court-Book with the Secondary, who on his Rule sets down the Day appointed for Argument, at least four Days before the *Demurrer* is argued: And Paper-Books are made and delivered to the Judges. The *Demurrant* argues first, and the Court will hear but two Counsel on a Day, viz. one of a Side, and seldom give Judgment the same Day; and if desired on either Side, (unless the Case be very plain) the Court will hear further Arguments the next Term. The whole Record is not be read, on opening the *Demurrer*; except the same be to the Declaration only: But where it appears to be for Delay, the whole Record will be heard by the Court, tho' there be a Plea, &c. And if it be found merely for Delay, Judgment shall be given presently. If the major Part of the Judges of the Court can't determine the Matter on the *Demurrer*, it is to be sent into the Exchequer-Chamber to be determined by all the Judges of England. 1 *Inst.* 71. *Practif. Attorn. Edit.* 1. p. 154. Where the Court gives Judgment on the *Demurrer* in Debt for the Plaintiff in the Action, the Judgment is for the Plaintiff to recover his Debt, Costs and Damages: But if it be in Action of the Case, a Writ of Inquiry of Damages must be awarded, before Judgment on the *Demurrer*. If Judgment on the *Demurrer* is for the Defendant in the Action, the Judgment is, that the Plaintiff *Nihil Capiat per Breve*, or *per Billam*, and that the Defendant *eat sine die*. *Wood's Inst.* 603. The general Words of a *Demurrer* are, *Quod Breve vel Nar. vel Placitum, &c. Materiaque in eodem content. minus sufficiens in Lege exist.*, &c. If a *Demurrer* be enter'd, it cannot be afterwards waved. 1 *Lill.* 435.

Demurrer to Evidence, Is where a Question of Law doth arise thereupon: As if the Plaintiff produces in Evidence, any Records, Deeds, Writings, &c. upon which a Question of Law arises, and the Demandant offers to *demur* upon it; and then the Plaintiff must join in *Demurrer*, or waive his Evidence. So if the Plaintiff brings Witnesses to prove a Fact, and a Matter of Law ariseth upon it; if the Defendant admits their Testimony to be true, there also the Defendant

may *demur* in Law: And so may the Plaintiff *demur* upon the Defendant's Evidence. And in these Cases, the Counsel for the Plaintiff and Defendant agree the Matter of Fact in Dispute, and the Jury are discharg'd; and the Matter of Law is referred to the Judges to determine. But where Evidence is given for the King, in an Information or other Suit, and the Defendant offers to *demur* upon it, the King's Counsel are not obliged to join therein; but the Court ought to direct the Jury to find the Special Matter. And indeed because Juries of late usually find a doubtful Matter specially, *Demurrers upon Evidence* are now seldom used. 5 *Rep.* 104. 1 *Inst.* 72. 2 *Inst.* 426. If the Court doth not agree to a *Demurrer on the Insufficiency of Evidence* in a Civil Cause; they ought to seal a *Bill of Exceptions*, &c. 9 *Rep.* 13.

Demurrer to Indictments. When a Criminal joins Issue upon a Point of Law in an Indictment, allowing the Fact to be true, as laid in the Indictment or Appeal, this is a *Demurrer in Law*: And if the Indictment or Appeal proves good in Law, in the Opinion of the Judges, they proceed to Judgment and Execution, as if the Party had been convicted by Confession, or Verdict. And tho' by the Criminal's *Demurrer* he refuseth to put himself upon Trial by the Inquest, yet he shall not, as in other Cases, be put under the *Pain fort & dure*; for a *Demurrer* is allowed to be try'd by the Judges, and not by the Inquest. And he that is condemn'd on *Demurrer*, is said to be convict; for whoever is adjudged, is convicted by Law. 2 *Inst.* 178. *H. P. C.* 243. *S. P. C.* 150. 1 *Hawk. P. C.* 14. But see 2 *Hawkins* 334.

Demysanguis, Is the Half-Blood: Where a Man marries a Woman, and hath Issue by her a Son, and the Wife dying he marries another Woman, by whom he hath also a Son; now these two Sons, tho' they are called *Brothers*, are but *Brothers of the Half-Blood*, because they had not both one Father and Mother: And therefore by Law they cannot be Heirs to one another; for he that claims as Heir to another by Discent, must be of the Whole-Blood to him from whom he claimeth. *Terms de Ley* 234.

Den: The Names of Places ending in *Den*, as *Biddenden*, &c. signify the Situation to be in a Valley, or near Woods; from the Sax. *Den*, i. e. *Vallis*; *Locus Sylvestris*. Blount.

Den and Strond, Is a Liberty for Ships or Vessels to run or come a-shore: And *K. Edw.* 1. by Charter granted this Privilege to the Barons of the *Cinque Ports*. *Placit. temp. Ed.* 1.

Dena terræ, A hollow Place between two Hills; and the Word *Dena* is used for a little Portion of woody Ground, commonly called a Coppice. — *Et una parva Dena Sylve*. *Domest.*

Denarii, A general Term for any Sort of *Pecunia numerata*, or ready Money. *Paroch. Antiq.* 320.

Denarii de Caritate, Customary Oblations made to *Cathedral Churches* about the Time of *Pentecost*, when the Parish-Priests and many of their People went in Procession to visit their Mother-Church: This Custom was afterwards changed into a settled Duc, and usually charged upon the Parish-Priest; tho' at first it was but a Gift of Charity, or Present, to help maintain and adorn the Bishop's Sec. *Cartular. Abbat. Glaston. M.S.* f. 15.

Denarius, An *English Penny*: It is mentioned in the *Stat. Edw.* 1. *De compositione mensurarum*, &c.

Denarius Dei, God's Penny, or Earnest Money. — *Ita quod neuter Mercatorum ab illo contractu possit discedere vel resiliere postquam Denarius Dei inter Principales Personas contrahentes datus fuerit & receptus.* *Carr. Ed. 1.* This Earnest Money is call'd *Denarius Dei*, or God's Penny, because in former Times, the Piece of Money so given to bind the Contract, was given to God, *i. e.* To the Church, or the Poor.

Denarius S. Petri, An annual Payment of one Penny from every Family to the Pope, during the Time that the Roman Catholick Religion prevail'd in this Kingdom, paid on the Feast of St. Peter. *Stat. 25 H. 8. c. 25.* See *Peter-Pence*.

Denarius tertius Comitatus. Of the *Fines* and other Profits of the County-Courts, originally when those Courts had Superior Jurisdiction before other Courts were erected, two Parts were reserved to the King, and a *Third Part* or Penny to the *Earl of the County*; who either received it in Specie at the Assizes and Trials, or had an equivalent Composition for it out of the *Exchequer*. *Paroch. Antiq. 418.*

Denbera, A low Place for the Running and Feeding of Hogs, wherein they are penn'd; by some called a *Swinecumb*. *Cowel.*

Denizen, (*Fr. Donaison*) Is an alien enfranchised, and made a Subject by the King's Letters Patent; and is called *Donaison*, because his Legitimation proceeds *ex donatione Regis*, from the King's Gift. Such a one is enabled in many Respects, to do as the King's native Subjects do, to purchase and possess Lands, enjoy any Office or Dignity; and when he is thus enfranchised, he is said to be under the King's Protection, or *Esse ad fidem Regis Anglie*; before which Time he can possess nothing in *England*. But notwithstanding this, it is short of *Naturalization*; for a Stranger naturalized may inherit Lands by Descent, which a *Denizen* cannot: And in the Charter, whereby a Person is made a *Denizen*, there is commonly contained some Clause that expressly abridges him of that full Benefit which natural Subjects enjoy. *Bract. lib. 5. tract. 5. cap. 25. 2 Inst. 741.* When the King makes a *Denizen* by Letters Patent, he may purchase Lands, and his Issue born afterwards may inherit them; but those he had before shall not inherit them: And tho' a *Denizen* is enabled to purchase, he cannot inherit the Lands of his Ancestors; but as a Purchaser he may enjoy them; and he may take Lands by Devise. *1 Inst. 8. 11 Rep. 67. 5 Rep. 52.* Aliens made *Denizens* are incapable of Offices in the Government, to be Members of Parliament, &c. by *Stat. 12 W. 3. c. 2. 1 Geo. c. 4.* It is so high a Prerogative, to make Aliens Subjects and *Denizens*, that the King cannot grant this Power over to any other. *7 Rep. Wood's Inst. 22.*

Denshering of Land, Is the Casting Parings of Earth, Turf, and Stubble into Heaps, which when dried are burnt into Ashes, for a Compost on poor barren Land. This Method of Improvement is used on taking in and inclosing Common and Waste Ground; and in many Parts of *England* is called *Burn-beating*, but in *Staffordshire* and other Counties, they term it *Denshering of Land*.

De non Decimando, To be discharg'd of Tithes. See *Modus Decimandi*.

De non Residentia Clerici Regis, Is an ancient Writ where a Parson is employ'd in the King's Service, &c. to excuse and discharge him of *Non-residence*. *2 Inst. 624.*

Dentrix, A Fish with many Teeth. *Chart. H. 6. Monast. Ramsey.*

Deodand, (*Deo-dandum*) Is a Thing given as it were to God, to appease his Wrath, where a Person comes to a violent Death by Mischance, not by any reasonable Creature; and is forfeited to the King, or Grantee of the Crown; and if to the King, his Almoner disposes of it by Sale, and the Money arising thereby he distributes to the Poor: Also if forfeited to the Lord of a Liberry, it ought to be thus distributed. *3 Inst. 57. 5 Rep. 110. 1 Nelf. 636.* The Original of *Deodands* is said to come from the Notion of *Purgatory*; for when a Person came to a sudden and untimely Death, without having Time to be *sorrieved* by a Priest, and to have the Extream Unction administered to him, the Thing which had been the Occasion of his Death, became *Deodand*; that is was given to the Church, to be distributed in Charity, and to pray for the Soul of such deceased Person out of *Purgatory*. *1 Lill. 443.* There are several Examples of Forfeitures in Cases of *Deodands*; as if a Man in Driving a Cart, falls so as the Cart-wheel runs over him, and presseth him to Death; the Cart-wheel, Cart, and Horses are forfeited to the Lord of the Liberty: For *Omnia que movent ad mortem sunt Deodanda.* *Bract. lib. 3. tract. 2. cap. 5.* But it hath been observ'd, that at this Day, if a Man be killed by the Wheel of a Cart drawn with Horses, the Jury find that only *Deodand* which was the immediate Cause of his Death, *viz.* the Wheel; which is then seized by the Lord of the Manor, and converted to his own Use. *1 Nelf. 636.* If a Man riding over a River, is thrown off his Horse by the Violence of the Water, and drown'd, his Horse is not *Deodand*; for the Death was caused *per Cursum Aquae.* *2 Cro. 483.* Where one under fourteen Years of Age, falls from a Cart, Horse, &c. they are not *Deodand*; but if a Horse strikes and kills such a Person, it is *Deodand*. *3 Inst. 57.* And if a Person wounded by any Accident, as of a Cart, Horse, &c. die within a Year and a Day after, what did it is *Deodand*: So that if a Horse strikes a Man, and afterwards the Owner sells the Horse, and then the Party that was stricken dies of the Stroke; the Horse, notwithstanding the Sale, shall be forfeited as *Deodand*. *Plowd. 260. 5 Rep. 110.* If one falls out of a Vessel in Salt Water, the Vessel is not *Deodand*, and Accidents at Sea are frequently happening; but if one falls out of a Vessel in Fresh Water, it is said to be otherwise. *Wood's Inst. 212.* Things fix'd to the Freehold; as a Bell hanging in a Steeple, a Wheel of a Mill, &c. unless severed from the Freehold, cannot be *Deodands*. *2 Inst. 281.* There is no Forfeiture of a *Deodand*, 'till the Matter is found of Record, by the Jury that finds the Death; who ought also to find and appraise the *Deodand*. *5 Rep. 110. 1 Inst. 114.* After the Coroner's Inquisition, the Sheriff is answerable for the Value, where the *Deodand* belongs to the King; and he may levy the same on the Town, &c. wherefore the Inquest ought to find the Value of it. *1 Hawk. 67.* *Deodands* were likewise the Goods and Chattels of *Felo de se*, &c. *1 Lill. 443.*

Deonerando pro rata Portionis, Is a Writ that lies where a Person is distrained for Rent, that ought to be paid by others proportionably with him. *F. N. B. 234.*

Departure, Is a Word in our Law properly applied to a Defendant, who first Pleading one Thing

Thing in Bar of an Action, and being replied unto in his Rejoinder, he quits that and shews another Matter, contrary to, or not pursuing his first Plea, which is called a *Departure from his Plea*: Also where a Plaintiff in his Declaration sets forth one Thing, and after the Defendant hath pleaded, the Plaintiff in his Replication shews new Matter from his Declaration, this is a *Departure*; as in *Coke's Institutes*, *The Defendant demurred, because it was a Departure from the Declaration*. *Plowd.* 7, 8. *2 Inst.* 147. But if a Plaintiff in his Replication depart from his Count, and the Defendant takes Issue upon it; if it be found for the Plaintiff, the Defendant shall take no Advantage of that *Departure*: Tho' it would have been otherwise, if he had demurred upon it. *Raym.* 86. *1 Lill. Abr.* 444. If a Man plead a general Agreement in Bar, and in his Rejoinder alledge a special One, this is a *Departure* in Pleading: And if an Action is brought at Common Law, and the Plaintiff by his Replication would maintain it by Virtue of a Custom, &c. it hath been held a *Departure*. *1 Nelf. Abr.* 638. Where Matter is omitted at first, it is a *Departure* to plead it afterwards. *Ibid.* If in Covenant, the Defendant pleads Performance; and after rejoins that the Plaintiff ousted him, it is a *Departure* from his Plea. *Raym.* 22. In Debt upon Bond for Performance of Covenants in a Lease, the Defendant pleaded Performance; and afterwards in his Rejoinder set forth that so much was paid in Money, and so much in Taxes, &c. upon Demurrer it was adjudged a *Departure* from the Plea; because he had pleaded Performance, and afterwards sets forth other Matter of Excuse, &c. *1 Salk.* 221. Debt upon Bond for Performance of an Award, made for Payment of Money; if the Defendant plead Performance, and the Plaintiff having replied and assign'd a Breach in Non-payment, &c. the Defendant rejoins that he is ready to pay the Money at the Day, &c. this is a *Departure* from his Plea; for Performance is Payment of the Money, and Payment and ready to pay are different Issues. *Sid.* 10. *4 Leon.* 79. In Debt upon Bond for Non-performance of an Award; the Defendant pleads that the Award was, that he should release all Suits to the Plaintiff, which he had done; the Plaintiff replies that such an Award was made, but that the Award was further, that the Defendant should pay to the Plaintiff such a Sum, &c. the Defendant rejoins that true it is, that by the Award he was to pay the Plaintiff, the said Sum, but that the Award was also, that the Plaintiff should release to the Defendant all Actions, &c. which he had not done; on Demurrer this was held a *Departure* from the Plea, being all new Matter. *2 Bulstr.* 39. *Godb.* 155. *1 Nelf.* 637. After *Nullum fecerunt Arbitrium*, the Defendant cannot plead that the Award is void; without being a *Departure* from the former Plea. And if where *Nul tiel* Award is pleaded; then the Award is set forth, and a Joinder that it was not tendered, it is a *Departure*. *1 Lev.* 133. *Lutw.* 385. A *Departure* must be always from something which is material; or it will not be allowed: If in Trespass for taking Goods, the Plaintiff reply, that after the Taking, the Defendant converted them to his own Use, this being an Abuse makes a Trespass; and the Conversion is either Trover or Trespass at the Plaintiff's Election, so that by his Replication he may make it Trespass, and be no *Departure*. *1 Salk.* 221, 222. In Circumstances of Time, &c.

laid as to Promises, the Plaintiff is not tied to a precise Day; for if the Defendant by his Plea force the Plaintiff to vary, it is no *Departure* from his Declaration. *1 Nelf.* 640, 641. And if another Place be mentioned in the Replication, in Action of Debt; as this is a personal Thing, 'tis no *Departure*, because he who is indebted to another in one Place, is so in every Place. *Sid.* 228. A *Departure* being a Denial of what is before admitted, is a Saying and Unsayings, and for that one Issue cannot be joined upon it, 'tis naught for the Uncertainty. *1 Lill.* 444.

Departure in Despight of the Court, and Entry of it. See *Default*.

Depositors of Gold and Silver, The *Parters* or *Dividers* of those *Metals*, from others that are coarser. *Stat.* 4 *Hen.* 7.

Depopulation, (*Depopulatio*) Is a Wasting or Destruction; a Desolation or Unpeopling of any Place, by Fire, Sword, Pestilence, &c. *12 Rep.* 30.

Depopulatores Agrozum. These were great Offenders, by the ancient Common Law; so called because by Prostrating and Ruining of Houses of Habitation of the King's People, they as it were depopulated Towns and Villages, leaving them without Inhabitants. *Stat.* 4 *Hen.* 4. *cap.* 2. *3 Inst.* 204.

Deposition, (*Depositio*) Is the Testimony of a Witness, otherwise called a *Deponent*, put down in Writing by Way of Answer to Interrogatories exhibited for that Purpose, in Chancery, &c. Proof in the High Court of Chancery is by *Depositions* of Witnesses; and the Copies of such regularly taken and published, are read as Evidence at the Hearing: And *Depositions* taken in one Cause, may be used at the Hearing of another Cause, when they are between the same Parties, &c. without Motion; but in a Cause between other Parties, tho' touching the same Matters, this will not be allowed, without special Order of Court; neither will *Depositions* in other Courts be permitted to be read, without such Order. *Practif. Attorn. Edit.* 1. p. 233, 234. *Depositions* in the Chancery, after a Cause is determined, may be given in Evidence in a Trial at Bar in B. R. in a Suit for the same Matter, between the same Parties, if the Party that *deposed* be dead; but not otherwise, for if he be living, he must appear in Person in Court to be examined, &c. *1 Lill. Abr.* 445. And where Witnesses in a Cause are going to Sea, or long Journies, the Court of B. R. will give Leave to examine them on Interrogatories, at a Judge's Chamber, in the Presence of the Attornies on both Sides; which *Depositions* in such Case, shall be admitted to be good Evidence. *Ibid.* *Depositions* of Informers, &c. taken upon Oath before a Coroner, upon an Inquisition of Death, or before Justices of Peace on a Commitment or Bailment of Felony, may be given in Evidence at a Trial for the same Felony, if it be proved on Oath that the Informer is dead, or unable to travel, or kept away by the Procurement of the Prisoner; and Oath must be made that the *Depositions* are the same that were sworn before the Coroner or Justice, without any Alteration. *2 Hawk. P. C.* 429. But *Depositions* taken before a Coroner, cannot be given in Evidence upon an Appeal for the same Death; because it is a different Prosecution from that wherein they were taken: And it has been adjudged, That the Evidence given by a Witness at one Trial, could not in the ordinary Course of Justice be made use of against

against a Criminal, on the Death of such Witness, at another Trial. *Ibid.* 430. It was adjudged in the Earl of *Strafford's* Trial, that where Witnesses could not be produced, by Reason of Sickness, &c. their *Depositions* might be read, for or against the Prisoner on a Trial of High Treason; but not where they could be produced in Person: And that *Depositions* taken by a Witness before a Justice of Peace, might, at the Prisoner's Desire, be read at the Trial; in order to take off the Credit of the Witness, by shewing a Variance between such *Depositions* and the Evidence given in Court. *Ibid.* *Deposition* is used in the Law in another Sense, viz. To signify the *Depriving* a Person of some Dignity: And *Deposition* is also taken for Death; and *Dies Depositionis*, the Day of one's Death. *Littleton's Dist.*

Deprivation, (Deprivatio) Is a Depriving or Taking away; as when a Bishop, Parson, Vicar, &c. is deposed from his Preferment. And of *Deprivations* there are two Sorts, *Deprivatio à Beneficio*, and *ab Officio*; the *Deprivation à Beneficio* is when for some great Crime, &c. a Minister is wholly deprived of his Living: And *Deprivation ab Officio* is where a Minister is for ever deprived of his Orders, which is also called *Deposition* or *Degradation*; and is commonly for some heinous Offence meriting Death, and perform'd by the Bishop in a solemn Manner. *Blount.* *Deprivation à Beneficio* is an Act of the Spiritual Court, grounded upon some Crime or Defect in the Person *depriv'd*, by which he is discharged from his Spiritual Promotion or Benefice, upon sufficient Cause proved against him. 1 *Nelf. Abr.* 641. *Deprivation* may also be by a particular Clause in some Act of Parliament: The *Deprivation* of Bishops, &c. is declared lawful by Statute 39 *Eliz. c. 8.* And by the King's Commission, as he hath the Supremacy lodged in him, a Bishop may be *depriv'd*; for since a Bishop is vested with that Dignity by Commission from the King, 'tis reasonable he should be *depriv'd*, where there is just Cause, by the same Authority: But the Canons direct, that a Bishop shall be *depriv'd* in a Synod of the Province; or if that cannot be assembled, by the Archbishop, and twelve Bishops at least, not as his Assistants, but as Judges: Tho' I think this Canon was never received in England. *Young Clergyman's Lawyer* 105. It has been adjudg'd, that an Archbishop may deprive a Bishop, for Simony, &c. for he hath Power over his Suffragans, who may be punish'd in the Archbishop's Court for any Offence against their Duty. 1 *Salk. Rep.* 134. The Causes of *Deprivation* are many: If a Clerk obtain any Preferment in the Church, by simoniacal Contract; if he be an Excommunicate, a Drunkard, Fornicator, Adulterer, Infidel, Schismatick, or Heretick; or is guilty of Murder, Manslaughter, Perjury, Forgery, &c. If a Clerk be an Illiterate, and not able to perform the Duty of his Church; if he is a scandalous Person in his Life and Conversation; or Bastardy is objected against him; if one be a meer Layman, and not in Holy Orders; or is under Age, viz. the Age of twenty-three Years; be disobedient and incorrigible to his Ordinary; or a Nonconformist to the Canons; if a Parson refuse to use the Common Prayer, or preach in Derogation of it; do not administer the Sacraments, 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. *Degg's Parson's Counsellor* 98, 99, &c. 3 *Inst.* 264. And refusing to use the Common Prayers of the Church; Plurality of Livings, &c. are Causes of *Deprivation ipso facto*, in which Case the Church shall be void, without any Sentence declaratory; and Avoidances by Act of Parliament need no declaratory Sentence: But in other Cases there must be a declaratory Sentence. *Dyer* 275. Where a Benefice is only voidable, but not void before Sentence of *Deprivation*, the Party must be cited to appear, there is to be a Libel against him, and a Time assign'd to answer it, and also Liberty for Advocates to plead, and after all a solemn Sentence pronounced: Tho' none of these Formalities are required, where the Living is made *ipso facto* void. *Can.* 122. If a *Deprivation* be for a Thing merely of Ecclesiastical Cognizance, no Appeal lies; but the Party hath his Remedy by a Commission of Review, which is granted by the King of meer Grace. 26 *H. 8. Moor* 781.

Deputy, (Deputatus) Is he that exercises an Office, &c. in another Man's Right; whose Forfeiture or Misdemeanor, shall cause him, whose *Deputy* he is, to lose his Office. The Common Law takes Notice of *Deputies* in many Cases, but it never takes Notice of Under-Deputies; for a *Deputy* is generally but a Person authorised, who cannot authorise another. 1 *Lill. Abr.* 446. A Man cannot make his *Deputy* in all Cases; except the Grant of the Office justify him in it; as where it is to one, to execute by *Deputy*, &c. *Litt.* 379. Judges cannot Act by *Deputy*, but are to hold their Courts in Person; for they may not transfer their Power to others, as the Judges of the Ecclesiastical Courts may. 2 *Hawk. P. C.* 3. But it has been adjudged, that Recordors may hold their Courts by *Deputy*. 1 *Lev.* 76. 1 *Nelf.* 643. A Steward of a Court may make a *Deputy*; and Acts of an Under-Steward's *Deputy* have been held good in some Cases. *Cro. El.* 534. A Sheriff may make a *Deputy*; it is incident to his Office, though no express Power is given by his Patent; and he hath equal Power with the High Sheriff. 9 *Rep.* 49. A Coroner ought not to execute his Office by *Deputy*, it being a judicial Office of Trust, and judicial Offices are annexed to the Person. 1 *Lill.* 446. The Office of *Custos Breviarum* and Chirographer in C. B. cannot be executed by *Deputy*. 1 *Nelf. Abr.* 664. If the Office of Parkerhip be granted to one, he may not grant this to another; because it is an Office of Trust and Confidence. *Terms de Ley* 239. A Bailiff of a Liberty may make a *Deputy*. *Cro. Jac.* 240. And a Constable may make a *Deputy*, who may execute the Warrants directed to the Constable, &c. 2 *Danv.* 482. But according to *Hawkins*, it ought to be where by Reason of Sickness, Absence, &c. the Constable cannot serve himself. 2 *Hawk. P. C.* 62. When an Office descends to an Infant, Ideot, &c. such may make a *Deputy* of Course. 9 *Rep.* 47. Where an Office is granted to a Man and his Heirs, he may make an Assignee of that Office; and by Consequence a *Deputy*. 9 *Rep.* A *Deputy* of an Office, hath no Interest therein, but doth all Things in his Master's Name, and his Master shall be answerable; but an Assignee hath an Interest in the Office, and doth all Things in his own Name, for whom his Grantor shall not answer, unless in Special Cases. *Terms de Ley* 239, 240. A superior Officer must

must answer for his *Deputy* in Civil Actions, if he is not sufficient: But in criminal Cases it is otherwise, wherein *Deputies* are to answer for themselves. 2 *Inst.* 191, 466. *Doct. & Stud.* c. 42.

De quibus sur Disseisin, Is a Writ of Entry, mentioned in our Books treating of Writs. *Fitzb.* N. B. 191.

Deraign or *Dereyn*, (*Disfranchare*) Seems to be deriv'd literally from the Fr. *Defrayer*, i. e. To confound and disorder, or *Defranger*, to turn out of Course or displace; as *Deraignment* or Departure out of Religion. *Stat.* 31 H. 8. c. 6. And *Deraignment* and Discharge of their Profession. 33 H. 8. c. 29. Which is spoken of those religious Men that forsook their Orders or Profession; and so doth *Kitchin* use it, where he says the Lessee entered into Religion, and afterwards was *deraigned*, p. 152: In our *Common Law* this Word is used diversly; but generally to prove any Thing; viz. to *deraign* that Right, *Deraign* the Warranty, &c. *Glanvil*, lib. 2. cap. 6. F. N. B. 146. If a Man hath an Estate in Fee with Warranty, and enfeoffs a Stranger with Warranty, and dies; and the Feoffee vouches the Heir, the Heir shall *deraign* the first Warranty, &c. *Plowd.* 7. And Jointenants and Tenants in Common shall have Aid, to the Intent to *deraign* the Warranty paramount. 31 H. 8. c. 1. Some have asserted this Word to signify nothing but the Proof or making good of the Denial of a Fact. *Bracton*, lib. 3. tract. 2. cap. 28. *Britton* applieth it to a Summons that may be challenged as defective, or not lawfully made, cap. 21. And *Skene* confounds it with our Waging and Making of Law. See *Lex Deraisnia*.

Derelict, (*Derelictus*) Is any Thing forsaken or left; or wilfully cast away. *Derelict* Lands left by the Sea belong to the King. 2 *Nels. Abr.* 903.

Descent of Lands, Tenements, &c. See *Descent*.

Description, (*Descriptio*) In Decds and Grants there must be a certain Description of the Lands granted, the Places where the Lands lie, and of the Persons to whom granted, &c. to make them good: But Wills are more favoured than Grants as to those Descriptions; and a wrong 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. If there are several Descriptions of one Person in a Will, they must all agree at the Time of the Will executed, in Name, Circumstances, &c. or the Devise to such is void. *Ibid.*

De son tort Demesne, Are certain Words of Form used in Actions of Trespass, &c. by Way of Replication to the Defendant's Plea: For Example, A. sues B. in Action of Trespass. B. answers for himself, that he did that which is alleged against him by the Command of C. his Master; to which A. replies, that B. did it *De son tort Demesne*, sans ceo que C. luy command, modo & forma, viz. That B. did it of his own Wrong, without that, that C. commanded him, in such Form, &c. When the Defendant in *jure proprio*, or as a Servant to another, claims any Interest in a Common, or to a Way, &c. *De son tort* generally is not good: But if the Defendant justifies as Servant, there it may be good, with a Traverse of the Commandment, it being material; for the general Replication *De son Tort* is properly when the Defendant's Plea consists merely of Matter of Excuse, and no Matter of Interest. 8 *Rep.* 67. 1 *Lill. Abr.* 428. There ought to be a Conclusion to the Country in a Replication of *De son*

Tort; because the Replication should make an Issue of it. 3 *Lev.* 65. But there cannot be Variety of Matter put in Issue; as Matter of Record and Matter of Fact, &c. 3 *Lev.* 65. 2 *Leon.* 108.

Despitus, Signifies in our antient Law-Books a contemptible Person. *Fleta*, lib. 4. cap. 5. par. 4.

Desubito, To weary a Person with continual Barkings, and then to bite; which is provided against by old Laws. — *Si Canis hominem Desubitet, aut mordeat tacitus, in prima culpa reddantur sex sol.* Leg. Alured. 26.

Detachiate, To seize or take into Custody another Person's Goods, &c. by Attachment or other Course of Law. *Cowel.*

Detinet, A Word used in Writs, &c. See *Debet* and *Detinet*.

Detinue, (*Detinendo*) In the *Common Law* is like *Actio Depositum* in the Civil Law, and is a Writ which lies against him, who having Goods or Chattels delivered to keep, refuseth to redeliver them. In this Action the Thing detained is to be recovered; but if one cannot recover the Thing it self, he shall recover Damages for the Thing, and also for the Detainer. *Wood's Inst.* 542. *Detinue* lies for any Thing certain and valuable wherein one may have a Property or Right; as for a Horse, Cow, Sheep, Hens, Dogs, Beds, Jewels, Plate, Cloth, Bags of Money, Sacks of Corn, &c. It must be laid so certain, as the Thing detained may be known and recovered; and therefore for Money out of a Bag, or Corn out of a Sack, &c. it lies not, for the Money or Corn cannot in this Case be known from other Money or Corn; so that the Parry must have an Action on the Case, &c. 1 *Inst.* 286. F. N. B. 138. Yet *Detinue* may be brought for a Piece of Gold, of the Price of 22 s. tho' not for 22 s. in Money; for here is a Demand of a certain particular Piece. 2 *Danv. Abr.* 510. A Man lends a Sum of Money to another, *Detinue* lies not for it, but Debt: But if A. bargains and sells Goods to B. upon Condition to be void if A. pays B. a certain Sum of Money at a Day; now if A. pays the Money, he may have *Detinue* against B. for the Goods, tho' they come not to the Hands of B. by Bailment, but by Bargain and Sale. *Cro. Eliz.* 867. 2 *Danv.* 510. If a Man delivers Goods to A. to deliver to B. B. may have *Detinue*, for the Property is in him: And where he delivers them to B. and after grants them to D. he shall not have *Detinue* after the Grant, but the Grantee shall have it. *Yelv.* 241. 1 *Bulst.* 69. When Goods are deliver'd to one, and he delivers them over to another, Action of *Detinue* may be had against the second Person; and if he delivers them to one that has a Right thereto, yet 'tis said he is chargeable: Also if a Person to whom a Thing is delivered dieth, *Detinue* lieth against his Executors, &c. or against any Person to whom the Thing comes. 2 *Danv. Abr.* 511. A Man may have a general *Detinue* against another that finds his Goods: Tho' if I deliver any Thing to A. to redeliver, and he loses it, if B. finds it and delivers it to C. who has Right to the same, he is not chargeable to me in *Detinue*, because he is not privy to my Delivery. 7 H. 6. 22. 9 H. 6. 58. In Actions of *Detinue*, the Thing must be once in the Possession of the Defendant; which Possession is not to be altered by Act of Law, as Seizure, &c. And the Nature of the Thing must continue, without Alteration, to entitle this Action. F. N. B. 138. To bring *Detinue*, the Plaintiff must set

forth the Time and Thing delivered, to what Use the same was delivered, and the Time appointed for the Redelivery thereof. *Practif. Solic.* But Actions of *Detinue* are not so frequently brought as formerly; for Actions of *Trover and Conversion* are had in their Stead, where the Conversion changes the *Detinue* to *Action of the Case*; and thereby the tedious Proceedings as to Garnishment, &c. are now out of Use. 10 *Rep.* 57. 1 *Inst.* 286. *Detinet* is a necessary Word in the Writ of *Detinue*.

Detinue of Charters. A Man may have *Detinue* for Deeds and Charters concerning Land; but if they concern the Freehold, it must be in C. B. and no other Court. Action of *Detinue* lies for Charters which make the Title of Lands; and the Heir may have a *Detinue of Charters*, altho' he hath not the Land: And if my Father be disseised, and dieth, I shall have *Detinue* for the Charters, notwithstanding I have not the Land; but the Executors shall not have the Action for them. *New Nat. Br.* 308. *Detinue* was brought for a Deed, and the Plaintiff had a Verdict, that the Defendant detained the Deed, and the Jury gave 20 l. Damages, but did not find the Value of the Deed; and then there issued out a *Distingas* to deliver the Deed, or the Value, and afterwards a Writ of Inquiry was awarded for the Value; whereupon the Jury found a different Value from what the first Verdict found; and it was adjudg'd good. *Raym.* 124. 1 *Nelf. Abr.* 649. In *Detinue of Charters*, if the Issue be upon the *Detinue*, and it is found that the Defendant hath burnt the Charters, the Judgment shall not be to recover the Charters, which it appears cannot be had; but 'tis said it shall be for the Plaintiff to recover the Land in Damages. 2 *Roll. Abr.* 101. 2 *Danv. Abr.* 511. For Detaining of Deeds and Charters concerning the Inheritance of Lands, or an Indenture of Lease, the Defendant shall not wage his Law. 1 *Inst.* 295.

Detinue of Goods in Frank-marriage, Is on a Divorce betwixt a Man and his Wife; when, after the Divorce, the Wife shall have this Writ of *Detinue* for the Goods given with her in Marriage. *M.* 35 E. 1. *New Nat. Br.* 308.

Detractare, Is a Word signifying to be torn in Pieces with Horses. — *Apostata, Sacrilegi, & hujusmodi, detractari debent & comburi.* *Fleta*, lib. 1. cap. 37.

Detunicare, To discover or lay open to the World. *Matt. Westm.* 1240.

Devadiatus, Is where an Offender is without Sureties or Pledges. *Si homo in Villa delinquit & Devadiatus fuerit, nil inde habet Præpositus Regis.* *Domesd. tit.* Sudrei.

Devastavit, or Devastaverunt bona Testatoris, Is a Writ that lies against Executors or Administrators, for paying Debts upon simple Contract, before Debts on Bonds and Specialties, &c. for in this Case they are as liable to Action as if they had squandered away the Goods of the Deceased, or converted them to their own Use; and are compellable to pay such Debts by Specialty out of their own Goods, to the Value of what they so paid illegally. *Dyer* 232. But if an Executor pays Debts upon simple Contract, before he hath any Notice of Bonds, it is no *Devastavit*; and regularly this Notice is by an Action commenced against him, for the Law doth not oblige him to take Notice of it himself, nor of a Judgment against his Testator, because he is not privy to Acts done either by or against him. 1 *Mod.* 175. 3 *Lev.* 115. Where an Executor,

&c. payeth Legacies before Debts, and hath not sufficient to pay both, 'tis a *Devastavit*. Also where an Executor sells the Testator's Goods at an Undervalue, it is a *Devastavit*; but this is understood where the Sale is fraudulent, for if more Money could not be had, it is otherwise. *Kelw.* 59. 1 *Nelf. Abr.* 649. Executors keeping the Goods of the Deceased in their Hands, and not paying the Testator's Debts; or selling of them, and not paying of Debts, &c. or not observing the Law which directs them in the Management thereof; or doing any Thing by Negligence or Fraud, whereby the Estate of the Deceased is misemployed, are a *Devastavit* or Waste; and they shall be charged for so much *De bonis propriis*, as if for their own Debt. 8 *Rep.* 133. But the Fraud or Negligence of one Executor is not chargeable on the Rest, where there are several Executors. 1 *Roll. Abr.* 929. There are some Cases in the old Books, that where an Executor wastes the Goods of the Testator, and afterwards makes his Executor, and dies, leaving Assets, that an Action of Debt will not lie against the Executor of the wasting Executor, upon a Suggestion of a *Devastavit* or Waste by the first Executor; because 'tis a personal Wrong which died with him. 3 *Leon.* 241. But in this Case there is a Difference between a lawful Executor and an *Executor de son Tort*; for as an *Executor de son Tort* possesses himself of the Goods wrongfully, if he afterwards wastes them, and dies, leaving Assets, his Executor shall be charged upon the Suggestion of a *Devastavit* in his Testator, because he came wrongfully by the Goods, and therefore the Wrong shall not die with his Person. 2 *Lev.* 135. And before the Statute 30 *Car.* 2. c. 7. it has been decreed in Equity against the Executor of a lawful Executor, who had wasted the Goods, and died, that such Executor should be liable to make good to the Creditors of the Testator, so much as the first Executor had wasted, and so far as he had Assets of the said first Executor. 1 *Ch. Rep.* 257. By that Statute 'tis enacted, that if an *Executor de son Tort* wastes the Goods, and dies, 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; and therefore his Executor or Administrator may be liable to a *Devastavit*. 3 *Mod.* 113. Debt lies against an Executor in the *Debet* and *Detinet*, where there is a Judgment against his Testator, upon a Suggestion only, that he had wasted the Goods; and this is a more expeditious Way than the old Method of *Scire fac. Inquiry*, which was issued to shew Cause why the Plaintiff should not have Execution against the *Executor de Bonis propriis*, and thereupon the Sheriff return'd a *Devastavit*, &c. 1 *Lev.* 147. 1 *Nelf.* 650. A Husband is to be charged for Waste done by his Wife *Dum sola*: But the Husband is not chargeable after the Death of a Wife Executrix, on Suggestion of a *Devastavit* in a Declaration against him. *Cro. Car.* 603. *Lutw.* 672. And it has been adjudged, that a Feme Covert Executor cannot do any Waste during the Coverture; tho' for Waste done by the Husband she shall be charged, if she survives him; but then it must be on a Judgment obtained against him, and not on a bare Suggestion of a *Devastavit*, &c. 2 *Lev.* 145. See *Debet & Detinet*.

Devenerunt,

Debenerunt, A Writ heretofore directed to the Escheator on the Death of the Heir of the King's Tenant, under Age and in Custody, commanding the Escheator that by the Oaths of good and lawful Men, he enquire what Lands and Tenements by the Death of the Tenant came to the King. *Dyer* 360. This Writ is now disused: But see Stat. 14 Car. 2. c. 11. for preventing Frauds and Abuses in his Majesty's Customs.

Debest, (*Devestire*) Is opposite to *invest*; for as *Invest* signifies to deliver the Possession of any Thing to another; so *Devest* signifieth the Taking it away. *Feud. lib. 1. cap. 7.*

Debise, (from the Fr. *Deviser*, to divide or sort into Parcels) Is properly where a Man gives away any Lands or Tenements by Will in Writing. And he that gives away his Lands in this Manner, is called the *Devisor*; and he to whom the Lands are given, the *Devisee*. A *Devise* in Writing is, in Law Construction, no Deed; but an Instrument by which Lands are conveyed. And anciently where Lands were devisable, it was by Custom only; for at Common Law, in Favour of Heirs, no Lands or Tenements in Fee-simple were devisable by Will; nor could they be transferred from one to another but by solemn Livery and Seisin; Matter of Record, or sufficient Deed or Writing. 1 *Inst.* 111. 2 *Inst.* 386, &c. But now it is otherwise by Statute 32 Hen. 8. See *Will*.

Devoires of Calais, Were the Customs due to the King, for Merchandize brought into or carried out of *Calais*, when our Staple remained there. 2 R. 2. Stat. 1. c. 3. *Devoir* in French signifies a Duty, paying their Customs and Devoires to the King. Stat. 34 Ed. 1. c. 18.

Dextrarius. The Word *Dextrarios*, has been used for light Horses, or Horses for the great Saddle; from the Fr. *Destrier*, a Horse for Service. — *Willielmus de B. dedit Regi tres Dextrarios, quinque Chacuros, &c. pro habenda seiscina Castr. de Grosmunt, &c. Rot. Chart. in Tur. London, Anno 7. Joh. n. 38.* In another Sense, *Dextrarius* is understood to take the Right Hand of another. *Blount*.

Dextras dare, Shaking of Hands in Token of Friendship; or a Man's giving up himself to the Power of another Person. *Walsingh. p. 332.*

Diarium, Is taken for daily Food; or as much as will suffice for the Day. *Du Cange*.

Dica, A Tally for Accounts, by Number of *Tailles*, Cuts or Notches. — *Et præter hoc debet Magister Mariscalcia habere Dicas de donis & Liberationibus quæ fuerint in Thesaurò Regis, &c. Lib. Rub. Scaccar. fol. 30.* And in an ancient Record, — *Institutum est ut diligenter per Dicam notetur quantum ex omni genere Bladi vel Leguminis expendatur in semine. — Et Dica illa dividatur in duo, & una pars deputabitur Custodiæ Hospitalis Fratris, &c. altera Grangiariorum. Statut. Ord. de Semplingham, pag. 748.*

Dickar or **Dicker** of Leather, Is a certain Quantity consisting of ten Hides, by which Leather is bought and sold: There are also *Dickers* of Iron, containing ten Bars to the *Dicker*. This Word is thought to come from the Greek *Deca*'s, which signifies Ten. *Domesd.*

Dictor and **Dictum**: The one signifies an Arbitrator, and the other the Arbitrament. — *Protulit Dictum suum & sententiam pro Rege Angliæ. Malmf. p. 384.*

Dictum de Kenilworth, Was an Edict or Award, between King Henry the Third and his Barons and others, who had been in Arms against him; so called, because it was made at *Kenilworth Castle* in *Warwickshire*, Anno 51. Hen. 3. It contained a Composition of those who had forfeited their Estates in that Rebellion, which Composition was five Years Rent of the Lands and Estates forfeited.

Diem clausit extremum, Was a Writ issued out of the Court of *Chancery* to the Escheator of the County, upon the Death of any of the King's Tenants *in Capite*, to enquire by a Jury of what Lands he died seised, and of what Value, and who was the next Heir to him: And the same ought to be granted at the Suit of the next Heir, &c. for upon that, when the Heir came of Age, he was to sue Livery of his Lands out of the King's Hands. *F. N. B. 251.*

Dies. There are several Sorts of Days, *i. e.* Days *natural*, *artificial* and *legal*; and *Sunday* is not only *Dies non Juridicus* as to legal Proceedings, but also as to Contracts. 2 *Inst.* 264. See *Day*.

Dies datus, Is a Day or Time of Respite given to the Defendant in a Suit by the Court. *Broke*.

Dies Marchiæ, Was the Day of Congress or Meeting of the *English* and *Scotch*, appointed annually to be held on the *Marches* or Borders, to adjust all Differences between them, and preserve the Articles of Peace. — *Convenerunt ad Diem Marchiæ, & conventum fuit inter eos pro commodo pacis, &c. Tho. Walsingham, in Ric. 2. p. 307.*

Dieta, A Journey, or Day's Journey. — *Omnis rationabilis Dieta constat ex viginti Miliaribus. Fleta, lib. 4. cap. 28.* And in this Sense it is used by *Bracton, lib. 3. tract. 2. c. 16.* But this Word hath divers other Significations in the *Civil Law*.

Diet, (*Convventus*) An Assembly; as the Diet of the Empire of *Ratisbon*, &c.

Dieu & 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; first given by *K. Rich. 1.*

Dieu Son Ait, Are Words often used in our old Law: And it is a *Maxim* in Law, That the Ait of God shall prejudice no Man. Therefore, if a House be blown down by Tempest, Thunder or Lightning, the Lessee or Tenant for Life or Years, shall be excused in Waste: Likewise he hath by the Law a special Interest to take Timber, to build the House again for his Habitation. 4 *Rep.* 63. 11 *Rep.* 82. So when the Condition of a Bond consists of two Parts in the Disjunctive, and both are possible at the Time of the Obligation made, and afterwards one of them becomes impossible by the Ait of God, the Obligor is not bound to perform the other Part. 5 *Rep.* 22. And where a Person is bound to appear in Court, at a certain Day; if before the Day he dieth, the Obligation is saved, &c. See *Bond*.

Diffacere, To destroy: And *Diffactio* is a Maiming any one. *Leg. H. 1. c. 64, 92.*

Diffociare Rectum, To take away, or deny Justice. *Mat. Paris. Anno 1164.*

Digest, The Book of Pandects of the Civil Law; which hath its Name from its containing *Legalia præcepta excellentè Digesta. Du Cange.*

Dignity, (*Dignitas*) Signifies Honour and Authority; Gravity, Reputation, &c. And *Dignity* may

may be divided into Superior and Inferior: As the Titles of Duke, Earl, Baron, &c. are the highest Names of *Dignity*; and those of Baronet, Knight, Serjeant at Law, &c. the lowest. 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 *Hawk. P. C.* 185, 230. No Temporal *Dignity* of any Foreign Nation can give a Man a higher Title here than that of Esquire. 2 *Inst.* 667. See *Addition* and *Discent*.

Dignity Ecclesiastical, (*Dignitas Ecclesiastica*) Is defined by the Canonists to be *Administratio cum Jurisdictione & Potestate aliqua conjuncta*; of which there are several Examples in *Duarenus, de Sacris Eccles. &c. lib. 2. c. 6.* *Dignities Ecclesiastical* are mentioned in the Stat. 26 H. 8. cap. 31 & 32. And of Church *Dignities*, Camden in his *Britannia*, p. 161. reckons in England 544.

Dignitaries, (*Dignitarii*) Are those who are advanced to any *Dignity Ecclesiastical*; as a Bishop, Dean, Archdeacon, Prebendary, &c. But there are simple Prebendaries, without Cure or Jurisdiction, which are not *Dignitaries*. 3 *Inst.* 155.

Dilapidation, (*Dilapidatio*) Is where an Incumbent on a Church Living, suffers the Parsonage House or Outhouses to fall down, or be in Decay, for Want of necessary Reparation: 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 the Committing or Suffering any wilful Waste, in or upon the Inheritance of the Church. *Degg's Parf. Counf.* 89. 'Tis the Interest of the Church in general to preserve what belongs to it for the Benefit of the Successors; and the old Canons, and our own provincial Constitutions, require the Clergy sufficiently to repair the Houses belonging to their Benefices; which if they neglect or refuse to do, the Bishop may sequester the Profits of the Benefice for that Purpose, &c. *Right's Clerg.* 143. And by the Canon Law, *Dilapidations* are made a Debt, which is to be satisfied out of the Profits of the Church; but the Common Law prefers Debt on Contract, &c. before Debt for *Dilapidations*. *Hern.* 136. The Prosecution in these Cases, may be brought either against the Incumbent himself, or against his Executors or Administrators; for the Executor or Administrator of him in whose Time it was done or suffered, must make Amends to the Successor: And if you proceed against the Incumbent, then it is proper in the Spiritual Court: Likewise you may proceed in the Spiritual Court against an Executor, or the Successor may have an Action of the Case or Debt at the Common Law, in which Action he shall recover Damages in Proportion to the *Dilapidations*. 1 *Nelf. Abr.* 656. By Statute, if any Parson, &c. shall make a Gift of his Goods and personal Estate, to defraud his Successor, as to *Dilapidations*, such Successor may have the same Remedy in the Spiritual Court against the Person to whom such Gift is made, as he might have against the Executors of the deceased Parson. 13 *Eliz. cap.* 10. And Money recovered for *Dilapidations*, is to be employed in the Reparations of the same Houses suffered to be in Decay; or the Party recovering shall forfeit double the Value of what he re-

ceives, to the King, by Stat. 14 *Eliz. cap.* 11. Where in our Books 'tis said, that *Dilapidations* are suable for only in the Ecclesiastical Court, that is to be intended where the Suit is grounded upon the Canon Law; for an Action of the Case might have been brought at the Common Law by the Successor against the Executors of the Dilapidator. *Parf. Counf.* 97, 98. If a Parson suffers *Dilapidations*, and afterwards takes another Benefice, whereby his former Benefice becomes void; his Successor may have an Action against him, and declare, that by the Custom of the Kingdom he ought to pay him *Tantas Denarium summas quantas sufficient ad Reparandum*, &c. 3 *Lev.* 268. In case a Parson comes to a Living, the Buildings whereof are in Decay by *Dilapidations*, and his Predecessor did not leave a sufficient personal Estate to repair them, so that he is without Remedy; he is to have the Defects surveyed by Workmen, and attested under their Hands in the Presence of Witnesses, which may be a Means to secure him from the Incumbrance brought upon him by the Fault of his Predecessor. *Country Parf. Compan.* 60.

Diligiatus, Outlawed, *i. e. De Lege ejectus*. Leg. Hen. 1. c. 45.

Dilligroust, Pottage formerly made for the King's Table, on his Coronation Day: And there was a Tenure in Serjeanty, by which Lands were held of the King, by the Service of finding this Pottage, at that great Solemnity. 39 *H.* 3.

Dimidietaſ, Is used in our Records for a Moiety, or one Half. — *Sciant quod Ego Matilda Filia Williclmi le F. dedi Waltero de S. Dimidietatem illius Burgarii*, &c. — *Sine dat.* Ex Libro Chart. Priorat. de Leominstr.

Diminution, (*Diminutio*) Is where the Plaintiff or Defendant in a Writ of Error alledges to the Court that Part of the Record is omitted and remains in the inferior Court not certified; whereupon he prays that it may be certified by *Certiorari*. *Co. Ent.* 232, 242. Of course *Diminution* is to be certified on a Writ of Error; tho' if Issue be joined upon the Errors assigned, and the Matter is entered upon Record, which is made a *Consilium*, in this Case there must be a Rule of Court granted for a *Certiorari* to certify *Diminution*. 1 *Lill. Abr.* 255. *Diminution* cannot be alledged of a Thing which is fully certified; but in something that is wanting, as Want of an Original, or a Warrant of Attorney, &c. 2 *Lev.* 206. 1 *Nelf. Abr.* 658. And if on *Diminution* alledged, the Plaintiff in Errors certify one Original, &c. which is wrong; and the Defendant in Errors certifies another that is true; the true one shall stand. *Cro. Jac.* 597. *Cro. Car.* 91. After a Writ of Error brought, and the Defendant hath pleaded *In nullo est Erratum*, he cannot afterwards alledge *Diminution*; because by that Plea he affirmeth or alloweth the Record to be such as is certified upon the Writ of Error. *Godb.* 266. But in some Cases, *Diminution* hath been alledged, after *In nullo est erratum* pleaded, *ex gratia Curie*; though not *ex rigore juris*. *Palm.* 85. And there is an Instance that the Court in such a Case hath awarded a *Certiorari*, to inform their Conscience of the Truth of the Record in C. B. where the Defendant in Error had not joined *In nullo est Erratum*. 1 *Nelf.* 658.

Dimissory Letters, (*Litteræ Dimissoriæ*) Are such as are used where a Candidate for Holy Orders has a Title in one Diocese, and is to be ordained in another: The proper Diocesan sends his

Letters

Letters Dimissory directed to some other ordaining Bishop, giving Leave that the Bearer may be ordained, and have such a Cure within his District. *Corwel.*

Diocese, (*Diœcesis*) Signifies the Circuit of every Bishop's Jurisdiction: For this Realm hath two Sorts of Divisions; one into Shires or Counties, in Respect to the *Temporal State*; and another into *Dioceses*, in Regard to the *Ecclesiastical State*, of which we reckon twenty-two in *England*, and four in *Wales*. 1 *Inst.* 94. Also the Kingdom is said to be divided in its Ecclesiastical Jurisdiction into two *Provinces*, of *Canterbury* and *York*; each of which *Provinces* is divided into *Dioceses*, and every *Diocese* into *Archdeaconries*, and *Archdeaconries* into *Parishes*, &c. *Wood's Inst.* 2.

Disability, (*Disabilitas*) Is when a Man is disabled, or made incapable to inherit any Lands, or take that Benefit, which otherwise he might have done: Which may happen four Ways; by the Act of an Ancestor, or of the Party himself, by the Act of God, or of the Law. 1. *Disability* by the Act of the Ancestor, is where the Ancestor is attainted of Treason, &c. which corrupts the Blood of his Children; so that they may not inherit his Estate. 2. *Disability* by the Act of the Party, is where a Man binds himself by Obligation, that upon Surrender of a Lease, he will grant a new Estate to the Lessee; and afterwards he grants over the Reversion to another, which puts it out of his Power to perform it. 3. *Disability* by the Act of God, is where a Person is *Non sane Memoria*, whereby he is incapable to make any Grant, &c. So that in all Cases where he passeth any Estate out of him, it may after his Death be made void; but it is a Maxim in Law, *That a Man of full Age shall never be re-versed to disable his own Person*. 4. *Disability* by the Act of the Law, is where a Man by the sole Act of the Law, without any Thing by him done, is rendered incapable of the Benefit of the Law; as an Alien born, &c. *Terms de Ley*, 256. 5 *Rep.* 21. 4 *Rep.* 123, 124. 8 *Rep.* 43. There are also other *Disabilities*, by the Common Law, and Statute Law; by the Common Law, Ideocy, Infancy and Coverture, as to Grants, &c. And by Statute in many Cases; as Papists are disabled to make any Presentation to a Church, &c. Officers not taking the Oaths, are incapable to hold Offices; Foreigners, though naturalized, to bear Offices in the Government, &c. 11 *Rep.* 77. *Stat.* 11 & 12 *W.* 3. 1 & 3 *Geo.* See *Capacity*.

Disabvotare, Signifies to deny, or not to acknowledge a Thing: It is mentioned in *Hengham Magna*, cap. 4.

Disalt, According to *Littleton*, is to disable a Person. *Litt. Tit. Discontinuance*.

Disboscatio, A Turning Wood Ground into Arable or Pasture.

Discharge, (from *Dis* and *Cargo*) Is to unlade a Ship or Vessel by taking out the Cargo or Goods. — *Et prædictus*, &c. *Carcare* & *Discharge* fecit *ibidem* *Merchandis* & *Denariis* *quascunque*. *Placit. Parl.* 18 Ed. 1.

Disceit, A Writ or Action for Fraud and Deceit. See *Deceit*.

Discent, (Lat. *Descensus*, Fr. *Descent*) Is an Order or Means whereby Lands or Tenements are derived unto any Man from his Ancestors. And is either by *Common Law*, *Custom* or *Statute*: By *Common Law*, as where one hath Land of Inheritance in Fee-simple, and dieth without disposing thereof in his Life-time, and the Land goes

to the eldest Son and Heir of Course, being cast upon him by Law. 1 *Inst.* 13, 237. *Discent* of Fee-simple by *Custom*, is sometimes to all the Sons, or to all the Brothers, where one Brother dieth without Issue; as in *Gavelkind*: Sometimes to the youngest Son, as in *Borough English*; and sometimes to the eldest Daughter, or the Youngest, &c. according to the Customs of particular Places. 1 *Inst.* 110, 140, 175. *Litt.* 210, 211. And *Discent* by *Statute* of Fee-tail, is as directed by the Manner of the Settlement or Limitation, pursuant to the Stat. *Westm.* 2. 13 Ed. 1. cap. 1. *Discent* as *Common Law*, is *Lineal*, or *Collateral*: *Lineal* is a *Discent* downwards in a right Line, from the Grandfather to the Father, the Father to the Son, Son to Grandson, &c. and the lineal Heirs shall first inherit. *Collateral* is a *Discent* which springeth out of the Side of the whole Blood, as another Branch thereof; such as the Grandfather's Brother, Father's Brother, and so downward. 1 *Inst.* 10, 11. Therefore if a Man purchaseth Lands in Fee-simple, and dies without Issue, for Default of the right Line, he which is next of Kin in the collateral Line of the whole Blood, though never so remote, comes in by *Discent* as Heir to him; for there is a next of Kin by Right of *Representation*, and by Right of *Propinquity* or Nearness of Blood. *Litt.* 2. 1 *Ventr.* 415. 3 *Rep.* 40. To have Land in Fee-simple by *Discent*, a Person must be Heir of the whole Blood; he is to be the next, and most worthy of Blood, to the Ancestor; and he ought to be Heir to him that was last actually seized. Where Lands descend to the Son from the Father, and he enters on the Lands, and dies seized thereof, without having any Issue, this Land will descend to the Heirs of the Part of the Father, who are of the whole Blood; and if there are none such, the Land shall escheat: So where Lands descend on the Part of the Mother. *Litt. Sect.* 4. 1 *Inst.* 13. And there is a Maxim in Law, that where Lands descend on the Part of the Father, the Heirs of the Mother shall never inherit; and where Lands descend on the Part of the Mother, the Heirs of the Father shall never inherit. 1 *Inst.* 14. But there is a Difference between *Discents* from Father and Mother to their Children, and *Discents* between Brothers and Sisters; for a Son or a Daughter need be only of the Blood of either the Father or Mother, which hath the Inheritance to inherit them: Though the Brothers and Sisters must be of the same Father and Mother, to inherit one another. *Noy* 68. The next and most worthy of Blood are the Male, and all Descendants from him, before the Females; and the Female on the Part of the Father, before the Male or Female of the Part of the Mother: And the elder Brother, and his Posterity, shall have Lands in Fee-simple, before any younger Brother: Also a Sister of the whole Blood shall be preferred and take before the younger Brother which is of the half Blood; but such a younger Brother, though he may not be Heir to a Brother, for Want of the whole Blood, yet he may be Heir to his Father, or his Uncle. 1 *Inst.* 14. 3 *Rep.* 41. As to being Heir to him last actually seized: If Tenant in Fee-simple hath a Son and a Daughter by one Woman or Venter, and a Son by another Venter, and dies seized, and the elder Son dies without Issue, before actual Seisin, the younger Brother as Heir to the Father shall have the Estate; but if the elder Brother had entered on the Lands, the Sister would

would have it as Heir to him. 1 *Inst.* 11, 15. *Lit.* 8. None can inherit any Lands as Heir, but only the Blood of the *first Purchaser*; as if the Father make a Purchase, the Blood of the Mother shall not have the Estate: But if a Son purchases, and there is no Heir on the Side of the Father, the Land shall go to the Heirs on the Side of the Mother; for they are of the Blood of the Son the first Purchaser, and he had the Blood of both Father and Mother. *Litt.* 4. 1 *Inst.* 12. So that there is a Difference where the Son purchaseth Lands in Fee-simple, and where he cometh to them by *Discent*. If a Man hath Issue two Sons by divers Venters, the younger Brother of the half Blood shall not have Land purchased by the elder Brother, on his Dying without Issue; but the elder Brother's Uncle, or next Cousin shall have it. 1 *Inst.* 14. The elder Brother of the whole Blood shall have Land by *Discent*, purchased by a middle or younger Brother, if such die without Issue; (for as to *Discent*s between Brethren, the Eldest is the most worthy of Blood to inherit to them as well as to the Father). And if there be no Brother or Sister, the Uncle shall have it as Heir, and not the Father: And yet it may afterwards come to the Father, as Heir to the Uncle; likewise if the Father hath Issue another Son or Daughter, after the *Discent* to the Uncle, that Issue may enter upon the Uncle, and hold the Estate. *Lit.* 3. 3 *Rep.* 40. The Law takes no Notice of the *Disability* of the Father in case of *Discent*, but only of the immediate Relation of Brothers and Sisters, as to their Estates; so that the Inability of the Father doth not hinder the *Discent* between them: For Example; A Man had Issue a Son and a Daughter, and was attainted of Treason, and died; the Son purchased Lands, and died without Issue; and it was adjudged that notwithstanding the Attainder of the Father, the Daughter shall take by *Discent* from her Brother, because the *Discent* between them was immediate, and the Law doth not regard the *Disability* of the Father. 4 *Leon.* 5. 1 *Nelf. Abr.* 645. Inheritances may *descend*, but not *ascend*: And in the right Line, Children inherit their Ancestors without Limitation; but the Ancestors may not take from their Children, for the Father can never come to the Lands which his Son hath purchased by lineal Assent; tho' he may by collateral Assent, where the Son's Lands come to his Uncle, and then to the Father. In the collateral Line, the Uncle inherits the Nephew, and the Nephew the Uncle. *Litt.* 3. 3 *Rep.* 40. *Vaugh.* 244. Lands and Tenements in Fee-simple *descend*, first, to the eldest Son as Heir, and to his Issue; the Sons first, in Order of Birth; and for Want of Sons, to the Daughters equally, who inherit as one Heir; if the eldest Son hath no Issue, then to his next eldest Brother of the whole Blood, and his Heirs; and for Want of a Brother, to his Sister or Sisters of the whole Blood, and their Issue; if there be no Brother or Sister, to the Uncle and his Issue; and for Want of an Uncle, to an Aunt or Aunts, and their Issue; and if there be none such, then to Cousins, in the nearest Degree of Consanguinity. *Bacon's Elem.* And in case of Lands purchased by Brethren; after Uncles and Aunts, the Land shall descend to the Father, and the half Blood, and their Issue; (who come in after the Father, being of the whole Blood to him, tho' not to one another) and for Want of Uncle, Father, and half Blood, to the

next of Kin in the collateral Line. *Wood's Inst.* 218. In *Discent* of Estates tail, half Blood is no Hindrance; because the Issue are in *per formam Doni*, and always of the whole Blood to the Donee. 3 *Rep.* 41. If one die seised of Land, in which another has Right to enter, and it descends to his Heir; such *Discent* shall take away the other's Right of Entry, and put him to his Action for Recovery thereof. *Stat.* 32 *Hen.* 8. c. 33. *Co. Lit.* 237. But a *Discent* of such Things as lie in Grant; as Advowsons, Rents, Commons in gross, &c. puts not him that hath Right to his Action. 1 *Inst.* 237. 2 *Danv. Abr.* 561. And a *Discent* shall not take away the Entry of an Infant; nor of a Feme Covert, where the Wrong was done to her during the Coverture. 2 *Danv.* 563. See *Kindred*.

Discent being created by Law, and the most ancient Title, an Heir is in by that, before a Grant, or Devise, &c. 'Tis a Rule in Law, that a Man cannot raise a Fee-simple to his own right Heirs, by the Name of Heirs, as a *Purchase*, either by Conveyance or Devise; for if he devise Lands to one who is Heir at Law, the Devise is void, and he shall take by *Discent*. *Dyer* 54, 126. And 'tis the same where the Lands will come to the Heir, either in a direct or collateral Line; or where the Heir comes to an Estate by Way of Limitation, when the Word *Heirs* is not a Word of *Purchase*. *Ibid.* A Father hath two Sons by several Venters, and devises his Land to his Wife for Life, and after her Decease to his eldest Son; though the Son doth not take the Estate presently on the Death of his Father, he shall be in by *Discent*, and not by Purchase, and the Devise shall be void as to him. *Style* 148. 1 *Nelf. Abr.* 645. A Man being seised of Lands which he had by the Mother's Side, devised them to his Heirs on the Part of his Mother; and it was adjudged that the Devisee shall take by *Discent*. 3 *Lev.* 127. And when the Heir takes that which his Ancestor would have taken if living, he shall take it by *Discent*, and not by Purchase. 2 *Danv.* 557. But generally where an Estate is devised to the Heir at Law, attended with a Charge, as to pay Money, Debts, &c. in such Case, he takes by Purchase, and not by *Discent*. Though Conditions to pay Money have been construed only a Charge in Equity; and that they do not alter the *Discent* at Common Law. 1 *Lutw.* 595; 1 *Salk.* 241. A Man can have Lands no other Way than by *Discent* or Purchase. And *Discent* is the worthiest Means whereby Land can be acquired.

Discent of Crown-Lands. All the Lands whereof the King is seised in *jure Coronae*, shall *secundum jus Coronae* attend upon and follow the Crown; so that to whomsoever the Crown descends, those Lands and Possessions descend also. And if the Heir to the Crown be attainted of Treason; yet shall the Crown descend to him, and without any Reversal the Attainder is avoided. *Plowd.* 247. *Co. Lit.* 15. The Dignity of the Crown of England, for Want of Heirs Male, is descendible immediately to the eldest Daughter, and her Posterity; and so it has been declared by Act of Parliament: And by Stat. 25 *Hen.* 2. cap. 22. *Regnum non est Divisibile*. The eldest Sister of a King, as well as the eldest Daughter, shall inherit all his Fee-simple Lands by *Discent*: And half Blood is no Impediment to the *Discent* of the Lands of the Crown. *Co. Lit.* 15, 165. But a Daughter of the whole Blood, shall not inherit where there is a Son of the half

half Blood ; as where the King hath Issue a Son and a Daughter by one Venter, and a Son by another Venter, and purchases Lands, and dies ; afterwards the eldest Son enters and dies also without Issue, the Daughter shall not have these Lands, or any other Fee-simple Lands of the Crown, but they shall descend to the younger Brother. *Plowd.* 245. 34 *H.* 6. A Person coming to be King by *Discent* of the Part of his Mother, makes a Purchase to him and his Heirs, and dies without Issue, this Land shall descend to the Heir on the Part of the Mother ; contrary to the Case of a Subject, where the Heir on the Father's Side shall enjoy it. *Ibid.* *Co. Litt.* 16. As the whole Kingdom hath an Interest in the *Discent of the Crown*, the King cannot surrender or alien it, &c. See *Crown*.

Discent of Dignities. A Dignity also differs from common Inheritances, and goes not according to the Rules of the Common Law ; for it descends to the half Blood, and there is no Coparcenership in it, but the Eldest takes the Whole. *Co. Litt.* 27. The Dignity of Peccage 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 forward nor backward, but only downward to Posterity ; and nothing but Corruption of Blood, as if the Ancestor be attainted of Treason or Felony, can hinder the *Discent* to the right Heir. *Lex Constitutionis*, pag. 85.

Discharge, Is where a Man confined by some legal Writ or Authority, doth that which by Law he is required to do, whereupon he is released from the Matter for which he was confined. And if one be arrested by a *Latitat* out of B. R. and the Plaintiff do not file a Declaration against the Defendant in Prison in two Terms, he shall be *discharged* on common Bail. 1 *Lill. Abr.* 470. Also where a Defendant on Arrest is admitted to *Bail*, if the Bail bring in the Principal before the Return of the second *Scire facias* issued out against them, they shall be *discharged*. *Mich.* 24 *Car. B. R.* If an Obligee by his own Act, discharges one joint Obligor, where several are jointly bound ; it *discharges* the others. *March* 129. And a Man may *discharge* a Promise made to himself, but not by himself. *Cro. Jac.* 483. See *Acquittal*, and vide *Habeas Corpus*.

Disclaimer, (*Disclamium*, from the Fr. *Clamer*, with the Privative *Dis*) Is a Plea containing an express Denial, or Renouncing of a Thing ; as if a Tenant sue a *Replevin*, upon the Distress of the Lord, and the Lord avows the Taking, saying the Tenant holds of him as of his Lord, and that he distrained for the Rent not paid, or Service not performed : Now if the Tenant say he doth not hold of him, this is called a *Disclaimer*, and the Lord proving the Tenant to hold of him, on a Writ of Right brought, the Tenant shall lose his Land. *Terms de Ley* 263. And if a Writ of *Præcipe* be brought against two Persons for Land, and one of them the Tenant, saith that he is not Tenant, nor claims any Thing in the Lands ; this is a *Disclaimer* as to him, and the other shall have the whole Land. *Ibid.* Also when a Tenant hath *disclaimed*, upon Action brought against him, he shall not have Restitution on Writ of Error, &c. against his own Act ; but is barred of his Right to the Land *disclaimed*. 8 *Rep.* 62. But a verbal *Disclaimer*, shall not take Place against a Deed of Lands : Nor shall the *Disclaimer* of a

Wife, during the Coverture, bar her Entry on his Lands. 3 *Rep.* 26. Baron and Feme may *disclaim* for the Wife ; though if the Husband hath nothing but in Right of his Wife, he cannot *disclaim*. 2 *Danv. Abr.* 569. Such Person as cannot lose the Thing perpetually in which he *disclaims*, shall not be permitted to *disclaim* : As a Bishop, &c. may not *disclaim*, for he cannot de-vest the Right out of the Church. Though in a *Quo Warranto*, at the Suit of the King, against a Bishop or others for Franchises and Liberties, if the Bishop, &c. *disclaims* them, this shall bind their Successors. *Co. Litt.* 102, 103. If a Man be vouched because of a Reversion upon a Lease made by himself, he cannot *disclaim* : But an Heir may *disclaim*, being vouched upon a Lease made by his Ancestor. 2 *Danv.* 569. A Person may not *disclaim* in the Principal, and not in the Incident ; as he that is vouched because of a Reversion, cannot *disclaim* in the Reversion, saving the Seigniority. 40 *Ed.* 3. 27. If the Lord *disclaims* his Seigniority, in a Court of Record, it is extinct ; and the Tenant shall hold of the Lord next paramount to the Lord *disclaiming*. *Lit. Sect.* 146. It is said not to be necessary, that the *Writ of Right sur Disclaimer* should be brought against the Person that *disclaims* ; for if it be only against him that is found Tenant of the Land, though he be a Stranger, it is not material. 2 *Danv.* 570. By Plea of *Non-tenure*, nothing is disowned but the Freehold, which may be good where the Tenant hath the Reversion in Fee, and not the Freehold ; but when such Tenant *disclaims*, or pleads *Non-tenure* and *disclaims*, the Demandant shall have the Whole, as the Whole is *disclaimed*. *Ibid.* Beside these *Disclaimers* by Tenants of Lands, there are *Disclaimers* in divers other Cases : For there is a *Disclaimer of Blood*, where a Person denies himself to be of the Blood or Kindred of another in his Plea. *F. N. B.* 102. And there is a *Disclaimer of Goods*, as well as Lands ; as if a Man *disclaimeth* Goods, on Arraignment of Felony, when he shall lose them, though he be cleared. *Staundf. P. C.* 186. In the Chancery, if a Defendant by his Answer renounces the having any Interest in the Thing in Question, this is likewise a *Disclaimer*. And there is a *Deed of Disclaimer of Executorship* of a Will, &c. where an Executor refuses, and throws up the same.

Form of a Disclaimer of Executorship.

THIS Indenture tripartite, made the Day, &c. Between A. B. of, &c. of the first Part, C. D. of, &c. of the second Part, and L. B. of, &c. of the third Part : Whereas T. B. late of, &c. duly made and published his last Will and Testament in Writing, bearing Date, &c. And thereby devised (amongst other Things) all that Messuage, &c. to the said L. B. and also gave and bequeathed, &c. and made the said A. B. and C. D. Executors and Trustees of his said Will, as in and by the said Will may more fully appear. And whereas the said T. B. soon after the Making and Publishing of the said Will, died : And the said A. B. hath refused to accept the said Executorship and Trust, and never acted therein, nor ever received any of the Rents and Profits of the said Messuage, or of the Goods and Chattels of the Testator T. B. But the said C. D. alone proved the said Will, and took upon him the Execution thereof. Now this Indenture witnesseth, That the said A. B. as a farther Declaration of his not acting in the Executorship aforesaid, and to free himself from the same,

doth

doth by these Presents renounce and disclaim the said Executorship, and all the Trusts reposed in him by the said recited Will: And doth also by these Presents remise and release unto the said C. D. his Executors and Administrators, all the Estate, Right, Title and Interest of him the said A. B. in and to the said Premises, by Virtue of the said recited Will, or otherwise howsoever. In Witnes, &c.

Discontinuance, (*Discontinuatio*, Derived from the Fr. *Discontinuer*, i. e. *Cessare*) Signifies an Interruption or Breaking off; and is twofold, *Discontinuance of Possession*, and *Discontinuance of Process*: The Effect of *Discontinuance of Possession* is, that a Man may not enter upon his own Lands or Tenements alienated, whatever his Right be to it, of his own Authority, but must bring his Writ, and seek to recover Possession by Law. *Co. Lit.* 325. *F. N. B.* 191. Where a Tenant in Tail, or a Man seised in Right of his Wife, &c. by Feoffment, Gift in Tail, or Lease for Life, by Fine or Livery, not warranted by the Stat. 32 *Hen.* 8. aliens the Estate; such Alienations are called *Discontinuances*: Whereby the Wife after her Husband's Death, and the Issue in Tail after the Death of Tenant in Tail, and those in Remainder and Reversion are driven to their Action, and cannot enter. *1 Inst.* 325. But a *Discontinuance* taketh away an Entry only: And to every *Discontinuance* it is necessary there should be a Devetting or Displacing of the Estate, and turning the same to a Right; for if it be not turned to a Right, they that have the Estate cannot be driven to an Action. *Co. Lit.* 327. And an Estate-tail cannot be discontinued, but where he that makes the *Discontinuance*, was once seised by Force of the Intail, where the Estate-tail is executed; unless by Reason of a Warranty. *Lit. Sect.* 637, 641. Also if Tenant in Tail levies a Fine, &c. this is no *Discontinuance*, till the Fine is executed; because if he dies before Execution, the Issue may enter. *Co. Lit.* 33. 2 *Danv.* Abr. 572. A *Discontinuance* may be five Ways, viz. by Feoffment, Fine, Recovery, Release, and Confirmation with Warranty. *1 Rep.* 44. A Grant without Livery; or a Grant in Fee without Warranty, are no *Discontinuances*: An Exchange will not make a *Discontinuance*; as if Tenant in Tail exchanges Land with another, that is not any *Discontinuance*, by Reason no Livery is requisite thereon. 2 *Danv.* 57. It is the same of a Bargain and Sale, &c. And an Alienation of such Things as lie in Grant, and not in Livery, works no *Discontinuance*; for such Grant does no Wrong either to the Issue in Tail, or him in Reversion or Remainder, because nothing passeth but during the Life of Tenant in Tail, which is lawful; and every *Discontinuance* worketh a Wrong. *Co. Lit.* 332. If Tenant in Tail of a Copyhold Estate, surrenders to another in Fee, this makes not any *Discontinuance*, (except there be a Custom for it) but the Heir in Tail may enter; though this hath been a great Question. *1 Leon.* 95. 2 *Danv.* 571. If there be Tenant for Life Remainder in Tail, and Remainder in Tail, &c. And Tenant for Life, and he in the first Remainder in Tail levy a Fine, this is no *Discontinuance* of either of the Remainders. *1 Rep.* 76. But if there be Tenant in Tail, Remainder in Tail, &c. And Tenant in Tail, enfeoffs him in Reversion in Fee: Or where there is Tenant for Life, Remainder in Tail, Reversion in Fee, and Tenant for Life enfeoffs the Reversioner; these

are *Discontinuances*, because there is a mean or immediate Estate. *1 Rep.* 140. *Co. Lit.* 335. 2 *Danv.* 575. If there be Tenant in Tail, Remainder to his right Heirs, and he makes a Feoffment in Fee, this is a *Discontinuance*; though such Tenant that made the Feoffment, hath the Fee in him. 2 *Danv.* 572. Where a Tenant in Tail of a Manor makes a Lease for Life, not warranted by Stat. 32 *Hen.* 8. of Part of the Demesnes, this is a *Discontinuance* of this Parcel; and 'tis said makes it no Parcel of the Manor. 2 *Roll. Abr.* 58. By Statute, a Husband is restrained from Alienation, and discontinuing of the Wife's Land, 32 *Hen.* 8. cap. 28. and a Wife Tenant in Tail with the Husband; or having an Estate in Dower, &c. from making any *Discontinuance* of the Lands of the Husband, after his Death. *11 H.* 1. cap. 20. Likewise Ecclesiastical Persons, as Bishops, Deans, &c. from aliening or discontinuing their Estates. *13 Eliz.* cap. 10. *1 Jac.* 1. c. 3. And some *Discontinuances* at Common Law, are now made Bars as to the Issue in Tail; though still *Discontinuances* in some Cases, to him in Remainder, &c. such as Fines, with Proclamations by Statute. 4 *Hen.* 7. cap. 24. 32 *H.* 8. cap. 36. If the Husband levy a Fine with Proclamations, and dieth, the Wife must enter, or avoid the Estate of the Conufee within five Years, or she is barred for ever, by the Stat. 4 *Hen.* 7. For the Stat. 32 *Hen.* 8. cap. 28. doth help the *Discontinuance*, but not the Bar. *1 Inst.* 326. Husband and Wife Tenants in special Tail, the Husband alone levied a Fine to his own Use, and afterwards he devised the Land to his Wife for Life, the Remainder over, rendering Rent, &c. The Husband dies, the Wife enters and pays the Rent, and dies: In this Case it was adjudged, that the Fine had barred the Issue in Tail, but not the Wife. *Dyer* 351. The Entry of the Wife in this Case, was a Disagreement to the Estate of Inheritance, and an Agreement to the Estate for Life: But if the Wife had not waved the Inheritance, the Estate-tail as to the Wife had remained. 9 *Rep.* 135. If Lands be given to the Husband and Wife, and to the Heirs of their two Bodies, and the Husband maketh a Feoffment in Fee, and dieth; the Wife is helped by the Statute 32 *H.* 8. and so is the Issue of both their Bodies. *1 Inst.* 326. The Husband is Tenant in Tail, the Remainder to the Wife in Tail, the Husband makes a Feoffment in Fee; by this the Husband by the Common Law did not only discontinue his own Estate-tail, but his Wife's Remainder: But by the Statute 32 *Hen.* 8. after the Death of the Husband without Issue, the Wife may enter by the said Act. Though if the Husband hath Issue, and maketh a Feoffment in Fee of his Wife's Land, and his Wife dieth; the Heir of the Wife shall not enter during the Husband's Life, neither by the Common Law, nor by the Statute. *Ibid.* A *Discontinuance* may be defeated, where the Estate which worked it is defeated; as if a Husband make a Feoffment in Fee of the Wife's Land upon Condition; and after his Death, his Heir enters on the Feoffee for the Condition broken; now the *Discontinuance* is defeated, and the Feme may enter upon the Heir. *1 Inst.* 336. The Titles of *Discontinuance* of Estates and *Reverter*, were formerly large Titles in our Books; but they are abridged by Statute.

As to *Discontinuance of Process*, it is when the Opportunity of Prosecution is lost for that Time,

or the Plaintiff is dismissed the Court, &c. And 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*: The Continuance of the Suit by improper Process, or by giving the Party an illegal Day, is properly a *Miscontinuance*. 2 Hawk. 298. Where an Action is long depending, and continued from one Term to another, the *Continuances* must be all entered, otherwise there will be a *Discontinuance*; whereupon a Writ of Error may be brought, &c. 1 Nels. Abr. 660. If the Plaintiff in a Suit doth nothing, it is a *Discontinuance*, and he must begin his Suit again: And where 'tis too late to amend a Declaration, &c. or the Plaintiff is advised to prosecute in another Court, he is to discontinue his Suit, and proceed *de novo*. Com. Law Com. Plac. 171. But a *Discontinuance* of an Action, is not perfect till it is entered on the Roll, when 'tis of Record. Cro. Car. 236. The Plaintiff cannot discontinue his Action after a Demurrer joined and entered; or after a Verdict, or a Writ of Enquiry, without Leave of the Court. Cro. Jac. 35. 1 Lill. Abr. 473. In Actions of Debt or Covenant, after a Demurrer joined, the Court will give Leave to discontinue, if there be an apparent Cause; as if the Plaintiff through his own Negligence, is in Danger of losing his Debt: But if the Demurrer be argued, then he shall not have Leave to discontinue; nor where he brings another Action for the same Cause, and this is pleaded in Abatement of the first Action. Sid. 84. It has been ruled, upon a Motion to discontinue, that the Court may give Leave after a special Verdict; which is not complete and final; but never after a general Verdict. 1 Salk. 178. 1 Nels. 663. An Appeal may as well be discontinued by the Defect of the Process or Proceeding in it, as it may be by the Insufficiency of the Original Writ, &c. For by such Defect, the Matter depending is as it were out of Court. 1 Lill. 473. *Discontinuance* of Process is helped at Common Law by Appearance. And by Stat. 32 H. 8. cap. 30. all *Discontinuances*, *Miscontinuances* and *Negligences* therein, of Plaintiff or Defendant, are cured after Verdict. 2 Danv. 352. The Death of the King is not a *Discontinuance* of any Suit; and no Suit before Justices of Assize, or Justices of Peace, &c. will be discontinued by a new Commission. Stat. 1 Ed. 6. c. 3. 4 & 5 W. & M. &c. On the *Discontinuance* of Suits, it is usual to give the Defendant Costs. See *Continuance*.

Discontinuance of Plea, Is where divers Things should be pleaded to, and some are omitted; this is a *Discontinuance*. 1 Nels. Abr. 660, 661. If a Defendant's Plea begin with an Answer to Part, and answers no more, it is a *Discontinuance*; and the Plaintiff may take Judgment by *Nil dicit*, for what is not answered: But if the Plaintiff plead over, the whole Action is discontinued. 1 Salk. 139. Debt upon Bond of 500*l*. the Defendant as to 225*l*. Part of it, pleads Payment, &c. And upon Demurrer to this Plea, it was adjudged that there being no Answer to the Residue, 'tis a *Discontinuance* as to that, for which the Plaintiff ought to take Judgment by *Nil dicit*. 1 Salk. 180. Where no Answer is given to one Part, if the Plaintiff pleads thereto, he cannot have Judgment according to his Declaration; for which Reason, it may be a *Discontinuance* of

the Whole. 1 Nels. 660. But this is helped after Verdict by 32 H. 8. c. 30.

Discretion, (*Discretio*) When any Thing is left to any Person to be done according to his *Discretion*, the Law intends it must be done with sound *Discretion*, and according to Law: And the Court of B. R. 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. *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. The Assessment of Fines on Offenders committing Affrays, &c. And the Binding of Persons to the good Behaviour, are at the *Discretion* of our Judges, and Justices of the Peace. 1 Hawk. P. C. 132, 138. And in many Cases, for Crimes not capital, the Judges have a discretionary Power in inflict corporal Punishment on the Offenders. 2 Hawk. 445. Infants, &c. under the Age of *Discretion*, are not punishable for Crimes; and Want of *Discretion*, is a good Exception against a Witness. Ibid. 434.

Disfranchise, Is to take away one's Freedom or Privilege: It is the contrary to *Enfranchise*. And Corporations have Power to *disfranchise* Members, for doing any Thing against their Oaths; but not for Contempts, &c. 11 Rep. 98. See *Corporation*.

Disinheriton, Is an old Word which signifies as much as *Disinheriting*; mentioned in the Stat. 20 Ed. 1. and 8 R. 2.

Disheritoz, One that *disinheriteth*, or puts another out of this Inheritance. Stat. 3 Ed. 1. c. 39.

Tithes, (*Decima*) Are *Tithes*, or the Tenth Part of all the Fruits of the Earth, and of Beasts, or Labour due to the Clergy. It signifies also the Tenth of all *Spiritual Livings* given to the Prince, which is called a *Perpetual Dism*. Stat. 2 & 3 Ed. 6. cap. 35. And formerly this Word signified a *Tax* or *Tribute* levied of the *Temporality*. Holinsb. in Hen. 2. f. 111. The Laws of *Dismes* or *Tithes*; see *Tithes*.

Disparagement, In a legal Sense was used for matching an Heir in Marriage under his Degree, or against Decency. Co. Lit. 107. *Magna Charta*, cap. 6.

Dispauper, When any Person, by Reason of his Poverty, is admitted to sue in *Forma pauperis*; if afterwards, before the Suit is ended, the same Party have any Lands or personal Estate fallen to him, or be guilty of any Thing whereby he is liable to have this Privilege taken from him, then he is put out of the Capacity of suing in *Forma pauperis*, and is said to be *dispaupered*. See *Forma Pauperis*.

Dispensation. By the 25 H. 8. cap. 21. The Archbishop of Canterbury has Power of *Dispensing* in any Case, wherein *Dispensations* (not contrary to the Law of God) 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 during the Vacancy of the See of Canterbury, the Guardian of the Spiritualities may grant *Dispensations*. The Archbishop of Canterbury grants *Dispensations*, not only in his own Province, but in the Province of York; and the Archbishop of York, and other Bishops, dispence as they were wont to do, by the Common Law and Custom of the Realm. Wood's Inst. 26. Every Bishop of common Right has the Power of Institution into Benefices, and of *Dispensing* in

common Cases, &c. *Ibid.* 305. *Dispensations* to hold *Pluralities*; See *Chaplain*s.

Dispensations of the King. If a *Dispensation* by the *Archbishop* of *Canterbury*, is to be in extraordinary Matters, or in a Case that is new, the *King* and his Council are to be consulted; and it ought to be confirmed under the Broad Seal. The *King's* Authority to grant *Dispensations* remains as it did at Common Law; notwithstanding the Stat. 25 H. 8. 1 Cro. 542, 601. 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* 213. Where the Subject hath an immediate Interest in an Act of Parliament, the *King* cannot *Dispense* with it; but where the *King* is intrusted with the Management thereof, and the Subject by way of Consequence only, he may. *March* Rep. 214, 216. When an Offence wrongs none but the *King*; or if the Suit is only the *King's* for the Breach of a Penal Law, that is not to the Damage of a third Person, the *King* may *dispense*: But in case the Suit is the *King's*, for the Benefit of another, he cannot. *Vaugh.* 344, 334, 339, &c.

Dispensation by Non obstante. If any Statute tends 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 publick Weal, &c. which are inseparable from the *King*; by a Clause of *Non obstante*, he may dispense with it. 2 *Hawk.* 390. But as in the Reign of *King James II.* the *dispensing* Power was carried so high as to render the Execution of our necessary Laws in a Manner dependent on the Pleasure of the Prince; by Stat. 1 W. & M. Sess. 2. ca. 2. It is enacted, That no *Dispensation* by *Non obstante* of, or to any Statute, or any Part thereof, shall be allowed; but that the same shall be held void, and of none Effect, except a *Dispensation* be allowed in such Statute. The *Dispensation* by *Non obstante* was brought into this Kingdom by the *Pope*; and first used by *Hen.* 3. *Pryn's* Animadver. on 4 Inst. fol. 129.

Dispersonare, Is to scandalize or disparage. *Blount.*

Disrationare, and Dirationare, now called *Traversare*, &c. See *Deraign*.

Disignare, To break open a Seal.—*Sepulto patre Testamentum disignatum est.* *Neubrigenfis*, lib. 2. c. 7.

Disseisin, (from the Fr. *Disseisin*) Signifies an unlawful Dispossessing a Man of his Right. As where a Person enters into Lands or Tenements, and his Entry is not lawful, and keeps him that hath the Estate from the Possession thereof. *Bract.* lib. 4. cap. 3. And *Disseisin* is of two Sorts; either *Single Disseisin*, committed without Force of Arms; or *Disseisin by Force*, but this latter is more properly *Deforcement*. *Brit.* cap. 42, 43. By *Magna Charta*, 9 *Hen.* 3. cap. 29. No Man is to be *disseised*, or put out of his Freehold, but by lawful Judgment of his Peers, or the Law: And by Statute, the Dying seised of any *Disseisor* of, or in any Lands, &c. having no Right therein, shall not be a Discent in Law, to take away an Entry of a Person having lawful Title of Entry; except the *Disseisor* hath had peaceable Possession five Years, without Entry or Claim by the Person having lawful Title. 32 H. 8. cap. 33. But if a *Disseisor* having expelled the right Owner, hath such peaceable Possession of the Lands five Years without Claim, and continues in Possession so as

to die seised, and the Land descends to his Heirs, they have a Right to the Possession thereof till the Person that is Owner recovers at Law; and the Owner shall lose his Estate for ever, if he do not prosecute his Suit within the Time limited by the Statute of Limitations. *Bac. Elem.* And if a *Disseisee* levy a Fine of the Land whereof he is *disseised*, unto a Stranger, the *Disseisor* shall keep the Land for ever; for the *Disseisee* against his own Fine cannot claim, and the Conusee cannot enter, and the Right which the *Disseisee* had being extinct by the Fine, the *Disseisor* shall take Advantage of it. 2 *Rep.* 56. If a Feme Sole be seised of Lands in Fee, and is *disseised*, and then taketh Husband; in this Case, the Husband and Wife, as in Right of the Wife, have Right to enter, and yet the Dying seised of the *Disseisor*, shall take away the Entry of the Wife, after the Death of the Husband. 1 *Inst.* 246. If a Person *disseises* me, and during the *Disseisin*, he or his Servants cut down the Timber growing upon the Land, and afterwards I re enter into the Lands, I shall have Action of Trespas against him; for the Law, as to the *Disseisor* and his Servants, supposes the Freehold to have been always in me: But if the *Disseisor* be *disseised*, or if he makes a Feoffment, Gift in Tail, Lease for Life or Years, I shall not have Action against the second *Disseisor*, or against those who come in by Title: For all the mesne Profits shall be recovered against the *Disseisor* himself. 11 *Rep.* 51. *Keilw.* 1. Where a Man hath a House in Fee, &c. and locks it, and then departs; if another Person comes to his House and takes the Key of the Door, and says that he claims the House to himself in Fee, without any Entry into the House, this is a *Disseisin* of the House. 2 *Danv.* Abr. 624. If a Feoffor enters on the Land of the Feoffee, and makes a Lease for Years, &c. It is a *Disseisin*, tho' the Intent of the Parties to the Feoffment was that the Feoffee should make a Lease to the Feoffor for Life. 2 *Rep.* 59. But if a Feoffee enters before Livery, he is not a *Disseisor*. 2 *Danv.* 630. If Lessee for Years is ousted by his Lessor; this is said to be no *Disseisin*. *Cro. Jac.* 678. A Man enters on another's Lands, claiming a Lease for Years, who hath not, is a *Disseisor*: Though if a Man enters into the House of another by his Sufferance, without claiming any Thing, it will not be a *Disseisin*. 9 H. 6. 21, 31. 2 *Danv.* 625. If a Person enters on Lands by Virtue of a Grant or Lease, that is void in Law; he is a *Disseisor*. 2 *Danv.* 630. A Lessee at Will makes a Lease for Years, it is a *Disseisin*, at the Election of the Lessor at Will: Though it is the *Disseisin* of the Lessee at Will, not of the Lessee for Years. *H. 7 Car. B. R.* If a Man enters into the Land of an Infant, though by his Assent; this is a *Disseisin* to the Infant, at his Election. 11 *Ed.* 3. *Aff.* 87. And if a Person commands another to enter upon Lands, and make a *Disseisin*, the Commander is a *Disseisor*, as well as such other; unless the Command be conditional, when it may be otherwise. 22 *Aff.* 99. 2 *Danv.* 631. If a Man forces another to swear to surrender his Estate to him, and he doth so, it will be a *Disseisin* of the Estate. So forcibly hindering a Person from tilling his Land, is a *Disseisin* of the Land. 1 *Inst.* 161. But if one enter wrongfully into the Lands of another, and he accepts Rent from such Person, he shall not afterwards be taken for a *Disseisor*. *Dyer* 173. Where any Person is disturb'd from entering on Land; it is a *Disseisin*: A Denial of

a Rent, when lawfully demanded, is a *Disseisin* of the Rent. 1 *Inst.* 153. Also hindering a Distress for Rent, by Force; or making Relicous of a Distress, are a *Disseisin* of the Rent. 2 *Danv.* 624, 625. An Infant, or Feme Covert, may be a *Disseisor*, but it must be by actual Entry on Lands, &c. A Feme Covert shall not be a *Disseisor*, by the Act of the Baron: If he disseises another to her Use, she is not a *Disseisor*; nor if the Wife agrees to it, during the Coverture: Though if after his Death, she agree to it, she is a *Disseisor*. *Ibid.* 626, 627. Assises that lie against *Disseisors* are called *Writs of Disseisin*; and there are several Writs of Entry *sur Disseisin*, of which some are in the *Per*, and others in *le Poft*, &c. But Writs of *Assise on Disseins*, are now disus'd; and the feigned Action of Ejectment introduc'd in their Place. See *Assise of Novel Disseisin*, and *Entry*.

Disseisor, Is he that disseiseth or puts another out of his Land, without order of Law: And a *Disseisee*, is he that is so put out. 4 *H.* 4. As the King in Judgment of Law can do no Wrong, he cannot be a *Disseisor*. 1 *E.* 5, 8. A *Disseisor* is to be fined and imprisoned; and the *Disseisee* restored to the Land, &c. by Stat. 20 *H.* 3. *ca.* 3. Where a *Disseisor* is disseised, it is called *Disseisin upon Disseisin*.

Disseisers, Are Separatists from the Church, and the Service and Worship thereof; relating to whom, and their Qualifications, by subscribing the Oaths, Declaration, &c. there are a great many Statutes, besides the *Toleration Act*: As Stat. 5 & 6 *Ed.* 6. *c.* 1. 23 *Eliz.* *c.* 1. 3 *Fac.* 1 *c.* 4. 13 *Car.* 2. *c.* 1. 17 *Car.* 2. *c.* 2. and 22 *Car.* 2. *c.* 1. 1 *W. & M.* *c.* 18. 10 *Ann.* *c.* 2. 1 *Geo.* *c.* 6, &c. See *Church, Conventicles*, &c.

Distress, (*Districcio*) Signifies most commonly any Thing which is taken and distrained for Rent behind, or other Duty: And by the Common Law, *Distresses* for Rent were not to be sold, but only detained for enforcing Payment of the Rent; but this is altered by Statute. A Man may take a *Distress* for Homage, Fealty, or any Services; for Fines and Amercements; and for Damage-Feasant, &c. and the Effect of it is to compel the Party either to replevy the *Distress*, and contest the Taking in Action of Trespass against the Distrainer; or, which is more usual, to compound and pay the Debt or Duty, for which he was distrained: There are likewise *Distresses* in Actions, compulsory to cause a Man to appear in Court: And of these there is a *Distress Personal*, of a Man's moveable Goods, and Profits of his Lands, &c. for Contempt in not appearing after summoned; and *Distress Real*, upon immoveable Goods. *Distress* is also divided into *finite* and *infinite*: *Finite* is that which is limited by Law, how often it shall be made to bring the Party to Trial of the Action, as once, twice, &c. And *infinite* is without Limitation, until the Party appears; which is likewise applicable to Jurors not appearing: Then it hath had a further Division into a *Grand Distress* and *Ordinary Distress*; the Former whereof extends to all the Goods and Chattels which the Party hath within the County. *E. N. B.* 904. *Old Nat. Br.* 43, 113. *Brit. cap.* 26. *fol.* 52. Of common Right a Person may distrain for Rents, and all manner of Services; and for Rent reserved upon a Gift in Tail, Lease for Life, Years, &c. though there be no Clause of *Distress* in the Deed, so as the Reversion be in himself: But on a Feoffment in Fee, a *Distress* may not be

taken, unless expressly reserved in the Deed. 1 *Inst.* 57, 205. *Doctor and Student cap.* 9. If a Lessee for Years grant away all his Term to another, rendering Rent, he cannot distrain for this Rent; but Debt will lie for it as a Sum in gross. 2 *Lev.* 80. A *Distress* ought to be made of such Things whereof the Sheriff may make Replevin, and deliver again in as good Plight and Condition as they were at the Time of the Taking. 1 *Inst.* 47. And *Distresses* for Rent are to be reasonable, and not excessive; and not to be taken in the King's Highway, or the common Street, or in the ancient Fees of the Church. *Stat.* 51 *H.* 3. 52 *H.* 3. *c.* 15. 9 *Ed.* 2. And where a *Distress* is taken, it may be replevied in five Days; if it be not in that Time after taken, and Notice given, it is to be appraised and sold by the Person distraining, with the Under-Sheriff, Constable, &c. to satisfy the Debt, leaving the Overplus with the Sheriff, &c. for the Use of the Owner. *Stat.* 2 *W. & M.* *cap.* 5. All *Distresses* for Rent ought to be made on the Premises, by the Common Law: But by Statute, if any Tenant fraudulently removes Goods from off the Premises, the Landlord may in five Days seise such Goods wheresoever found, as a *Distress* for the Rent in Arrear; unless the Goods are sold for a valuable Consideration before the Seizure. 8 *Ann.* *ca.* 17. And whereas before that Statute, for Rent due the last Day of the Term, the Lessor could not distrain; because the Term ended before the Rent was due; (and the Lessee had the whole Day to pay it) and it was the same, where the Lessee held over his Term, for Rent incurred during the Term. *Co. Lit.* 47. Now by the Stat. 8 *Ann.* where Leases are expired, a *Distress* may be taken, provided it be done within six Months, and during the Landlord's Title, and Tenant's Possession. *Distresses* for Services are to be on the Land: But for an Amercement in a Leet, the *Distress* may be taken any where within the Hundred, as well out of the Land, as on it, wherever Cattle are of him that is amerced; for the Amercement charges only the Person; and for this a *Distress* may be taken in the high Street. 2 *Danv. Abr.* 644, 645. For Services a *Distress* cannot be taken but where the Services are certain; or may be reduced to a Certainty. *Co. Lit.* 96. A *Distress* for Rent cannot be made in the Night: Nor may Gates, &c. be broke open to make a *Distress*; or the Landlord enter into the Tenant's House for that Purpose, unless the Doors are open. 1 *Inst.* 142, 161. *Distresses* are to be of a Thing valuable, whereof some Body hath a Property; so that Things *Fere Nature*, as Dogs, Conies, &c. may not be distrain'd. 1 *Roll. Abr.* 664, 666. Also it is the same of Cattle of the Plough, Beasts of Husbandry, Sheep or Horses joined to a Cart, with a Rider upon it. 1 *Ventr.* 36. But it has been adjudged that Horses may be taken from a Cart loaded; though it has been a disputed Case, whether they could be separated. *Sid.* 422. *Raym.* 18. A Horse with a Rider upon his Back; or a Horse in an Inn, or put into a Common; an Ax in a Man's Hand, cutting down Wood; or any Thing a Person carries about him; Utenfils and Instruments of a Man's Trade or Profession, or the Books of a Scholar; Corn in a Mill, or Goods in a Market to be sold for the Use of the Publick; Materials in a Weaver's Shop, for making of Cloth; another Person's Garment in the House of a Taylor, &c. are not distrainable: Nor is any Thing that

that is fixed to the Freehold of a House, as a Furnace, Doors, Windows, Boards, &c. 1 *Sid.* 422, 440. 1 *Inst.* 47. 2 *Danv. Abr.* 641. But Goods, Cattle, not of the Plough, &c. Sheaves of Corn; Corn in the Straw, or thrashed, and Carts with Corn, (but not Victuals) Hay in a Barn, or Ricks of Hay; Money in a Bag sealed, though not out of a Bag, &c. may be distrained for Rent: And so may Cattle or Goods driving to Market, if put into Pasture by the Way; and Beasts of a Stranger, in the Landlord's Ground, being *Levant and Couchant*, and having well rested themselves there. 1 *Inst.* 47. 1 *Lutw.* 214. *Mod.* 385. 2 *W. & M.* If a Driver of Cattle asks Leave of the Lessor to put his Cattle into Ground for a Night, and he gives Leave, as well as the Lessee; yet 'tis said he is not concluded from distraining them for Rent. 2 *Ventr.* 59. 2 *Danv.* 642. But the Goods of a Carrier are privileged, and cannot be distrained for Rent, though the Waggon wherein loaded is put into the Barn of a House, &c. on the Road. 1 *Salk.* 249. If the Fences of another Man's Ground be out of Repair, and the Neighbour's Cattle Escape there, and are *Levant and Couchant*, without any fresh Pursuit after them, they may be distrained for Rent; for the Land is Debtor for the Rent, and the Landlord must resort thither, and is not to inquire whose Cattle they are which he finds therein. 1 *Roll. Rep.* 124. 1 *Nelf. Abr.* 667. But if the Owner freshly pursues the Cattle, they are not distrainable; because they are supposed to be always in his View and Possession. If the Owner of the Cattle is to maintain the Fences, in such Case, if they escape into another's Ground, they may be distrained before *Levant and Couchant*, and notwithstanding fresh Pursuit. 1 *Nelf. Ibid.* Where a Landlord comes to distrain Cattle, which he sees on the Tenant's Ground, if the Tenant or any other to prevent the *Distress*, drives the Cattle off the Ground, the Landlord may make fresh Pursuit, and distrain them: But if before the *Distress*, the Owner of the Cattle renders his Rent, and a *Distress* is taken afterwards, it is wrongful. 1 *Inst.* 160. 2 *Inst.* 107. Two *Distresses* cannot be taken for one Rent, if there were sufficient Goods when the first *Distress* was made; but if there were not then a sufficient *Distress*, there may. *Cro. El.* 13. *Lutw.* 1536. But by Stat. 17 *Car. 2. cap.* 1. When the Value of Cattle distrained shall be found not to be of the Value of the Arrears of Rent, for which the *Distress* was taken, the Person distraining, his Executors, &c. may take further *Distresses*, for such Arrears. 1 *Nelf.* 670. A *Distress* of Cattle must be brought to the common Pound, or be kept in an open Place; and if they are put into a common Pound, the Owner is to take Notice of it at his Peril; but if in any other open Place, Notice is to be given the Owner, that he may feed them; and then if the Cattle die for Want of Food, the Tenant shall bear the Loss; and the Landlord may distrain again for his Rent. 5 *Rep.* 90. 1 *Inst.* 47, 96. Where one impounds Cattle distrained, he cannot justify the Tying them in the Pound; if he ties a Beast, and it is strangled, he must answer it in Damages. 1 *Salk.* 248. If the Person distraining put the *Distress* in a broken Pound, and the *Distress* escapes, he can have no Action for it: But 'tis otherwise if from another Pound, without his Default, when he may have Action of Trespass. *Salk. Ibid.* By Statute, no *Distress* of Cattle shall be driven out

of the Hundred where taken to any Pound, except to a Pound overt in the same County, and not above three Miles distant; nor shall any *Distress* be impounded in several Places, under the Penalty of 5 *l.* and treble Damages. 1 *P. & M. cap.* 12. Cattle distrained may not be used, because by Law they are only as a Pledge; unless it be for the Owner's Benefit, by milking, &c. 2 *Cro.* 148. When a *Distress* is taken of Household Goods, or other dead Things, they are to be impounded in a House, or other Pound Covert, &c. And if the *Distress* is damaged, the Distrainer must answer it. *Wood's Inst.* 191. And they are to be removed immediately; except Corn or Hay, by Stat. 2 *W. & M. cap.* 5. If a Landlord doth not remove Goods immediately, but quits them till another Day, during which Time they are taken away, it is not a Rescous for want of Possession. *Mod. cap.* 215. 1 *Nelf.* 672. Where Goods are unlawfully distrained, the Owner may rescue them, before they are impounded; but not afterwards. 1 *Inst.* 47. If Lands lie in several Counties, a *Distress* may be made in one County, for the whole Rent. 1 *Inst.* 154. And if a Landlord comes into a House, and seizes upon some Goods as a *Distress*, in the Name of all the Goods in the House; this is a good Seizure of all. 6 *Mod.* 215. But if any Person shall distrain another, on Purpose to injure him, or put him to Expence, &c. he shall pay treble Damages. Stat. 13. And if any *Distress* and Sale shall be made where there is no Rent due, the Owner of the Goods distrained shall recover double the Value of the Goods, and full Costs. 2 *W. & M.* Also by the Common Law, if a Lord or other Person shall distrain several Times for his Service or Rent, when none is in Arrear, the Tenant may have an *Affise de sovent Distress*, &c. *F. N. B.* 176. See *Recaption*, *Replevin*, and *Rescous*.

Distress of the King. By the Common Law, no Subject can distrain out of his Fee or Scignior; 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, not only on Lands held of himself, but of others; where his Tenant is in actual Possession, and the Land manured with his own Beasts, &c. 2 *Inst.* 132. 2 *Danv. Abr.* 643.

Distress of a Town. If a Town be assessed to a certain Sum, a *Distress* may be taken in any Part, subject to the whole Duty. 2 *Danv.* 643.

Districtione Scaccarii, A Statute so called. 51 *H. 3.*

District, (Districtus) A Territory, or Place of Jurisdiction; the Circuit wherein a Man may be compelled to appear, also the Place in which one hath the Power of distraining: And where we say *Hors de son fee*, out of the Fee; it has been used for *Extra Districtum suum*. *Brit. c.* 120.

Distringas, Is a Writ directed to the Sheriff, or other Officer, commanding him to distrain a Man for a Debt to the King, &c. Or for his Appearance at a Day. There is great Diversity of this Writ; which was sometimes of old called *Constringas*. *F. N. B.* 138.

Distringas Juratores, Is a Writ directed to the Sheriff, to distrain upon a *Fury* to appear; and return Issues on their Lands, &c. for Non-appearance. Where an Issue in Fact is joined to be tried by a *Fury*, which is returned by the Sheriff in a Panel upon a *Venire facias* for that Purpose; thereupon there goes forth a Writ of

Disfringas Furator. to the Sheriff, commanding him to have their Bodies in Court, &c. at the Return of the Writ. 1 *Lill. Abr.* 483. And the Writ of *Disfring. Fur.* ought to be delivered to the Sheriff so timely, that he may warn the *Fury* to appear four Days before the Writ is returnable, if the *Furors* live within forty Miles of the Place of Trial; and eight Days, if they live farther off. *Ibid.* 484. There may be an *Alias*, or *Pluries Disfringas Fur.* where the *Fury* do not appear.

Dividend in the Exchequer, Is taken for one Part of an *Indenture*. Stat. 10 Ed. 1. c. 11.

Dividend in the University, Is that Part or Share which every one of the Fellows do justly and equally divide among themselves of their annual *Stipend*.

Dividend in Law Proceedings, A *Dividing* of Fees and Perquisites between Officers arising from Writs, &c. *Practif. Solic.*

Dividend of Merchants, Is where a just Share of Profits in *Trade* is assigned to any one.

Dividend in Stocks, A *dividable* proportionate Share of the *Interest* of Stocks, erected on publick Funds; as the *South-Sea*, *India*, *Bank*, and *African* Stocks, &c. Payable to the Adventurers Half-yearly.

Divisa, Hath various Significations: Sometimes it is used for a *Device*, Sentence or Decree: Sometimes for a *Devise* of a Portion or Parcel of Lands, &c. by Will: And sometimes it is taken for the Bounds or Limits of Division of a Parish, or Farm, &c. As *Divisas perambulare*, to walk the Bounds of a Parish; in which Sense, it has been extended to the Division between Countries, and given Name to Towns, as to the *Devises*, a Town in *Wiltshire*, situate on the Confines of the West Saxon, and Mercian Kingdoms. *Leg. H. 2. cap. 9. Leg. Inæ c. 44. Leg. H. 1. c. 57. Cowel.*

Divorce, (*Divortium*, a *Divertendo*) Is a Separation of two, *de facto* married together, made by Law: It is a *Judgment Spiritual*; and therefore if there be Occasion, it ought to be reversed in the Spiritual Court. *Co. Lit.* 235. And besides Sentence of *Divorce*; in the old Law, the Woman *divorced* was to have of her Husband a Writing called a *Bill of Divorce*, which was to this Effect, *viz.* I Promise that hereafter I will lay no Claim to Thee, &c. There are many *Divorces* mentioned in our Books; as *Causa Pracontractus*; *Causa Frigiditatis*; *Causa Consanguinitatis*; *Causa Affinitatis*; *Causa Professionis*, &c. But the usual *Divorces* are only of two Kinds, *i. e.* à *Mensa & Thoro*, from Bed and Board; and à *Vinculo Matrimonii*, from the very Bond of Marriage. A *Divorce à Mensa & Thoro*, dissolveth not the Marriage; for the Cause of it is subsequent to the Marriage, and supposes the Marriage to be lawful: This *Divorce* may be by Reason of Adultery in either of the Parties, for Cruelty of the Husband, &c. And as it doth not dissolve the Marriage, so it doth not debar the Woman of her Dower; or bastardize the Issue; or make void any Estate for the Life of Husband and Wife, &c. 1 *Inst.* 235. 3 *Inst.* 89. 7 *Rep.* 43. The Woman under Separation by this *Divorce*, must sue by her next Friend; and she may sue her Husband in her own Name for Alimony. *Wood's Inst.* 62. A *Divorce à Vinculo Matrimonii*, absolutely dissolves the Marriage, and makes it void from the Beginning, the Causes of it being precedent to the Marriage; as *Pracontract* with some other Person, Consanguinity or Affinity within the *Levitical* Degrees, Impotency, Impurity, &c. On this *Divorce* Dower is gone; and

and if by Reason of *Pracontract*, Consanguinity, or Affinity, the Children begotten between them are Bastards. 1 *Inst.* 235. 2 *Inst.* 93, 687. But in these *Divorces*, the Wife 'tis said shall receive all again that she brought with her, because the Nullity of the Marriage arises through some Impediment; and the Goods of the Wife were given for her Advancement in Marriage, which now ceaseth: But this is where the Goods are not spent; and if the Husband give them away during the Coverture, without any Collusion, it shall bind her: If she knows her Goods unspent, she may bring Action of Detinue for them; and as for Money, &c. which cannot be known, she must sue in the Spiritual Court. *Dyer* 62. 1 *Nelf. Abr.* 675. Where Lands were formerly given to Husband and Wife, and the Heirs of their Bodies in *Frank-Marriage*; if they had afterwards been divorced, the Wife was to have her whole Lands; and by *Divorce* an Estate-Tail of Baron and Feme, 'tis said may be extinct. *Godb.* 18. If a Marriage *de facto* be voidable by *Divorce*, yet if the Husband dies before any *Divorce*, the Wife *de facto* shall be endowed. 1 *Inst.* 33. Where a Sentence of *Divorce* is given in the Spiritual Court *Contra Pracontractus*, the Issue of that Marriage shall be Bastards, so long as the Sentence stands unrepealed; and no Proof shall be admitted at Common Law to the contrary. 1 *Inst.* 235. 1 *Nelf.* 674. And Issue of a second Marriage in such Case, may inherit until the Sentence is repealed. 2 *Leon.* 207. But it is not so where the *Divorce* is à *Mensa & Thoro*, for Adultery, &c. in which Case the Marriage still continues. *Cro. Car.* 462. And if after a *Divorce à Mensa & Thoro*, either of the Parties marry again, the other being Living, such Marriage is a meer Nullity; and by Sentence to confirm the first Contract, she and her first Husband become Husband Wife to all Intents, without any formal *Divorce* from the 2d. 2 *Leon.* 173. Also on this *Divorce*, as the Marriage continues, Marrying again while either Party is living, hath been held within the Statute 1 *Fac.* 1. of Felony, for having married a second Husband or Wife, the former being alive; where a Woman was divorced, and inhibited by the Sentence not to marry during her Husband's Life. *Cro. Car.* 333. 1 *Nelf.* 674. But on a *Divorce à Vinculo Matrimonii*, by Reason of *Pracontract*, &c. the Parties may marry again: And in *Divorces* for Adultery, several Acts of Parliament have allowed the Innocent Party to marry again. Sentence of *Divorce* must be given in the Spiritual Court, in the Life of the Parties, and not afterwards: But it may be repealed in the Spiritual Court, after the Death of the Parties. 1 *Inst.* 33, 244. 7 *Rep.* 44. 5 *Rep.* 98. A *Divorce* shall be try'd by the Bishop's Certificate; and not by a Jury.

Diurnalis, Signifies as much Land as can be ploughed in a Day, with one Ox; in some Author, it is Writ *Diuturna*. Blount

Docket, or **Dogget**, Is a Brief in Writing on a small Piece of Paper or Parchment, containing the Effect of a greater Writing. 2 & 3 *P. & M. cap. 6. West Symbol. par. 2. Sect.* 106. And when Rolls of *Judgments* are brought into C. B. the *Judgments* are docketted, and entered on the Docket of that Term; so that upon any Occasion you may soon find out a Judgment, by searching these *Dockets*, if you know the Attorney's Name. Exemplifications of *Decrees in Chancery* are also docketted: And Attornies keep *Docket-Books*, where in

in are entered Judgments, &c. *Practif. Attorn. Edit. 1. p. 155, 166.*

Dogs, The Law takes Notice of a Greyhound, Mastiff Dog, Spaniel and Tumbrel; for Trover will lie for them. 1 Cro. 125. 2 Cro. 44. A Man hath a Property in a Mastiff: And where a Mastiff falls on another Dog, the Owner of that Dog cannot justify the Killing the Mastiff; unless there was no other to save his Dog, as that he could not take off the Mastiff, &c. 1 Saund. 84. 3 Salk. 139. The Owner of a Dog is bound to muzzle him if mischievous; but not otherwise. *Ibid.*

Dog-Days, (*Dies caniculares*) Are the hottest Time of the Year, by Reason the Sun is then in Leo: They are reckoned sixty-four in all, à tertio Idus Julii usque in Idus Septembris.

Dog-draw, Is a manifest Deprehension of an Offender against Venison in a Forest, when he is found drawing after a Deer by the Scent of a Hound, led in his Hand: Or where a Person hath wounded a Deer, or wild Beast, by shooting at him, or otherwise, and is caught with a Dog drawing after him to receive the same. *Manwood, par. 2. cap. 18.*

Dogger, A little Ship or Vessel; as a Dutch Dogger, &c. Stat. 31 Ed. 3. cap. 1.

Doggers-fish, Are Fish brought in those Ships. *Stat. Ibid.*

Dogger-men, Fishermen that belong to Dogger-Ships. 25 H. 8. c. 2.

Doitain, or *Doit*, Was a base Coin of small Value, prohibited by the Stat. 3 H. 5. ca. 1. We still retain the Phrase, in the common Saying, when we would undervalue a Man, *That he is not worth a Doit.*

Do Law, (*Facere Legem*) Is the same with to make Law. Stat. 23 H. 6. c. 14.

Dole, (*Dola*) A Saxon Word signifying as much as *Pars* or *Portio* in the Latin; and anciently where a Meadow was divided into several Shares, it was called a *Dole-Meadow*. 4 Jac. cap. 11. See *Dalus*.

Dolefish, Seems to be the Share of Fish, which the Fishermen, yearly employ'd in the North Seas, do customarily receive for their Allowance. Stat. 35 H. 8. c. 7.

Dolg-bote, (*Sax.*) A Recompence or Amends, for a Scar or Wound. *Sax. Dist. LL. Aluredi. Reg. c. 23.*

Dollar, A Piece of foreign Coin, going for about 4s. 6d. *Lex Mercat.*

Dom-bot, (*Sax.*) Signifies *Liber Judicialis*, as appears by the Laws of K. Ed. 1. this 'tis conjectured was a Book of Statutes of the English Saxons, wherein the Laws of the ancient Saxon Kings were contained. *Leg. Inæ, c. 29.*

Dome, or **Doom,** (from the Sax. *Dom*) A Judgment, Sentence, or Decree. And several Words End in *Dom*; as *Kingdom*, *Earldom*, &c. from whence they may be applied to a Jurisdiction of a Lord, or a King. *Mon. Angl. Tom. 1. fol. 284.* Also there is a *Dome of a Church*; such as *St. Paul's*, &c.

Domesday, (*Liber Judiciarius, vel Censualis Anglie*) Is a most ancient Record, made in the Time of William I. called the Conqueror, and now remaining in the Exchequer fair and legible, consisting of two Volumes, a Greater and a Less; the greater containing a Survey of all the Lands in England, except the Counties of Northumberland, Cumberland, Westmorland, Durham, and Part of Lancashire, which 'tis said were never surveyed,

and excepting Essex, Suffolk, and Norfolk; which three last are comprehended in the lesser Volume. There is also a *third Book*, which differs from the others in Form more than Matter, made by the Command of the same King. And there's a *fourth Book* kept in the Exchequer which is called *Domesday*; and though a very large Volume, is only an Abridgment of the others. Likewise a *fifth Book* is kept in the Remembrancer's Office in the Exchequer, which has the Name of *Domesday*, and is the very same with the Fourth before-mentioned. Our Ancestors had many *Dome-Books*: K. Alfred had a Roll, which he called *Domesday*; and the *Domesday Book* made by Will. 1. referr'd to the Time of Edw. the Confessor, as that of K. Alfred did to the Time of Æthelred. The fourth Book of *Domesday* having many Pictures, and gilt Letters in the Beginning, relating to the Time of King Edward the Confessor, this led him who made Notes on Fitzherbert's Register into a Mistake in pa. 14. where he tells us, that *Liber Domesday factus fuit tempore Regis Edwardi*. The Book of *Domesday* was begun by five Justices, assigned for that Purpose in each County, in the Year 1081. and finished Anno 1086. And 'tis generally known, that the Question whether Lands are ancient *Demesne*, or not, is to be decided by the *Domesday of Will. 1.* from whence there is no Appeal: And 'tis a Book of that Authority, that even the Conqueror himself submitted some Cases wherein he was concerned to be determined by it. The Addition of *Day* to this *Dome Book*, was not meant with any Allusion to the *final Day of Judgment* as most Persons have conceited; but was to strengthen and confirm it, and signifieth the judicial decisive Record or Book of *dooming Judgment and Justice*. *Hammond's Annot. Camden* calls this Book *Gulielmi Librum Censualium*, the *Tax-Book* of King William; and it was further called *Magna Rolla Winton*. The Dean and Chapter of York have a Register stiled *Domesday*; so hath the Bishop of Worcester; and there is an ancient Roll in Chester Castle, called *Domesday Roll*. *Blount.*

Domes-men, Judges, or Men appointed to doom, and determine Suits and Controversies: Hence *ag-deme*, I *Deem*, or Judge. *Vide Days-Man.*

Domicellus, Is an old obsolete Latin Word, anciently given as an Appellation or Addition to the King's natural Sons in France, and sometimes to the eldest Sons of Noblemen there; from whence we borrow these Additions: As several natural Children of John of Gaunt Duke of Lancaster, are stiled *Domicelli* by the Charter of Legitimation. 20 R. 2. But according to Thorn, the *Domicelli* were only the better Sort of Servants in Monasteries. — *Domicellus Abbatiss, & Domicelli & Servientes Monasterii*, p. 1748, 1990.

Domigerium, Is a Word sometimes used for Danger; but otherwise, and perhaps more properly, it is taken for Power over another; *sub Domigerio alicujus vel manu esse*. *Braët. lib. 4. Tract. 1. cap. 19.*

Domina, A Title given to honourable Women, who anciently in their own Right of Inheritance held a Barony. *Paroch. Antiq. 78.*

Dominica in Ramis Palmarum, Palm-Sunday. Anno 23 Ed. 1.

Dominium, Signifies Right, or Regal Power. *Paroch. Antiq. 498.*

Dominus. This Word prefixed to a Man's Name, in ancient Times usually denoted him a Knight

Knight, or a Clergyman; and sometimes a Gentleman not a Knight, especially a Lord of a Manor.

Dono Reparanda, Is a Writ that lies for one against his Neighbour, by the Fall of whose House he fears Damage and Injury to his own. *Reg. Orig.* 153.

Domus Conversorum, Was an ancient House built or appointed by K. H. 3. for such Jews as were converted to the Christian Faith: But King Ed. 3. who expelled the Jews from this Kingdom, deputed the Place for the Custody of the Rolls and Records of the Chancery. See *Rolls*.

Domus Dei, The Hospital of Saint Julian in Southampton, so call'd. *Mon. Angl. Tom.* 2. 440.

Donative, (*Donativum*) Is a Benefice merely given and collated by the Patron to a Man, without either Presentation to, or Institution by the Ordinary, or Induction by his Order. *F. N. B.* 35. And *Donatives* are so term'd, because they began only by the Foundation and Erection of the *Donor*. *Clergym. Law.* 120. The King might of ancient Time found a Church or Chapel, and exempt it from the Jurisdiction of the Ordinary: So he may by his Letters Patent give Licence to a common Person to found such a Church or Chapel, and make it *Donative*, not presentable; and that the Incumbent or Chaplain shall be deprived by the Founder and his Heirs, and not by the Bishop; which seems to be the Original of *Donatives* in England. *Gwin's Readings*. When the King founds a Church, &c. *Donative*, it is of Course exempted from the Ordinary's Jurisdiction, tho' no particular Exemption is mentioned, and the Lord Chancellor shall visit the same: And where the King grants a Licence to a common Person to found a Church or Chapel, it may be *Donative*, and exempted from the Jurisdiction of the Bishop, so as to be visited by the Founder, &c. *1 Inst.* 134. *2 Roll. Abr.* 230. The Resignation of a *Donative* must be to the Donor or Patron, and not to the Ordinary; and *Donatives* are not only free from all ordinary Jurisdiction, but the Patron and Incumbent may charge the Glebe to bind the Successor: And if the Clerk is disturb'd, the Patron may bring *Quare Impedit*, &c. *1 Inst.* 344. *Cro. Jac.* 63. If the Patron of a *Donative* will not nominate a Clerk, there can be no Lapse: But the Bishop may compel such Patron to nominate a Clerk by Ecclesiastical Censures; for tho' the Church is exempt from the Power of the Ordinary, the Patron is not exempted: And the Clerk must be qualified like unto other Clerks of Churches, no Person being capable of a *Donative*, unless he be a Priest lawfully ordained, &c. *Yelu.* 61. *Stat.* 14 *Car.* 2. c. 4. *1 Lill.* 488. A parochial Church may be *Donative*, and exempt from the Ordinary's Jurisdiction. *Godolph.* 262. the Church of *St. Mary le Bone* in *Middlesex* is *Donative*, and the Incumbent being cited into the Spiritual Court, to take a Licence from the Bishop to preach, pretending that it was a Chapel, and that the Parson was a Stipendiary; it was ruled in the King's Bench that it was a *Donative*, and if the Bishop visit, the Court of *B. R.* will grant a Prohibition, *1 Mod.* 90. *1 Nels. Abr.* 676. If the Patron of a *Donative*, doth once present his Clerk to the Ordinary, and the Clerk is admitted, instituted and inducted, then the *Donative* ceaseth; and it becomes a Church presentative. *1 Inst.* 344. But where a *Donative* is created by Letters Patent, by which Lands are settled upon the Parson and his Successors, and he is to come in by the Dona-

tion of the King, and his Successors; in this Case, tho' there may be a Presentation to the *Donative*, and the Incumbent come in by Institution and Induction, yet that will not destroy the *Donative*. *2 Salk.* 541. All Bishopricks, being of the Foundation of the King; they were in ancient Time *Donative*. *3 Rep.* 75. A Parson is put in Possession of a *Donative* by Gift in Writing of the following Form.

Form of a Donation of a Church.

TO all to whom these presents shall come, I the Right Honourable T. Lord B. Baron of, &c. send Greeting. Whereas the Church or free Chapel of, &c. in the Diocese of, &c. is now void, and of Right doth belong and appertain to my Gift. Know ye therefore, That I the said T. Lord B. in Consideration of the known Abilities, Learning and Honesty of T. D. Clerk of, &c. Have given and granted unto him the said T. D. the said Church or Chapel of, &c. aforesaid with all Rights, Benefits, Advantages and Appurtenances whatsoever to the same belonging; and by these presents I the said T. Lord B. do induct the said T. D. to the Possession of the said Church or Chapel, with all its Rights and Appurtenances. In Witness, &c.

Donor, and **Donee**. Donor is he who gives Lands or Tenements to another in Tail, &c. And the Person to whom given is the *Donee*.

Dorture, (*Dormitorium*) Is the common Room or Chamber, where all the Fryers or Religious of one Convent slept and lay all Night. *Stat.* 25 *H.* 8. c. 11.

Dote Assignanda, Is a Writ that lay for a Widow, where it was found by Office, that the King's Tenant was seised of Lands 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; whereupon she had this Writ to the Escheator, to assign her Dower, &c. But it was usual to make the Assignment of the Dower in the Chancery, and to award a Writ to the Escheator to deliver the Lands assigned unto her. *Stat.* 15 *Ed.* 3. cap. 4. *Reg. Orig.* 297. *F. N. B.* 263. And these Widows are called in our Law the *King's Widows*.

Dote unde nihil habet, Is a Writ of Dower, that lies for the Widow against the Tenant who bought Land of her Husband in his Life-time, whereof he was solely seised in Fee-simple, or Fee-tail, and of which she is dowable. *F. N. B.* 147.

Dotis Admensuratione, *Admeasurement* of Dower, where the Widow holds more than her Share, &c. See *Admeasurement*.

Double Plea, (*Duplex placitum*) Is where a Defendant alledgeth for himself two several Matters in Bar of the Plaintiff's Action, when one of them is sufficient, which shall not be admitted: As if a Man plead several Things, the one not depending upon the other, the Plea is accounted *Double*, and will not be allowed; but if they mutually depend on each other, and the Party may not have the last Plea without the first, then it shall be received. *Kitch.* 223. And where a *Double Plea* that is wrong is pleaded, if the Plaintiff reply thereto, and take Issue of one Matter; if that is found against him, he cannot afterwards plead in Arrest of Judgment; for by the Replication it is allowed to be good. *18 E.* 4. 17. All Pleas ought

ought to be single, that the Jury may not be troubled and perplexed with over many Things at once. *Smith's Rep. Angl. lib. 2. cap. 13.*

Double Quarrel, (*Duplex Querela*) Is a Complaint made by any Clerk, or other, to the Archbishop of the Province, against an inferior Ordinary, for delaying or refusing to do Justice in some Cause Ecclesiastical; as to give Sentence, institute a Clerk, &c. and seems to be termed a *Double Quarrel*, because it is most commonly made against both the Judge and him, at whose Suit Justice is denied or delayed: The Effect whereof is, That the Archbishop taking Notice of the Delay, directs his Letters under his authentical Seal to all Clerks of his Province, commanding them to admonish the Ordinary within a certain Number of Days to do the Justice required, or otherwise to appear before him, or his Official, and there alledge the Cause of his Delay: And to signify to the Ordinary that if he neither perform the Thing enjoin'd, nor appear and shew Cause against it, he himself in his Court of Audience will forthwith proceed to do the Justice that is due. *Cowel.*

Doubles, (*Fr. from the Lat. Diploma*) Signify the same with Letters Patent. *Stat. 14 H. 6. c. 6.*

Douzen Peers, Were twelve Peers assigned at the Instance of the Barons in the Reign of King Hen. 3. to be Privy Counsellors to the King, or rather Conservators of the Kingdom.

Dow, To give or endow, from the Latin Word *Do*.

Dowager, (*Dotata, Dotissa*) A Widow endow'd; applied to the Widows of Princes, Dukes, Earls, and other great Personages.

Dower, (*Dotarium*) Is a Portion which a Widow hath of the Lands of her Husband after his Decease, for the Sustainance of her self, and Education of her Children. *1 Inst. 30.* And there were formerly five Kinds of Dower in this Kingdom.

1. *Dower of the Common Law*, which is a third Part of such Lands or Tenements whereof the Husband was sole seised in Fee-simple, or Fee-tail, during the Coverture; and this the Widow is to enjoy during her Life. 2. *Dower of Custom*, which is that Part of the Husband's Estate to which the Widow is entitled after the Death of her Husband, by the Custom of any Manor or Place, so long as she lives Sole and Chast; and this is more than one third Part, for in some Places she shall have Half the Land, as by the Custom of *Gavelkind*; and in divers Manors the Widow shall have the Whole during her Life, which is called her *Free-bench*: But as Custom may enlarge; so it may abridge Dower, to a 4th Part. *1 Inst. 33.* 3. *Dower ad Ostim Ecclesie*, made by the Husband himself immediately after the Marriage, who named such particular Lands of which his Wife should be endow'd; and in ancient Time it was taken that a Man could not by this Dower endow his Wife of more than a third Part, though of less he might: And as the Certainty of the Land was openly declared by the Husband, the Wife after his Death might enter into the Land of which she was endow'd without any other Assignment. *1 Inst. 34. Lit. Sect. 39.* 4. *Dower ex assensu Patris*, which likewise was of certain Lands named by a Son who was the Husband, with the Consent of his Father, and always put in Writing as soon as the Son was married: And if a Woman thus endow'd, or *Ad Ostim Ecclesie*, after the Death of her Husband enter'd into the Land allotted her in Dower, and agreed

thereto, she was concluded to claim any Dower by the Common Law. *Lit. Sect. 41. 5. Dower de la plus Belle*, which was where the Wife was endow'd with the fairest Part of her Husband's Estate; but of all these Writs of Dower, the two first are now only in Use. *1 Nelf. Abr. 679.* By our Law, all the Goods and Chattles of the Wife are the Husband's; and if she be an Inheritrix, the Husband holds her Land during her Life; also if he hath Issue by her, for his own Life, by the *Curtesy of England*: And if he have any Land in Fee, whereof he is possessed during the Marriage, she is to have a third Part thereof for her Life as her Dower; though she bring nothing to the Husband, and whether she have Issue by him or not. *Lit. 36.* There are three Things to entitle Dower, viz. Marriage, Seisin, and Death of the Husband: And a Wife shall be endow'd of a Seisin in Law, as well as of a Seisin in Deed; as where Lands and Tenements descend to the Husband before Entry, he hath but a Seisin in Law, and yet the Wife shall be endow'd although it be not reduc'd to an actual Possession. *1 Inst. 31, 32, &c.* And it is not necessary that Seisin should continue during the Coverture; for if the Husband aliens the Lands, &c. the Wife shall be nevertheless endow'd. *Ibid. 32, 35.* Where Lands are exchange'd by the Husband for other Lands, the Wife may be endow'd of which Lands she will, as the Husband was seisd of both; though she may not be endow'd of the Lands given and taken in Exchange. *1 Inst. 31.* Where the Estate which the Husband hath during the Marriage is ended, there the Wife shall lose her Dower. *New. Nat. Br. 333.* But of an Estate-Tail in Lands determin'd, it is said a Woman shall be endow'd. *1 Inst. 31, 32.* And if a Wife be endow'd of her third Part, and afterwards evicted by an elder Title; she shall have a new Writ of Dower, and be endow'd of the other Lands. *2 Danv. Abr. 670.* Though this is where it is the immediate Estate descended to the Heir; and not when it is the Estate of an Alienee. *9 Rep. 17.* The Wife is dowable where Lands were recover'd against the Husband by Default or Covin: And a Woman deforc'd of her Dower, shall recover Damages, viz. the Value of her Dower from her Husband's Death. *13 E. 1 20 H. 3.* If Lands be granted to a Husband during the Life of another Person, and the Husband dies, his Wife shall not be endow'd. *1 Rep. 98.* If a Man leases Land for Life, rendring Rent; his Wife shall not be endow'd of this Rent; for this is but an Estate for Life in the Rent, though it descends to the Heir. *2 Danv. 656.* But she shall be endow'd of a Reversion, expectant on a Term of Years; and of a Rent reserv'd thereon. *Lutw. 729.* If the Husband hath only an Estate for Life, Remainder to another in Tail, though the Remainder over is to his Heirs, the Wife shall not be endow'd. *2 Danv. 656.* But if there be only an intervening Estate for Years, it will be no Bar to Dower. *Lutw. 729, &c.* A Woman shall not be endow'd of the Goods of her Husband; nor of a Castle, or capital Messuage: But of all other Lands and Tenements she may. *1 Inst. 35.* Where there are three Manors, one of them may be assigned to the Wife in Dower, in lieu of all three. *Moor 12.* The Sheriff may assign a Rent out of the Land in lieu of Dower; and her Acceptance of the Rent will bar Dower out of the same Land, but not out of other Lands. *2 And. 31. Dyer 91. 1 Nelf. Abr. 680.* If during the Coverture, the Husband

Husband doth extinguish Rents by Release, &c. yet she shall be endowed of them; for as to her *Dower*, in the Eye of the Law, they have Continuance. 1 *Inst.* 32. If Land be assigned to a Woman for Years, in Recompence of *Dower*, this is no Bar of *Dower*; for this is not such an Estate therein as she should have. 2 *Danv.* 668. Where a Jointure is made of Lands after Marriage, the Wife may waive it, and demand her *Dower*: But 'tis otherwise if made before Marriage according to the Stat. 27 H. 8. And if Lands are given to the Husband and Wife in Tail, and after the Death of the Husband, the Wife disagrees, she may recover her *Dower*; for by her waiving her Estate, her Husband in Judgment of Law was sole seised *ab initio*. 3 *Rep.* 27. If Lands are improv'd, the Wife is to have one third according to the improv'd Value. 1 *Inst.* 32. And if the Ground deliver'd her be sow'd, she shall have the Corn. 2 *Inst.* 81. A Widow may have Judgment to recover her *Dower*, with a *Cessat Executio*, in case there be any Thing objected against precedent the Title of *Dower*, &c. till that is determin'd. 1 *Nels.* 684, 687. 1 *Salk.* 291. Judgment in *Dower* is to recover a third Part of Lands and Tenements *per Metas & Bendas*; but this may not be of a Mill, for if it were, neither of the Parties could use their Parts. 1 *Lev.* 182. When no Division can be made of what the Wife is *dowable*, *Dower* is to be assign'd in a special Manner; as of the third Presentation to a Church, the third Toll-Dish of a Mill; Common certain, a third Year; the third Part of the Profits of an Office, Fair, Market, &c. 1 *Roll. Abr.* 678. And *Dower* is much favoured in Law, being for the Benefit of Widows: Wherefore the Wife of one *Non Compos Mentis*, of an Ideot, Outlaw, or one attainted of Felony, may be endow'd: But not of a Person attainted of Treason; nor the Wife of an Alien, Jew, &c. 1 *Inst.* 33, 37. Stat. 1 Ed. 6. cap. 12. 5 Ed. 6. cap. 11. At Common Law, *Dower* is assign'd by the Sheriff, by the King's Writ; or by the Heir, &c. by Agreement among themselves: And the Wife cannot enter otherwise into her *Dower*. 1 *Bulst.* 35. By the ancient Law of England, till *Magna Charta*, a Woman was to continue a whole Year in her Husband's House, for the Assignment of her *Dower*. 2 *Inst.* 17. By that Statute, a Widow shall immediately after her Husband's Death have her Marriage Inheritance; and remain in his chief House forty Days, within which Time *Dower* is to be assign'd her of the third Part of all his Lands, &c. 9 H. 3. If a Wife accept and enter no less Land than the third of the whole, on the Sheriff's Assignment, she is barr'd to demand more. *Moor* 679. If the Widow accepts of *Dower* of the Heir, against common Right, she shall hold it subject to the Charges of the Husband; but otherwise it is, if she be endow'd against common Right by the Sheriff. 2 *Danv.* 672. By Provision of Law, the Wife may take a third Part of the Husband's Lands, and hold them discharged. *Ibid.* If *Dower* be assigned a Woman on Condition, or with an Exception; the Condition and Exception are void. *Cro. Eliz.* 451. Detaining of Charters concerning the same Land of which the Widow demands her *Dower*, is a good Plea by the Heir in Delay of her *Dower*: But if she delivers up the Evidences, she shall have Judgment; though if she denies the Detainer, and it is found against her, she loses her *Dower*. *Hob.* 199.

9 *Rep.* 19. If a Wife levies a Fine with her Husband, she debars her self of her *Dower*: And if a common Recovery be had against the Husband and Wife, of the Husband's Lands, it shall bar the Wife of her *Dower*. 2 *Rep.* 74. *Plowd.* 514. Where a Woman releases her Right to him in Reversion, her *Dower* may be extinguish'd. 8 *Rep.* 151. If a Wife commits Treason or Felony; or if she elope from her Husband, and live with the Adulterer willingly, without being reconciled to the Husband, she shall lose and forfeit her *Dower*; but if the Husband be reconciled to her, and she lives with him again, she shall be endow'd. 2 *Inst.* 453. *Dyer* 106. And if after Elopement of the Wife, her Husband and she demean themselves as Husband and Wife, it is Evidence of Reconciliation. *Dyer* 196. If a Man grants his Wife with her Goods to another, and the Wife by Virtue of the Grant lives with the Grantee during the Life of the Husband, this shall forfeit her *Dower*; for she lived in Adultery, notwithstanding the Grant. 2 *Inst.* 435. 2 *Danv.* 662. If a Woman be of the Age of nine Years, at the Death of her Husband, she shall be endowed, of whatsoever Age he is; because after the Death of the Husband, the Marriage is adjudged lawful. 1 *Inst.* 33. The Wife is, as soon she can after the Decease of her Husband, to demand her *Dower*, lest she lose the Value from the Time of his Death: And in Action of *Dower*, the first Process is *Summons* to appear, on the Return whereof the Attorney for the Tenant or Defendant may enter with the Filizer that the Tenant appears, and prays *View*, &c. Then a Writ of *View* goes out, whereby the Sheriff is to shew the Tenant the Land in Question, upon the Return of which Writ of *View*, the Tenant's Attorney takes a Declaration, and puts in a Plea, the most general one is, *Ne unques seisi*, &c. viz. That the Husband was never seisd of any Estate whereof the Wife can be endowed; and when Issue is join'd, you must proceed to Trial as in other Actions: Upon Trial, the Jury are to give Damages for the mean Profits from the Death of the Husband (if he die seised) for which Execution shall be made out; and then you have a Writ to the Sheriff to give Possession of a third Part of the Lands. *Pract. Solic.* p. 335, 336.

Form of a Summons in Dower.

P Recipe A. quod Juste, &c. addat B. quæ fuit ux. T. D. rationabil. Dotem suam quæ ei continget de Libero Tenemento quod fuit præd. T. quondam viri sui in, &c. Unde nihil habet, ut dicit, &c.

Form of a Count or Declaration, and Plea in Dower.

Wilts. ff. **B.** D. vidua quæ fuit ux. T. D. Gen. per, &c. Attorn. suum pet. vers. A. B. Tertiam partem Unius Messuagii, unius Gardini, Sex acr. Terræ, &c. cum pertin. in, &c. ut Dotem ipsius B. ex Dotatione præd. T. quondam viri sui per Breve Dom. Regis de Dote unde Nihil habet, &c. — Et præd. A. per Attorn. suum ven. & petit visum de Tenement. præd. cum pertin. &c. habuit, &c. Dies dat. est partibus prædict. hic usque a Die Paschæ in quindecim dies, &c. — Et præd. A. per, &c. Attornat. suum ven. & dicit quod præd. B. Dotem de Tenement. præd. cum pertin. unde &c. ex Dotatione præd. T. quond. viri sui habere non debet, quia dicit quod idem T. quond. vir die quo ipse præfat. B. desponsavit nec unquam

quam postea fuit seist. de Tent. præd. cum pertin. unde, &c. de tal. stat. ita quod præd. B. inde dotasse potuit & de hoc pon. &c.

As in great Estates *Jointures* of Lands are usually made in Lieu and Satisfaction of *Dower*, these *Actions* of *Dower* are not so frequently brought as they were formerly.

Dowry, (*Dos Mulieris*) Was 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. This Word is often confounded with *Dowet*; tho' it hath a different Meaning from it.

Dowry Bill. Among the Jews, the Bridegroom at the Time of the Marriage, gave his Wife a *Dowry Bill*. Blount.

Drozin, A Territory or Jurisdiction, mentioned in the Stat. of *View and Frank-pledge*. 18 E. 2. See *Deciners*.

Drozo Regis, The Standard, *Ensign*, or military Colours, bore in War by our ancient Kings, having the Figure of a *Dragon* painted on them.

— *Rex Anglia fixisset signum suum in medio, & tradidisset Draconem suum Petro de P. ad portandum, &c.*—Rog. Hoved. sub ann. 1191.

Dragium, *Drag*; A coarser Sort of Bread-Corn: In *Staffordshire*, they use a Kind of Malt, made of Oats mixed with Barley, which they call *Dreg* or *Drag Malt*; and in *Essex*, &c. they have a Grain called *Dreg*. Tuffer's Husband. p. 32.

Dregs, Seem to be floating Pieces of Timber so joined together, that by swimming on the Water they may bear a Burden or Load of other Things down a River. 6 H. 6. c. 5.

Dzagere, Signifies any Harness belonging to Cart Horses, for drawing a Waggon, or other Carriage. *Paroch. Antiq.* p. 549.

Dzag-latches, Were Thieves and Robbers: *Lambert* in his *Eiren. lib.* 2. cap. 6. calls them *Thieves*, *Wasters*, and *Robbersmen*; Words grown out of Use. They are mentioned in 5 Ed. 3. cap. 14. & 7 R. 2. c. 5.

Dreit-Dreit, or *Droit*, Are Words signifying formerly a double Right. *Bract. lib.* 4. cap. 27. *Co. Lit.* 266.

Drenched, An old Word used where a Person was overcome, from the Germ. *Tringen*, i. e. *Cogere*.

Drenches, or *Drenges*, (*Drengi*) Were Tenants in *Capite*, says an ancient M.S. *Mon. Angl. Tom.* 2. fol. 598. And according to *Spelman*, they are such as at the Coming of *Will. I.* called the *Conqueror*, being put out of their Estates, were afterwards restored thereunto; on their making it appear that they were Owners thereof, and neither in *Auxilio*, or *Consilio* against him. *Spelm.*

Drengage, (*Drengagium*) The Tenure by which the *Drenches* or *Drenges* held their Lands. *Trin.* 21 Ed. 3. *Ebor. & Northumb. Rot.* 191.

Drift of the Forest, (*Agitatio Animalium in Foresta*) Is a View or Examination of what Cattle are in the *Forest*, that it may be known whether it be surcharged or not; and whose the Beasts are, and whether they are commonable, &c. These *Drifts* are made at certain Times in the Year by the Officers of the *Forest*; when all the Cattle of the *Forest* are driven into some Pound or Place enclosed, for the Purposes afore-mentioned; and to the End it may be discovered whether any Cattle of Strangers be there, which

ought not to common. *Manw. par.* 2. c. 15. *Stat.* 32 H. 8. c. 13. 4 *Inst.* 309.

Dzinklean, (in some Records *Potura Drinklean*) Was a Contribution of Tenants, in the Time of the *Saxons*, towards a *Potation* or *Ale*, provided to entertain the Lord, or his Steward.

Drodenne, Signified with our *Saxon* Ancestors a Grove, or woody Place, where Cattle were kept; and the Keeper of them was called *Drofman*. *Domesday*.

Drofland or *Dyfland*, Another *Saxon* Word, signifying a Tribute or yearly Payment made by some Tenants to the King, or their Landlords, for driving their Cattle thro' a Manor to Fairs or Markets. *Cowel*.

Droit, *Right*, Is the highest Writ of all other real Writs whatsoever, and hath the greatest Respect, and the most assured and final Judgment; and therefore called a *Writ of Right*, and in the old Books *Droit. Co. Lit.* 158. There are divers of these Writs used in our Law, such as the following.

Droit de Abbotsen.

Droit de Dower.

Droit de Garde.

Droit Patent.

Droit Rationabili parte.

Droit sur Disclaimer.

} All these several Writs of *Right*, and their various Uses, see *Recto*.

Dromones, *Dromos*, *Dromunda*, Signified at first high Ships of great Burden, but afterwards those which we now call Men of War. *Walsingh. Anno* 1292. — *Tres Majores Naves subsequenter, quos vulgo Dromones appellant*—*Mat Paris.* sub ann. 1191.

Drunkenness, Is an Offence for which a Man may be punished in the Ecclesiastical Court, as well as by Justices of Peace by Statute: And by 4 *Fac.* 1. c. 5. And 21 *Fac.* 1. c. 7. If any Person shall be convicted of *Drunkenness* by the View of a Justice, Oath of one Witness, &c. he shall forfeit five Shillings for the first Offence, to be levied by Distress and Sale of his Goods; and for want of a Distress, shall sit in the Stocks six Hours: And for the second Offence, he is to be bound with two Sureties in ten Pounds each, to be of the good Behaviour, or be committed. For *Drunkenness*, Seamen may be punished by Fine, &c. as a Court Martial shall think fit, by *Stat.* 13 *Car.* 2. c. 9. And he who is guilty of any Crime thro' his own voluntary *Drunkenness*, shall be punished for it as much as if he had been sober. *Co. Lit.* 247. 1 *Hawk. P. C.* 2.

Dry Exchange, (*Cambium Siccum*) Is a Term invented in former Times for the Disguising and Covering of *Usury*; in which something was pretended to pass on both Sides, whereas in Truth nothing passed but on one Side, in which Respect it was called *Dry*. *Stat.* 3 H. 7. c. 5.

Dry Rent, A Rent reserved without Clause of Distress. See *Rent-sock*.

Duces tecum, Is a Writ commanding a Person to appear at a certain Day in the Court of *Chancery*, and to bring with him some Writings, Evidences, or other Things, which the Court would view. *Reg. Orig.*

Duces tecum licet Languidus, A Writ directed to the Sheriff, upon a Return that he cannot bring his Prisoner without Danger of Death, he being *adeo Languidus*; then the Court grants a *Habeas Corpus* in Nature of a *Duces tecum licet Languidus*. *Book Entr.*

Duel, (*Duellum*) In our antient Law is a Fight between Persons in a doubtful Case, for the Trial of the Truth. *Fleta*. But this Kind of *Duel* is difus'd; and what we now call a *Duel* is, a Fighting between Two upon some Quarrel precedent: Wherein, if a Person is killed, both the Principal and his Seconds are guilty of Murder, and whether such Seconds fight, or not. *H. P. C.* 47, 51. And 'tis said by some, that the Seconds of the Person kill'd are equally guilty, by Reason of the Encouragement which they gave by joining with him: But this is contradicted by others. *1 Hawk.* 82. Wherever two Persons in cool Blood meet and fight upon a precedent Quarrel, and one of them is killed, the other is guilty of Murder, and cannot excuse himself by alledging that he was first struck by the Deceased, or that he had declined to meet him, was prevail'd upon to do it by his Importunity, or that it was not his Intent to kill, but only to vindicate his Reputation, &c. *1 Hawk. P. C.* 81. If two Persons quarrel over Night, and appoint to fight the next Day; or quarrel in the Morning, and agree to fight in the Afternoon; or such a considerable Time after, by which it may be presumed the Blood was cooled; and then they meet and fight a *Duel*, and one kill the other, it is Murder. *3 Inst.* 51. *H. P. C.* 48. *Kely.* 56. And when-ever it appears that he who kills another in a *Duel* or Fighting on a sudden Quarrel, was Master of his Temper at the Time, he is guilty of Murder; as if after the Quarrel he fall into another Discourse, and talk calmly thereon; or alledge that the Place where the Quarrel happens is not convenient for Fighting; or that his Shoes are too high, if he should fight at present, &c. *Kel.* 56. *1 Lev.* 180. If one challenge another, who refuses to meet him, but tells him that he shall go the next Day to such a Place about Business, and then the Challenger meets him on the Road, and assaults the other; if the other in this Case kill him, it will be only Manslaughter; for here is no Acceptance of the Challenge or Agreement to fight: And if the Person challenged refuseth to meet the Challenger, but tells him that he wears a Sword, and is always ready to defend himself; if then the Challenger attack him, and is killed by the other, it is neither Murder nor Manslaughter, if necessary in his own Defence. *Kel.* 56. It is a very high Offence to challenge another, either by Word or Letter, to fight a *Duel*; or to be the Messenger of such a Challenge; or even barely to endeavour to provoke another to send a Challenge, or to fight; as by dispersing Letters for that Purpose, full of Reflections, &c. *1 Sid.* 186. *3 Inst.* 158. And Persons convicted of barely sending a Challenge, have been adjudged to pay a Fine of 100 l. to be imprisoned for a Month, and to make a publick Acknowledgment of their Offence, and to be bound to their Good Behaviour. *1 Hawk. P. C.* 135, 138.

Duke, (*Lat. Dux, Fr. Duc, à Ducendo*) Signified among the antient Romans, *Duxorem exercitus*, such as led their Armies; since which they were called *Duces*, and were Governors of Provinces, &c. In some Nations, the Sovereigns of the Country are called by this Name; as the *Duke of Savoy*, &c. In *England*, the Title of *Duke* is the next Dignity to the Prince of *Wales*: And the first *Duke* we had in *England* was *Edward the Black Prince*, so fam'd in our *English* Histories for Heroick Actions; who was created *Duke of Corn-*

wal in the 11th Year of King *Edw. 3.* After which there were more made in such Manner as their Titles descended to their Posterity; and during the late Reigns their Number hath been greatly increased. They are created with Solemnity, *per Cincturam Gladii, Cappaque & Circuli aurei in Capite impositionem.* *Camd. Britan.* p. 166.

Dum fuit infra ætatem, Is where an Infant maketh a Feoffment of his Lands; when he cometh of full Age, he may have this Writ to recover those Lands or Tenements which were so aliened: And within Age, he may enter into the Land and take it back again, and by his Entry he shall be remitted to his Ancestor's Right. *New Nat. Br.* 426. If the Husband and Wife alien the Wife's Land, during the Nonage of both of them, the Wife at her full Age after the Death of the Husband, shall have a *Dum fuit infra ætatem.* *M.* 14 E. 3.

Dum non fuit Compos Mentis, Is a Writ that lieth where a Man who is not of sound Memory aliens any Lands or Tenements, then he shall have this Writ against the Alienee. *F. N. B.* 202. And he shall alledge that he was not of *Sane memoire* when he made the Feoffment; but being visited with Infirmary, lost his Discretion for a Time, so as not to be capable of Making a Grant, &c. *New Nat. Br.* 449. But see *Disability*.

Dun, Down, In which Termination it hath varied into *Don*, signifies a Mountain or high open Place; so that the Names of those Towns which end in *Dun* or *Don*, as *Ashdon*, &c. were either built on Hills, or near them in open Places. *Domesd.*

Dunsetts, Those who dwell on Hills or Mountains. *Sax.*

Dunum, and **Duna**, A Down or Hill: And *Dunnarium* is used in the same Sense. *Chart. dat.* 29 Ed. 3. *Penes Decan. & Cap. Eccl. Cath. Christi Oxon.*

Duodena, A Jury of twelve Men. — *Tunc Justiciar. convocata seorsim alia Duodena.* *Walsingh.* 256.

Duodena manu, Twelve Witnesses to purge a Criminal of an Offence. See *Jurare Duodecima Manu*.

Duplex Querela, A Process Ecclesiastical; *Double Quarrel*.

Duplicate, Is used for second Letters Patent, granted by the Lord Chancellor in a Case wherein he had before done the same; which were therefore thought void. *Crompt. Jurisd. fol.* 215. But it is more commonly a Copy or Transcript of any Deed or Writing, Account, &c. or a second Letter, written and sent to the same Party and Purpose as a former, for Fear of Miscarriage of the First, or for other Reasons: This Word is mentioned in the Stat. 14 Car. 2. c. 10.

Durden, A Thicket of Wood in a Valley. *Cowel.*

Duress, (*Duritia*) Is where one is wrongfully imprisoned or restrained of his Liberty contrary to Law, 'till he seals a Bond or other Deed to another; or threatned to be killed, wounded, or beaten if he do not do it: And a Bond or Deed so obtained is void in Law. *Broke*, in his Abridgment, joins *Duress* and *Minas* together, *i. e.* Hardship and Threatnings: If one under a just Fear of being imprison'd, killed, &c. enters into a Bond to him that threatens him, it is *Duress per Minas*; and may be pleaded to avoid the Bond: But it must be a Threatning of Life or Member, or of Imprisonment; and not of a Battery only; or

to take away Goods, &c. 1 *Inst.* 162, 253. 2 *Inst.* 483. But it has been adjudg'd, that if a Man makes a Deed by *Durefs* done to him by Taking of his Cattle, tho' there be no *Durefs* to his Person, yet this shall avoid the Deed. 2 *Danv. Abr.* 686. If a Person threaten another to make a Deed to a third Person, it is by *Durefs*, and void, as if such third Person had made the Threatning. 2 *Inst.* 482. 3 *Inst.* 92. 4 *Inst.* 97. And where a Man is imprisoned until he makes a Bond at another Place; if afterwards he doth it when at large, the Bond is by *Durefs*, and void: But if a Person be arrested upon an Action at the Suit of another, and the Cause of Action is not good, if he make a Bond to a Stranger, it is not *Durefs*; tho' if he make it to the Plaintiff, it is. 1 *Lill. Abr.* 494. If a Man be lawfully in Prison, and makes an Obligation against his Agreement and Will, he may avoid it by *Durefs*: But it is otherwise if he do it of his good Will. 43 *E.* 3. 10. 2 *Danv.* 686. A Man shall not avoid a Deed by *Durefs* to a Stranger: For it hath been held that none shall avoid his own Bond for the Imprisonment or Danger of any other than of himself only. *Cro. Jac.* 187. And yet a Son shall avoid his Deed by *Durefs* to the Father: And the Husband shall avoid a Deed made by *Durefs* to the Wife; though a Servant shall not avoid a Deed made by *Durefs* to his Master, or the Master the Deed sealed by *Durefs* of his Servant. 2 *Danv.* 686. If a Man is taken by Virtue of a Process issuing out of a Court that hath not Power to grant it; or is in Custody on a false Charge of Felony, &c. And for his Enlargement and Discharge gives Bond, &c. this may be avoided, as taken by *Durefs*. *Cro. El.* 646. 4 *Inst.* 97. *Allen* 92. A Statute-Merchant may be avoided by *Audita Querela*, because it was made by *Durefs* of Imprisonment. A Will shall be avoided by *Durefs* or Menace of Imprisonment. A Feoffment made by *Durefs* is voidable; but not void. But no Averment shall be taken against a Deed inrolled that it was made by *Durefs*. 1 *Roll. Abr.* 862. 2 *Danv.* 685. A Marriage had by *Durefs* is voidable: And by Statute, Obligations, Statutes, &c. obtained of Women by Force, to marry the Persons to whom made, or otherwise, unless for a just Debt, are declared void. 31 *H.* 6. c. 9. If a Person executes a Deed by *Durefs*, he cannot plead *Non est factum*, because it is his Deed; tho' he may avoid it by special Pleading, and Judgment *Si assio*, &c. 5 *Rep.* 119.

Dursley, Signifies Blows without Wounding or Bloodshed, vulgo *Dry-blows*. Blount.

Duffy Fatts, *Duffy Foots*, Pedlars or Traders who have no settled Habitation, and they have their Name from their Feet being cover'd with Dust, by their continual Travelling. See *Piepowder Court*.

Dutchy Court of Lancaster, Is a Court of the *Dutchy Chamber of Lancaster* held at *Westminster* before the Chancellor, for Matters concerning the Lands and Franchises of the *Dutchy*: And the Proceedings in this Court are by *English Bill*, as in Chancery. 4 *Inst.* 204. The Original of it was in *Henry the Fourth's* Days, who obtaining the Crown of *England* by deposing *Rich.* 2. and having the *Dutchy of Lancaster* by Descent, in Right of his Mother, was seized thereof as King, and not as Duke: But at length by Authority of Parliament he passed a Charter, whereby the Possessions, Liberties, &c. of the said *Dutchy* were severed from the Crown, and so left to Posterity. Of this Court

Gwin (in his Preface to his *Readings*) say thus: The Court of the *Dutchy of Lancaster* grew out of the Grant of King *Edw.* 3. who gave that *Dutchy* to his Son *John of Gaunt*, and endowed it with Royal Rights and Privileges; and for as much as it was afterwards extinct in the Person of King *Hen.* 4. by Reason of the Union thereof with the Crown, the same King (suspecting himself to be more rightfully Duke of *Lancaster*, than King of *England*) determined to save his Right in the *Dutchy*, whatever should befall the Kingdom; and therefore he separated the *Dutchy* from the Crown, and settled it in the natural Persons of himself and his Heirs, as if he had been no King: In which Estate it continued during the Reigns of *Hen.* 5. and *Hen.* 6. But when *Edw.* 4. recovered the Crown, and recontinued the Right of the *House of York*, he appropriated that *Dutchy* to the Crown again, yet so that he suffered the Court and Officers to remain as he found them; and in this Manner it came together with the Crown to *Hen.* 7. who approving the Policy of *Hen.* 4. and by whose Right he obtained the Kingdom, made a like Separation of the *Dutchy*, and so left it. It is now only a superior County *Palatine*. Vide *Lancaster*. Officers of this Court, See *Chancellor of the Dutchy of Lancaster*.

Duty. Any Thing that is known to be due by Law, and thereby recoverable, is a *Duty* before it is recovered; because the Party interested in the same hath a Power to recover it. 1 *Lill.* 495.

Dwindled, Signifies any Thing consumed; from whence comes the Word *Dwindle*.

Dyke-reebe, An Officer that hath the Care and Oversight of the *Dykes* and *Drains* in Fenny Countries; as of *Dieping Fens*, &c. mentioned in the Stat. 16 & 17 *Car.* 2. c. 11.

Dyge or Dirge, A mournful Ditty or Song over the Dead; from the Teutonick *Dyrke* *Laudare*, to praise and extol, whence it is a laudatory Song. *Cowel*.

Dytenum, A Ditty or Song. — *Venire cum toto ac pleno Dyteno*, to sing Harvest home. *Paroch. Antiq.* 320.

E.

Ebalus, From the Sax. *Eale*, *Cervisia*, & *Hus*, *Domus*) An Ale-house: In the Laws of *K. Alfred* we often find this Word.

Calhozda, The Privilege of Affixing and Selling Ale and Beer: It is mentioned in a Charter of King *Hen.* 2. to the Abbot of *Glastonbury*.

Ealderman, Among the Saxons was as much as Earl with the Danes. *Camd. Britan.* 107. Also an Elder, Senator, &c. And at this Day, *Ealdermen* or *Aldermen*, are those who are associated to the Mayor or Chief Officer in the Common Council of a City or Borough Town. Stat. 24 *Hen.* 8. cap. 13. See *Alderman*.

Earl, (Sax. *Eorle*, Lat. *Comes*) This 'tis said was a great Title among the Saxons, and is the most Ancient of the *English* Peerage, there being no Title of Honour used by our present Nobility that was likewise in Use by the Saxons, except this of *Earl*; which was usually applied to the First in the Royal Line. *Verstegan* deriveth this Word from the Dutch *Ear*, i. e. Honor, and *Ethel*, which signifies Noble: But whencesoever it is derived, the Title *Earl* was at length given to those who were Associates to the King in his Councils and Martial Actions; and the Method of Investiture

Investiture into that Dignity was *Per Cincturam Gladii Comitatus*, without any formal Charter of Creation. *Dugdale's Warwicksh.* 302. *William* the First, called the *Conqueror*, gave this Dignity in Fee to his Nobles, annexing it to this or that County or Province; and allotting them for the Maintenance of it a certain Portion of Money arising from the Prince's Profits, for the Pleadings and Forfeitures of the Provinces. *Camd.* And formerly one *Earl* had divers Shires under his Government, and had Lieutenants under him in every Shire, such as are now *Sheriffs*; as appears by divers of our old Statutes. *Cowel.* But about the Reign of King *John*, and ever since, our Kings have made *Earls* of Counties, &c. by Charter; and giving them no Authority over the County, nor any Part of the Profits arising out of it; only sometimes they have had an annual Fee out of the Exchequer, &c. An *Earl*, *Comes* was heretofore correlative with *Comitatus*; and antiently there was no *Comes* or *Earl*, but had a Shire or County for his *Earldom*; but of late Times the Number of *Earls* very much encreasing, several of them have chosen for their Titles some eminent Part of a County, considerable Town, Village, or their own Seats, &c. Then, besides these local *Earls*, there are some personal and honorary; and others nominal, who derive their Titles from the Names of their Families. *Lex Constitutionis*, p. 78. Their Place is next to a Marquess, and before a Viscount: And as in very antient Times those who were created *Counts* or *Earls*, were of the Blood Royal; our *British* Monarchs to this Day call them in all publick Writings, our most dear Cousin: They also originally did, and still may use the Style of *Nos.* See *Countess*.

Easement, (*Affamentum*, from the Fr. *Aise*, i. e. Commoditas) Is defined to be a Service or Convenience which one Neighbour hath of another by Charter or Prescription, without Profit; as a Way through his Land, a Sink, or such like. *Kitch.* 105. A Person may prescribe to an *Easement* in the Freehold of another, as belonging to some antient House, or to Land, &c. a Way over the Land of another; a Gate-way, Water-course, or Washing-place in another's Ground may be claimed by *Prescription* as *Easements*: But a confus'd Multitude cannot prescribe; though for an *Easement* they may plead Custom or Usage. *Cro. Jac.* 170. 3 *Leon.* 254. 3 *Mod.* 294. To alledge an *Easement* by *Consuevit* only is the best Way: And Things of Necessity shall not be extinguished by Unity of Possession; but a Way of *Ease* may be thus extinguished. 1 *Lill. Abr.* 496. See *Prescription*.

Easter, Was the Name of a Goddess which the Saxons worshipped in the Month of *April*; and so called, because she was the Goddess of the *East*. *Blount.* But in our Church it is the Feast of the *Passover*, in Commemoration of the Sufferings of our Saviour *Christ*.

Eastintus, (Sax. *East-Tyne*) Is an easterly Coast or Country, and hath been applied to the *East-freet*, *East-side* of a River, &c. — *Si sit* *Estintus*, & *se sit* *Northintus* *amendet*, &c. — *Leg. K. Edw.* 1.

Ebdomadarius, An *Ebdomary* or Officer appointed *Weekly* in Cathedral Churches, to supervise the regular Performance of Divine Service, and prescribe the particular Duties of each Person attending in the Choir, as to Reading, Singing, Praying, &c. To which Purpose the *Ebdo-*

mary at the Beginning of his Week drew in Form a Bill or Writing of the respective Persons and their several Offices, called *Tabula*; whereupon the Persons there entered were stiled *Intabulati*: This is manifested in the Statutes of the Cathedral Church of *St. Paul's*, digested by Dr. *Ralph Baldock*, Dean of *St. Paul's*, Anno 1295. *M.S. penes Joh. Episc. Norwic.*

Eberemorth or **Eberemozs**, (Sax.) Bare, or down-right Murder. *Leg. H.* 1. c. 12.

Eberemurder, (*Apertum Murdrum*) Was one of those Crimes, which by King *Henry* the First's Laws, cap. 13. *Emendari non possunt*; hoc ex scelerum genere fuit nullo pretio expiabilem, &c. *Spelm.*

Ecclesia, (Lat.) Is commonly used for that Place where God is served, which is called a Church: But in *Law Proceedings*, according to *Fitzherbert*, this Word intends a Parsonage; for so he expresses it in a Question, whether a Benefice was *Ecclesia*, *sive* *Capella*, &c. *F. N. B.* 32. 2 *Inst.* 363.

Ecclesiæ Sculptura. The Image or Sculpture of a Church in antient Times, was often cut out or cast in Plate or other Metal, and preserved as a religious Treasure or Relique; and to perpetuate the Memory of some famous Churches. *Mon. Angl. Tom.* 3. p. 309.

Ecclesiastical Persons or **Ecclesiasticks**, (*Ecclesiastici*) Are Church-men, Persons whose Functions consist in performing the Service, and keeping up the Discipline of the Church. See *Clergy*.

Ecclesiastical Laws, See *Canon*, and *Courts Ecclesiastical*.

Eder, A Hedge. *Eder-breche* (Sax. *Eador-bryce*) The Trespas of Hedge-breaking. *Leg. K. Alfred*, cap. 45.

Edestia, From *Ædes*, used for Buildings. — *Sciunt quod Ego Adam de M. concessi Johanni de B. pro servicio suo totam terram cum Edestiis, & omnibus pertin.* &c. *Ex Regist. Priorat. de Wormley.*

Edia, Aid or Help: Thus *Du Fresne* interprets it; but *Cowel* says it signifies *Ease*.

Eel-fares, Are a Fry or Brood of Eels. *Stat.* 25 *Hen.* 8.

Effozialiter, With military Force. — *Tu ita Effozialiter venis cum Equis & Armis.* *Mat. Paris.* Anno 1213.

Effoziammentum, (*Afforciammentum*) A Distress or Inquisition. *Mon. Angl. Tom.* 1. pag. 280.

Effratoys, (Lat.) Breakers, applied to *Burglars*, that break open Houses to steal. — *Qui furandi causa Domos effringunt*, &c. *M.S.*

Effusio Sanguinis, The Mulk, Fine, or Penalty impos'd by the old *English* Laws for the Shedding of Blood; which the King granted to many Lords of Manors: And this Privilege, among others, was granted to the Abbot of *Glastonbury*. *Cartular. Abbat. Glaston.* *M.S.* fol. 87.

Egyptians, (*Egyptiani*) Commonly called *Gipsies*, are by our Laws and Statutes a counterfeit Kind of Rogues, who disguising themselves in strange Habits, smearing their Faces and Bodies, and framing to themselves a Canting unknown Language, wander up and down; and under Pretence of telling Fortunes, curing Diseases, and such like, abuse the ignorant common People, by Stealing and Pilfering from them every Thing that is not too heavy for their Carriage, and which they may go off with undiscover'd. There are several Statutes for suppressing these Impostors; as by *Stat.* 22 *H.* 8. c. 10. *Egyptians* coming into *England* are to depart the Realm in fifteen Days, or be imprisoned. And by 1 & 2 *P. & M.*

If

If any Person shall import any *Egyptians* into this Kingdom, he shall forfeit 40 *l.* And if the *Egyptians* remain in *England* above a Month, they shall be guilty of Felony. Also Conforting with *Egyptians* is made Felony by 5 *Eliz. c. 20.*

Eia, Ey, (from the Saxon *Eig*, *Insula*) An Island: So that where the Names of Places end in *Ey*, it denotes them an Island; as *Ramsay* is the Island of *Rams*; *Sheppey* the Island of *Sheep*; *Hersey*, the Island of *Harts*, &c. *Mat. Paris. An. 833.*

Ejecta, A Woman ravish'd or deflowered; or cast forth from the Virtuous: *Ejectus*, a Whoremonger. *Blount.*

Ejectione custodiæ, (*Ejectment de Garde*) Is a Writ which lieth against him that casteth out the *Guardan* from any Land during the Minority of the Heir. *Reg. Orig. 162. F. N. B. 139.* There are two other Writs not unlike this; the one termed *Ravishment de Gard*, and the other *Droit de Gard*.

Ejectione firmæ, or *Ejectment*, Is a Writ or Action that lies for the Lessee for Years, who is ejected before the Expiration of his Term, either by the Lessor or a Stranger: Also *Ejectment* may be brought by a Lessor against the Lessee, holding over his Term, &c. *Reg. Orig. 227.* And upon *Ejectment* for Non-payment of Rent, the Court order'd the Proceedings to be stayed on Payment of the Rent and Costs, and a new Lease to be made at the Defendant's Charge. 1 *Lill. Abr. 501.* In these Cases *Ejectment* is either an actual *Ejectment*, as when the Lessee is actually put out of Land let unto him; or it is an *Ejectment* by Implication of Law, viz. where such an Act is done by one which doth amount to an *Ejectment*, although he doth not really enter upon the Land let, and oust the Lessee. *Ibid. 496.* But *Ejectment* is now become an Action in the Place of many *Real Actions*, as Writs of Right, *Formadons*, &c. which were very difficult as well as tedious and chargeable: And this is the common Action for trying of Titles, and recovering of Lands, &c. illegally kept from the right Owner; tho' where Entry is taken away by Discents, Fines and Recoveries, Disseisins, &c. *Ejectment* may not be brought; so that all Titles cannot be tried by this Action. *Wood's Inst. 547, 548.* And the Action of *Ejectione firmæ* was never known to remove a Possession till the Reign of King *Hen. 8.* before which Time an Action of Trespas, *Quare clausum fregit*, &c. was made use of: Tho' in Action of Trespas, Damages were only to be recovered; whereas in *Ejectione firmæ*, the Thing or Term it self is recovered, as well as Damages. 3 *Leon. 49.* *Ejectment* ought to be brought for a Thing that is certain; as if it be of a Manor, *Manerium de A. cum Pertinentiis*; if of a Rectory, *Rectoriæ de B.* &c. And so many Messuages, Cottages, Acres of arable Land, Meadow, &c. *cum pertin. in Paroch. &c.* For Land must be distinguished, how much of one Sort, and how much of another, &c. *Cro. El. 339. 3 Leon. 13.* *Ejectment* lies of a Church, as *De uno Domo*, vocat. *The Parish-Church of*, &c. And a Church is a Messuage, by which Name it may be recovered; and the Declaration is to be served on the Parson who officiates Divine Service. 11 *Rep. 25. 1 Salk. 256.* It lies not of Tithes only; but may be of a Rectory, Chapel, &c. and the Tithes thereto belonging. 2 *Danv. Abr. 752.* And *Ejectment* will lie of so many Loads of Tithes-Corn, severed from the nine Parts, or where certainly expressed; tho' it will

not lie for Tithes generally. 1 *Nell. Abr. 688.* It lies *De uno Messuagio sive Burgagio*; but not *De uno Messuagio sive Tenemento*, unless it have a *Vocat A.* &c. to make it good, because of the Uncertainty of the Word *Tenement*. 1 *Sid. 295. 2 Danv. 753.* It lieth *De Domo*, which hath convenient Certainty for the Sheriff to deliver Possession, &c. *Cro. Jac. 654.* It lies of a Cottage or Curtilage; of a Coal-mine, &c. but not of a Common, Piscary, &c. *Cro. Jac. 150.* For Under-wood it lies, tho' a *Præcipe* doth not. 2 *Roll. Rep. 482, 483.* But for *uno Clauso*, or *una pecia Terræ*, &c. without Certainty of the Acres, Nature, &c. it doth not lie. 11 *Rep. 55. 4 Mod. 1.* The Method of Proceeding in *Ejectment* is now made more easy than formerly; when a Lease was to be sealed and delivered on the Premises to the Lessee, &c. In ancient Times, the *Ejector* in Law was any Person that came upon any Part of the Land, &c. mentioned in the Lease of *Ejectment*, tho' he were there without any Intent to disturb the Lessee of the Possession, after the Sealing of the *Ejectment* Lease; and such *Ejector* was a good *Ejector* against whom an Action of *Ejectione firmæ* might be brought to try the Title of the Land in Question: But now the Law is altered, for there is no Occasion for a Lease to be made and sealed upon the Premises to the Lessee, who hath a Mind to try the Title, and to leave the Lessee in Possession to be ousted and ejected by the Tenants in Possession, &c. The usual Course at this Time is to draw a Declaration, and therein feign a Lease for Three, Five, or Seven Years, to him that would try the Title, and also feign a casual *Ejector* or Defendant in the Declaration, and then deliver the Declaration to the *Ejector*, who serves the same by Delivering a Copy thereof on the Tenant in Possession, or his Wife, (for a Delivery to a Son, or Servant, &c. is not good), and gives Notice in Writing at the Bottom for him to appear and defend his Title; which must be read to the Tenant; and the Person serving it is to tell him that if he do not procure some Attorney to appear for him and defend his Title, in Default thereof, that he (the Defendant) will suffer a Judgment to be had against him, whereby he (the Tenant) will be turn'd out of Possession: The Declaration being thus serv'd, the Tenant is to appear the Beginning of the next Term by his Attorney, and consent to a Rule to be made Defendant instead of the casual *Ejector*, and take upon him the Defence; wherein he may confess a Lease, Entry, and Ouster, and at the Trial stand upon the Title only: But if the Tenant in Possession doth not appear and enter into the afore-mentioned Rule in Time, after the Declaration serv'd; then on Affidavit made of the Service of the Declaration, with Notice to appear as aforesaid, the Court will order that Judgment be entered against the casual *Ejector* by Default; and the Tenant in Possession will by an *Habere facias Possessionem* upon such Judgment be turn'd out of Possession. 1 *Lill. 499.* If at the Trial the Defendant will not appear and confess Lease, Entry, and Ouster, it is usual to call him or his Attorney, and then call the Plaintiff and nonsuit him; and upon Return of the *Posse*, Judgment will be given against the casual *Ejector*. 1 *Salk. 250.* But in this Case, tho' the Plaintiff be nonsuit, he shall not pay any Costs; for the Rule for confessing Lease, Entry, and Ouster is to be carried to the Secondary, who taxes Costs upon it to be paid by the Defendant;

dant; and if the same are not paid, the Court on Affidavit and Motion will grant an Attachment against the Defendant; but this is where the Defendant appears, and not where it goes wholly against him by Default. 1 *Lill.* 503, 504. If the Tenant doth appear, having by his Attorney filed common Bail, and entered into the Rule above-mentioned, he is made Defendant in the Declaration, and put into the same in the Place of the casual *Ejector*; and then the Defendant's Attorney must plead *Non Cul.* And the Plaintiff's Attorney draws up the Issue, a Copy whereof and of the Declaration is to be delivered to the Attorney for the Defendant; whereupon Notice is given of Trial: In Order to which the *Venire*, &c. is to be made out and return'd, and the Record made up by the Plaintiff's Attorney, beginning with the Declaration; which being sealed, the *Breviate* is to be prepared, in which, after a short Recital of the Declaration and Plea, the Plaintiff's Title is to be set forth from the Person last seised in Fee of the Premises, under whom the Lessor claims down to the Client, the Plaintiff proving the Deeds, &c. And after Trial the Proceedings are as in other Cases. And here it is to be observ'd, that if the Declaration is delivered the first or second Day of *Easter* or *Michaelmas* Terms, the Tenant must plead the same Term, or the Plaintiff will have Judgment; and this is by Reason of the Length of those Terms. *Practif. Solic.* 328, 329. The Plaintiff is not allowed to amend his Declaration in *Ejectment* after Delivery; he must stand by it, or deliver a new Declaration. As many Demises may be laid in a Declaration as shall be thought fit; and if the Plaintiff recovers upon one, it is sufficient for the Whole. 3 *Lev.* 117, 334. Where one brings *Ejectment* of Land in two Parishes, and the Whole lies in one, he shall recover: Also if a Person brings *Ejectment* of one Acre in B. and Part of it lies in A. he shall recover for such Part as lies in B. And if one having Title to a Part only of Lands, bringeth an *Ejectment* for the Whole, he shall recover his Part of the Lands. *Plowd.* 429. 3 *Cro.* 13. A Plaintiff shall recover only according to the Right which he hath at the Time of bringing his Action: And one who hath Title to the Land in Question, may on Motion be made a Defendant in the Action with the Tenant in Possession, to defend his Title; and a Landlord may be made a Defendant by the Tenant, with the Consent of such Landlord, &c. 1 *Nels. Abr.* 694. 1 *Lill.* 497, &c. As the Possession of the Land is primarily in Question, and to be recovered, that concerns the Tenant; and the Title of the Land, which is tried collaterally, that is concerning some other, who may be admitted to be a Defendant with a Tenant: But none other is to be admitted a Defendant, but he that hath been in Possession or receives the Rents, &c. When there is a Recovery in *Ejectment* by Verdict, Action may be brought to recover the mesne Profits of the Lands from the Time of the Defendant's Entry laid in the Declaration: And this Action may be brought either by the Plaintiff in *Ejectment*, or by the Lessor of the Plaintiff; tho' where the Plaintiff brings it, he need only at the Trial to produce his *Possea* of his Recovery; but where the Lessor brings it he must prove his Title over again, if it be insisted on by the other Side, otherwise he will be nonsuited. 1 *Lill.* 499. The Plaintiff in *Ejectment* is a meer nominal Person, and a Trustee for the

Lessor; and if he release the Action, he may be committed for a Contempt; so likewise if he release an Action brought in his Name for the mesne Profits. 1 *Salk.* 260. It has been held a great Abuse, that nominal Lessees in *Ejectment* were Persons not in Being, or not known to the Defendant; and Attornies who have made such Lessees, have been order'd to pay Costs, and put to answer on Interrogatories, &c. *Mod. Ca.* 309. If a Man is made Plaintiff in *Ejectment* without his Knowledge, and the Plaintiff thereupon becomes nonsuit, after which Execution is sued out against him; if it appears by his Oath, that he was made Plaintiff without his Knowledge or Order, he shall be discharged. 34 *Car. B. R.* 5 *Ann.* 1 *Lill.* 500. In *Ejectment*, if it appears that the Plaintiff was ejected after the Lease made, it is sufficient; tho' no certain Day be alledged in which he was ejected, for the Day is not material, being before the Action brought. *Cro. Jac.* 311. But the Time of Entry of the Plaintiff must be shewn, that it may appear he was not a Disseisor, by Entering on the Lands before the Commencement of his Term, &c. Where Lands in the Lease and Declaration, &c. are different, and not exactly the same, or the Term is different from that in the Declaration, tho' the Plaintiff hath a Verdict, he cannot have Judgment. *Yelv.* 166. 2 *Lutw.* 963. If there be a Verdict and Judgment against the Plaintiff, he may bring another Action of Trespass and *Ejectment* for the Land, it being only to recover the Possession, &c. wherein Judgment is not final; and it is not like a Writ of Right, &c. where the Title alone is tried. *Wood's Inst.* 547. *Trin.* 23 *Car. B. R.* No Arrest is to be made in this Action, as usually prosecuted: But if there be no Tenant in Possession; as where a House or Land is empty, and the Person that was last in Possession is run away, so that you cannot find any Person to deliver the Declaration to, then the Process must be in the old Way, by Sealing a Lease upon the Ground; and an Original is to be sued out against the Person who ejected the Lessee, and then Ouster and *Ejectment*, &c. And herein Rules are to be given to plead; tho' there cannot be Judgment against the casual *Ejector*, without a Motion for that Purpose, after the Rules for Pleading are out. 1 *Lill.* 498. In *Ejectment* for empty Houses, a Lease was sealed on the Land, and a Declaration delivered to the casual *Ejector*, and Judgment and Execution had; yet because the Plaintiff did not move for a peremptory Rule to plead, the Judgment was set aside: And in this Case there must be an Affidavit of the Sealing the Lease and the Entry. 1 *Salk.* 255. 1 *Nels. Abr.*

Form of an Original in *Ejectment*, in the old Way.

REX, &c. Vic. South'ton Salutem. Si A. B. fecerit te securum tunc pone per vad. & salvos pleg. C. D. nuper de, &c. Ita quod sit coram Justiciariis nostris apud Westm. (tali die) ad respondend. E. F. de placito quare Vi & Armis unum Messuagium quinque acras Prati & quinque acras Pasiur. cum pertin. in, &c. in Com. tuo qua, &c. Dimisit ad terminum qui nondum preterit intravit & ipsum a firma sua Ejecit & alia enormia ei intulit ad grave damnum ipsius E. & contra pacem nostram Dom. Regis nunc, &c.

Form

Form of a Declaration in Ejectment, in B. R.

South'ton ff. **J**Ohannes B. queritur de Georgio D. in Custod. Mar. &c. videlicet quod cum quidam Thomas E. Gen. Decimo die Octobr. Anno Domini Millesimo septingentesimo, &c. apud Paroch. de, &c. in Com. prad. dimisisset concessisset & ad firmam tradidisset prefat. Johanni Un. Messuagium quinq; acras Prati & quinq; acras Pastur. cum pertin. situat. jacen. & existen. in Paroch. de, &c. prad. in Com. prad. Habend. & Tenend. Tenement. prad. cum pertin. prefat. Johanni & Assign. suis a vicesimo nono die Septembris tunc ultimo praterit. usque plen. finem & termin. quinque annor. extunc prox. sequen. & plenar. complend. & finiend'. Virtute cujus quidem Dimission. idem Johannes in Tenement. prad. cum pertin. Intravit & fuit inde possessionat'. Et sic inde possessionat. existen. prad. Georgius postea sil't eodem decimo die Octobr. Anno supradict. Vi & Armis, &c. Tenement. prad. cum pertin. in & super possession. ipsius Johannis inde Intravit & ipsum Johannem a Firma sua prad. termino prad. suo inde nondum finit. Ejecit expulit & amovit ipsum; Johannem sic inde Eject. expuls. & amot. a possessione sua prad. inde extratenuit & adhuc extratenet & al. enormia ei adtunc & ibidem intulit contra Pacem Domini Regis nunc & ad dampn. ipsius Johannis Cent. Librar'. Et inde produc. sectam, &c.

Notice to the Tenant in Possession to appear, &c.

Mr. T. F.

YOU may perceive by the above Declaration, that I am sited as a casual Ejector for the Messuage and Lands therein contained, whereto I have no Title; if therefore you claim any Title to the same, or any Part thereof, you must appear the next Trinity-Term in his Majesty's Court of King's Bench at Westminster, by some Attorney of that Court, and make your Defence, otherwise Judgment will be had against me by Default, and you will be turn'd out of Possession; of which take this Notice from,

Your Friend

George D.

Affidavit of Service of the Declaration and Notice.

J. G. of, &c. maketh Oath, That he, this Deponent, on, &c. last past, did deliver to T. F. Tenant in Possession of the Messuage and Premises in Question, a true Copy of the Declaration in Ejectment hereto annexed; at the Foot of which Declaration is a Notice for the said T. F. to appear the then next and now present Trinity-Term, in this Court, and defend his Title, otherwise Judgment would be entered against him by Default; and this Deponent farther saith, That he told the said T. F. that if he did not appear and defend his Title the then next and now present Trinity-Term, he would be turn'd out of Possession.

Ejectum, Ejectus Maris, Quod è Mari ejicitur: Jet, Jetson, Wreck, &c. See *Wreck*.

Eigne, (Fr. Aïsne) Eldest or First-born; as Bastard eigne, and Mulier Puisne, are Words used in our Law, for the Elder a Bastard, and the Younger lawful born.

Cinecia, (from the Fr. Aïsne, i. e. Primogenitus) Signifies Eldership. Statute of Ireland, 14 Hen. 3. See *Esneey*.

Eyre or Eyre, (Fr. Erre, viz. Iter, as a Grand Erre, that is, Maghis Itineribus) Is the Court of Justices Itinerant; and Justices in Eyre are those whom Bracton in many Places calls *Justiciarios Itinerantes*. The Eyre of the Forest is the Justice-Seat; which by ancient Custom was held every Three Years by the Justices of the Forest, *Fourneying up and down for that Purpose*. Bract. lib. 3. tract. 2. c. 1, & 2. Brit. c. 2. Cramp. Jurisd. 156. Manw. par. 1. pa. 121. See *Justice in Eyre*.

Election, (Electio) Is when a Man is left to his own Free-will to take or do one Thing or another, which he pleases. And if it be given of several Things, he who is the first Agent, and ought to do the first Act, shall have the Election: As if a Person make a Lease, rendring Rent, or a Garment, &c. the Lessee shall have the Election, as being the first Agent, by Payment of the one, or Delivery of the other. Co. Litt. 144. And if A. covenant to pay B. a Pound of Pepper or Sugar before Easter; it is at the Election of A. at all Times before Easter, which of them he will pay: But if he pays it not before the said Feast, then afterwards it is at the Election of B. to demand and have which he pleaseth. Dyer 18. 5 Rep. 59. 11 Rep. 51. If I give to you one of my Horses in my Stable, there you shall have the Election; for you shall be the first Agent, by Taking or Seizure of one of them. Co. Litt. 145. Where Things granted are annual, and to have Continuance, the Election (where the Law gives it him) remains to the Grantor, as well after the Day as before: But 'tis otherwise when to be performed at once. Ibid. When nothing passes to the Feoffee or Grantee before Election to have the one Thing or the other, the Election ought to be made in the Life of the Parties; and the Heir or Executor cannot make the Election: But where an Estate or Interest passes immediately to the Feoffee, Donee, &c. there Election may be made by them, or their Heirs or Executors. 2 Rep. 36, 37. And when one and the same Thing passeth to the Donee or Grantee, and the Donee or Grantee hath Election in what Manner he will take it, there the Interest passeth immediately, and the Party, his Heirs, &c. may make Election when they will. Co. Litt. 145. 2 Danv. Abr. 761. Where the Election creates the Interest, nothing passes 'till Election; and where no Election can be made, no Interest will arise. Hob. 174. If the Election is given to several Persons, there the first Election made by any of the Persons shall stand: As if a Man leases two Acres to A. for Life, Remainder of one Acre to B. and of the other Acre to C. Now B. or C. may elect which of the Acres he will have, and the first Election by one binds the other. Co. Litt. 145. 2 Rep. 36. If a Man leases two Acres for Life, the Remainder of one in Fee to the same Person; and after licenses the Lessee to cut Trees in one Acre, this is an Election that he shall have the Fee in the other Acre. 2 Danv. 762. And an Election made by Tenant for Life, shall bind him in Remainder. Moor 102. A Person grants a Manor, except one Close called N. and there are two Closes called by that Name, one containing nine Acres, and the other but three Acres; the Grantee shall not in this Case chuse which of the said Closes he will have, but the Grantor shall have Election which Close shall pass. 1 Leon. 268. But if one grants an Acre of Land out of a Waste or Common, and doth not say in what Part, or how to be bounded, the Grantee may make his Election where he will.

will. 1 *Leon.* 30. If a Man hath three Daughters, and he covenants with another that he shall have one of them to dispose of in Marriage; it is at the Covenantor's *Election* which of his Daughters the Covenantee shall have, and after Request she is to be delivered to him. *Moor* 72. 2 *Danv.* 762. In Consideration that a Person had sold another certain Goods, he promis'd to deliver him the Value in such Pipes of Wine as he should chuse; the Plaintiff must make his *Election* before he brings his Action. *Style* 49. An *Election* which of two Things to be done, ought not to be made merely by bringing an Action; but before, that the Defendant may know which he is to do, and 'tis said he is not bound to tender either before the Plaintiff hath made his Choice which will be accepted. 1 *Mod.* 217. 1 *Nels. Abr.* 697. When a Condition of a Bond is, that the Obligor shall pay 30 *l.* or twenty Kine, at the Obligee's *Election*, within such a Time; the Obligee at his Peril is to make his *Election* within the Time limited. 1 *Leon.* 69. But in Debt upon Bond to pay 10 *l.* on such a Day, or four Cows, at the then *Election* of the Obligee, it was adjudged, that it was not enough for the Defendant to plead that he was always ready, &c. if the Obligee had made his *Election*; for he ought to tender both at the Day, by Reason the Word then relates to the Day of Payment. *Moor* 246. 1 *Nels.* 694, 695. If a Man hath an *Election* to do one of two Things, and he cannot by any Default of a Stranger, or of himself, or of the Obligee, or by the Act of God, do the One; he must at his Peril do the other. 1 *Lill. Abr.* 506. Where the Law allows a Man two Actions to recover his Right, it is at his *Election* to bring which he pleaseth: And where a Man's Act may work two Ways, both arising out of his Interest, he hath *Election* given him to use it either Way. *Dyer* 20. 2 *Roll. Abr.* 787. Action of Trespass upon the Case, or Action of Trespass *Vi & Armis*, may be brought against one that rescues a Prisoner, at the *Election* of the Party damnified by the Rescous. And an Action of the Case, or an Affise, lies against him that surcharges a Common, at the *Election* of him that is injured thereby. 1 *Lill.* 504, 505. Also for a Rent-charge out of Lands, there may be Writ of Annuity or Distress, at the *Election* of the Grantee; but after the Death of the Grantor, if the Heir be not charg'd, the *Election* to bring Annuity ceaseth. *Dyer* 344. A Man was indicted of Felony for Entering an House and taking away Money, and found guilty, and burnt in the Hand; after which, the Person who lost the Money brought an Action of Trespass against the other for Breaking his House, and Taking away his Money, and it was held that the Action would lie; for tho' it was at his *Election* at first, either to prefer an Indictment or bring an Action, yet by the Indictment he had made no *Election*, because that was not the Prosecution of the Party, but of the Crown. *Style* 347. If a Bargain and Sale be made of Lands which is inrolled, and at the same Time the Bargainor levies a Fine thereof to the Bargainee, he hath his *Election* to take by one or the other. 4 *Rep.* 72. A Wife hath her *Election* which to take, of a Jointure made after Marriage, or her Dower, on the Death of the Husband, and not before. *Dyer* 358. When a Lessor hath *Election* to charge the Lessee, or his Assignee, for Rent; if he accepts the Rent of the Assignee, he hath determined his *Election*. 3 *Rep.* 24. An Act becoming void will

determine an *Election*. *Hob.* 152. There is no *Election* against the King in his Grants, &c. 1 *Leon.* 30.

Election of a Clerk of Statutes-Merchant, Is a Writ that lies for the Choice of a Clerk assign'd to take Bonds called *Statutes-Merchant*; and is granted out of the Chancery, upon Suggestion that the Clerk formerly assign'd is gone to dwell at another Place, or is under some Impediment to attend the Duty of his Office, or hath not Lands sufficient to answer his Transgressions if he should act amiss, &c. *F. N. B.* 164.

Election of Ecclesiastical Persons. There is to be a free *Election* for the Dignities of the Church by 9 *Ed.* 2. c. 14. And none shall disturb any Person from making free *Election*, on Pain of great Forfeiture. If any Persons that have a Voice in Elections, take any Reward for an *Election* in any Church, College, School, &c. the *Election* shall be void: And if any Persons of such Societies resign their Places to others for Reward, they incur a Forfeiture of double the Sum; the Party giving it, and the Party taking it is incapable of such Place. *Stat.* 31 *Eliz.* c. 6. *Election of Bishops*. Vide *Bishops*.

Election of a Verderor of the Forest, (*Electione Viridariorum Forestæ*) Is a Writ that lies for the Choice of a Verderor, where any of the Verderors of the Forest are dead, or removed from their Offices, &c. It is directed to the Sheriff; and, as appears by the ancient Writs of this Kind, the Verderor is to be elected by the Freeholders of the County in the same Manner as Coroners. *New Nat. Br.* 366.

Election of Members of Parliament, See *Parliament*.

Eleemosyna, Alms: *Dare in puram & perpetuam* Eleemosynam, to give in pure and perpetual Alms, or *Frank-almoigne*, as Lands were commonly given in ancient Times to Religious Uses. *Cowel*.

Eleemosyna Regis, or *Eleemosyna carucarum pro Aratri*, i. e. *Eleemosyna Aratri*, Is a Penny which King *Æthelred* ordered to be paid for every Plough in England, towards the Support of the Poor: It is called *Eleemosyna Regis*, because it was at first appointed by the King. *Leg. Æthelred.* cap. 1.

Eleemosynaria, The Place in a Religious House where the common Alms were repositd, and thence by the Almoner distributed to the Poor.

Eleemosynarius, The Almoner or peculiar Officer who received the *Eleemosynary* Rents and Gifts, and in due Method distributed them to pious and charitable Uses. There was such a chief Officer in all the Religious Houses: And the greatest of our English Bishops had antiently their Almoners, as now the King hath. *Linwood's Provincial*, lib. 1. tit. 12. See *Almoner*.

Eleemosynæ, Hath been used for the Possessions belonging to Churches. *Blount*.

Elegit, (From the Words in it, *Elegit sibi Liberari*) Is a Writ of Execution that lies for him who hath recovered Debt or Damages, or upon a Recognizance in any Court against one not able in his Goods to satisfy the same; directed to the Sheriff, commanding him to make Delivery of a Moiety of the Party's Lands, and all his Goods, Beasts of the Plough excepted; And the Creditor shall hold the said Moiety of the Land so delivered unto him, until his whole Debt and Damages are paid and satisfied; and during that Term he is Tenant by Elegit, *Reg. Orig.* 299. Co.

Lit. 289. This Writ is given by the Statute of *Westm.* 2. 13 *Ed.* 1. c. 18. And by it the Plaintiff, &c. elects *omnia bona & catalla* of the Defendant, *præter Boves & Afros de Caruca sua*; and also a Moiety of all the Lands which the Defendant had at the Time of the Judgment recovered: But it ought to be sued within a Year and a Day after the Judgment; and Inquisition is to be made by a Jury summoned by the Sheriff of what Land the Defendant had, &c. *F. N. B.* 267. All Writs of Execution may be good, tho' not returned, except an *Elegit*; but that must be returned, because an Inquisition is to be taken upon it, and that the Court may judge of the Sufficiency thereof. 4 *Rep.* 65, 74. It has been ruled, that if more than a Moiety of the Lands is delivered on an *Elegit* by the Sheriff, the same is void for Whole. *Sid.* 91. 2 *Salk.* 563. And the Sheriff cannot sell any Thing but what is found in the Inquisition; and therefore if he sell a Term for Years, &c. misrecited in the Inquisition as to the Commencement thereof, the Sale is void. 4 *Rep.* 74. In Debt upon Bond, the Defendant before the Trial conveyed his Lands to another, &c. but he himself took the Profits; notwithstanding this Conveyance a Moiety of his Lands were extended on an *Elegit*. *Dyer* 294. 3 *Rep.* 78. If two Persons have each of them a Judgment against one Debtor, and he who hath the first Judgment brings an *Elegit*, and hath the Moiety of the Lands delivered to him in Execution; and then the other Judgment-Creditor sues out another *Elegit*, he shall have only a Moiety of that Moiety which was not extended by the first Judgment. *Cro. Eliz.* 483. But this is contrary to the Year-Book 10 *Ed.* 2. where 'twas held, that the entire Moiety left should be delivered in Execution. 1 *Nelf. Abr.* 698. When Lands are once taken in Execution on an *Elegit*, and the Writ is returned and filed, the Plaintiff shall have no other Execution. 1 *Lev.* 92. And if the Defendant hath Lands in more Counties than one, and the Plaintiff awards an *Elegit* to one County, and extends the Lands upon the *Elegit*, and afterwards files the Writ, he cannot after that sue out an *Elegit* into the other Counties: But he may immediately after Entry of the Judgment upon the Judgment-Roll award as many *Elegits* into as many Counties as he thinks fit, and execute all or any of them at his Pleasure. 1 *Lill. Abr.* 509. *Cro. Jac.* 246. And it has been held, that a Person may have several *Elegits* into several Counties, for the entire Sum recovered; or that he may divide his Execution, and have it for Part in one County and Part in another. *Moor* 24. A Man had Lands in Execution upon *Elegit*, and afterwards moved for a new *Elegit*, upon Proof that the Defendant had other Lands not known to the Creditor at the Time when the Execution was sued out; and it was adjudged, that if he had accepted of the First by the Delivery of the Sheriff, he could not afterwards have a new *Elegit*; but when the Sheriff returns the Writ, he may waive it, and then have a new Extent. *Cro. Eliz.* 310. 1 *Nelf. Abr.* 699. If the Defendant dies in Prison, so that there is no Execution with Satisfaction, the Plaintiff shall have an *Elegit* afterwards. 5 *Rep.* 86. And if all the Lands extended on an *Elegit* be evicted by better Title, the Plaintiff may take out a new Execution. 4 *Rep.* 66. Where an *Elegit* is sued upon a Judgment, the Levying of Goods for Part is no Impediment, but the Plaintiff may bring another

Elegit pro Residuo, and take the Lands. 1 *Lev.* 92. Upon a *Nihil* returned upon an *Elegit*, there may be brought a *Capias ad satisfaciend.* or a *Fieri facias*. 1 *Leon.* 176. And an *Elegit* may be sued after a *Fieri facias* returned *Nulla bona*; and after a *Capias satisfaciend.* returned *Non est Inventus*. *Hob.* 57. If on Recovery by Writ of Debt a *Fieri facias* is sued out, and the Sheriff return *Nulla bona*; then the Plaintiff shall have a *Capias* or *Elegit*, &c. And if the Sheriff return, that the Defendant hath nothing whereof he may make Satisfaction, he shall be sent to the Prison of the Fleet, &c. there to remain 'till he have made Agreement with the Party: And if the Sheriff in such Case return *Non est Inventus*, then there shall go forth an *Exigent* against him. *Terms de Ley* 289. There is another Sort of *Elegit* upon adjudging Execution against Tertenants, whereon only a Moiety of the Lands against which Execution is awarded are extended by the Sheriff; and nothing is mentioned therein of any Goods and Chattels. *Ibid.* A Person in Execution was suffered to escape, and then he died; the Land which he had at the Time of the Judgment may be extended by *Elegit* upon a *Scire facias* brought against his Heir as Tertenant. *Dyer* 271. A Man may have an Assise of the Land which he hath in Execution by *Elegit*, if he be deforced thereof. *Stat. Westm.* 2. c. 18. And if Tenant by *Elegit* alien the Land in Fee, &c. he who hath Right shall have against him and the Alienee an Assise of *Novel Disseisin*. *Ibid.* At a Trial at Bar in C. B. the Court delivered for Law, that where Lands are actually extended and delivered upon an *Elegit*, a Fine levied on those Lands, and Nonclaim will bar the Interest of the Tenant by *Elegit*; and upon the Inquisition found, the Party is in Possession before actual Entry, for in such Case he may bring an Ejectment or Trespass, &c. 1 *Mod.* 217. If Tenant by *Elegit*, &c. be put out of Possession before he hath received Satisfaction for his Debt, by the Heir at Law, &c. he may have Action of Trespass, or re-enter and hold over 'till satisfied: But after Satisfaction received, the Defendant may enter on the Tenant by *Elegit*. 4 *Rep.* 28, 67. Tenants by *Elegit*, Statutes-Merchant, &c. are not punishable for Waste by Action of Waste; but the Party against whom Execution is sued is to have a Writ *Venire facias ad computandum*, &c. and there the Waste shall be recovered in the Debt: Tho' 'tis said there is an old Writ of Waste in the Register for him in Reversion against Tenant by *Elegit* committing Waste on Lands which he hath in Execution. 6 *Rep.* 37. *New Nat. Br.* 130. On Tenant by *Elegit*'s Accounting, if the Money recovered by the Plaintiff is levied out of the Lands, the Defendant shall recover his Land; and if more be received by Waste, &c. he shall have Damages. *Terms de Ley* 288. See Extent, Execution.

Form of a Writ of Elegit.

Georgius, &c. Vic. S. Salutem. Cum A. B. nup. in Cur. nostr. coram nobis apud Westm. per Bill. &c. ac per Judic. ejusdem Cur. recuperavit vers. C. D. sexagint. libr. de debito necnon quadragint. solid. pro dampnis suis qua sustinuit tam occasione detention. Debiti ill. quam pro mis. & custag. suis per ipsum circa sectam suam in hac parte appoit. unde conoist. est sicut nobis constat de Recordo, posteaque prad. A. venit in Cur. nostra coram nobis & Elegit sibi Liberari omnia Bona & Catalla prad. C. præter Boves & Affros de Carruca

Carruca sua & similis. Medietat. omnium & singulor. terrar. & tentor. pred. C. in Balliva tua juxta formam Statuti inde Edit. & provis. quousque Debit. & Damna pred. plenar. inde Levaverit; Ideo tibi Precipimus quod omnia Bona & Catalla pred. C. in Balliva tua prater Boves & Affros de Carruca sua & similis. Medietat. Omnium Terrar. & Tentor. pred. C. in Balliva tua de quibus pred. C. die, &c. quo die Judic. pred. redditum fuit vel unquam postea fuit seist. sine Dilatione Liberare fac. per rationabil. Pretium & Extent. Tenend. sibi Bona & Catalla ut Bona & Catalla sua propr. Ac etiam Tenend. Medietat. Terr. & Tent. pred. ut Liberum Tenement. suum sibi & assign. Suis juxta formam Statut. pred. quousque Debit. & Damna pred. inde Levaverit, Et qualis hoc Breve nostr. fueris Execut. nobis apud Westm. die, &c. Constare facias sub sigillo tuo & sigillo eorum per quor. Sacramentum Extent. & Appreciation. ill. feceris, Et habens, &c.

Else-Arrows, Were Flint-Stones sharpened of each Side in Shape of Arrow-heads, made Use of in War by the ancient Britains; of which several have been found in England, and greater Plenty in Scotland, where 'tis said the common People imagine they dropt from the Clouds.

Elke, A Kind of Yew to make Bows of. *Stat. 32 H. 8. cap. 9.* Also the Name of a wild Beast, something like a Deer.

Eloin, (From the Fr. *Esloigner*) Signifies to remove or send a great Way off: In this Sense it is used by Statute; if such as be within Age be *eloined*, so that they cannot come to sue personally, their next Friends shall be admitted to sue for them. *13 Ed. 1. c. 15.*

Elongata, Is a Return of the Sheriff that *Cattle* are not to be found, or removed so that he cannot make Deliverance, &c. in *Replevin. 2 Lill. Abr. 454, 458.*

Elopement, (Derived from the Belg. *Ee*, viz. *Matrimonium*, & *Loopen*, *currere*) Is where a married Woman, of her own Accord, goes away and departs from her Husband, and lives with an Adulterer. A Woman thus leaving her Husband, is said to *elope*; and in this Case, her Husband is not obliged to allow her any *Alimony* out of his Estate; nor shall he be chargeable for Necessaries for her, as Wearing Apparel, Diet, Lodging, &c. And where the same is notorious, whoever gives her Credit, doth it at his Peril: But on *Elopement*, the Putting a Wife in the Gazette, or other News-Papers, is no legal Notice to Persons in general not to trust her; though personal Notice to particular Persons given by the Husband, will be good not to be chargeable to them. *1 Roll. Abr. 350. 1 Ventr. 42. By Stat. 13 Ed. 1. c. 34.* If the Wife goes away from the Husband, and tarrieth with the Adulterer, without returning, and being reconciled to her Husband, this continual *Elopement* forfeits her Dower; according to these old Verses:

*Sponte Virum Mulier fugiens & Adultera facta,
Dote sua careat, nisi sponso sponte retracta.*

Action lies against the Adulterer for carrying away another Person's Wife, and *detaining* her; and large Damages are usually given in these Cases to the injured Husband.

Embargo, A Prohibition upon Shipping, not to go out of any Port, on a War breaking out, &c.

Emblements, (From the Fr. *Emblavence de Bled*, viz. Corn sprung or put above Ground) Signifies properly the Profits of Land sown: But the Word is sometimes used more largely, for any Products that arise naturally from the Ground, as Grass, Fruit, &c. In some Cases, he which sowed the Corn shall have the *Emblements*, and in others not: A Lessee at Will sows the Land, he shall have the *Emblements*; though if the Lessee determines the Will himself, he shall not have them, but the Lessor. *3 Rep. 116.* If Lessee at Will sows the Land with Grain, or other Thing yielding annual Profit, and the Lessor enters before Severance; yet the Lessee shall have it: But where the Lessee plants young Fruit-Trees, or other Trees, or sows the Land with Acorns, &c. he shall not have these: And if such Tenant by good Husbandry make the Grass to grow in greater Abundance; or sow the Land with Hay-seed, by which Means it is increased, if the Lessor enters on the Lessee, the Lessee shall not have it, because Grass is the natural Profit of the Soil. *Co. Lit. 55, 56.* Where Tenant for Life sows the Land, and dies, his Executors shall have the *Emblements*, and not the Lessor, or him in Reversion; by Reason of the Uncertainty of the Estate. *Cro. Eliz. 463.* And if a Tenant for Life plants Hops, and dies before Severance, he in Reversion shall not have them, but the Executors of Tenant for Life. *Cro. Car. 515.* If Tenant for Years, if he so long live, sow the Ground, and die before Severance; the Executor of the Lessee shall have the Corn: And where Lessee for Life leases for Years, if the Lessee for Years sow the Land, and after Lessee for Life dies before Severance, the Executor of Lessee for Years shall have the *Emblements. 2 Danv. Abr. 765.* But if Tenant for Life sows his Lands with Corn, and afterwards grants over all his Estate and Right to another; if the Grantee dies before Severance, it is said his Executors shall not have the Corn, but he in the Reversion. *Cro. Eliz. 464.* If Tenant for Years sow Ground, and before the Corn is severed, his Term which is certain expires; the Lessor or he in Reversion shall have the *Emblements*; but he must first enter on the Lands. *1 Lill. Abr. 511.* A Lessee for Life or Years sows the Land, and after surrenders, &c. before Severance, the Lessor shall have the Corn. *2 Danv. 764.* If there be Lessee for Years upon Condition that if he commit Waste, &c. his Estate shall cease; if he sows the Ground with Corn, and after doth Waste, the Lessor shall have the Corn. *Co. Lit. 55.* And where a Lord enters on his Tenant for a Forfeiture, he shall have the Corn on the Ground. *4 Rep. 21.* Where a Feme Copyholder for her Widowhood sows the Land, and before Severance takes Husband, so that her Estate is determined, the Lord shall have the *Emblements. 1 Lill. 511.* Though if such a Feme Copyholder *durante viduitate*, leases for one Year according to Custom, and the Lessee sows the Land, and afterwards the Copyholder takes Husband, the Lessee shall have the Corn. *2 Danv. 764.* If a Feme Sole having Lands for Life, &c. sows the Land, and then marries, if the Husband die before Severance, the Feme shall have the Corn, and not the Husband's Executors. *Ibid. 765.* If a Husband hold Lands for Life in Right of his Wife, and sow the Land, and after she dies before Severance, he shall have the *Emblements.*

Dyer 316. 1 *Nelf. Abr.* 701. And where the Wife hath an Estate for Years, Life, or in Fee, and the Husband sows the Land and dieth, his Executors shall have the Corn. 1 *Nelf.* 702. But if the Husband and Wife are Jointenants, tho' the Husband sow the Land with Corn, and dies before Ripe, the Wife and not his Executor shall have the Corn, she being the surviving Jointenant. *Co. Lit.* 199. When a Widow is endowed of Lands sown, she shall have the *Emblements*, and not the Heir. 2 *Inst.* 81. A Tenant in Dower may dispose of Corn sown on the Ground; or it may go to her Executors, if she die before Severance. *Stat.* 20 *Hen.* 3. 2 *Inst.* 80, 81. And if a Parson sows his Glebe and dies, his Executors shall have the Corn: Likewise such Parson may by Will dispose thereof. 1 *Roll. Abr.* 655. *Stat.* 28 *Hen.* 8. *cap.* 11. If Tenant by Statute-Merchant sows the Land, and before Severance a casual Profit happens, by which he is satisfied, yet he shall have the Corn. *Co. Lit.* 55. Where Lands sown are delivered in Execution upon an Extent, the Person to whom delivered shall have the Corn on the Ground. 2 *Leon.* 54. And Judgment was given against a Person, and then he sowed the Land, and brought a Writ of Error to reverse the Judgment; but it was affirmed; and adjudged that the Recoveror should have the Corn. 2 *Bulst.* 213. If a Disseisor sows the Land, and afterwards cuts the Corn, but before 'tis carried away, the Disseefer enters; the Disseefer shall have the Corn. *Dyer* 31. 11 *Rep.* 52. If a Person seised in Fee of Land dies, having a Daughter and his Wife *Priviment ensient* with a Son; and the Daughter enters and sows the Land, and before Severance of the Corn the Son is born; in this Case the Daughter shall have the Corn, her Estate being lawful and defeated by the Act of God; and it is for the publick Good that the Land should be sowed. *Co. Lit.* 55. A Man seised in Fee sows Land, and then devises the Land by Will, and dies before Severance; the Devisee shall have the Corn, and not the Devisor's Executors. *Winch.* 52. *Cro. El.* 61. Where a Person devises his Land sown, and says nothing of the Corn, the Corn shall go with the Land to the Devisee: And when a Man seised of Land, sows it and dies without Will, it goes to the Executor, and not the Heir. 1 *Lill.* 512. A Devisee for Life dies, he in Remainder shall have the *Emblements* with the Land. *Hob.* 132. Tenant in Fee sows the Land, and devises it to A. for Life, Remainder to B. for Life, and dies; A. dies before Severance, B. in Remainder shall have the Corn, and not the Executor of the first Tenant for Life. *Cro. Eliz.* 61, 464. Where there is a Right to *Emblements*, Ingress, Egress and Regress are allowed by Law to enter, cut and carry them away, when the Estate is determined, &c. 1 *Inst.* 56.

Emblers de Gentz, (Fr.) A Stealing from the People: The Word occurs in our old Rolls of Parliament. — Whereas divers Murders, *Emblers des Gentz*, and Robberies are committed, &c. *Rot. Parl.* 21 *Ed.* 3. *n.* 62.

Embraceor, (Fr. *Embrasour*) Is he that when a Matter is in Trial between Party and Party, comes to the Bar with one of the Parties, having received some Reward so to do, and speaks in the Case; or privately labours the Jury, or stands in Court to survey or overlook them, whereby they are awed or influenced, or put in Fear or Doubt of the Matter. *Stat.* 19 *H.* 7. *cap.*

13. And the Penalty of this Offence is 20 *l.* and Imprisonment, at the Discretion of the Justices, by the said Statute: Also a Person may be punished by Fine, &c. on Indictment at Common Law, as well as by Action on the Statute. *Com. Law Com. Plac'd* 186. But Lawyers and Attornies, &c. may speak in the Case for their Clients, and not be *Embraceors*: Also the Plaintiff may labour the Jurors to appear in his own Cause; but a Stranger must not do it: For the bare Writing of a Letter to a Person, or parol Request for a Juror to appear, not by the Party himself, hath been held within the Statutes against Embracery and Maintenance. 1 *Inst.* 369. *Hob.* 294. 1 *Saund.* 301. And if the Party himself instruct a Juror, or promise any Reward for his Appearance, then the Party is likewise an *Embraceor*: And a Juror may be Guilty of Embracery, where he by indirect Practices gets himself sworn on the *Tales*, to serve on one Side. 1 *Lill.* 513. There are divers Statutes relating to this Offence and Maintenance, as 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 32 *H.* 8. *c.* 9, &c.

Embracery, Is the Act or Offence of *Embraceors*: And to attempt to influence a Jury, or any way incline them to be more favourable to the one Side than the other, by Promises, Threatnings, Money, Treats, &c. whether the Jurors on whom any such Attempt is made, give any Verdict or no, or whether the Verdict pass on his Side or not; this is *Embracery*. 1 *Inst.* 369. *Noy's Rep.* 102.

Embrizing Days, (From *Ember*, *Cineres*) So called either because our Ancestors, when they fasted sat in Ashes, or strewed them on their Heads, are those which the ancient Fathers called *Quatuor Tempora jejunii*, and are of great Antiquity in the Church: They are observed on Wednesday, Friday and Saturday next after *Quadragesima Sunday*, (or the first Sunday in Lent) after *Whitsunday*, *Holyrood-day* in September, and *St. Lucy's Day* about the Middle of December. These Days are mentioned by *Briton*, *cap.* 53. and other Writers; and particularly in the *Stat.* 2 & 3 *Ed.* 6. *cap.* 19. And are still kept with great outward Zeal by the Roman Catholics: Our Almanacks call them the *Ember Weeks*.

Emendals, (*Emenda*) Is an old Word still made Use of in the Accounts of the Society of the *Inner Temple*; where so much in *Emendals* at the Foot of an Account, on the Balance thereof, signifies so much Money in the Bank or Stock of the Houses, for Reparation of Losses or other emergent Occasions: *Quod in Restaurationem Damni tribuitur*. *Spelm.*

Emendare, *Emendam solvere*, to make *Amends* for any Crime, or Trespas committed. *Leg. Edw. Confess.* *cap.* 35. Hence a capital Crime, not to be atton'd by Fine, was said to be *inemendabile*. *Leg. Canut.* *p.* 2.

Emendatio, Hath been used for the Power of Amending and Correcting Abuses, according to stated Rules and Measures: As *Emendati Panni*, the Power of looking to the Assise of Cloth, that it be of just Measure; *Emendatio Panis & Cervisia*, the Assising of Bread and Beer, &c. a Privilege granted to Lords of Manors, and executed by their Officers appointed in the Court-Leet, &c. *Ad nos spectat Emendatio Panni & Panis & Cervisia, & quicquid Regis est, Excepto murthero & Latrocinio*, &c. — *Paroch. Antiq.* 196.

Empanel A Jury. *Ponere in Assisi & Juratis*, &c. See *Impanel*.

Empe-

Emperor, (Imperator) The highest Ruler of large Kingdoms and Territories, a Title anciently given to renowned and victorious Generals of Armies, who acquired great Power and Dominion. And this Title, is not only given to the *Emperor of Germany*, as *Emperor of the Romans*; but was formerly belonging to the *Kings of England*, as appears by a Charter of King Edgar, viz. *Ego Edgarus Anglorum Basileus, omniumque Regum Insularum Oceani qua Britanniam circumjacent, &c. Imperator & Dominus.*

Encenia, (From Enceniare to begin a Thing) Is applied to the Dedication of Churches; which was always on a *Sunday*. Blount.

Enchefon, A French Word used in our Law Books and Statutes, signifying as much as Occasion, or the Cause or Reason wherefore any Thing is done. *Stat. 5 Ed. 3. c. 3.*

Endeavour. Where one who has the Use of his Reason, endeavours to commit a Felony, &c. he shall be punished by our Laws, but not to that Degree as if he had actually committed it: As if a Man assault another on the Highway, in order to a Robbery, but take Nothing from him, this is not punished as Felony, because the Felony was not accomplished; tho' as a Misdemeanor, it is liable to Fine and Imprisonment. *3 Inst. 68, 69, 161. 11 Rep. 98. Vide Intendment.*

Endowment, Signifies the Bestowing or Affluring of *Dower* on a Woman: But it is sometimes used metaphorically for the Settling a Provision upon a Parson, on Building of a Church or Chapel; and the Severing a sufficient Portion of Tithes, &c. for a Vicar, towards his perpetual Maintenance, when the Benefice is appropriated. *Stat. 15 R. 2. c. 6. 4 H. 4. c. 12.*

Enemp, (Inimicus) Is properly an Alien or Foreigner, who in a publick Capacity and hostile Manner, invades any Kingdom or Country; and whether such Persons come hither by themselves, or in Company with *English* Traitors, they cannot be punished as Traitors, but shall be dealt with by martial Law. *H. P. C. 10. 15. 1 Hawk. 35.* But the Subjects of a Foreign Prince, coming into *England*, and living under the Protection of the King, if they take up Arms, &c. against the Government, they may be punished as Traitors, not as alien Enemies. *1 Hawk. ibid.* Persons may bear Arms, notwithstanding the *Stat. 2 Ed. 3. c. 3.* against going or riding arm'd, to defend themselves against Enemies. *Cromp. 64.* If a Prisoner be rescued by Enemies, the Gaoler 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 Hawk. 130.* Adhering to and Succouring the King's Enemies. See *Treason*.

Enfranchise, (Fr. Enfranchir) To make Free, or incorporate a Man in any Society, &c. It is also used where one is made a free *Denizen*, which is a Kind of Incorporation in the *Commonwealth*.

Enfranchisement, (Fr. from Franchise, i. e. Libertas) Is when a Person is incorporated into any Society or Body Politick, and signifies the Act of Incorporating. He that by Charter is made a *Denizen* or *Freeman of England*, is said to be *enfranchised*, and let into the general Liberties of the Subjects of the Kingdom: And he who is made a *Citizen of London*, or other City, or free Burgefs of any Town Corporate, as he is made Partaker of those Liberties that appertain to the Corporation, is in the common Sense of the

Word a Person *enfranchised*. So a Villain was *enfranchised*, when he was made Free by his Lord; and rendered capable of the Benefits belonging to Freemen. And when a Man is *enfranchised* into the Freedom of any City or Borough, he hath a Freehold in his Freedom during Life; and may not for endeavouring any Thing only against the Corporation, lose and forfeit the same. *11 Rep. 91.*

Englecery or Engleschire, (Engleceria) Is an old Word signifying the being an *Englishman*. When *Canutus the Dane* came to be King of *England*, he at the Request of the Nobility sent back his Army into *Denmark*, but kept some *Danes* behind to be a Guard to his Person; and he made a Law for the Preservation of his *Danes*, who were often privately made away by the *English* that if an *Englishman* killed a *Dane*, he should be tried for the Murder; or if he escaped, the Town or Hundred where the Fact was done was to be amerced sixty-six Marks to the King: So that after this Law whenever a Murder was committed, it was necessary to prove the Party slain to be an *Englishman*, that the Town might be exempted from the Amercement; which Proof was called *Englecery* or *Engleschire*: And whereas if a Person were privily slain, he was in ancient Time accounted *Francigena*, which Word comprehended every Alien, especially the *Danes*; It was therefore, that where any Person was murdered, he should be adjudged *Francigena*, unless *Englecery* were proved, and that it was made manifest he was an *Englishman*. The Manner of Proving the Person killed to be an *Englishman*, was by two Witnesses who knew the Father and Mother, before the Coroner, &c. *Bract. lib. 3. tract. 2. c. 19. Fleta, lib. 1. c. 30. 7 Rep. 16.* This *Englecery*, by Reason of the great Abuses and Trouble that afterwards were perceived to grow by it, was utterly taken away by *Stat. 14 Ed. 3. c. 4.*

Enhance, To raise the Price of Goods or Merchandize. See *Forestaller*.

Enpleet, Was anciently used for Implead. — They may *enpleet* and be *enpleeted* in all Courts. *Mon. Angl. Tom. 2. f. 412.*

Entail, (Fr. Entaille, i. e. Incisus) Is Fee entailed, viz. abridged, limited, and tied to certain Conditions, at the Will of the Donor; where Lands are given to, or settled on others. See *Fee and Tail*.

Enterpleader, (Fr. Enterplaidier, Lat. Interplacitare) Signifies to discuss or try a Point incidentally happening as it were between, before the principal Cause can be determined. And *Enterpleader* is allowed that the Defendant may not be charged to two severally, where no Default is in him: As if one brings Detinue against the Defendant upon a Bailment of Goods, and another against him upon a Trover, there shall be *Enterpleader*, to ascertain who hath Right to his Action. *2 Dam. Abr. 779.* If two bring several Detinues against A. B. for the same Thing, and the Defendant acknowledges the Action of one of them, without a Prayer of *Enterpleader*, they shall not interplead on the Request of the other; for the *Enterpleader* is given for the Security of the Defendant, that he may not be twice charged, and he hath waived that Benefit. *18 Ed. 3. 22.* If one brings Detinue against B. and counts upon a Delivery to redeliver to him, and another brings Detinue against him also, and counts so likewise; if here be not any Privy of Bailment between them, yet they shall *enterplead*, to avoid the double

ble Charge of the Defendant; and also because the Court cannot know to whom to deliver the Thing detained if both should recover. *Br. Enterplead. 3.* And upon such several Detinues, if the Defendant says that he found it, and traverses the Bailment, they shall *enterplead*; for then he is chargeable as well to the one as the other: So if he says that they delivered it jointly, *absque hoc* that they delivered it as they have counted: But it is otherwise if the Defendant doth not traverse the Bailment, because if there was a Bailment, he is chargeable only to the Bailor, and may plead in Bar against the others. *2 Danv. 782.* Where two bring several Detinues for one Thing, and the Defendant prays that they may *enterplead*, and delivers the Thing to the Court, and before the Award of the *Enterpleader*, one discontinues his Suit, the other shall not have Judgment; but if he discontinue his Suit after the *Enterpleader* awarded, the other may have Judgment. *11 Hen. 6. 19.* If a Recovery be had upon an *Enterpleader*, Judgment shall be given to recover the Thing demanded against the Defendant; and not against the Garnishee, in case of Garnishment, &c. *2 Danv. 783.* When two have *enterpleaded* in Detinue, he that recovers shall recover Damage against the other. *Br. Damag. 68.* There was formerly *Enterpleader* relating to Delivery of Lands by the King, to the right Heir, where two Persons out of Wardship were found Heirs, &c. *7 Rep. 45. Staundf. Pver. cap. 19. Bro. Tit. Enterplead.* And anciently the Head *Enterpleader* made a great Title in the Law.

Entiertie, (From the Fr. *Entierete*, Entireness) Is a Contradistinction in our Books to Moierie, denoting the Whole: And a Bond, Damages, &c. are said to be *entire*, when they cannot be divided or apportioned.

Entire Tenancy, Contrary to *several Tenancy*, and signifying a sole Possession in one Man; whereas the other signifies a joint or common Possession in more. *Brook.*

Entry, (*Ingressus*, Fr. *Entree*, i. e. *Introitus*) Signifies the Taking Possession of Lands or Tenements, where a Man hath Title of *Entry*: And it is also used for a *Writ of Possession*. These *Writs of Entry* concern the Right of Property, and are of divers Kinds, distinguished into four Degrees, according to which the *Writs* are varied. The first Degree is a *Writ of Entry sur Disseisin*, that lieth for the Dissee against a Disseisor, upon a Disseisin done by himself; and this is called a *Writ of Entry* in the Nature of an Assise. Second, A *Writ of Entry sur Disseisin in le per*, for the Heir by Discent, who is said to be in the *Per* as he comes in by his Ancestor; and so it is if a Disseisor make a Feoffment in Fee, Gift in Tail, &c. the Feoffee and Donee are in the *Per* by the Disseisor. Third, A *Writ of Entry sur Disseisin in le Per & Cui*, where the Feoffee of a Disseisor maketh a Feoffment over to another, when the Dissee shall have a *Writ of Entry sur Disseisin*, &c. of the Lands in which such other had no Right of *Entry*, but by the Feoffee of the Disseisor to whom the Disseisor demised the same, who unjustly and without Judgment disseised the Demandant. Fourth, A *Writ of Entry sur Disseisin in le Post*, which lieth when after a Disseisin the Land is removed from Hand to Hand beyond the Degrees, in case of a more remote Seisin, wherunto the other three Degrees do not extend. *1 Inst. 238.* In these four Degrees

are comprehended generally all Manner of *Writs of Entry*. And the *Writ of Entry in le Post* is so called, because the Words of the *Writ* are, *Post Disseisinam quam B. injuste & sine Judicio fecit, &c.* Briton observes that the Words *In le Per*, *In le Per & Cui*, and *In le Post*, signify nothing but divers Forms of this *Writ*, applied to the Case whereupon it is brought; and each Form taking its Name from the Words contained in the *Writ*. *F. N. B. 193.* But if any *Writ of Entry* be conceived out of the right Cause, so that one Form is brought for another, it is abatable. A *Writ of Entry* in the *Per* and *Cui* shall be maintained against none, but where the Tenant is in by Purchase or Discent; for if the Alienation or Discent be put out of the Degree, upon which no *Writ* may be made in the *Per* and *Cui*, then it shall be made in the *Post*. *Terms de Ley 299.* And there are five Things which put the *Writ of Entry* out of the Degrees, viz. Intrusion; Disseisin upon Disseisin; Succession where the Disseisor was a Person of Religion, and his Successor enters; Judgment, when a Person hath had Judgment to recover against the Disseisor; and Escheat, on the Disseisor's Dying without Heir, or committing Felony, &c. on which the Lord enters, &c. In all these Cases, the Dissee or his Heir, shall not have a *Writ of Entry* within the Degrees of the *Per*, but in the *Post*; because they are not in by Discent, or Purchase. *Ibid.* Degrees as to *Entries* are of two Sorts, either by Act in Law, as in Case of a Discent; or by Act of the Party, by lawful Conveyance; and by the Common Law, if the Lands were conveyed out of the Degrees, the Demandant was driven to his *Writ of Right*, in Respect of such long Possession, and so many Alterations in different Hands; wherefore by the Statute of *Marlbridge*, *52 H. 3. cap. 29.* the *Writ of Entry in le Post* is given. But no Estate gain'd by Wrong doth make a Degree; so that Abatement, Intrusion, &c. work not a Degree; nor doth every Change by unlawful Title, or an Estate of Tenant by the Curtesy, by Judgment, &c. or of any others that come in the *Post*; though a Tenancy in Dower by Assignment of the Heir doth work a Degree, because she is in by her Husband; and so doth not Assignment of Dower by a Disseisor, by Reason she is in the *Post*. *1 Inst. 239.* *Entry on Lands* is taken away by Discent on Disseisins, or Discontinuance, &c. But a Discent shall not take away the *Entry* of Lessee for Years, nor of Tenant by Elegit, &c. who have but a Chattel, and no Freehold; otherwise it is of an Estate for Life, or any higher Estate. *1 Inst. 249.* Where a Disseisor dieth seised, and the Law casteth the Lands upon his Heir; this is a Discent which tolls an *Entry* at Common Law: By Statute, it is only where the Disseisor had peaceable Possession five Years; for if he had not Possession peaceably during that Time, the Discent to his Heir shall not take away an *Entry*. *32 H. 8. cap. 33.* If a Disseisor leases for Years, and dies seised of the Reversion, the *Entry* of the Dissee is taken away, because he died seised of the Fee and Freehold: But if he had leased for Life, &c. the *Entry* of the Dissee would not be taken away. *1 Inst. 239.* Where the Disseisor of an Infant dies seised, and after the Infant comes of Age, and the Heir of the Disseisor dies before *Entry*; though he died not seised of an actual Seisin, but a Seisin in Law; yet his Dying seised takes away the *Entry* of the Dissee.

seifed. *Ibid.* If a Disfeisor makes a Feoffment upon Condition, and the Feoffee dies seifed, and the Feoffor enters upon the Heir for the Breach of the Condition, the Disfeifed may enter upon him; for by the *Entry* of the Disfeisor, the Discent is utterly defeated. *Lit. Sect.* 409. The Title of *Entry* in a Feoffor, &c. that hath but a Condition, cannot be taken away by any Discent, because he has no Remedy by Action to recover the Land; so that if a Discent should take away his *Entry*, it would bar him of his Right for ever: And the Condition remains, and cannot be devested and put out of Possession, as Lands, &c. *1 Inst.* 240. If a Man recovers Land, and after a Stranger to the Recovery dies seifed, this shall not take away the *Entry* of the Recoveror; as it was but a Title. *2 Danv. Abr.* 561. But where a Person recovers against another, and enters and sues Execution, and after the Recoverer disfeifes him, and dies seifed; this Discent shall take away the *Entry* of the Recoveror, for the Recovery was executed. *Ibid.* If after Recovery against Tenant for Life, he dies, and he in Remainder enters before Execution, and dies seifed, the *Entry* of the Recoveror is not taken away. *1 Inst.* 238. If a Man is disfeifed of Land whereunto a Common is appendant, the Disfeifed cannot use the Common till he enters on the Land to which the Common is appendant; for if the Disfeifed might enter, so might the Disfeisor, which would be a double Charge on the Common: But if a Person be disfeifed of a Manor, to which an Advowson is appendant, he may present to the Advowson before *Entry* on the Manor. *1 Inst.* 122. A Disfeifed enters into the Land, and continues therein with the Disfeisor, and manures it with him, claiming nothing of his first Estate; or if the Disfeifed enters, and takes the Profits as Lessee, &c. of the Disfeisor, 'tis said these will be an *Entry* that will reduce the first Estate. *2 Danv.* 790. And if the Disfeifed commands a Stranger to put in the Cattle of such Stranger in the Land to feed there; this is an *Entry* in Law on the Land. *1 Inst.* 245. And if a Person enters by Command of him who hath Title, he by Virtue thereof may gain a Title to himself. *1 Nelf. Abr.* 705. Where *Entry* may be made into Land, or any Thing, it shall not be in the Party before *Entry*: If *Entry* cannot be made, but only Claim, then it shall be in him by Claim; and when neither *Entry* nor Claim can be made, it shall be in him by Act of Law. *1 Plowd.* 133. In case the Possession of Land is in no Man, but the Freehold in Law is in the Heir that enters, his general *Entry* into one Part reduces all into his actual Possession: But if an *Entry* is to devest an Estate, a general *Entry* into Parcel, is good only for that Part. *1 Inst.* 15. If a Man disfeife me of one Acre at one Time, and another Acre at another Time in the same County, my *Entry* into one of them in the Name of both is good: Though it will not be good, if the Disfeisin be by two several Persons, or if the Acres lie in several Counties, when there ought to be several *Entries* and Actions. *1 Inst.* 252. If he who hath Right of *Entry* into a Freehold, enters into Part of it, it shall be adjudged an *Entry* into all possessed by one Tenant; but if there be several Tenants possessed of the Freehold, there must be several *Entries* on the several Tenants. *1 Lill. Abr.* 515, 516. Special *Entry* into a House with which Lands are occupied, claiming the Whole, is a

good *Entry* as to the whole House and Lands *Ibid.* If a Husband enters to the Use of his Wife; or a Man enters to the Use of an Infant, or any other, where the *Entry* is lawful; this settles the Possession before Agreement of the Parties: But it is otherwise where a Person enters to the Use of one whose *Entry* is not lawful; for this vests nothing in him till Agreement, and then he shall be a Disfeisor. *2 Danv.* 787. If two Jointenants are disfeifed, and the Disfeisor aliens, and one Jointenant enters upon the Alienee to the Use of both; this settles the Freehold in both of them. *Ibid.* 788. But if one Coparcener, &c. enters specially claiming the whole Land, she gains the Part of the Companion by Abatement; and it shall not settle any Possession in the other. *1 Inst.* 243. The Heir is to enter into Lands descended to him, to entitle him to the Profits. *1 Inst.* 214. If a younger Son enters on Lands in Fee, where the eldest Son dies having Issue; tho' many Discents are cast in his Line, yet the Heirs of the eldest Son may make an *Entry* on the Lands; but if the youngest Son convey away the Lands in Fee, and the Feoffee dies seifed, they may not enter; nor may they enter where the youngest Son disfeifes the Eldest, and dies seifed. *1 Inst.* 237, 244. *Lit. Sect.* 397. Where Tenant in Tail hath Issue two Sons, and the Eldest dies, leaving his Wife *previement enfeint* of a Son, and the younger Brother enters, and then the Wife of the Eldest is delivered of a Son, he may enter upon the younger Brother. *2 Danv.* 557. If a Bastard being the eldest Son, enters on Lands, and enjoys it during his Life; his *Entry* and Dying seifed may make a Title to his Heir against the lawful Children. *1 Inst. Ibid.* An Estate of Freehold will not cease, without *Entry* or Claim: Also a Remainder of an Estate of Freehold cannot cease without *Entry*, &c. no more than an Estate of Freehold in Possession. *Cro. El.* 360. A Right of *Entry* preserves a Contingent Remainder. *2 Lev.* 35. And a Grantee of a Reversion may enter for a Condition broken. *Plow.* 176. Where a Person will take Advantage of a Condition, he must either enter, or make a Claim: And for Condition broken, there must be actual *Entry*, to bring Ejectment for Recovery of the Estate; but where a Man is entitled to enter by Discent, or for Nonpayment of Money due on a Mortgage, &c. *Entry* and Ouster confessed in the Rule in Ejectment, without actual *Entry*, is sufficient to make the Lease to entitle the Action. *1 Lill. Abr.* 516. When a Man hath Title to Land, and is out of Possession, he cannot make a Lease of it to a Tenant, but by Entering and Sealing the Lease on the Land; or empowering others by Letter of Attorney to do it. *Dalif. Rep.* 81. A Lessee must enter into Lands demised to him; and though the Lessor dies before the Lessee enters, yet he may enter: Also if the Lessee dies before *Entry*, his Executors or Administrators may enter. The Lessee may assign over his Term before *Entry*, having *Interesse termini*; but he may not take a Release to enlarge his Estate, or bring Trespass, &c. till actual *Entry*. Though if there be Words *Bargain and Sell* in a Lease, &c. for Consideration of Money, the Lessee or Bargaine is in Possession on Executing the Deed, to bring Trespass, make a Release, &c. *Lit.* 59, 454. *1 Inst.* 46, 57, 270. If Tenant for Years holds over his Term, he is Tenant at Sufferance till the *Entry* of the Lessor. Where a Lessor enters on his Lessee

Lessee for Years, the Rent is suspended. 1 *Leon.* 110. And the Tenant is to continue in Possession of the whole Land, till the Rent become due. *Style* 243. But without Entry and Expulsion, the Lessee is not discharged of his Rent to the Lessor; unless it be where the Lessor is attainted of Treason, &c. that the Rent is to be paid to the King, who is in Possession without Entry. *Sid.* 399. 1 *Nell. Abr.* 706. A bare Entry on another, without an Expulsion, makes only a Seisin; so that the Law will adjudge him in Possession who hath the Right. 3 *Salk.* 135. If a Person who hath Title of Entry, finds an House open with no Body in it, and enters into it, and keeps Possession; this is no forcible Entry: Contra if any Body is in it. *Common Law Com. Plac'd.* 186. Where a Person is in a House with Goods, &c. the House may be entered when the Doors are open, to make Execution. *Cro. Eliz.* 759. But it must be averred that the Goods were in the House. *Lutw.* 1434, 1428. And a Man cannot enter into a House, the Doors being open, to demand a Debt, unless he aver that the Debtor is within the House at the same Time. *Cro. El.* 876. Entry may be made on a Tenant where Rent is in arrear, to take a Distress, &c. In Order to regain Possession of Lands by Entry, &c. the Manner of Entry is thus: If it be a House, and the Door is open, you go into it, and say these Words: — *I do here enter, and take Possession of this House:* But if the Door be shut, then set your Foot on the Groundsel, or against the Door, and say the before Words: And if it be Land, then go upon the Land, and say, *I here enter and take Possession of this Land, &c.* If another do it for you, he must say, *I do here enter, &c. to the Use of A. B.* And it is necessary to make it before Witnesses, and that a Memorandum be made of it. *Lit.* 385. 1 *Inst.* 237, 238. In Actions for Recovery of Lands, &c. Entry is to be made within twenty Years after the Title accrued. *Stat.* 21 *Jac.* 1. cap. 16. But where a Fine of Lands is passed, the Entry is to be in five Years. 1 *R.* 3. 4 *Hen.* 7. Also an Action is to be commenced in one Year after the Entry. 4 & 5 *Ann.* Demand how made of Rent, &c. to entitle Entry, see Demand. See also Claim.

Entry ad Communem Legem, Is the Writ of Entry which lies where Tenant for Term of Life, or for Term of another's Life, or by the Curtesy, &c. aliens and dies, when he in the Reversion shall have this Writ against whomsoever is in Possession of the Land. *New Nat. Br.* 461.

Entry ad terminum qui preterit, A Writ of Entry brought against a Tenant for Years, who holdeth over his Term, and thereby keeps out the Lessor: And if the Husband and Wife lease the Wife's Land for Years, and the Husband dieth, and the Termor holds over his Term, the Wife may have a Writ of Entry ad terminum qui preterit, &c. but she must count that she and her Husband leased the Land, &c. Also the Grantee in Reversion may have this Writ against the Lessee, or his Assignee, &c. *New Nat. Br.* 447, 448.

Entry in casu consimili, Is a Writ that lies where Tenant for Life, or Tenant by the Curtesy, aliens in Fee, &c. he in Reversion shall have this Writ, by *Stat. Westm.* 2. cap. 24. See Casu Consimili.

Entry in casu Probiso, Lies where Tenant in Dower aliens in Fee, or for Term of Life, or of another's Life; then he in the Reversion shall

have this Writ, provided by the Stat. of *Glouc.* 6 Ed. 1. cap. 7. By which Statute it is enacted, That if a Woman alien her Dower in Fee, or for Life, the next Heir, &c. shall recover by Writ of Entry. And the Writ may be brought against the Tenant of the Freehold of the Land, on such Alienation, during the Life of the Tenant in Dower, &c. *New Nat. Br.* 456. These Writs of Entry may be all brought either in the Per, or in the Cui or Post.

Entry sine assensu Capitali, Is a Writ of Entry that lieth where a Bishop, Abbot, &c. aliens Lands or Tenements of the Church, without the Assent of the Chapter or Convent. *F. N. B.* 195.

Enure, Signifies in the Law to take Place, or be available; and is as much as effectum: As for Example; A Release made to Tenant for Life shall enure, and be of Force and Effect to him in the Reversion. *Litt.*

Eodordure, (From the Sax. Eodor, a Hedge, and Brice, ruptura) Hath been used for Hedge-breaking: In which Sense it is mentioned in the Laws of K. *Alfred*, cap. 45.

Eorle, Sax. for Earl, &c. though made Use of by the Danes for Baron. See Earl.

Epimania, A Word signifying Expences or Gifts. *Blount.*

Episcopalia, Synodals, or other customary Payments from the Clergy to their Bishop or Diocesan: Which were formerly collected by the rural Deans, and by them transmitted to the Bishop. — Episcopalia reddat, vel reddere faciatis de Ecclesiis Decanatus sui, &c. *Mon. Angl.* tom. 3, p. 61. These customary Payments have been otherwise called Onus Episcopale; and were remitted by special Privilege to free Churches and Chapels of the King's Foundation, which were exempt from Episcopal Jurisdiction. *Kennet's Gloss.*

Eques Auratus, (Lat.) Is taken for a Knight; because anciently none but Knights were allowed to beautify and gild their Armour with Gold: But this Word is rather used by the Heralds than Lawyers; for Eques Auratus is not a Word in our Law for Knight, but Miles, and formerly Chevalier. 4 *Inst.* 5.

Equilocus, An Equal; it is mentioned in *Simoon Dunelm.* Anno 882.

Equity, (Equitas, quasi Aequalitas) Is defined to be a Correction, or Qualification, of the Law generally made in that Part wherein it faileth, or is too severe. And likewise signifies the Extension of the Words of the Law to Cases unexpressed, yet having the same Reason; so that where one Thing is enacted by Statute, all other Things are enacted that are of the like Degree: For Example; The Statute of *Glouc.* gives Action of Waste against him that holds Lands for Life or Years; and by the Equity thereof, a Man shall have Action of Waste against a Tenant that holds but for one Year, or Half-year, which is without the Words of the Act, but within the Meaning of it; and the Words that enact the one, by Equity enact the other. *Terms de Ley* 303, 304. So that Equity is of two Kinds; the one doth abridge and take from the Letter of the Law, and the other enlarge and add thereto. *Equitas est perfecta quadam Ratio, quae Jus scriptum Interpretatur & Emendat.* 1 *Inst.* 24. And Statutes may be construed according to Equity; especially where they give Remedy for Wrong, or are for Expedition of Justice, &c. 1 *Inst.* 24, 54, 76.

76. 2 *Inst.* 106, 107, &c. *Equity* seems to be the Interpoling *Law of Reason*, exercised by the Lord Chancellor in extraordinary Matters, to do *equal Justice*, and by supplying the Defects of the Law, give Remedy in all Cases.

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 Proceedings in the Court of Chancery. But the Chancery cannot shorten the Time of Payment of the Mortgage Money, where it is limited by express Covenant; tho' it may lengthen it: And then upon Nonpayment, the Practice is to foreclose the *Equity of Redemption* of the Mortgagor. 2 *Ventr.* 365. To foreclose the *Equity*, a Bill in Chancery is exhibited; to which an Answer is put in, and a Decree being obtained, a Master in Chancery is to certify what is due for Principal, Interest and Costs, which is to be paid at a Time prefixed by the Decree, whereupon the Premises is to be reconveyed to the Mortgagor; or in Default of Payment, the Mortgagor is ordered to be foreclosed from all *Equity of Redemption*, and to convey the Premises absolutely to the Mortgagee. *Law of Securities*, pag. 129, 133. A Fine and Non-claim will bar *Equity of Redemption*: But in a common Mortgage, a Covenant to refrain it shall not be regarded in Chancery. 2 *Ventr.* 365. Where Persons having once mortgaged Lands, mortgage the same a second Time, without discovering the first Mortgage, they forfeit their *Equity of Redemption*, and the second Mortgagee may redeem, &c. And it is the same if Persons borrowing Money, enter a Judgment, &c. for Security, and afterwards borrow more Money, and mortgage Lands to the second Lender, without giving Notice of the Judgment, or paying the same off in six Months, &c. by Stat. 4 & 5 *W. & M. c.* 16.

Equus Coopertus, A Horse equipp'd with Saddle and Furniture. — *Inveniendū pro quolibet Feodo unum Equum Coopertum, vel duos Discooper- tos*, &c. Inq. 16 Ed. 1. de Baronia de Dunham Massy.

Ermine, (From the Fr. *Ermine*) A Fur of great Value, much used in *Robes of State*.

Ern, The Names of Places ending in *Ern*, is said to signify a melancholy Situation; from the Sax. *Ern*, i. e. *Locus Secretus*.

Ernes. The loose scattered Ears of Corn, that are left on the Ground, after the Binding or Cocking of it: It is derived from the old *Teuton.* *Ernde*, Harvest; *Ernden*, to cut or mow Corn: Hence to *ern* is in some Places to glean. Kennet's Gloss.

Errant, (*Itinerant*) Is applied to Justices of the Circuit, and Bailiffs at large, &c. See *Eyre*.

Erraticum, A Waif or Stray; Erring or wandering Beast. *Constit. Norman. A. D.* 1080.

Error, (Fr. *Erreur*) Signifies an Error in Pleading, or Process, &c. whereupon the Writ which is brought for Remedy of this Oversight, is called a *Writ of Error*, in Lat. *De Errore Corrigen- do*. And a Writ of Error is a Writ which issues out of Chancery, and lies where any one is grieved by the Proceedings and Judgment in any Court of Record, having Power to hold Plea of Debt or Trespass above 40 s. It is returnable in the King's Bench; and if upon the Transcript of the Record into B. R. it appears to the Court that there is Error in the Record or Process, or in

giving of Judgment, then the Judgment is reversed: But if there appear to be none, then is the Judgment affirmed with double Costs. 1 *Lill. Abr.* 518. This is borrowed from the French Practice, which is called *Proposition de Erreur*; and lies in great Diversity of Cases: Also there is a Writ of Error to reverse a Fine, &c. Erroneous Judgments given in the Court of B. R. were only reformed by the Parliament till the Stat. 27 *Eliz. cap.* 8. By that Statute, a Writ of Error lies out of the Chancery upon all Judgments given in the King's Bench, when the Suit is by Bill, (except the King is a Party to the Suit) returnable in the Exchequer Chamber, before the Judges of the Common Pleas, and Barons of the Exchequer, &c. who may examine the Errors and reverse or affirm the Judgment; other than for Errors concerning the Jurisdiction of the Court, or Want of Form in Writs, Pleadings, &c. and after the Errors are examined, and Judgment affirmed or reversed, the Record is sent back to the King's Bench, to proceed and award Execution: But if the Suit is by Original Writ; or on *Qui tam*, &c. where the King is Party, Writ of Error lies only to the Parliament. Stat. *Ibid.* To reverse a Judgment given in the Court of Common Pleas, the Writ of Error is made returnable in the King's Bench; and Error is not to be brought in Parliament: But where a Writ of Error is brought in B. R. upon a Judgment given in C. B. and the Judgment is reversed or affirmed in B. R. the Party grieved may have Writ of Error returnable in Parliament. 31 *El. c.* 1. 1 *Lill. Abr.* 519, 521. Erroneous Judgment in the Court of Exchequer is to be examined by the Lord Chancellor, &c. taking to them the Justices and such other sage Persons as they think fit; and if any Error be found, they shall correct the Rolls, and send them into the Exchequer, and make Execution, &c. Stat. 31 *Ed.* 3. *cap.* 12. Not only on Reversing or Affirming a Judgment, the Exchequer Chamber is to send back the Record into B. R. but also if the Plaintiff in the Writ of Error is Nonsuit, or if the Suit is discontinued in the Court of Exchequer Chamber, the Record shall be sent back; and the Court of Exchequer shall give Costs and Damages to the Plaintiff in the Original Action for his Delay, &c. though if the Plaintiff in Error was Plaintiff in the Original Action, there no Costs shall be given. 2 *And.* 122. 2 *Nelf. Abr.* 707. Writ of Error will not lie in the Exchequer Chamber upon a Judgment in B. R. but in Actions of Debt, Detinue, Trespass on the Case, Covenant and Ejectment; which are the Actions mentioned in the Stat. 27 *Eliz.* A Writ of Error lies not in the Exchequer Chamber on Judgment in Replevin in B. R. nor on Judgment in Action of *Scandalum Magnatum*. 2 *Nelf.* 708, 709. But on Judgment in Replevin in C. B. there may be Writ of Error brought in B. R. The Stat. 27 *Eliz. c.* 8. is only to relieve on the Merits of the Cause, as it stood on the first Judgment, and there can be no new Writ of Error after that Judgment is affirmed or reversed; so that if the Merits of the first Judgment be examined before a *Scire facias* brought, the Exchequer Chamber having executed their Power, can do nothing in it. 1 *Salk.* 263. Error doth not lie in the Exchequer Chamber upon a Judgment given on a *Scire facias* in B. R. 1 *Lill.* 530. The Exchequer Chamber doth not award a *Scire facias ad Audiendum Errores*; but Notice is given to the Parties concerned.

cerned. 1 *Ventr.* 34. Where a Writ of *Error* determines in the Exchequer Chamber, by Abatement or Discontinuance, the Judgment is not again in *B. R.* till a *Remittitur* is entered. 1 *Salk.* 261. The Court of Exchequer Chamber have not any Authority, but to reverse or affirm the Judgment, &c. for they cannot make Execution. *Cro. Eliz.* 108. But where Judgment is given for the Defendant, and the Plaintiff brings a Writ of *Error*; if the Judgment is reversed, the Court which reverses the Judgment shall give Judgment for the Plaintiff, as the other Court ought to have done. *Telv.* 117, 118. If erroneous Judgment be had by Consent of Parties, it may be reversed in the Exchequer Chamber; for Consent of Parties may not change the Law; but if the Consent is entered upon and made Part of the Record, it may be good. *Hob.* 5. *Cro. El.* 664. It has been held, that an *Error* in Fact cannot be assign'd in the Exchequer Chamber: But by some Authorities *Errors* in Fact may be assigned as *Errors* in Law. 2 *Mod.* 194. 2 *Nelf. Abr.* 708. *Error de Record* *Quod coram vobis Residet* lies in the Court of *B. R.* for *Errors* in Fact in the Judgment of the same Court; as Nonage of the Parties, Want of an Original, &c. which doth not proceed from the *Error* of the Judges, and this Writ is allowed without Bail: But a Writ of this Kind doth not lie for *Error* in Matter of Law, when it would be reversing their own Judgments. *Cro. Jac.* 254. And *Errors* in Fact may be corrected in *C. B.* the same Term, without this Writ, which lies not in the Exchequer Chamber. *Ibid.* 620. If Judgment is given in *B. R.* in Civil Actions, a Writ of *Error* will not lie in the same Court, but only for *Errors* in Fact triable by a Jury; but upon a Judgment in criminal Cases, *Error* will lie in *B. R.* whether the *Error* be in Fact or in Law; though it lies also in Parliament. 3 *Salk.* 147. Where a Judgment in *C. B.* is affirm'd upon a Writ of *Error* in *B. R.* and afterwards a *Scire fac.* is brought on that Judgment, and the Plaintiff hath Judgment thereon; no Writ of *Error* lieth in the Exchequer Chamber, because the Record was not in *B. R.* by Bill, but by Writ of *Error*. 1 *Roll. Rep.* 264. 3 *Salk.* 148. On Judgment given in the Court of King's Bench in *Ireland*, even after *Error* brought and determined there, Writ of *Error* may be sued in the King's Bench in *England*. 2 *Nelf.* 730. When Judgment is given in *B. R.* for the Plaintiff in *Errors*, there shall be only a *Judicium Revocetur*, &c. entered, with Costs: If for the Defendant in *Errors*, that the Plaintiff *Nil capiat per Breve suum de Errore*. A Writ of *Error* was brought on a Judgment in *C. B.* after a Trial at Bar, and Bills of Exception to the Evidence. *Lutw.* 905. The Chief Justice of *B. R.* &c. or the eldest Judge ought to allow a Writ of *Error*; which is in Judgment of Law a *Supersedeas* until the *Errors* are examined, and the Judgment affirmed or reversed. *Cro. Jac.* 534. A Plaintiff having erroneous Judgment may reverse it, as well as a Defendant; and a Judgment may be reversed, and new Judgment given for the Plaintiff. 1 *Lev.* 310. Also if a Judgment is reversed, the Plaintiff may bring a new Action for the same Cause. And Debt lies upon a Judgment in *B. R.* after the Writ of *Error* brought; which is only a *Supersedeas* to the Execution. 1 *Lev.* 153. *Error* lies not on an interlocutory Judgment; it must be a final Judgment after Verdict, &c. A Writ of *Error* may not be brought to reverse a Judgment by Default,

before a Writ of Inquiry of Damages issues and is executed, that the Verdict of the Jury and interlocutory Judgment may be made a perfect final Judgment, upon which alone a Writ of *Error* must be brought. 1 *Lill.* 522. But on Judgment by Default in Ejectment, it lies before a Writ of Inquiry of Damages, and Judgment thereupon, because in this Case the Judgment already is perfect to recover the Term. *Latch.* 212. Where a Writ of *Error* is brought to reverse a Judgment in an inferior Court, tho' the Record is not certified as it ought, yet Execution cannot be sued; but on Certificate of the Neglect, &c. a Writ of *Executione Judicii* may be issued. 1 *Lill.* 526. And if a Writ of *Error* to reverse a Judgment be discontinued for Want of Prosecution; Execution cannot be had upon the Judgment, until the Discontinuance is certified from the Court where discontinued. *Ibid.* 518. The Want of a Bill in *B. R.* is *Error* upon a Judgment by Confession, or Default, (but not after a Verdict) because the Bill is the original Process there. *Ibid.* For Variance between the original Writ and Declaration; or Want of an Original, &c. And where Proceedings are so erroneous, as not to be amended, for Faults in Verdicts, Executions, &c. And where any Thing material is omitted in a Judgment, Writ of *Error* lies, and the Judgment shall be reversed: So where the Stiles of inferior Courts are wrong or insufficiently named, &c. their Judgments may be reversed. But where Faults are small, they sometimes pass as *Vitium Clerici*. 2 *Nelf. Abr.* 714, 715, 721, &c. 728. After *In nullo est Erratum* pleaded, the Party affirms the Record to be perfect, and he is foreclosed to say there is *Error* in it: Though the Court is not restrained from examining into it. 1 *Salk.* 270. A Writ of *Error* cannot be brought on any Record which is not a Judgment. 1 *Salk.* 145. In Writ of *Error*, when the Record comes into Court, if the Plaintiff all that Term do not assign his *Errors*; or if he do it, and omit to sue a *Scire facias ad audiendum Errores*, against the Defendant in *Errors*, returnable the same Term, or the next, all the Matter is discontinued; and the next Term a new Writ of *Error* is to be sued out upon the Record directed to the same Justices, &c. *F. N. B.* 20. If he that brings Writ of *Error* discontinues before the Defendant in the Writ of *Error* pleads to it, he may have a new Writ of *Error*; but if he discontinue after the Defendant hath pleaded *In nullo est Erratum*, he may not have a new Writ. 1 *Lill.* 522. *Errors* are to be assign'd in the Term, or the Writ of *Error* will be quashed. *Ibid.* 524. When the Record is in Court by Writ of *Error*, the Plaintiff in *Errors* is to assign his *Errors*; and shall have a *Scire facias* before the Record is entered: And the Manner of assigning *Errors*, according to the antient Practice is to put a Bill into the Court, and to say in the Bill, *in hoc Erratum est*, &c. shewing in certain in what Things. *F. N. B.* 20, 22. The Party bringing a Writ of *Error* is to cause the Roll where the Judgment is entered to be mark'd with the Word *Error* in the Margin, that the other Party may have Notice on the Record that the Writ of *Error* is brought; and this Marking of the Roll, on giving Notice thereof, is as it were a *Supersedeas* in it self to hinder Execution: Tho' a *Supersedeas* is to be made out, allowed with the Sheriff of the County: And the Plaintiff's Attorney is not obliged to search the Record, whether Writ of *Error* be brought, or not; but may

may make out Execution upon the Judgment, if no *Superfedeas* be taken forth, or he have no Notice of the Writ of Error. *Trin. 24 Car. B. R.* The Assigning general Errors is to say, that the Declaration, &c. is not sufficient in Law; and that Judgment was given for the Plaintiff, where it ought to have been for the Defendant: And the Errors of a Judgment are now to be assigned on the Record, to appear with it to the Court. It must appear in the Record, that Judgment was given for a Matter out of the Jurisdiction of the Court, for the Plaintiff in Error to assign that for Error. *1 Lill. 523.* That shall not be assigned for Error which might have been pleaded to the Action. *Roll. Rep. 50, 88.* And Judgment can't be reversed in Part, and stand good as to other Part; or be reversed as to one Party, and remain good against the Rest. But if there be Error in awarding Execution, the Execution only shall be reversed, and not the Judgment. *Hob. 90.* Any Person damnified by Error in a Record, or that may be supposed to be injured by it, may bring Writ of Error to reverse it, whether he be Party, or no; but Principal and Bail cannot join in a Writ of Error: And where there are several Defendants, if one of them release the Errors, he may be summoned and seivered, and the others may reverse the Judgment. *6 Rep. 26. Hob. 72.* By Statute, he that brings Writ of Error to reverse a Judgment in a superior Court, in all Cases after a Verdict; and in all Actions of Debt, by Confession or Default; and Actions of Debt upon Bond for Payment of Money only, must put in good Sureties to prosecute his Writ of Error with Effect, and pay the Debt and Damages if Judgment be affirmed: But inferior Courts, as well upon Verdicts as other Judgments by Default, &c. have their Writs of Error allowed without putting in Bail, they being omitted in the Statute *3 Jac. 1. c. 8.* If Bail be not put in, on Writ of Error brought upon a Judgment in the Courts at Westminster, the Writ of Error is no *Superfedeas* to the Execution; though such Writ is in Being until a *Nolle prosequi* is entered, or Judgment affirmed, &c. And it is the same where insufficient Bail is given, on Rule to put in better Bail, or justify those put in; which if the Plaintiff doth not do, Execution is ordered upon the Judgment, with a *Non obstante* to the Writ of Error, &c. *Mich. 9 W. B. R.* A Plaintiff in Error is, in the Time appointed by the Rule for that Purpose, to certify the Record into B. R. or the Court will grant a *Nolle Prosequi* on the Writ of Error. *Mich. 22 Car. B. R.* But the Court will not let the Plaintiff in Errors quash his own Writ of Error; tho' they may grant Leave to discontinue it. *5 Mod. 67.* Where a Verdict is for a Defendant in Errors, and Judgment is affirm'd, Costs are allowed by Stat. *3 H. 7. c. 10. occasione dilationis Executionis.* And by *4 & 5 Ann. c. 16.* Upon quashing Writs of Error, for Defect or Variance from the Record, &c. the Defendant is to have Costs as if Judgment were affirm'd. When a Writ of Error is not in *dilatione Executionis*, as where it is brought after the Execution is executed, the Plaintiff shall not have Damages and Costs. *Cro. Jac. 636.* No Person can reverse a Thing for Error, unless the Error be to his Prejudice. *5 Rep. 38.* One in Remainder may have Writ of Error upon Judgment given against Tenant in Tail: But he in Reversion or Remainder shall not have Writ of Error, in the Lifetime of Tenant for Life, on Judgment given a-

gainst such Tenant, because they cannot be Parties grieved in his Time. *2 Nelf. Abr. 712.* Where a Plaintiff in Error dies, the Writ abates; but 'tis said not where the Defendant dies. *Yelv. 112.* By *30 Car. 2. c. 6.* In Actions real, personal, and mix'd, the Death of either Party between Verdict and Judgment, shall not be alledged for Error. No Fine or Recovery, nor any Judgment in a Real Action, &c. shall be reversed for Error, except the Writ of Error be commenced within twenty Years, saving the Right of Infants, &c. *10 & 11 W. 3. c. 14.* If there be not an Original; or not proper Writs of Covenant, or if there be any Fraud, &c. Writ of Error may be brought to make the Fine void. *1 Inst. 9.* By Stat. *5 Geo. c. 13.* it is enacted, That all Writs of Error, wherein there shall be any Variance from the original Record, or other Defect, may be amended by the Court, and made agreeable to the Record: And where any Verdict hath been given, in any Action, Suit, &c. in any of his Majesty's Courts at Westminster, or other Court of Record, the Judgment thereon shall not be stayed or reversed for any Defect or Fault in Form or Substance, in any Bill, Writ, &c. or for Variance in any such Writs from the Declaration or other Proceedings: But this is not to extend to any Appeal of Felony, or Process on Indictments, Informations, &c. See Judgment.

Error in the King's Bench is thus prosecuted: The Writ of Error must be first allowed with the Clerk of the Errors, and then the Proceedings are by *Sci. fac. ad audiend. Errores* against the Plaintiff in the Action, whereon Judgment was obtained; and the Writ of Error being received by the Sheriff to whom directed, he is to give Notice to the Plaintiff in Error to shew Cause why Execution should not be on the Judgment, and make a Return to that Purpose; then a Rule is to be given with the Secondary for the Plaintiff in Error to assign his Errors by such a Day, which if he shall not do before the Rule is out, the Plaintiff in the original Action may take out Execution against him. If the Plaintiff in Error assign Errors in the Record, then the Defendant must plead *in nullo est Erratum*, and thereupon enter the Cause with the Clerk of the Papers, for the Errors to be argued; and if some Part of the Record be not returned, a *Certiorari* must be pray'd to bring it into Court; and if Matters of Fact are alledged in Error, as Nonage, Death of the Plaintiff, &c. a proper Plea must be made thereto, and Issue thereupon taken and tried as in any other Issue: But if only Matters of Law are assign'd, the Errors are argued by Counsel on both Sides, and the Judgment is either reversed or affirmed. When a Judgment is reversed or affirmed in the Exchequer-Chamber, the Transcript of the Record thereof will be remitted back to this Court, to be entered up at the End of the Judgment here: And if such Judgment shall be affirm'd in the Exchequer Chamber, yet a Writ of Error may be brought thereupon returnable in Parliament. *Practif. Solic. 252, 253.* If you would bring a Writ of Error in Parliament to reverse a Judgment in B. R. there must be a Petition to the King for his Warrant, which Petition has the Allowance of the Attorney General, and then the King writes on the Top of it *Fiat Justitia*; whereupon a Writ of Errors is made out by the Clerk of the Errors, (who hath 4*l.* Fee, and the King's Warrant costs 5*l.*) And then the Lord Chief Justice

of this Court carries the Record, and a Transcript thereof, up to the House of Lords in full Parliament, and after they are examined there, leaves the Transcript with the Lords, but brings back the Record: And this being done, the Attorney for the Defendant in Errors, gets some Lord to move that the Plaintiff in Errors may assign his Errors; but if for the Plaintiff, Motion is to be made that upon his Assigning Errors, the Defendant may appear and make his Defence, and Counsel be heard on both Sides: Then after the Judgment is either affirm'd or reversed, the Clerk of the Parliament remands the Transcript of the Record into B. R. with the Affirmation or Reversal thereof, to be entered upon the Record of the said Court, which Court, if affirm'd, awards Execution, &c. *Dyer 385. Practis. Attorn. Edit. 1. p. 117.* A Writ of Error in Parliament is made returnable immediately; or on a Prorogation, *ad proximum Parliamentum*: And it doth not determine by a Prorogation. But if a Parliament is dissolved before the Errors are heard, it is otherwise: And on Motion, Execution hath been granted in B. R. on a Judgment in such a Case, the Record being never out of the Court. *Raym. 5. 2 Nels. Abr. 731.* To bring a Writ of Error in the King's Bench here in England to reverse a Judgment given in the King's Bench in Ireland, a Writ must be procured from the Curfitor, directed to the Chief Justice of the Court of B. R. in Ireland, requiring him to summon the Plaintiff in the Action there, to appear here in this Court, to answer the Errors; whereupon a Transcript of the Record is sent over, (not the Record it self of the Judgment which remains in Ireland): And when the Errors are argued, if the Judgment is reversed, there must go a Writ to the Chief Justice of Ireland to reverse it, commanding him to award Execution; so that the Judgment is not actually reversed here, but there. And where the Judgment in Ireland is affirmed here, there can be no Writ of Execution granted here; but on Affirmance of the Judgment, a Writ goes, reciting all the Proceedings, directed to the Judges of B. R. in Ireland, requiring them to issue Process of Execution. *Cro. Car. 368. 1 Salk. 321.*

Form of a Writ of Error brought in B. R. and Judgment thereupon.

Dominus Rex Mand. Dilecto & fidel. suo R. Eyre Mil. Capital. Justic. suo de Banco breve suum clausum in hac verba, ff. Georgius Dei Gratia, &c. (reciting the whole Record) Postea scilt. die, &c. ven. prad. C. D. per Attorn. suum, & dicit quod in Record. & Process. prad. ac etiam in Redditione Judicii loquel. prad. manifeste est Errat. in hoc videlt. quod per Record. prad. apparet quod Judic. prad. in form. prad. reddit. fuit pro prad. A. B. versus prad. C. D. ubi per Legem Terra Judic. ill. reddi debuisset pro prad. C. D. vers. prefat. A. B. Ideo in eo manifest. est Erratum, Et pet. idem C. D. breve dict. Dom. Regis ad pramuniend. prad. A. B. essend. cor. dict. Domin. Rege auditur. Record. & Process. prad. Et ei conceditur, &c. Per quod praecept. est Vic. prad. quod per probos & legales homines, &c. Scire fac. prefat. A. B. quod sit coram Domino Rege a die, &c. auditur. Record. & Process. prad. Si, &c. Et ulterius, &c. Idem dies dat. est prefat. C. D. &c. Ad quem diem coram Domino Rege apud Westm. ven. prad. C. D. per Attorn. suum prad. & Vic. non mis. inde breve Et prad. A. B. ad eundem diem solemn. exact. per, &c. Attorn. suum scilt. ven.

super quo idem C. D. ut prius dicit quod in Recordo & Process. prad. ac etiam in redditione Judic. prad. Manifeste est Errat. allegando Error. prad. per ipsum in forma prad. allegat. & Pet. qd' Judic. prad. ob. Error. & al. in Record. & Process. prad. existen. revocetur, &c. Et qd' Cur. dict. Dom. Regis hic procedat tam ad Examination. Record. & Process. prad. quam Mater. prad. superius pro Error. assign. Quodq; prad. A. B. ad Error. rejunger. &c. Super quo idem A. B. dic. quod nec in Record. & Process. prad. nec in redditione Judic. prad. in ullo est Erratum, Et pet. quod Cur. Domini Regis hic procedat tam ad Examination. Record. & Process. prad. quam Mater. prad. superius pro Error. assign. Et quod Judic. prad. in omnibus affirmet. Sed quia Cur. dict. Domini Regis nunc hic de Judicio suo de & super pramiss. reddend. nondum advisatur dies inde dat. est partibus prad. coram Domino Rege apud Westm. usque &c. Ad quem Diem coram Domino Rege apud Westm. ven. Partes prad. per Attorn. suos prad. super quo visis & per Cur. Dom. Regis nunc hic plen. intellectis omnibus & singulis Præmissis diligenterq; examinat. & inspect. tam Record. & Process. prad. ac Judic. super eisdem reddit. quam prad. Causis & Mater. per predict. C. D. superius pro Error. assign. pro eo quod videtur Cur. Domini Regis nunc hic quod nec in Record. & Process. prad. nec in reddicon. Judic. prad. in ullo vitiosum aut defectivum exist. ac quod Record. ill. in nullo fuit Erratum, Conf. est quod Judic. prad. in omnibus affirmet. ac in omni robore stet & effectu dictis Causis & Mater. superius pro Error. assign. in aliquo non obstan. Et ulterius per Cur. Domini Regis nunc hic Consideratum est quod prad. A. B. recuperet versus prefat. C. D. Decem Libr. eidem A. B. per Cur. Domini Regis nunc secundum formam statut. in hujusmod. casu nuper Edit. & Provis. adjudicat. pro mis. custag. & dampn. suis que sustinuit occasione dilation. Execucon. Judicii prad. pretextu Prosecucon. prad. brevis de Error. Et qd. prad. A. B. habeat inde Execucon', &c.

If the Judgment be reversed, then it is thus:

PRO eo quod videtur Cur. Domini Regis nunc hic quod in Record. & Process. prad. ac etiam in Redditione Judicii prad. Manifeste est Errat. Conf. est quod Judicium prad. ob Error. ill. & al. in Record. & Process. prad. reversetur adnulletur & penitus pro nullo habeatur Et quod predict. C. D. ad omnia qua occasione Judicii amisit restituatur.

Erthmioletum, An antient Word for a Meeting of the Neighbourhood to compromise Differences among themselves; which was customary in former Days: It is mentioned in *Leg. H. 1. c. 57.*

Esbranchatura, (From the Fr. *Esbrancher*) Cutting off Branches or Boughs in Forests, &c. *Hoved. 784.*

Escaldare, to Scald: *Escaldare Porcos*, Was one of our antient Tenures in Serjeanty; as appears by the Inquisition of the Serjeancies and Knights Fees in the 12th and 13th Years of King John, within the Counties of Essex and Hertford. *Lib. Rub. Scaccar', M.S. 137.*

Escambio, (derived from the Span. *Cambiar*, to change) Was a License granted to make over a Bill of Exchange to another beyond Sea: For by the Stat. 5 R. 2. c. 2. No Merchant ought to exchange or return Money beyond Sea, without the King's License. *Reg. Orig. 194. See Exchange.*

Escape, (*Escapium*, from the Fr. *Eschapper*, i. e. *Effugere*, to fly from) Signifies a violent or privy Evasion out of some lawful Restraint; as where a Person is arrested or imprisoned, and gets away before delivered by due Course of Law. *Staundf. P. C. cap. 26, 27.* And there are two Kinds of

Escapes;

Escapes; voluntary and negligent: Voluntary is when one arrests another for Felony, or other Crime, and lets him go by Consent; in which Case the Party that permits the *Escape* is esteem'd guilty of the Crime committed, and must answer for it: *Negligent Escape* is when one is arrested, and afterwards *escapes* against the Will of him that arrested him, or had him in Custody; and is not pursued by fresh Suit, and taken again before the Party pursuing hath lost Sight of him. *Crompt. Just.* 36. And for these negligent *Escapes*, the Gaoler, &c. is to be fined. The Sheriff is not answerable for the Gaoler, only in Civil Cases; and none shall suffer capitally for the Crime of another, so that a principal Gaoler is only finable for a voluntary *Escape* suffered by his Deputy. 2 *Hawk. P. C.* 135. The Crime of the Prisoner *escaping*, for which the Gaoler is answerable, must be such as it was at the Time of the *Escape*; as where a Person is committed for dangerously Wounding another, it is Trespass only, and not Felony, 'till the Party wounded is dead: And he who suffers another to *escape* who was in Custody for Felony, cannot be arraigned for such *Escape* as for Felony, until the Principal is attainted; but he may be indicted and try'd for Imprison before the Attainder of the Principal: And in High Treason 'tis said the *Escape* is immediately punishable, whether the Party *escaping* be ever convicted, or not. 2 *Hawk. Ibid.* Where an Officer who hath the Custody of a Prisoner charged with and guilty of a capital Crime, doth knowingly give him his Liberty, with an Intent to save him from Trial, &c. he is guilty of a voluntary *Escape*. *Cro. Car.* 492. *S. P. C.* 32. One negligent *Escape* will not amount to a Forfeiture of a Gaoler's Office, as one voluntary one will; but many negligent *Escapes* will do it: And the Fine for suffering a negligent *Escape* of a Person attainted, was by the Common Law of Course 100 l. and in other Cases at the Discretion of the Court. 3 *Lev.* 288. 2 *Lev.* 81. A Gaoler cannot excuse himself by Killing a Prisoner in a Pursuit, as to the Fine, tho' he could not possibly retake him; but shall be fined for the negligent *Escape*, and because the publick Justice is not so well satisfied by such a Killing. 2 *Hawk.* 130. As voluntarily Permitting a Felon to *escape* out of Prison, is Felony; so is the Breaking of a Prison by a Prisoner and *escaping*: If one be committed only on Suspicion of Felony, if a Felony is done, it is Felony to break the Prison and *escape*: And if the Offence appears on Record, as when a Person is committed by the Court, or taken by Virtue of a *Capias* out of B. R. it is Felony to break the Prison and make an *Escape*, tho' the Party is innocent. But if any one by the General Authority which the Law gives him arrests an innocent Person, such Person may rescue himself. 2 *Inst.* 592. 3 *Inst.* 221. *H. P. C.* 109. And a Man must be committed to Prison by lawful *Mittimus*, or Breach of Prison and *Escaping* is not Felony. If a Party is committed for Treason, to break Prison and *escape* is but Felony; but if a Prisoner let out Traitors, it will be Treason. *H. P. C.* 109. 2 *Inst.* 590. Where one is imprisoned for Petit Larceny, or Killing a Man *se Defendendo*, &c. to break Prison and *escape* is not Felony: And if a Prison be set on Fire, not by the Privy of the Prisoner, he may break Prison for the Safety of his Life. 2 *Inst.* 590. A Gaoler refusing to receive a Person arrested by the Constable for Felony, whereby he is let go, is guilty of an

Escape: But there must be an actual Arrest, which Arrest must be justifiable, to make an *Escape*; for if it be for a supposed Crime, where no Crime was committed, and the Party is neither indicted nor appealed, &c. it is no *Escape* to suffer a Person to go at large. *Fitz. Coron.* 224. *Bro. Esca.* 27, 28. If a private Person arrest another for Suspicion of Felony, he is to deliver him to a publick Officer who ought to have the Custody of him; or if he let him go otherwise, it will be an *Escape*. 2 *Hawk.* 138. And if no Officer will receive him, he is to deliver him to the Township where arrested; or get him bailed. Justices of Peace in their Sessions are empowered to inquire of *Escapes* of Persons arrested, and imprisoned for Felony. *Stat. 1 R. 3. c. 3.* To bail a Person not bailable by Law is a negligent *Escape*. *Plowd.* 476. In Civil Actions the Sheriff is answerable for the *Escape* of his Bailiff; as the Bailiff is his Servant: And Action of the Case lies against the Sheriff for an *Escape* upon mesne Process, because the Plaintiff is prejudiced in his Suit by it. *Cro. El.* 623, 625. 1 *Danv. Abr.* 183. But if he is arrested and rescued before brought to Gaol, the Sheriff is not chargeable. 2 *Cro.* 419. Tho' if a Defendant in Execution is rescued, the Sheriff is liable for the whole Debt; and is to have his Remedy against the Rescuer. *Dyer* 241. Where a Person is in Custody on mesne Process, and being outlawed after Judgment at the Suit of another, the Judgment-Creditor brings a Warrant on a *Capias Utlagatum*, and delivers it to the Sheriff's Officer, who hath him in Custody; if the Officer afterwards permits the Person to *escape*, though he refuse to execute the Warrant, the Sheriff is chargeable in Action of the Case. 5 *Rep.* 89. And a Sheriff shall not take Advantage of Error in suing out a proper Process where a Person is arrested, &c. As if a *Ca. sa.* issue after a Year and a Day, without suing out a *Scire facias*, this Error will not excuse the Sheriff in an *Escape*. 2 *Cro.* 288. 1 *Salk.* 273. But though a Sheriff may not take Advantage of an erroneous Process; yet he shall of a void Process, on which it is no *Escape* to let a Prisoner go. If a Prisoner *escapes* who was in Execution, his Creditor may retake him by *Capias ad satisfac.* or bring Action of Debt on the Judgment, or a *Sci. fac.* against him, &c. 1 *Ventr.* 269. 3 *Salk.* 160. A Prisoner taken in Execution makes a tortious *Escape*, the Party at whose Suit he was taken in Execution may have an *Alias Ca. sa.* to take him in Execution again; or Action on the Case against the Sheriff: But if the Sheriff voluntarily permit the *Escape*, Action of Debt is to be brought against the Sheriff: Though some of our Books tell us on such a voluntary *Escape*, the Plaintiff may have a new Execution. 1 *Lill. Abr.* 336. 1 *Lev.* 211. If a Man *escapes*, with the Consent of the Gaoler in a Civil Case, he cannot retake him. 3 *Rep.* 32. For 'tis said the Execution is discharged, so as the Party may not be taken again, or judg'd in Execution by Law. *Hob.* 202. And if he be allowed to go with a Keeper into another County, it is such an *Escape* and Discharge, that if he be there detained out of the Power of the Sheriff, it will be False Imprisonment. *Plowd.* 36. *Dyer* 166. But if a Person be permitted to *escape* by the Sheriff, he may be taken by the Party; for it may be the Sheriff is insufficient to answer. 1 *Ventr.* 4. If the Plaintiff permit the Prisoner to *escape*, he cannot afterwards retake him. And if the Body and Goods, &c. of a Conusor are taken

taken in Execution upon a Statute-Merchant, if the Conussee agree that he shall go at large, it is a Discharge of the whole Execution, and the Conusor shall have his Lands again: Tho' if the Sheriff had permitted him to *escape*, the Execution on the Lands would not be discharged. 2 *Nelf. Abr.* 737. Where a Prisoner *escapes* from the Custody of the Gaoler, he may be retaken: And the Sheriff, &c. may pursue a Person *escaping* into that or any other County; and if he retakes the Prisoner on fresh Pursuit before Action brought, it shall excuse the Sheriff. 3 *Rep.* 44. It hath been adjudged no *Escape* to let a Prisoner go where the Sheriff hath the Prisoner in Custody, if it be before the Return of the Writ: 'Tis sufficient if the Officer have the Party at the Return of the Writ, &c. *Moor* 299. 1 *Salk.* 401. 2 *Nelf.* 739, 740. Yet it hath been held that where a *Habeas Corpus* is granted to bring a Person into Court, if the Sheriff on the Way let him go at large in the County, or carry him round about a great Way, &c. it will be an *Escape*. 1 *Mod.* 116. Fresh Pursuit, after a Year, Inquiry being made after the Prisoner in the mean Time, is good to retake a Prisoner *escaping* in Execution. 8 *Jac. C. B.* The Sheriff may have Action upon the Case against a Prisoner that *escapes* from him. *Cro. El.* 393. And an *Escape* in one Place is an *Escape* in all Places; for a Prisoner being once *escaped*, and at large, it shall be intended he is confined to no Place, so that for *Escape* Action may be brought against the Prisoner in any County. 1 *Lill. Abr.* 537. Action of *Escape* will not lie against the Executor or Administrator of a Sheriff, &c. for an *Escape*, because it was personal, and *Movetur cum Persona*: But it may be otherwise if there be a Judgment recovered against the Sheriff before he died. *Dyer* 322. A Prisoner in Execution should not be allowed to go out of the Gaol; for if he goes out, tho' he returns again, it is an *Escape*. 3 *Rep.* 43, 44. 1 *Inst.* 260. 2 *Inst.* 381. Persons in the *King's Bench* and *Fleet* Prisons, are to be actually detained within the said Prisons: And if they *Escape*, Action of Debt lies against the Warden, &c. *Stat.* 1 R. 2. c. 12. Keepers of Prisons suffering Prisoners to be out of the Rules, (except on Rule of Court, &c.) is an *Escape*; and Persons conniving at an *Escape* shall forfeit 500*l.* &c. by 8 & 9 *W. 3.* c. 26. Also this Statute ordains, that where any Prisoner in Execution *escapes*, the Creditor may have any other new Execution against him. By *Stat.* 5 *Ann.* c. 9. If any Person in Custody for not performing any Decree in Chancery, &c. *escape*, the Party for whom the Money is decreed may have the same Remedy against the Sheriff, as if the Prisoner had been in Custody on Execution. An old Sheriff omits turning over a Prisoner in Execution to the new Sheriff, is said to be an *Escape*; so where there are two Executions against a Man, and in the Indenture of Turning over Mention is made but of one, &c. 3 *Rep.* 71. See *Sheriff*.

Escape Warrant. If any Person committed or charged in Custody in the *King's Bench* or *Fleet Prison*, in Execution, or on mesne Process, &c. go at large: On Oath thereof before a Judge of the Court where the Action was brought, an *Escape Warrant* shall be granted, directed to all Sheriffs, &c. throughout *England*, to retake the Prisoner, and commit him to Gaol where taken, there to remain till the Debt is satisfied: And a

Person may be taken of a *Sunday* upon an *Escape Warrant*. *Stat.* 1 *Ann.* c. 6. And the Judges of the respective Courts may grant Warrants, upon Oath to be made before Persons commissioned by them to take Affidavits in the Country, (such Oath being first filed) as they might do upon Oath made before themselves. 5 *Ann.* c. 9. A Sheriff ought not to receive a Person taken on *Escape Warrant*, &c. from any but an Officer; not from the Rabble, &c. which is illegal. *Pasch.* 3 *Ann.* 3 *Salk.* 149.

Escapio Quietus, Is on *Escape* of Beasts in a Forest; and he that by Charter is *Quietus de Escapio* is delivered from that Punishment which by the Laws of the Forest lieth upon those whose Beasts are found within the Land where forbidden. *Crompt. Jurisd.* 196.

Escapium, Hath been used for any Thing that comes by Chance or Accident. *Cowel.*

Escheat, (*Eschaeta*, from the Fr. *Escheoir*, i. e. Accidere) Signifies any Lands or Tenements that casually fall to a Lord within his Manor, by Way of Forfeiture; or by the Death of his Tenant, leaving no Heir general or special. *Magn. Chart.* c. 31. *Escheat* is also used sometimes for the Place or Circuit, in which the King, or other Lord, hath *Escheats* of his Tenants. *Bract. lib.* 3. *tract.* 2. *cap.* 2. And it is likewise applied to a Writ, which lies where the Tenant having an Estate in Fee-simple in any Lands or Tenements holden of a superior Lord, dies without Heir; in which Case the Lord brings this Writ against him that is in Possession of the Lands after the Death of his Tenant, and shall thereby recover the same in Lieu of his Services. *F. N. B.* 144. In our Law *Escheats* were of two Sorts: 1. *Regal*, Those Forfeitures which belong to our Kings by the antient Rights and Prerogative of the Crown. 2. *Feodal*, which accrue to every Lord of the Fee as well as the King, by Reason of his Seigniority. Where a Person commits Treason, his Estate shall *escheat* and be forfeited to the King: And when a Tenant in Fee-simple committeth Felony, and is attainted, the King shall have Year, Day, and Waste in his Lands, (or rather Year and Day in lieu of Waste) and afterwards it comes to the Lord by *Escheat*. But the Lord may compound with the King, and have the Estate presently. 3 *Inst.* 111. It has been holden, that a Saving against the Corruption of Blood in a Statute concerning Felony, doth by Consequence save the Land to the Heir, so as not to *escheat*, because the *Escheat* to the Lord for Felony is only *pro defectu Tenentis*, occasioned by the Corruption of Blood: But it hath been adjudged, that a Saving against the Corruption of Blood in a Statute concerning Treason, doth not save the Land to the Heir; for in Treason the Land goes to the King by Way of immediate Forfeiture. 3 *Inst.* 47. 1 *Salk.* 85. Inheritances of Things not lying in Tenure, as of Rents, Commons, &c. cannot *escheat* to the Lord, because there is no Tenure; nor descend, by Reason the Blood is corrupted: Tho' they are forfeited to the King by an Attainder of Treason, and the Profits of them shall be also forfeited to the King on an Attainder of Felony, during the Life of the Offender; and after his Death 'tis said the Inheritance shall be extinguished. 2 *Hawk. P. C.* 449. A Person is seized of Lands in Fee holden of a Lord, his Son is attainted of Treason, and the Father dieth, the Land shall *escheat* to the Lord, and not to the King;

King; who cannot have the Land, because the Son who was attainted never had any Thing to forfeit: But the King shall have the *Escheat* of all the Lands whereof the Person attainted of High Treason was seised, of whomsoever they were holden. 1 *Inst.* 13. Husband and Wife, Tenants in special Tail; the Husband is attainted of Treason and executed, leaving Issue; on the Death of the Wife the Lands shall *escheat*, because the Issue in Tail ought to make his Conveyance by Father and Mother, and from the Father he cannot by Reason of the Attainder. *Dyer* 322. If Tenant in Fee-simple is attainted of Treason, and executed, upon his Death the Fee is vested in the King, without Office found; yet he must bring a *Scire facias* against the Tenants: But Lands shall never *escheat* to a Lord of whom they are holden, until Office found. 3 *Rep.* 10. *Escheat* seldom happens to the Lord for Want of an Heir to an Estate; but when it doth, before the Lord enters, the Homage Jury of the Lord's Court ought to present it. 2 *Inst.* 36. Land shall *escheat* to the Lord where Heirs are born after Attainder of Felony. 3 *Rep.* 40. Tho' the King pardons a Felon before Conviction, the Lord shall not have his Lands by *Escheat*; for the Lord hath no Title before Attainder. *Owen* 87. 2 *Nels. Abr.* 744. If on Appeal of Death or other Felony, Process is awarded against the Party, and hanging the Process he conveyeth away the Land, and after is outlawed, the Conveyance is good to defeat the Lord of his *Escheat*: But if where a Person is indicted of Felony, hanging the Process against him, he conveys away his Land, and afterward is outlawed, the Conveyance shall not prevent the Lord of his *Escheat*. 1 *Inst.* 13. See *Corruption of Blood*.

Escheator, (*Escheator*) Was an Officer appointed by the Lord Treasurer in every County, to make Inquests of Titles by *Escheat*; which Inquests were to be taken by good and lawful Men of the County, impanelled by the Sheriff. *Stat.* 14 *Ed.* 3. c. 8. 34 *Ed.* 3. c. 13. 8 *H. 6.* c. 16. These *Escheators* found Offices after the Death of the King's Tenants, which held by Knights-Service, or otherwise of the King; and certified their Inquisitions into the Exchequer, and *Fitzherbert* called them Officers of Record. *F. N. B.* 100. No *Escheator* could continue in his Office above one Year: And whereas before the Statute of *Westm.* 1. cap. 24. *Escheators*, Sheriffs, &c. would seise into the King's Hands the Freehold of the Subjects, and thereby disseise them, by this Act, it is provided that no Seizure can be made of Lands or Tenements into the King's Hands, before Office found. 2 *Inst.* 206. And no Lands can be granted before the King's Title is found by Inquisition. 18 *H. 6.* c. 6. The Office of *Escheator* is an antient Office, and was formerly of great Use to the Crown; but having its chief Dependence on the Court of Wards, which is taken away by Act of Parliament, it is now in a Manner out of Date. 4 *Inst.* 225. There was antiently an Officer called *Escheator of the Jews*. *Clau.* 4 *Ed.* 1. m. 7.

Escheccum, A Jury or Inquisition. *Matt. Paris.* Anno 1240.

Eschipare, To build or equip. — *Naves bene Eschipatas bonis & probis Marinellis.* Du Cange. See *Eskippamentum*.

Escrow, Is a Deed delivered to a third Person, to be the Deed of the Party making it, upon a future Condition, when such a Thing is per-

form'd; and then it is to be delivered to the Party to whom made. It is to be delivered to a Stranger, mentioning the Condition; and has Relation to the first Delivery. 2 *Roll. Abr.* 25, 26. 1 *Inst.* 31.

Escuage, (*Scutagium*, from the Fr. *Escu*, a Shield) Signifies a Kind of Knight's Service, called *Service of the Shield*, whereby the Tenant was bound to follow his Lord into the Wars at his own Charge. It is also sometimes taken for that Duty or Payment, which they who held Lands under this Tenure, were bound to make to the Lord, when they neither went to the Wars, nor provided any other in their Place; being in lieu of all Services. And sometimes *Escuage* signified a reasonable Aid, demanded and levied by the Lord of his Tenants who held in Knights Service, &c. *Stat.* 12 *Car.* 2. c. 24. *F. N. B.* 8. See *Chivalry*.

Escurare, To scour or cleanse. — *Purgare vel Escurare totam Aquam Fossatorum*, &c. *Carta Tho. Episcop.* B. W. dat. 29. Oct. 4 *Ed.* 4.

Esingæ, The Kings of Kent, so called from the first King *Ochta*, who was surnamed *Ese*: He was Grandfather of K. *Ethelbert*.

Eskeatores, (From the Fr. *Escher*) Robbers or Destroyers of other Men's Lands and Fortunes. — *Furatores dicunt etiam quod Latrones*, & *Eskeatores de Terra de*, &c. *Intraverunt*, &c. *Placit.* *Parl.* 20 *Ed.* 1.

Eskippamentum, *Skippage*, Tackle, or Ship Furniture: The Sea-port Towns were to provide certain Ships, *Sumptibus propriis & duplici Eskippamento.* *Sir Rob. Cott.*

Eskippeson, Shipping, or Passage by Sea. *Humphry Earl of Bucks*, in a Deed dated 13 *Feb.* 22 *H. 6.* covenants with *Sir Philip Chetwind*, his Lieutenant of the Castle of *Calais*, to give him Allowance for his Soldiers, *Skippeson* and *Re-skippeson*, viz. Passage and Re-passage by Ship.

Esneey, (*Esneia*, *Dignitas primogeniti*) Is a private Prerogative allow'd to the eldest Coparcener, where an Estate is descended to Daughters for Want of Heir Male, to chuse first after the Inheritance is divided. *Fleta*, lib. 5. cap. 10. *Fus Esneia* is *Fus Primogenitura*; in which Sense it may be extended to the eldest Son, and his Issue, holding first: In the Statute of *Marlbridge*, cap. 9. it is call'd, *Initia pars Hereditatis*. *Co. Lit.* 166.

Esperbarius, (Fr. *Eservier*) A Spar-Hawk. *Chart. Forest.* cap. 4. — *Reddit. solut.* *Willielmo T. ad Manerium suum de*, &c. *pro omnibus serviciis unum Espervarium ad Festum*, &c. Anno 35 *H. 6.*

Esplees, (*Expletie*, from *Expleo*) Are the Products which Ground or Land, &c. yield; as the Hay of the Meadows, the Herbage of the Pasture, Corn of the Arable, Rents, Services, &c. And of an Advowson, the Taking of Tithes in gross by the Parson; of Wood, the Selling of Wood; of an Orchard, the Fruit growing there; of a Mill, the Taking of Toll, &c. These and such like Issues are term'd *Esplees*. And it is observ'd, that in a Writ of Right of Land, Advowson, &c. the Demandant ought to alledge in his Count, that he or his Ancestors took the *Esplees* of the Thing in Demand; otherwise the Pleading will not be good. *Terms de Ley* 310. Sometimes this Word hath been applied to the Farm, or Lands, &c. themselves. — *Dominus E. habebit omnia Expletias & Proficua de Corona emergentia.* *Plac. Parl.* 30 *Ed.* 1.

Espousals, (*Sponsalia*) Are a Contract or mutual Promise between a Man and a Woman to marry

marry each other; and where Marriages may be consummated, *Esponsals* go before them. Marriage or Matrimony is said to be an *Esposual de presenti*, and a Conjunction of Man and Woman in a constant Society. *Wood's Inst.* 57. See *Matrimony*.

Esquire, (From the Fr. *Escu*, and the Lat. *Scutum*, in Greek Σκῦτον) Which signifies an Hide of which *Shields* were antiently made, and afterwards covered: For here in the Time of the Saxons, the Shields had a Covering of Leather; so that an *Esquire* was originally he who attending a Knight in Time of War, did carry his *Shield*, whence he was called *Escuier* in French, and *Scutifer* or *Armiger*, i. e. Armour-bearer in Latin. *Hotoman* saith, that those which the French call *Esquires*, were a military Kind of Vassals, having *Fus Scuti*, viz. Liberty to bear a Shield, and in it the Ensigns of their Family, in Token of their Gentility or Dignity: But this Addition hath not of long Time had any Relation to the Office or Employment of the Person to whom it hath been attributed, as to carrying of Arms, &c. but been meerly a Title of Dignity, and next in Degree to a Knight. Those to whom this Title is now of Right due, are all the younger Sons of Noblemen, and the eldest Sons of such younger Sons; the eldest Sons of Knights, and their eldest Sons: The Officers of the King's Courts, and of the King's Household; Counsellors at Law; Justices of Peace, &c. But these latter are *Esquires* in Reputation; and he who is a Justice of Peace, has this Title only during the Time he is in Commission, and no longer, if he be not otherwise qualified to bear it. A Sheriff of a County being a superior Officer, retains the Title of *Esquire* during his Life; in Respect of the great Trust he hath in the Commonwealth. The chief of some antient Families are *Esquires* by Prescription; and in late Acts of Parliament for Poll-Money, many wealthy Persons (commonly reputed to be such) were rank'd among the *Esquires* of this Kingdom. *Blount*.

Esquires of the King, Are such who have the Title by *Creation*: These, when they are created, have put about their Necks a Collar of SS. and a Pair of *Silver Spurs* bestowed on them: And they were wont to bear before the Prince in War, a *Shield* or *Launce*. There are four *Esquires of the King's Body*, to attend on his Majesty's Person. *Camd.* 111.

Exendi quietum de Tolonio, A Writ to be quit of Toll, and lies for Citizens and Burgeses of any City or Town that by Charter or Prescription ought to be exempted from Toll, where the same is exacted of them. *Reg. Orig.* 258,

Excoisors, Are Persons appointed by a Court of Law, to whom a Writ of *Venire facias* is directed to impanel a *Jury*, on *Challenge* to the Sheriff and Coroners; who return the Writ in their own Names, with a Panel of the Jurors Names. 15 E. 4. 24. pl. 4.

Excoim, (*Excoimium*, Fr. *Excoine*) Signifies an *Excuse* for him that is summoned to appear and Answer to an Action, or to perform Suit to a Court-Baron, &c. by Reason of Sickness and Infirmary, or other just Cause of Absence. And the Causes that serve to *Excoim* are divers, yet drawn chiefly to five Heads; 1. *Excoim de ultra Mare*, whereby the Defendant shall have forty Days. 2. *De Terra Sancta*, where the Defendant shall have a Year and a Day. 3. *De malo veniendi*, which is likewise called the *Common Excoim*. 4. *De Malo*

Lefti, wherein the Defendant may by Writ be viewed by four Knights. 5. *De servitio Regis. Bract. lib. 5.* Britton, cap. 122. *Fleta*, lib. 6. After Issue joined in Dower, *Quare Impedit*, &c. one *Excoim* only shall be allowed. *Stat. 52 H. 3. c. 13.* And in Writs of Affise, Attaints, &c. after the Tenant hath appeared, he shall not be *excoim'd*; but the Inquest shall be taken by Default. 3 E. 1. c. 42. *Excoim ultra Mare* shall not be allow'd, if the Tenant be within the four Seas; but it shall be turned to a Default. c. 44. There is no *Excoim* permitted for an Appellant. 13 Ed. 1. Nor doth *Excoim* lie where any Judgment is given; or where the Party is distrained by his Lands; the Sheriff is commanded to make him appear; after the Party is seen in Court, &c. 12 E. 2. And *Excoim de servitio Regis* lieth not where the Party is a Woman; in a Writ of Dower; where the Party hath an Attorney in his Suit, &c. *Ibid.* *Excoim* is a Kind of Imparlance, or a Craving of a longer Time, that lies in real, personal, and mix'd Actions. 1 *Inst.* 138. And the Plaintiff as well as Defendant shall be *excoim'd*, to save his Default. 1 *Lill.* 540. The *Excoim-Day* in Court is regularly the first Day of the Term; but the fourth Day after is allow'd of Favour. 1 *Lill.* 540.

Excoim de Malo Mille, Is when the Defendant is in Court the first Day; but gone without Pleading, and being afterwards surprized by Sickness, &c. cannot attend, but sends two *Excoimners*, who openly protest in Court that he is detained by Sickness in such a Village that he cannot come, *pro lucrari* & *pro perdere*; and this will be admitted, for it lieth on the Plaintiff to prove whether the *Excoim* is true, or not.

Excoims and Proffers, Words used in the Statute 32 H. 8. cap. 21. See *Profer*.

Establishment of Dower, Is the Assurance or Settlement of Dower, made to the Wife by the Husband, on Marriage: And *Assignment of Dower*, signifies the Setting it out by the Heir afterwards, according to the Establishment. *Brit. cap.* 102, 103.

Estache, (From the Fr. *Estacher*, to fasten) Is used for a Bridge, or Stank of Stone and Timber. *Cowel*.

Estandard, or *Standard*, An Ensign for Horsemen in War. See *Standard*.

Estate, (Fr. *Estat*, Lat. *Fus*) Signifies that Title or Interest which a Man hath in Lands or Tenements, &c. And *Estates* are acquired divers Ways, viz. by *Discent* from a Father to the Son, &c. *Conveyance*, or Grant from one Man to another; by *Gift* or *Purchase*; *Deed* or *Will*: And a Fee-simple is the largest *Estate* that can be in Law. 1 *Lill.* 541. *Estates* are *Real* or *Personal*, &c.

Estoppel, (From the Fr. *Estouper*, i. e. *Oppilare*, *obstipare*) Is an Impediment or Bar of an Action arising from a Man's own Fact: Or where he is forbidden by Law to speak against his own Deed; for by his Act or Acceptance he may be *estopp'd* to alledge or plead the Truth. *F. N. B.* 142. *Co. Lit.* 352. If a Person is bound in an Obligation by the Name of A. B. and is afterwards sued by that Name on the Obligation; now he shall not be received to say in Abatement, that he is misnamed, but shall answer according to the Obligation, tho' it be wrong; and so far as he is the same Person that was bound, he is *estopped* and forbidden in Law to say contrary to his own Deed; and otherwise he might take Advantage of his own Wrong, which the Law will not suffer. *Terms de Ley* 314. If a Man enter into Bond, with

with Condition to give to another all the Goods which were devised to him by his Father; in this Case the Obligor is estopped to plead that the Father made no Will, but he may plead that he had not any Goods devised to him by his Father. 2 *Nelf. Abr.* 751. In a Deed, all Parties are estopped to say any Thing against what is contained in it: It estops a Lessee, to say that the Lessor had Nothing in the Land, &c. And Parties and Privies are bound by *Estoppel. Lit.* 58. 1 *Inst.* 352. 4 *Rep.* 53. But in *Estoppels*, both Parties must be estopped; and therefore where an Infant, or Feme Covert, make a Lease, they are not estopped to say that 'tis not their Deed, because they are not bound by it; and as to them it is void. *Cro. Eliz.* 36. And though *Estoppels* conclude Parties to say the Truth; yet Jurors are not concluded, who are sworn *ad veritatem de & super premissis dicendam*: For they may find any Thing that is out of the Record; and are not estopped to find Truth in a special Verdict. 4 *Rep.* 53. *Lutw.* 570. The Recital of a Deed shall not estop a Person, unless it be of a particular Fact, or where it is material, when it may be *Estoppel. Cro. Eliz.* 362. And an *Estoppel* shall bind only the Heir, who claims the Right of him to whom the *Estoppel* was. 8 *Rep.* 53. Acceptance of Rent from a Disseisor by the Disseisee, may be an *Estoppel*: And a Widow accepting less than her Thirds for Dower, is *Estoppel, &c.* 2 *Danv. Abr.* 130, 671. *Estoppels* are to be pleaded, so as to conclude the Plea, and rely on the *Estoppel*; not demand Judgment *Si actio, &c.* 4 *Rep.* 53. Our Books mention three Kinds of *Estoppel, viz.* By Matter of Record, by Matter in Writing, and by Matter in Pais. Co. Lit. 352.

Estovers, (Fr. *Estover*, from the Verb *Estoffer*) Signifies to supply with Necessaries; and is generally used in the Law for Allowances of Wood made to Tenants, comprehending *House-bote, Hedge-bote* and *Plough-bote*, for Repairs, &c. And in some Manors, the Tenants pay a certain small annual Rent, for *Estovers* out of the Lords Woods. *Westm.* 2. cap. 25. 20 *Car.* 2. cap. 3. This Word hath been taken for Sustenance; as *Bracton* uses it, for that Sustenance or Allowance which a Man committed for Felony, is to have out of his Lands or Goods, for himself and his Family, during his Imprisonment. *Bract. lib.* 3. tract. 2. cap. 18. And the Stat. 6 Ed. 1. c. 3. applies it to an Allowance in Meat, Clothes, &c. In which Sense, it has been used for a Wife's Alimony. See *Common of Estovers*.

Estray, (*Extrahura*, from the old Fr. *Estrayeur*) Is any Beast that is not wild, found within a Lordship, and not own'd by any Man; *Pecus quod elapsum à custode campos pererrat, ignoto Domino*: In which Case if it be cried and proclaimed according to Law in the two next Market-Towns on two Market-Days, and is not claimed by the Owner within a Year and a Day, it belongs to the Lord of the Liberty. *Brit. cap.* 17. And Swans may be *Estray*, as well as Beasts; and are to be proclaimed, &c. 1 *Roll. Abr.* 878. If the Beast stray to another Lordship within the Year, after it hath been an *Estray*, the first Lord cannot retake it, for until the Year and Day be past, and Proclamation made as aforesaid, he hath no Property; and therefore the Possession of the second Lord is good against him. *Wood's Inst.* 213. *Cro. Eliz.* 716. If the Cattle were never proclaimed, the Owner may take them at any Time: And where a Beast is proclaimed as the Law di-

rects, if the Owner claims it in a Year and a Day, he shall have it again; but must pay the Lord for Keeping. 1 *Roll. Abr.* 879. *Finch* 177. An Owner may seize an *Estray*, without telling the Marks, or proving the Property, (which may be done at the Trial if contested) and tendering Amends generally is good in this Case, without shewing the particular Sum; because the Owner of the *Estray* is no Wrong-Doer, and knows not how long it has been in the Possession of the Lord, &c. which makes it different from Trespas, where a certain Sum must be tendered. 2 *Salk.* 686. A Beast *Estray* is not to be used in any Manner, except in case of Necessity; as to milk a Cow, or the like; but not to ride an Horse. *Cro. Jac.* 148. 1 *Roll.* 673. *Estrays* of the Forest are mentioned in the Statute of 27 Hen. 8. cap. 7. The King's Cattle cannot be *Estrays*, or forfeited, &c.

Estreit, (*Extractum*) Is used for the true Copy, or Note of some original Writing or Record, and especially of *Fines, Amercements, &c.* imposed in the Rolls of a Court, to be levied by the Bailiff or other Officer. *F. N. B.* 57, 76. *Stat. Westm.* 2. c. 8. *Estreits* relate to *Fines, &c.* for Crimes and Offences, Defaults and Negligences, of Parties in Suits and Officers, Non-appearance of Defendants and Jurors, &c. And all forfeited Recognizances are to be first *estreated* into the Exchequer, by Sheriffs of Counties; on which Process issues to levy the same to the Use of the King. *Stat.* 22 & 23 *Car.* 2. cap. 22. *Estreits* are to be levied on the right Persons: And Sheriff's *Estreits* must be in two Parts, indented and sealed by the Sheriff, and two Justices of the Peace; who are to view them, and one of them is to remain with the Sheriff, and the other with the Justices. 11 Hen. 7. c. 15. *Estreits* of *Fines*, at the Quarter-Sessions, are to be made by the Justices; and to be double, one whereof is to be delivered to the Sheriff by Indenture. 14 R. 2. cap. 11. *Fines*, Post-*Fines*, Forfeitures, &c. must be *estreated* into the Exchequer twice a Year, on Pain of 50 l. And Officers are to deliver in their Returns of *Estreits* upon Oath. 22 & 23 *Car.* 2. 4 & 5 *W. & M.* 'Tis the Course of the Court of B. R. to send the *Estreits* twice a Year into the Exchequer, viz. on the last Day of the two issuable Terms; but in extraordinary Cases there may be a Rule to *estreat* them sooner. 1 *Salk.* 55. *Amercements* are not usually discharged on Motion, for there ought to be a *Constat* of the *Estreit*; though the Court may give Leave to the Sheriff to compound them. *Ibid.* 54. 1 *Nelf. Abr.* 207.

Estrictatus, Is a Word signifying Streightened. — *Inquirendum est de viis Domini Regis Estrictiatis.* R. *Hoveden*, p. 783.

Estrepiement, (*Estrepiementum*, from the Fr. *Estopier*, *Mutilare*, or from the Lat. *Extirpare*) Is where any Spoil is made by Tenant for Life, upon any Lands or Woods, to the Prejudice of him in Reversion; and also signifies to make Land barren by continual Ploughing. *Stat.* 6 Ed. 1. cap. 13. It seems by the Derivation, that *Estrepiement* is the unreasonable Drawing away the Heart of the Ground, by Ploughing and Sowing it continually, without Manuring or other good Husbandry, whereby it is impaired: And yet *Estopies* signifying *Mutilare*, may no less be applied to the Cutting down Trees, or Lopping them farther than the Law allows. *Cowel.* In ancient Records, we often find *Vastum & Estrepiementum*.

mentum facere : And this Word is used for a Writ, which lies in two Cases ; the one, when a Person having an Action depending, as a *Formedon*, Writ of Right, &c. sues to prohibit the Tenant from making Waste, during the Suit ; the other is for the Demandant, who is adjudged to recover Seisin of the Land in Question, before Execution sued by the Writ *Habere facias possessionem*, to prevent Waste being made till he gets into Possession. *Reg. Orig.* 76. *Reg. Judic.* 33. *F. N. B.* 60, 61. The Writ of *Estrepement* lies properly where the Plaintiff in a real Action, shall not recover Damages by his Action ; and it as it were supplies Damages ; for Damages and Costs may be recovered for Waste, after Writ of *Estrepement* brought. A Writ of *Estrepement* was delivered to the Tenant in Formedon, who notwithstanding committed Waste, and thereupon the Demandant counted upon this Writ ; the Tenant pleaded *Non fecit vastum contra Prohibitionem* ; and it was found by Verdict that he did ; whereupon the Demandant the Plaintiff, had his Damages and Costs. *Moor* 100. This Writ may be sued out with the Original in the Action ; and in some Cases may be brought as well after, as before Judgment, where Execution is not had ; but is usually before Judgment. *2 Inst.* 328. Where Tenants commit Waste in Houses assigned a Feme for Dower, on her bringing Action of Dower, Writ of *Estrepement* lies. *5 Rep.* 115. It also lies in Cases of Disseisins : And where a Writ of Error is brought to reverse a common Recovery, whilst the Writ is depending, *Estrepement* may be awarded to the Tenant ; likewise on a *Scire facias* brought against the Tenants, in Reversal of a Recovery, it will lie. *Cro. Eliz.* 114. *Moor* 622. But pending a Writ of Partition between Coparceners, if the Tenant commit Waste, this Writ will not be granted ; because there is equal Interest between the Parties, and the Writ will not lie, but where the Interest of the Tenant is to be disproved. *Goldsb.* 50. *2 Nels. Abr.* 754. Writ of *Estrepement* is directed to the Tenant and his Servants, or to the Sheriff : And if it be directed to the Tenant and his Servants, and they are duly served with it, if they afterwards commit Waste, they may be committed to Prison : But it is said not to be so, when directed to the Sheriff, because he may raise the *Posse Comitatus* to resist them who make Waste. *Hob.* 85. Though it hath been adjudged, that the Sheriff may likewise imprison Offenders, if he be put to it ; and that he may make a Warrant to others to do it. *5 Rep.* 115. *2 Inst.* 329. The Writ commands the Sheriff, *Quod ad Messuagium, &c. Personaliter accedens totaliter ordinari faciat quod vastum seu Estrepementum de eodem messuagio contra statut. non fiat pendente Placito, &c.* *2 Nels.* 754. In the Chancery, on Filing of a Bill, and before Answer, the Court will grant an Injunction to stay Waste, &c. *1 Lill.* 547.

Etheling or **Ætheling**, (Sax.) Signifies Noble ; and among the Eng. Saxons, it was the Title of the Prince, or King's eldest Son. *Camd.* See *Adeling*.

Evasion, (*Evasio*). Is a subtle Endeavouring to set aside Truth, or to escape the Punishment of the Law ; which will not be endured. If a Person says to another, that he will not strike him, but will give him a Pot of Ale to strike first ; and accordingly he strikes, the Returning of it is punishable ; and if the Person first striking

be killed, it is Murder ; for no Man shall evade the Justice of the Law, by such a Pretence to cover his Malice. *1 Hawk. P. C.* 81. No one may plead Ignorance of the Law to evade it, &c.

Evesdroppers, Are such Persons as stand under the Eves or Walls of a House, by Night or by Day, to hearken after News, and carry it to others, and thereby cause Strife and Contention in the Neighbourhood. *Terms de Ley* 317. They are punished in the Court Leet by Fine, by the Stat. *Westm.* c. 33.

Evection, (From *Evinco*, to overcome) Is a Recovery of Land, &c. by Law. If Land is evicted, before the Time of Payment of Rent on a Lease, no Rent shall be paid by the Lessee. *10 Rep.* 128. Where Lands taken on Extent are evicted or recovered by better Title, the Plaintiff shall have a new Execution. *4 Rep.* 66. If a Widow is evicted of her Dower or Thirds, she shall be endowed in the other Lands of the Heir. *2 Danv. Abr.* 670. And if on an Exchange of Lands, either Party is evicted of the Lands given in Exchange, he may enter on his own Lands. *4 Rep.* 121.

Evidence, (*Evidentia*) Is used in the Law for some Proof, by Testimony of Men on Oath, or by Writings or Records. It is called *Evidence*, because thereby the Point in Issue in a Cause to be tried, is to be made evident to the Jury ; for *Probationes debent esse Evidentes & Perspicua.* *Co. Lit.* 283. The *Evidence* to a Jury ought to be upon the Oaths of Witnesses ; or upon Matters of Record, or by Deeds proved, or other like authentic Matter. *1 Lill. Abr.* 547. And *Evidence* containeth Testimony of Witnesses, and all other Proofs to be given and produced to a Jury for the Finding of any Issue joined between Parties. *1 Inst.* 283. As to Proof by Witnesses, they cannot testify a Negative ; and the Common Law required no certain Number of Witnesses, though they are required by Statute in some Cases : The Testimony of one single *Evidence* is sufficient for the King in all Causes, except for Treason ; where there must be two Witnesses to the same Overt-Act, &c. In all other Criminal Matters, one *Evidence* is enough ; and to a Jury one Witness is sufficient. *3 Inst.* 20. *Mich.* 23 *Car. B. R. Stat.* 7. *W.* 3. *cap.* 3. And sometimes violent Presumption will be admitted for Evidence, without Witnesses ; as where a Person is run through the Body in a House, and one is seen to come out of the House with a bloody Sword, &c. But on this the Court ought not to judge hastily. *1 Inst.* 6, 373. And though presumptive and circumstantial Evidence may be sufficient in Felony ; it is not so in Treason. *State Trials*, Vol. 4. p. 307. The King cannot be a Witness under his Sign Manual, &c. *2 Roll. Abr.* 686. But it has been allowed he may, in Relation to a Promise made in Behalf of another. *Hob.* 213. A Peer produced as an *Evidence*, ought to be sworn. *3 Keb.* 631. It is no Exception to an *Evidence* that he is a Judge, or a Juror, to try the Person ; for a Judge may give Evidence, going off from the Bench. *2 Hawk. P. C.* 432. And a Juror may be an *Evidence* as to his particular Knowledge ; but then it must be on Examination in open Court, not before his Brother Jurors. *1 Lill.* 552. Members of Corporations shall be admitted or refused to give Evidence in Actions brought by Corporations, as their Interest is small or great ; whereby it may be

be judged whether they will be partial or not. 2 *Lev.* 231, 241. But they will not generally be admitted; though Inhabitants not free of the Corporation may be good Witnesses for the Corporation, as their Interest is not concerned; and Members may be disfranchised on these Occasions. *Ibid.* 236. In Actions against Church-wardens or Overseers of the Poor for Recovery of Money mispent on the Parish Account, the Evidence of the Parishioners, not receiving Alms, shall be allowed. *Stat.* 3 & 4 *W. & M.* cap. 11. And in Informations or Indictments for not repairing Highways and Bridges, the Evidence of the Inhabitants of the Town, Corporation, &c. where such Highways lie shall be admitted. 1 *Ann.* cap. 18. A Party interested in the Suit; or a Wife for or against her Husband, a Husband against the Wife, (except in Cases of Treason) may not be Witnesses. 4 *Inst.* 279. Yet it has been adjudged that a Wife may be admitted as an Evidence for the Husband on her being seduced to live with an Adulterer, against the Adulterer; and she may be a Witness to prove a Cheat upon her and her Husband. *Sid.* 431. Kinsmen, though never so near, Tenants, Servants, Masters, Attornies for their Clients, and all others that are not infamous, and which want not Understanding, or are not Parties in Interest, may give Evidence in a Cause; though the Credit of Servants is left to the Jury. 2 *Roll.* Abr. 685. 1 *Ventr.* 243. A Counsellor, Attorney, or Solicitor, is not to be examined as an Evidence against their Clients, because they are obliged to keep their Secrets; but they may be examined, as to any Thing of their own Knowledge before retained, not as Counsel or Attorney, &c. 1 *Ventr.* 97. If the Plaintiff makes one a Defendant in the Suit, on Purpose to impeach his Testimony, under a Pretence of his being a Party in Interest, he may nevertheless be examined *de bene esse*; and if the Plaintiff prove no Cause of Action against him, his Evidence shall be allowed in the Cause. 2 *Lill.* Abr. 701. One that hath a Legacy given him by Will, is not a good Witness to prove the Will; but if he release his Legacy, he may be a good Evidence. *Ibid.* 704. It is the same of a Deed, he that claims any Benefit by it, may not be an Evidence to prove that Deed, in Regard of his Interest: And a Person any Ways concerned in the same Title of Land in Question, will not be admitted as Evidence. *Ibid.* 705. But it has been held that an Heir apparent may be a Witness concerning a Title of Land; and yet a Remainder-man, who hath a present Interest, cannot. 1 *Salk.* 385. In criminal Cases, as of Robbery on the Highway, in Action against the Hundred; in Rapes of Women, or where a Woman is married by Force, &c. a Man or a Woman may be an Evidence in their own Cause. 1 *Ventr.* 243. And in private notorious Cheats, a Person may be an Evidence in his own Cause, where no Body else can be a Witness of the Circumstances of the Fact, but he that suffers. 1 *Salk.* 286. Upon an Information on the Statute against Usury, he that borrows the Money after he hath paid it, may be an Evidence; but not before. *Raym.* 191. An Alien Infidel, may not be an Evidence; but a Jew may, and be sworn on the *Old Testament*. 1 *Inst.* 6. A Quaker shall not be permitted to give Evidence in any criminal Cause: Though on other Occasions, his solemn Affirmation shall be accepted instead of an Oath. *Stat.* 7 & 8 *W.* 3.

cap. 34. Persons convicted of Felony, Perjury, &c. And if one by Judgment hath stood in the Pillory, or been whip'd; for this Infamy he shall not be admitted to give Evidence, whilst the Judgment is in Force: But the Record of Conviction must be produced on objecting against their Testimony; and the Witness shall not be asked any Question to accuse himself, tho' his Credit may be impeached by other Evidences, as to his Character in general, so as not to make Proof of particular Crimes, whereof he hath not been convicted. 3 *Inst.* 108, 219. 3 *Lev.* 426. If after a Man hath stood in the Pillory, &c. he be pardoned, he may be an Evidence: And notwithstanding Judgment of the Pillory infers Infamy at Common Law, by the Civil and Canon Law it imports no Infamy, unless the Cause for which the Person was convicted was infamous; and therefore such may be a good Witness to a Will, if not convicted of any infamous Act. 3 *Lev.* 426, 427. It has been held, that 'tis not standing in the Pillory, disables a Person to give Evidence; but standing there upon a Judgment for an infamous Crime, as Forgery, &c. If for a Libel, a Man may be a Witness. 5 *Mod.* 74. 3 *Nels.* Abr. 557. If a Man be convicted of Felony, and afterwards pardoned, he may be a good Evidence. *Raym.* 369. So where burnt in the Hand, which is *quasi* a Statute-Pardon: And 'tis said 'tis Burning in Hand restores the Offender to his Credit. *Ibid.* 330. A Person who was condemn'd to be hang'd for Burglary, but having a Pardon for Transportation, hath been allowed to be a good Evidence. 5 *Mod.* 18. A Person outlawed for Treason and pardoned, may be an Evidence. *State Trials*, Vol. 3. 585. Persons acquitted, or guilty of the same Crime, (while they remain unconvicted) may be Evidence against their Fellows. *Kel.* 17. But no Evidence ought to be given of what an Accomplice hath said, who is not in the same Indictment. *State Trials*, Vol. 2. 414. An Informer may be a Witness, tho' he is to have Part of the Forfeiture, where no other Witnesses can be had. *Wood's Inst.* 598. A Bail cannot be an Evidence for his Principal. *State Tr.* Vol. 3. 253. A Witness shall not be examined where his Evidence tends to clear or accuse himself of a Crime. *Ibid.* Vol. 1. 557. The Examination of a Witness ought not to be read, where the Evidence himself may be produced. *Ibid.* 526. A Witness shall not be cross examined till he hath gone through the Evidence on the Side wherein produced. *Ibid.* Vol. 2. 772. The Court is to examine the Witnesses, and not the Prisoner or Prosecutors. *Ibid.* Vol. 1. 143. An Evidence shall not be permitted to read his Evidence; but he may look on his Notes to refresh his Memory. *Ibid.* Vol. 4. 45. An Evidence may not recite his Evidence to the Jury, after gone from the Bar, and he hath given his Evidence in Court; if he doth, the Verdict may be set aside. *Cro. Eliz.* 159. One that is to be an Evidence at a Trial, ought not to be examined before the Trial, but by the Consent of both Parties, and a Rule of Court for that Purpose: But if a Witness is not able to attend the Trial, a Judge may excuse his Non-appearance, and certify his Examination. Also if a Person who gave Evidence in a former Trial be dead; upon Proof of his Death, any Person who heard him give Evidence, may be admitted to give the same Evidence between the same Parties; but a Copy of the Record of the Trial when the Evidence was gi-

ven ought to be produced. 3 *Inst.* 2. *Lill. Abr.* 705. A Witness by Hearsay of a Stranger, shall not be allowed; except perhaps to confirm the Evidence of a Witness that spoke of his Knowledge. *Wood's Inst.* 644. And Evidence given at one Trial, has been held not to be Evidence at another Trial. *State. Tr. Vol.* 2. 308, 337. No Evidence is necessary in passing a Bill of Attainder, but private Satisfaction to every one's Conscience is sufficient. *Ibid. Vol.* 1. 676. But the same Evidence is requisite on an Impeachment in Parliament, as in private Courts. *Ibid. Vol.* 4. 311, 318. Members of either House of Parliament may be Witnesses on Impeachments. *Ibid. Vol.* 2. 632. Evidence cannot supply a Defect in the Charge against a Criminal. *Ibid. Vol.* 1. 720. No Evidence ought to be produced against a Man in a Trial for his Life, but what is given in his Presence. *Ibid. Vol.* 4. 277. And Evidence shall not be given against the Prisoner for any other Crime than that for what prosecuted. *Ibid. Vol.* 3. 947. A Prisoner may bring Evidence to prove that the Witnesses gave a different Testimony before a Justice of Peace, or at another Trial: But he may not call Witnesses to disprove what his own Evidences have sworn. *Ibid. Vol.* 2. 623, 792. And no Objection can be made to the Evidence after Verdict given. *Vol.* 4. 35. It is justifiable to maintain or subvert an Evidence; but not to give him any Reward. *Ibid. Vol.* 2. 470. A Witness shall not be examined to any Thing that does not relate to the Matter in Issue. *Ibid. Vol.* 2. 343. And where an Issue is not perfect, no Evidence can be applied, nor can the Justices proceed to Trial. *Brownl.* 2. 47, 435. If Evidence doth not warrant and maintain the same Thing that is in Issue, the Evidence is defective, and may be demurred upon; but proving the Substance is sufficient. *Trials per pais*, 425. Evidence may be given of Facts before and after the Time they are laid in the Indictment. And where a Place is laid only for a Venue in an Indictment or Appeal, (and not made Part of the Description of the Fact) Proof of the same Crime may be made at any other Place in the same County; and after a Crime hath been proved in the County where laid, Evidence may be given of other Instances of the same Crime in another County, to satisfy the Jury. 2 *Hawk. P. C.* 436. But where a certain Place is made Part of the Description of the Fact against the Defendant, the least Variation as to such Place between the Evidence and Indictment is fatal. *Ibid.* 435. It hath been also adjudged, that where an Indictment sets forth all the special Matter in Respect whereof the Law implies Malice, Variance between the Indictment and Evidence as to the Circumstances of the Fact doth not hurt; so that the Substance of the Matter be found by the Evidence. 2 *Hawk.* 438. An Evidence against the King in Treason, or Felony, for the Criminal, was not to be examined on Oath by the Common Law: But by Statute, Witnesses for a Prisoner are to be sworn, as in case for the King, and Process for their Appearance is to be taken out. 3 *Inst.* 79. *Stat.* 7 *W.* 3. 1 *Ann.* If a Witness serv'd with Process in a Civil Cause refuse to appear, being tendered reasonable Charges, and having no lawful Excuse, Action on the Case lies against him, whereon 10 *l.* Damages, and other Recompence to the Party shall be recovered; and a Feme Covert not appearing, Action may be brought against the Husband and her. *Stat.* 5 *Eliz. cap.* 9.

1 *Leon.* 112. In a criminal Cause, if a Witness refuse to appear and give Evidence, being served with Process, the Court will put off the Trial, and grant Attachment against him; and as refusing to give Evidence is a great Contempt, the Party may be committed and fined. 1 *Salk.* 278. Preventing Evidence to be given against a Criminal, is punishable by Fine and Imprisonment; and a Person was fined one Thousand Marks in such a Case. *Hill.* 1663. B. R. Persons dissuading a Witness from giving Evidence, &c. And Jurors or others disclosing Evidence given, are likewise Offences punished by Fine and Imprisonment. 1 *Hawk.* 59. The Defendant's Counsel is to conclude by Way of Answer to the Evidence given to the Jury by the Plaintiff's Counsel: But he who doth begin to maintain the Issue to be tried, ought to conclude and sum up the Evidence given, which is no more than to put the Jury in Mind how he hath proved his Cause. 1 *Lill.* 551.

Evidence by Records and Writings, Is where Acts of Parliament, Statutes, Judgments, Fines and Recoveries, Proceedings of Courts, and Deeds, &c. are admitted as Evidence. A General Act of Parliament may be given in Evidence, and need not be pleaded; and of these the printed Statute-Book is good Evidence: But in the Case of a private Act, a Copy of it is to be examined by the Records of Parliament, and it is to be pleaded. *Trials per pais*, 177, 232. The Statute of Limitations, &c. may be given in Evidence. 1 *Salk.* 278. On *Non Assumpsit* pleaded, the Defendant cannot give the Statute of Limitations in Evidence; but upon *Nil Debet*, the Statute may be given in Evidence. 3 *Salk.* 154. Journals and other Proceedings in the House of Commons have been held to be no Evidence. *State Trials*, Vol. 3. 470. But it is otherwise, Vol. 3. 800. A History of England, or printed Trial, may not be read as Evidence. 1 *Lill.* 557. An Exemplification of the Inrolment of Letters Patent under the Great Seal, may be pleaded in Evidence. 3 *Inst.* 173. Records and Inrolments prove themselves; and a Copy of a Record or Inrolment sworn to, may be given in Evidence. 1 *Inst.* 117, 262. A Transcript of a Record in another Court, may be given in Evidence to a Jury: But Part of it may not be given in Evidence, it must be the Copy of the Whole. 1 *Lill. Abr.* 551. A Fine or Recovery may be given in Evidence, without vouching the Roll of the Recovery; for the Part indented is the usual Evidence that there is such a Fine: But it is said the Fine ought to be shewed with the Proclamations under Seal. 10 *Rep.* 92. 2 *Roll. Abr.* 574. A Record of an inferior Court, hath been rejected in Evidence, and the Party put to prove what was done: And Proceedings of County-Courts, Courts-Barons, &c. may be tried by a Jury; for it hath been adjudged that they cannot be proved by the Rolls, but by Witnesses. *Lit.* 75. But Court-Rolls of a Court-Baron, when shewn are good Evidence; and in some Cases, Copies of the Court-Rolls have been allowed as Evidence; and in others not. *Trials per pais*, 178, 228. A Copy of Copyhold Lands may be given in Evidence, where the Rolls are lost. *Mich.* 15 *Car.* B. R. Inrolment of a Deed is proved on certifying it by an examined attested Copy; though Inrolment of a Deed which needs no Inrolment, or the Estate doth not pass by it, is only Evidence to some Purposes. 3 *Lev.* 387. An ancient Deed proves

proves it self, where Possession has gone accordingly : But later Deeds must be proved by Witnesses. 1 *Inst.* 6. If all the Witnesses to a Deed are dead, continual and quiet Possession is presumptive Evidence of the Truth of it ; yet it may receive farther Credit by Comparison of Hands and Seals. *Wood's Inst.* 599. An old Deed proved to have been found among Deeds and Evidences of Land, may be given in Evidence to a Jury, though the Executing of it cannot be proved. *Trin.* 9 *W. B. R.* 3 *Salk.* 153. When Witnesses to a Deed are dead, their Hand-writing must be proved. 2 *Inst.* 118. And where there are several Witnesses to a Deed, and they are all dead but one, a *Subpoena* must be taken out against the living Man, and strict Enquiry made after him, and Affidavit is to be made that he cannot be found ; before the dead Men's Hands are to be proved. 1 *Lill.* 556. A Deed may be good Evidence, though the Seal is broken off : And where a Deed is burnt, &c. the Judges may allow it to be proved by Witnesses, that there was such a Deed, and this be given in Evidence. 1 *Lev.* 25. But the Court will not allow the Jury on a Trial at Bar, to carry Deeds, Writings or Books, with them out of Court, as Evidence to consider of, but such as are under Seal, and have been proved : Though by the Assent of Parties, or by the Assent of the Court without the Parties, they may be delivered to the Jurors. *Cro. Eliz.* 411. All Deeds or Writings under Seal, and given in Evidence, they may have ; and nothing which was not given in Evidence, for the Court gives their Direction to the Jury, upon the Evidence given in Court. 1 *Lill.* 313. A Deed though sealed and delivered, if not stamp'd according to Act of Parliament, cannot be pleaded or given in Evidence in any Court. *Stat.* 5 & 6 *W. & M. cap.* 21. A Deed cannot be proved by a Counterpart of it or Copy, if the Original is in Being, and may be had ; tho' it may when the Original cannot be procured. 1 *Inst.* 225. 10 *Rep.* 92. The Counterpart of an ancient Deed hath been allowed to be given in Evidence. *Mod. Caf.* 225. But it hath been held that the Counterpart of a Deed, without other Circumstances, is not sufficient Evidence ; unless in case of a Fine, when a Counterpart is good Evidence of it self. 1 *Salk.* 287. The Recital of a Deed is no Evidence without shewing the Deed ; or proving that there was such a Deed, and it is lost. 1 *Inst.* 352. *Vaugh.* 74. Recital of a Lease, in a Deed of Release, is good Evidence that there was such a Lease against the Relessor, and those claiming under him ; but not against others, except there be Proof that there was such a Lease. 1 *Salk.* 286. A Settlement set forth in a Bill in Chancery, and admitted in the Answer ; and where it was proved that the Deed was in the Possession of such a one, &c. hath been judged a good Evidence of the Deed of Settlement, where not to be found. 5 *Mod.* 384. The Probate of a Will, when it concerns personal Estate only, may be given in Evidence : But where Title of Lands is claimed under a Will, the Will must be shewn, not the Probate : Though if the Will be proved in the Chancery, Copies of the Proceedings there will be Evidence. 2 *Roll. Abr.* 678. *Trials per pais*, 234. A Bill in Chancery has been admitted as slight Evidence : An Answer in Chancery is Evidence against the Defendant himself, though not against others. 1 *Ventr.* 66. *Trials per pais* 167. But when a Party

gives an Answer in Chancery in Evidence at a Trial, though he insist to read only such a Part of it ; yet the other Side may require to have the Whole read. 5 *Mod.* 10. As in case of a Writing permitted to be read to prove one Part of an Evidence, which may be read to prove any other Part of the Evidence given to the Jury. Depositions of Witnesses in Chancery between the same Parties, may be given in Evidence at Law, especially if the Witnesses are dead, and the Bill and Answer proved. *Trials per pais* 167, 207, 234. Regularly Depositions in Chancery of a Witness may not be given in Evidence, if he be alive ; unless he be in France, or in another Kingdom, not subject to the Dominion of our King. *Ibid.* 359. But Depositions in Chancery, after Answer, between the same Parties, may be read as Evidence, though the Witnesses are not dead, if they cannot be found on Search. *Shower* 3 3. 1 *Salk.* 278. Depositions in Chancery in perpetuum Rei memoriam, are not to be given in Evidence, so long as the Parties are living. 1 *Salk.* 286. And it hath been adjudged that these Depositions to perpetuate Testimony, on a Bill exhibited, are not to be admitted as Evidence at a Trial at Law, except an Answer be put in. *Raym.* 335. If Depositions are taken out of the Realm, he who makes them is supposed there still, and they shall be read as Evidence ; but if it appears he is in England, they cannot be read, but he must come in Person. 1 *Lill.* 555. Things done beyond Sea may be given in Evidence to a Jury ; and the Testimony of a publick Notary of Things done in a Foreign Country, may be good Evidence. 6 *Rep.* 47. Depositions in the Ecclesiastical Courts, may not be given in Evidence to a Jury at a Trial ; but a Sentence may in a Cause of Tithes, &c. And the Sentence of the Spiritual Court is conclusive Evidence in Causes within their Jurisdiction. 1 *Salk.* 290. 2 *Nelf.* 761. Depositions taken before Commissioners of Bankrupt, 'tis said shall not be used as Evidence at a Trial. *Pasch.* 18 *Car.* 2. *B. R.* Depositions before a Coroner, are admitted as Evidence, the Witnesses being dead. 1 *Lev.* 180. Likewise they have been admitted where a Witness hath gone beyond Sea. 2 *Nelf. Abr.* 760. The Confession of a Prisoner before a Magistrate, &c. may be given in Evidence against him : And the Examination of an Offender need not be on Oath, but must be subscribed by him, if he confesses the Fact ; and then be given in Evidence upon Oath by the Justices of the Peace who took the same. The Examination of Others must be on Oath, and proved by the Justice or his Clerk, &c. as to their Evidence, if they are dead, unable to travel, or kept away by the Prisoner. *H. P. C.* 19, 262. *Kel.* 18. 55. *Wood's Inst.* 647. The Examination of an Informer before a Justice, taken on Oath and subscribed, may be given in Evidence on a Trial, if he be dead, or not able to travel, &c. which is to be made out on Oath. 2 *Hawk. P. C.* 429. By Statute, Justices of Peace, Mayors, Constables, &c. may plead the general Issue, and give the special Matter in Evidence, for any Thing done in their Offices. 7 *Jac.* 1. *cap.* 5. A Verdict against one under whom either the Plaintiff or Defendant claims, may be given in Evidence against the Party to claiming ; but not if neither claim under it. *Mich.* 1656. *B. R.* In Ejectment where the Plaintiff hath Title to several Lands, and brings Action of Ejectment against several Defendants, if he

he recovers against one, he shall not give that Verdict in *Evidence* against the Rest. 3 *Mod.* 141. In a Court of Common Law, a Decree in Chancery is no *Evidence*. Affidavits are not *Evidence*. Letters may be produced as *Evidence* against a Man, in Treason, &c. Similitude of Hands sworn to, has been allowed as *Evidence*: But since the Attainder of *Algernon Sidney*, it hath not been admitted in any criminal Case. 2 *Hawk.* 451. Since no Witnesses are present when Goldsmith's Notes are given, such Notes are allowed as *Evidence* of the Receipt of Money, or other Thing. 1 *Salk.* 285. A Shop-Book is *Evidence*; but it may not be given in *Evidence* for Goods sold, &c. after one Year, before the Action brought; though this extends not to any Buying or Selling, or Trading between Tradesman and Tradesman. *Stat.* 7 *Fac.* 1. c. 2. To make these Books *Evidence*, there ought to be the Hand of the Person to the Books that delivered the Goods, which must be proved. 1 *Salk.* 285. A Church-Book some Writers say is not to be admitted as *Evidence*; though others say it may. 1 *Cro.* 411. 'Tis said Copies of Publick Books of Corporations, &c. shall be *Evidence*. 1 *Lev.* 25. 1 *Lill.* 551. But Books of Corporations not of Record, where Leases are entered, &c. the Originals are to be produced as *Evidence*. A Pedigree drawn by a Herald at Arms will not be admitted for *Evidence*, without shewing the Records or ancient Books from whence taken; for the Entries in the Herald's Office are no Records, but only circumstantial *Evidence*: But a Copy of an Inscription on a Gravestone, has been given in *Evidence* in such a Case. 2 *Roll. Abr.* 686, 687. An Almanack wherein the Father had writ the Day of the Nativity of his Son, was allowed as *Evidence* to prove the Nonage of the Son. *Raym.* 84. Matter in Law ought not to be given in *Evidence* at a Trial, but only Matters of Fact, unless it be in case of a special Verdict: Matter in Law is disputable, and reserved to be spoken to in Arrest of Judgment. *Vaugh.* 143, 147. In Debt the Defendant may give in *Evidence* that he paid Money on an Obligation before the Day, &c. 2 *Nels. Abr.* 755. And a Release may be given in *Evidence*, on *Nil debet.* 5 *Mod.* 18. But in *Indebitatus Assumpsit* the Plaintiff shall not give any Specialty in *Evidence* to prove his Debt, as a Bond, Indenture, &c. because he may bring Action of Debt upon that Specialty. *Moor* 340. Entry and Expulsion may be given in *Evidence* in Debt for Rent: Coverture may be given in *Evidence* to avoid a Deed, &c. *Mod. Caf.* 230. Usurious Contracts, &c. may be given in *Evidence*. 2 *Nels.* 756. Fraud may be given in *Evidence*, on the general Issue: And Tampering with Witnesses may be given in *Evidence* against a Party, &c. 5 *Rep.* 60. But many Things are to be pleaded; as Justifications without Title, in Trespasses, &c. and cannot be given in *Evidence* upon Not guilty. *Trials per pais* 404. See *Copy*, *Depositions*, &c.

Ewage, (*Ewagium*) Is the same with *Aquage*, from the Fr. *Eau*, Water; and signifies Toll paid for Water-passage. — *Charta Regis Johannis*, &c. *hominibus de B. quod sint quieti de Thelonio, Scutagio, Passagio, Lastagio, & de Wrec & Lagan, de Ewagio*, &c. *Hill.* 14 *Hen.* 3. In *The- sauro. Reg. Scacc. Ebor. Rot.* 15.

Ewhize, (*Sax. Ew*, i. e. *Conjugium*, and *Bryce*, *fractio*) Adultery or Marriage-breaking: From

this Saxon Word *Ew*, Marriage, we derive our present English *Woo*, to woo a Dame.

Ewe, (*Ewva*) A German Word signifying Law; it is mentioned in *Leg. W.* 1.

Exaction, Is defined to be a Wrong done by an Officer, or one in pretended Authority, by taking a Reward or Fee for that which the Law allows not. And the Difference between *Exaction* and *Extortion*, is this: *Extortion* is where an Officer extorts more than his Due, when something is due to him; and *Exaction* is when he wrests a Fee or Reward where none is due. *Cowel.*

Exactor Regis, The King's Exactor or Collector; sometimes taken for the Sheriff: But generally, *Quicumque Publicas Pecunias, tributa, vestigia & res fisco debitas exigit, proprie nominatur Exactor Regis. Niger liber Scacc. par. 1. cap. ult.*

Examination, (*Examinatio*) A Searching after, or Cognizance of a Magistrate. By *Stat.* 2 & 3 *P. & M.* Justices of Peace are to examine Felons apprehended, and Witnesses, before the Felon is committed; and the Accusers must be bound over to appear and give *Evidence* at the next Assizes, &c. to which the *Examinations* are to be certified. *Mod. Justice*, 176, 177. See *Evidence*.

Examiners in the Chancery. (*Examinatores*) Are two Officers of that Court, that examine upon Oath, Witnesses produced by either Side, in London, or near it, on such Interrogatories as the Parties to any Suit exhibit for that Purpose: And sometimes the Parties themselves are, by particular Order, likewise examined by them: In the Country, Witnesses are examined by *Commissioners*, (usually Attornies not concerned in the Cause) on the Parties joining in Commission, &c.

Exannual Roll. In the old Way of exhibiting *Sheriffs Accounts*, the illeivable Fines and desperate Debts, were transcribed into a Roll under his Name; which was yearly read, to see what might be gotten. *Hale's Sher. Acco.* 67.

Exambiatores, A Word used anciently for *Exchangers* of Land: But *Cowel* supposes them to be such as we now call *Brokers*, that deal upon the Exchange between Merchants.

Exception, (*Exceptio*) In common Acceptation is a Stop or Stay to an Action; and is divided into *Dilatory* and *Peremptory*. *Bract. lib. 5. tract. 5.* It is of divers Kinds; in Law Proceedings, it is a Denial of a Matter alledged in Bar to the Action: And in Chancery it is what is alledged against the Sufficiency of an Answer, &c. The Counsel in a Cause are to take all their *Exceptions* to the Record at one Time; and before the Court hath delivered any Opinion therein. 1 *Lill. Abr.* 559. And on an Indictment for Treason, &c. *Exception* is to be taken for Misnaming, false Latin, &c. before any *Evidence* is given in Court; or the Indictment shall be good. *Stat.* 7 *W. 3. cap. 3.* Where by a general Pardon, any particular Crime is excepted; if a Person be attainted, &c. of that Offence, he shall have no Benefit of the Pardon. 6 *Rep.* 13. 2 *Nels. Abr.* 765. And when a Pardon is with an *Exception* as to Persons, the Party who pleads it ought to shew, that he is not any of the Parties excepted. 1 *Lev.* 26. A negative Expression may be taken to enure to the same Intent as an *Exception*; for an *Exception* in its Nature is but a Denial of what is taken to be good by the other Party, either in Point of Law or Pleading: And *Exceptio in non Exceptis firmat regulam.* 1 *Lill.* 559.

Excep-

Exception to Evidence, &c. If one of the Parties in a Suit, for the Insufficiency of the Evidence on the other Side, doth offer to demur upon the same, and the Court will not agree to it; then the Court ought upon Request to seal a *Bill of Exceptions* tendered to them in Writing, which upon a Writ of Error may be heard. 2 *Inst.* 246. And where a Suit is in any Court, if the Plaintiff or Defendant alledge any *Exception* to the Judge's Opinion, praying that the same be allowed; if the Judge refuseth it, then the Party making the *Exception* is to write it, and require the Judge to seal the same; which being done, and the Bill produced sealed in Court, the Judge that sealed it shall appear at a certain Day to confess or deny his Seal; and if the Seal be not denied, Proceedings are had to Judgment according to the *Exception*. *Stat.* 13 *Ed.* 1. *cap.* 31. 2 *Inst.* 1 *Lill. Abr.* 232. The *Exceptions* ought to be put in Writing *sedente Curia*, in the Presence of the Judge who tried the Cause, and signed by the Counsel on each Side; and then the Bill must be drawn up and tendered to the Judge that tried the Cause, to be sealed by him; and when signed, there goes out a *Scire facias* to the same Judge *ad cognoscendum scriptum*, and that is made Part of the Record, and the Return of the Judge with the Bill it self, must be entered on the Issue Roll; and if a Writ of Error be brought, it is to be returned as Part of the Record. 1 *Nelf. Abr.* 373. If a Bill of *Exceptions* is drawn up and tendered to the Judge for Sealing, and he refuses to do it, on Petition to the Lord Chancellor, he will grant a Writ for that Purpose. These Bills of *Exception* are to be brought before a Verdict given, and extend only to Civil Actions, not to Criminal. *Sid.* 85. 1 *Salk.* 288.

Exception in Deeds and Writings, Keeps the Thing from passing thereby, being a Saving out of the Deed, as if the same had not been granted: But it is to be a particular Thing out of a general One; as a Room out of an House, a Ground out of a Manor, Timber out of Land, &c. And it must not be of a Thing expressly granted in the Deed: Also it must be of what is severable from, and not inseparably incident to the Grant. 1 *Inst.* 47 1 *Lev.* 287. *Cro. El.* 244. Where an *Exception* goeth to the whole Thing granted or demised, the *Exception* is void. *Cro. El.* 6. A Man made a Lease of a Manor, excepting all Courts, &c. the *Exception* is void as to the Courts; for having leased the Manor, it cannot be such without Courts. *Hob.* 108. *Moor* 87c. A Lease was made of all a Man's Lands in L. excepting his Manor of H. and he had no Lands in L. but the said Manor; it was adjudged that the Manor passed, and that the *Exception* was void. *Hob.* 170. 2 *Nelf. Abr.* 764. A Lease of an House and Shops, except the Shops; tho' this may extend to other Shops, 'tis void as to the Shops belonging to the House demised, because 'tis repugnant to the Lease. *Dyer* 265. If an *Exception* crosses the Grant, or is repugnant to it, the same is void: And if there be a Saving or *Exception* out of an *Exception*, it may make a particular Thing as if never excepted; as if a Lease be made of a Rectory, excepting the Parsonage House, saving to the Lessee a Chamber; this Chamber not being excepted out of the Lease, shall pass by the Lease of the Rectory. *Hob.* 72, 170. *Cro. Eliz.* 372. *Owen* 20. An *Exception* must be always of a Thing *in esse*. *Co. Lit.* 47. *Dyer* 59. By *Exception* of Trees, the Soil is not excepted,

but only sufficient Nutriment for the Trees: For the Lessee shall have the Pasture growing under them; though the Lessor shall have all the Benefit of the Trees, Malt, Fruit, &c. and the Trees are Parcel of the Inheritance. 11 *Rep.* 48, 50. 5 *Rep.* 11. But it has been adjudged, that by an *Exception* of Woods, Underwood and Coppices, that the Soil of the Coppices is excepted. *Poph.* 146. 2 *Cro.* 487. If a Lessee for Years, assigns over his Term, excepting the Trees, &c. the *Exception* is not good; because no one can have such a special Property in the Trees, but the Owner of the Land. 2 *Nelf.* 764. But where Lessee for Life makes a Lease for Years, excepting the Wood, &c. this may be a good *Exception*, although he hath not any Interest in it but as Lessee, in Regard he is chargeable in Waste, &c. and hath not granted his whole Term. *Cro. Jac.* 296. 1 *Lill. Abr.* 560. These *Exceptions* are commonly in Leases for Life and Years.

Exchange, (*Excambium* or *Cambium*) Signifies generally as much as *Permutatio* with the Civilians; as the King's *Exchange*, which is the Place appointed by the King for *Exchange* of Plate or Bullion for the King's Coin. These Places have been divers heretofore; but now there is only one, *viz.* the Mint in the Tower. *Stat.* 1 *Hen.* 6. *cap.* 4. By 9 *Ed.* 3. *cap.* 7. *Exchanges* are to be kept where the King pleases: And every Man may *exchange* Gold for Silver, or Silver for Gold, &c. but none shall take Profit of Money *exchanged*, but the King's *Exchangers*, on Pain of Forfeiture. 25 *Ed.* 3. *cap.* 12. Also none shall give or take any more for *Exchange* of Coin than the true Value, under the Penalty of Forfeiting the Money *exchanged*, or to be fined and imprisoned, &c. 5 & 6 *Ed.* 6. *c.* 19. There is a *Royal Exchange of Merchants in London*: And *Exchange* among Merchants, is a Commerce of Money, or a Bartering or *Exchanging* of the Money of one City or Country for that of another: Money in this Sense, is either real or imaginary; Real, any real Species current in any Country at a certain Price, at which it passes by the Authority of the State, and of its own intrinsic Value: And, 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 Species. *Lex Mercatoria*, or *Merch. Comp.* 98. The Methods of *Exchange* for Money used in *England* ought to be *par pro pari*, according to Value for Value: And our *Exchange* is grounded on the Weight and Fineness of our own Money, and the Weight and Fineness of that of other Countries, according to their several Standards, proportionable in their Valuation; which being truly and justly made, reduces the Price of the *Exchange* of Money of any Nation or Country to a Certainty. But this Course of *Exchange* is of late abused; and Money is become a Merchandize, that rises and falls in its Price in Regard to the Plenty and Scarcity of it. *Ibid.* At *London*, all *Exchanges* are made upon the Pound *Sterling* of 20 s. In the Low Countries, *France* and *Germany*, upon the *French Crown*; *Spain* and *Italy*, &c. upon the *Ducat*; and at *Florence*, *Venice*, and other Places in the *Streights*, by the *Dollar* and *Florin*. See *Bill of Exchange*.

Exchanges were the Original and natural Way of Commerce, precedent to Buying; for there was no Buying till Money was invented; though in *Exchanging*, both Parties are as Buyers and Sellers, and both equally warrant. 3 *Salk.* 157.

Exchange of Lands, Is a mutual Grant of equal Interest in Lands or Tenements, the one in *Exchange* for the other: And is used peculiarly for that Compensation which the *Warrantor* must make to the *Warrantee*, Value for Value, if the Land warranted be recovered from the *Warrantee*. *Bract. lib. 2. cap. 16. Accomp. Convo. 1 Vol. 170.* Also there is a tacit Condition of Re-entry in this Deed, on the *Lands* given in *Exchange*, in Case of Evidition; and on the *Warranty* to vouch and recover over in Value, &c. For if either of the Parties is evicted, the *Exchange* is defeated. *4 Rep. 121.* If *A. B.* give 5 Acres of Land in *Exchange* to *C. D.* for five other Acres, and afterwards *C. D.* is evicted of one Acre, in this Case all the *Exchange* is defeated; and *C. D.* may enter on his own again. *4 Rep. 121. Cro. El. 903.* An *Exchange* may be made of Lands in Fee-simple, Fee-tail, for Life, &c. The Estates granted are to be equal, as Fee-simple for Fee-simple, &c. tho' the Lands need not be of equal Value, or of the like Nature: For a Rent in Fee issuing out of Land, may be exchanged for Land in Fee; but Annuities which charge the Person only, are not to be exchanged for Lands. *Litt. 63, 64. 1 Inst. 50, 51.* If an *Exchange* be made between Tenant for Life, and Tenant in Tail after Possibility of Issue extinct, the *Exchange* is good; because their Estates are equal. *11 Rep. 80. Moor 665.* An *Exchange* made between Tenant in Tail, and another, of unequal Interest, may be good during his Life; but his Issue, when of full Age, shall avoid it. And *Exchanges* made by Infants; by Persons *non sana Memoria*; a Husband of the Wife's Land, &c. are not void, but voidable only, by the Infant at his full Age, the Heir of the Person *non sana*, and the Feme after the Death of the Husband. *Perk. Sect. 277, 281.* Jointenants and Tenants in Common, after they have made Partition, may exchange their *Lands*: And by this Deed, Freeholds pass without Livery and Seisin; but the Word *Exchange* is to be used, and it ought to be by Deed indented; and there must be Execution of the *Exchange*, by Entry on the Lands in the Life of the Parties, or the *Exchange* will be void. *1 Inst. 50. 1 Mod. 91.* It is made by these Words, *A. B.* hath given, granted and confirmed to *C. D.* and his Heirs and Assigns for ever, all that Messuage, &c. In *Exchange* for, &c. And the said *C. D.* hath given and granted to the said *A. B.* and his Heirs and Assigns for ever, all that, &c. In *Exchange* for the said Messuage, &c. *Accomp. Conveyanc. Vol. 1. pag. 358.*

Exchange of Church Livings. *Exchanges* are now seldom used, except that Parsons sometimes *Exchange* their Churches, and resign them into the Bishop's Hands. And this is not a perfect *Exchange* till the Parties are inducted; for if either dies before they both are inducted, the *Exchange* is void. *Wood's Inst. 284.* If two Persons by one Instrument agree to exchange their Benefices, and in order thereto resign them into the Hands of the Ordinary, such *Exchange* being executed on both Parts, is good; and each may enjoy the other's Living: But the Patrons must present them again to each Living; and if they refuse to do it, or the Ordinary will not admit them respectively, then the *Exchange* is not executed; and in such Case either Clerk may return to his former Living, even tho' one of them should be admitted, instituted and inducted to the Benefice of the other; which is express'd in the *Exchange*

it self, and the *Protestation* usually added to it. *Right's Clerg.*

Form of a Resignation and Exchange of a Church.

IN Dei Nomine, Amen. Ego A. B. Rector Ecclesie de C. in Diocesi W. volens ipsam Ecclesiam meam cum Ecclesia de D. dicta Diocesi cujus Rector existit E. F. de, &c. certis justis & legitimis de Causis sine dolo & fraude Canonice Permutare ipsam Ecclesiam meam ex causa Permutationis hujusmodi & non alio modo, in sacras manus venerabilis in Christo Patris Domini J. Dei Gratia Winton. Episcopi Resigno; supplicans humiliter & Devote, ut prefat. E. F. de hujusmodi Causa permutationis ipsam Resignationem sic factam & non aliter velitis admittere, & negotium permutationis hujusmodi quatenus ad vos attinet fideliter expedire. Et Protestor expresse in his scriptis, quod si dicta permutatio debitum non sortiatur effectum, quod hujusmodi mea Resignatio predicta pro nullo penitus habeatur. Ego A. B. &c. nunc Rector Ecclesie de D. prius Rector Ecclesie de C. in Diocesi, &c. pred. Protector, dico & allego, quod si contingat quod hujusmodi Ecclesia mea de D. absque dolo & culpa meis in hac parte a me aliquo aliter Evincatur, volo & intendo ad dictam Ecclesiam de C. absque aliqua difficultate libere & licite redire, & eam rehabere juxta Canonicas Sanctiones; Et Protestor insuper quod non intendo nec volo ab hujusmodi Protestatione seu effectu ejusdem recedere aliquo aliter in futuro, sed eidem Protestationi & Contentis in eadem, volo & intendo in futuris Temporibus firmiter adherere, Juris Beneficio in omnibus semper salvo, &c.

Exchangeors, Are those that return Money by Bills of Exchange. *Excambiators. 5 R. 2. c. 2.*

Exchequer, (*Scaccarium*, from the Fr. *Eschequier*, i. e. *Abacus*, *tabula lusoria*, or from the Germ. *Schatz*, viz. *Tesaurus*) Is an ancient Court of Record, wherein all Causes touching the Revenue and Rights of the Crown are heard and determined; and here the Revenues of the Crown are received. *Camden* in his *Britan. p. 113.* saith, This Court took its Name à *Tabula ad quam affidebant*, the Cloth which covered it being Party-coloured, or chequered: We had it from the Normans, as appears by the Grand Customary, cap. 56. where it is described to be an Assembly of High Justiciers, to whom it appertained to amend that which the inferior Justiciers had misdone, and unadvisedly judged, and to do right to all as from the Prince's Mouth. Some Persons think there was an *Exchequer* under the Anglo-Saxon Kings; but our best Historians are of Opinion, that it was erected by K. William the First, called *The Conqueror*, its Model being taken from the transmarine *Exchequer*, establish'd in Normandy long before that Time. *Madox's Hist. Excheq.* In the Reign of Henry the First, Son of William the First, there was an *Exchequer*, which has continued ever since: And the Judges of the Court were at that Time stiled *Barones Scaccarii*, and administered Justice to the Subjects. In ancient Times the Barons of the *Exchequer* dealt in Affairs relating to the State, or publick Service of Crown and Realm: And were greatly concern'd in the Preservation of the Prerogative, as well as the Revenue of the Crown; for at the *Exchequer* it was the Care of the Treasurer and Barons to see that the Rights of the Crown were no Way invaded. *Lex Constitutionis 198.* For the Authority and Dignity of the Court of *Exchequer*, antiently

tiently it was held in the King's Palace; and the Acts thereof were not to be examined or controlled in any other of the King's Ordinary Courts of Justice: The *Exchequer* was the great Repository of Records, wherein the Records of the other Courts at *Westminster*, &c. were brought to be laid up in the Treasury there. And Writs of the Chancery were sometimes made forth at the *Exchequer*; Writs of Summons to assemble Parliaments, &c. *Ibid.* The *Exchequer* has been commonly held at *Westminster*, the usual Place of the King's Residence; but it hath been sometimes holden at other Places, as the King pleased; as at *Winchester*, &c. And in the *Exchequer* there are reckon'd seven Courts, *viz.* The Court of Pleas; the Court of Accounts; the Court of Receipts; the Court of the *Exchequer-Chamber*, (being the Assembly of all the Judges of *England* for difficult Matters in Law) the Court of *Exchequer-Chamber* for Errors in the Court of *Exchequer*; for Errors in the King's Bench; and the Court of Equity in the *Exchequer-Chamber*. 4 *Inft.* 119. But according to the usual Division for the Dispatch of all common Business, the *Exchequer* is divided into two Parts; one whereof is conversant especially in the judicial Hearing and Deciding all Causes pertaining to the Prince's Coffers, antiently called *Scaccarium Computorum*; the other is, the Receipt of the *Exchequer*, which is properly employ'd in the Receiving and Payment of Money. And it has been observ'd, that about the Time of the Conquest there was very little Money in Specie in the Realm; for then the Tenants or Knights Fees answered their Lords by military Services: And 'till the Reign of K. Hen. 1. the Rents or Farms due to the King were generally rendered in Provisions and Necessaries for his Household; but in this Reign the same were changed into Money, and afterwards in succeeding Times the Crown-Revenue was answered or paid into the *Exchequer* chiefly in Gold and Silver. *Lex Constitutionis*, p. 208. By Statute, all Sheriffs, Bailiffs, &c. are to account in the *Exchequer* before the Treasurer and Barons: And annual Rolls are to be made of the Profits of Counties, &c. Also Inquisitors shall be appointed in every County, of Debts due to the King. 51 H. 3. 10 E. 1. And all Fines of Counties for the whole Year are to be sent into the *Exchequer*. 15 Ed. 2. Officers of the *Exchequer* are without Delay to receive Money brought thither: And the Money in the Receipt is to be kept in Chests under three different Locks and Keys, kept by Three several Officers, &c. 8 & 9 W. 3. c. 28. In the lower Part of the *Exchequer*, called the Receipt, the Debtors of the King, and their Debtors, the King's Tenants, and the Officers and Ministers of the Court, &c. are privileged to sue and implead one another, or any Stranger, and to be sued in the like Actions as are prosecuted in the King's Bench and Common Pleas. The judicial Part of the *Exchequer* is a Court both of Law and Equity; the Court of Common Law is held in the Office of Pleas, after the Course of the Common Law, *coram Baronibus*; and here the Plaintiff ought to be a Tenant or Debtor to the King, or some Way Accountant to him; and the leading Process is either a Writ of *Subpoena*, or *Quo Minus*, which goes into *Wales*, where no Process of the King's Bench or Common Pleas ought to run, except the *Capias Utlagatum*. The Court of Equity is holden in the *Exchequer*-

Chamber *coram Thesaurario Cancellario & Baronibus*, but usually before the Barons only, the Lord Chief Baron being the Chief Judge to hear and determine all Causes in Law or Equity; the Proceedings here are by *English Bill* and Answer agreeable to the Practice of the High Court of Chancery, but the Plaintiff must likewise set forth that he is Debtor to the King, tho' it is not material whether he be so, or not, it being only Matter of Form. In this Court the Clergy usually exhibit Bills, for Recovery of their Tithes, &c. And here the Attorney General brings Bills for any Matters concerning the King; and any Person grieved in any Cause prosecuted against him on Behalf of the King, may bring his Bill against the Attorney General to be relieved in Equity; in which Case the Plaintiff must attend the King's Attorney with a Copy of the Bill, and procure him to answer the same, and Mr. Attorney may call any that are interested in the Cause, or any Officer, or others, to instruct him in the Making of his Answer, so as the King be not prejudiced thereby, and his Answer is to be put in without Oath. 4 *Inft.* 109, 112, 118. The Practice and Proceedings generally in Use at the *Exchequer Bar*, relate for the most Part to the Two Remembrancers of the Court; and antiently there was very much Business, and very various in the King's Remembrancer's Office relating to Debtors, Farmers, Receivers, Accountants, &c. for Debts and Duties due to the Crown: And all penal Punishments, Intrusions, Forfeitures upon popular Actions, &c. are Matters cognizable by this Court. *Practif. Attorn. Edit.* 1. p. 292, 293. The *Exchequer* is said to be the last of the four Courts at *Westminster*; govern'd by the Chancellor of the *Exchequer*, the Lord Chief Baron, and Three other Barons, who are the Sovereign Auditors of *England*, and the Judges of the Court, and ever give Judgment in the Term-time only: There also sits in this Court a *Puisne Baron*, who administers the Oath of all High Sheriffs, Under-Sheriffs, Bailiffs, Auditors, Receivers, Collectors, Controllers, Surveyors, and Searchers of all the Customs in *England*. The Chancellor or Under-Treasurer hath the Custody of the Seal of this Court. The King's Attorney General is made privy to all Manner of Pleas that are not Ordinary and of Course, which rise upon the Process of the Court; and he puts into Court in his own Name, Informations of Concealments of Customs, Seizures, &c. And also for Intrusions, Wastes, Incroachments, &c. upon any of the King's Lands; or upon Penal Statutes, Forfeitures, &c. The Remembrancers keep the Records of the Court betwixt the King and his Subjects, and enter the Rules and Orders there made: One is called the King's Remembrancer, and the other the Lord Treasurer's Remembrancer; the Remembrancer for the King hath all Manner of Informations upon Penal Statutes sued in his Office only; and he calls to Account, in open Court, all the great Accountants of the Crown, Collectors of Customs, &c. he makes out Writs of Privilege, enters Judgments of Pleas; and all Matters upon *English Bill* are remaining in his Office. The Remembrancer for the Lord Treasurer makes out all Estreats; he sets down in his Book the Debts of all Sheriffs, and takes their foreign Accounts; and issues out Writs and Processes in many Cases, &c. And these Remembrancers have several Attornies in their Offices to do Business under them:

them: Who by Statute are not to issue out of the Remembrancer's Office, any Writs upon Supposition, but on just Grounds, &c. 7 *Fac.* 1. There are two *Chamberlains* that keep the Keys of the Treasury, where the Records do lie, with the Book of Domesday, &c. They may sit in Court if they please, but not intermeddle with any Thing; unless it be relating to Sheriffs, in the Pricking whereof they have a Vote. And besides the Chamberlains, there is a *Clerk of the Pipe*, in whose Custody are conveyed out of the King's and Treasurer's Remembrancers, &c. as Water through a Pipe, all Accounts and Debts due to the King. The *Controller of the Pipe*; which is said to be the Chancellor of the *Exchequer*. The *Clerk of the Estreats*, who receives the Estreats from the Remembrancer's Office, and writeth them out to be served for the King, &c. The *Foreign Opposer*, who opposeth all Sheriffs, &c. of their Green Wax, *i. e.* Fines, Issues, Amerciaments, Recognizances, &c. certified in Estreats annexed to the Writ under the Seal in Green Wax; and delivereth the same to the Clerk of the Estreats to be put in Process. The *Auditors* that take the Accounts of the King's Receivers, Collectors, &c. and perfect them. The four *Tellers*, whose Business is well known. The *Clerk of the Pells*, from his Parchment-Rolls, called *Pellis Receptorum*. The *Clerk of the Nibils*, who makes a Roll of such Sums as the Sheriff upon Process returns *Nihil*, &c. The *Clerk of the Pleas*, in whose Office all Officers and privileged Persons are to sue and be sued; and here are divers *Under Clerks* employed in Suits commenced or depending in this Court. Then there is a *Clerk of the Summons*; *Under Chamberlains* of the *Exchequer*; *Secondaries* in the Offices of the Remembrancers; *Secondaries* of the Pipe; the *Usher of the Exchequer*, *Marshal*, &c.

Exchequer Bills. By Statute 5 *Ann.* c. 13. The Lord Treasurer may cause *Exchequer Bills* to be made of any Sum not exceeding 1,500,000 *l.* for the Use of the War: And the Duties upon Houses were made chargeable with 4 *l.* 10 *s.* per Cent. per Annum to the Bank for circulating them. The Bank not paying the Bills, Actions to be brought against the Company, and the Money and Damages recovered: And if any *Exchequer Bills* be lost, upon Affidavit of it before a Baron of the *Exchequer*, and Certificate from such Baron, and Security given to pay the same if found, Duplicates are to be made out: Also when Bills are defac'd, new ones shall be delivered. *Ibid.* The King, or his Officers in the *Exchequer*, by former Statutes, might borrow Money upon the Credit of *Bills*, payable on Demand, with Interest after the Rate of 3 *d.* per Diem for every 100 *l.* Bill. 7 & 8 *W.* 3. c. 31. And by 8 & 9 *W.* 3. c. 20. an Interest of 5 *d.* a Day was allowed for every 100 *l.* But 12 *W.* 3. c. 1. lowered the Interest on these Bills to 4 *d.* a Day per Cent. And by 12 *Ann.* c. 11. it is sunk to 2 *d.* a Day. Forging *Exchequer Bills*, or the Indorsements thereon, is Felony. See Felony.

Excise, (From the Belg. *Accüsse*, Tributum) Is a Duty or Imposition laid upon Beer, Ale, and other Liquors, which had its Beginning in the Reign of King Charles the Second. The 12 *Car.* 2. c. 23. granted to the King an *Excise* on Beer, Ale, Cyder, Strong-waters, &c. And by subsequent Statutes, additional Duties have been granted on Low-Wines, Spirits, or Brandy drawn from Corn, &c. Also a Duty of *Excise* is laid up-

on Malt, and on Sweets, &c. which are annually continued. Brewers erecting any Back, Cooler, Copper, &c. without giving Notice, or keeping any private Store-houses: And Maltsters keeping any private Vessels for Steeping of Barley, or altering their Vessels, without giving Notice to the Officers of the *Excise*; in either Case, forfeit 50 *l.* and bribing a Gauger incurs the Penalty of 10 *l.* 15 *Car.* 2. c. 11. 2 *W.* & *M.* 4 *W.* & *M.* 7 & 8 *W.* 3. 8 & 9 *W.* 3. c. 19. By 12 *Car.* 2. The *Excise* on Beer and Ale is granted for the Life of K. Charles the Second. By the 1 *Fac.* 2. c. 11. it is granted to King James for Life. By 2 *W.* & *M.* c. 3. it is granted to King William and Queen Mary during their Lives. By 1 *Ann.* c. 7. it is granted to Qu. Anne for her Life; and together with the Revenue of the Post Office, &c. made chargeable with 700,000 *l.* per Annum for the Support of the Household; and by 1 *Geo.* c. . it is granted to King George during his Life. Vide the Statutes.

Exclusa, Exclusagium, A Sluice for the Carrying off Water; and a Payment to the Lord for the Benefit of such a Sluice. *Et de molendina in eodem Manerio cum Aquis Exclusagiis*, &c. Mon. Angl. Tom. 1. p. 398, 587.

Excommungement, Is in *Law French* the same with *Excommunication* in *English*. Stat. 23 Hen. 8. c. 3.

Excommunication, (*Excommunicatio*) An Ecclesiastical Censure, by which a Person is excluded from the Communion of the Church, and from the Company of the Faithful. It hath been thus defined: *Excommunicatio est nihil aliud quam Censura a Canone vel Judice Ecclesiastico prolata & inflicta privans legitima communione Sacramentorum & quandoq; hominum.* And it is divided into *Major* and *Minorem*; *Minor* est, per quam quis à Sacramentorum participatione conscientia vel sententia arcetur: *Major* est, qua non solum à Sacramentorum, verum etiam Fidelium communione excludit, & ab omni actu Legitimo separat & dividit. Venatorius de sent. Excom'. The Form of an *Excommunication* was of old: *Auctoritate Dei Patris omnipotentis & Filii & Spiritus Sancti, & Beate Dei Genetricis Marie, omniumque Sanctorum, Excommunicamus, Anathematizamus, & à limitibus Sanctæ Matris Ecclesiæ Sequestramus*, &c. Leg. Will. 1. Anno 38 H. 3. Boniface Archbishop of Canterbury, and the other Bishops, with burning Tapers in their Hands in *Westminster Hall* before the King, and the other Estates of the Realm, denounced a Curse and *Excommunication* against the Breakers of the Liberty of the Church: And by Stat. 9 E. 3. Bishops may *excommunicate* not only all Perturbers of the Peace of the Church, but also Felons, and other Offenders, &c. And by the Ecclesiastical Laws, an *excommunicated* Person is not permitted to have Christian Burial. This *Excommunication* is generally for Contempt in not appearing, or not obeying a Decree, &c. and the Causes of it are many; as for Matters of Heresy, Refusing to receive the Sacrament, or to come to Church; Incontinency, Adultery, Simony, &c. It is published in the Church, and if the Offender do not submit in forty Days, then the Bishop is to certify the *Excommunication* into the Temporal Courts, setting forth specially the Cause of *Excommunication*, that the Judges may see whether the Ecclesiastical Court hath Cognizance of the Matter; and thereupon the Party may be taken and imprisoned by Virtue of the Writ *Significavit* or *Capias Excommunicatum*, and is to remain in Prison till he submits and is absolved; when the Bishop likewise

likewise certifying the same, another Writ issues to the Sheriff to discharge him. 2 *Inst.* 189. 8 *Rep.* 68. 2 *Nelf. Abr.* 768. None but the Bishop is to certify *Excommunication*, unless the Bishop be beyond Sea, or in *Remotis*; or except the Certificate is by one that hath ordinary Jurisdiction, &c. And if the Ordinary *excommunicates* a Person for any Thing where he hath not Cognizance of the Cause, the Party may bring an Action against him, or the Ordinary 'tis said may be indicted. 1 *Inst.* 134. 2 *Inst.* 527. *Wood's Inst.* 508. In some Cases Persons incur *Excommunication ipso facto* by Act of Parliament; but they are to be first convicted of the Offence by Law, and the Conviction is transmitted to the Ordinary. *Dyer* 275. 1 *Ventr.* 146. It hath been adjudged that the Spiritual Court hath not Power to meddle with the Body of any Persons whatsoever, or to send Process to take them; for if a Person is *excommunicate* for Contempt, &c. they ought to certify it into the Chancery, whence 'tis sent into B. R. and thence issues Process. *Cro. El.* 741. An Offender *excommunicated* is disabled to do any judicial Act, as to sue any Action at Law, be a Witness, &c. tho' he may be sued: But every *Excommunication* doth not disable one; for if a Mayor and Commonalty bring an Action, an *Excommunication* of the Mayor shall not disable them, because they sue and answer by Attorney: And if a Bishop is Defendant, an *Excommunication* by that Bishop shall not disable the Plaintiff; and an *Excommunication* against an Appellant, while the Appeal is depending, is void. 1 *Inst.* 134. 4 *Inst.* 340. *Wood* 508. Popish Recusants convicted are disabled as Persons *excommunicate*, &c. Stat. 3 Jac. 1.

Excommunicato Capiendo; Is a Writ directed to the Sheriff for Apprehending him who stands obstinately *excommunicated* forty Days; for the Contempt of such a Person, not seeking Absolution, being certified or signified into the Chancery; this Writ issues for the Imprisoning him without Bail or Mainprize until he conforms. *F. N. B.* 62. By the Stat. 5 *Eliz. c.* 23. Writs de *excommunicato Capiendo* shall issue out of the Court of Chancery in Term-time, and be returnable in B. R. &c. And if the Sheriff return a *Non est Inventus* on the Writ, a *Capias* with Proclamations is to be granted for the Party to yield his Body to Gaol under the Penalty of 10*l.* And if he do not appear on the first *Capias* and Proclamation, a Second is to go forth, and he shall forfeit 20*l.* &c. But by this Statute, if in the *Excommunicato Capiendo*, the Party *excommunicated* hath not a sufficient Addition, as to his Place of Dwelling, &c. according to 1 *H. 5. c.* 6. Or if in the *Significavit* it is not contained, that the *Excommunication* proceeds upon a Cause or Contempt of some original Matter of *Heresy*, for refusing to have a Child baptized, to receive the Sacrament, to come to Divine Service, or for Error in Matters of Religion and Doctrine, for Incontinence, Usury, Simony, Perjury in the Ecclesiastical Courts, or Idolatry; he shall not incur the Penalties in this Act, for his Contempt in not rendring himself Prisoner upon the *Capias*, &c. So that the Statute doth not require the *Capias* with Proclamations, and the Penalties in other Cases, besides the ten Cases mentioned. 2 *Inst.* 661. And it has been adjudged where a Person has been *excommunicated*, and none of those Causes were contained in the *Significavit*, that the Person *excommunicate* should be discharged of the Penalties, but not of the

Excommunication. 3 *Mod.* 89. It has also been held, that for any of the Causes expressed in the Statute, there ought to go a *Capias* with a Penalty, and be an Addition to the Writ; but in other Cases it was not necessary; and if the *Capias* was with a Penalty, the Court would not discharge the Party, but the Penalty only: But for Want of Addition, in Cases where that was required, the Party should be discharged upon Motion. 1 *Salk.* 294, 295.

Excommunicato deliberando, Is a Writ to the Sheriff for Delivery of an *excommunicate* Person out of Prison, upon Certificate from the Ordinary of his Conformity to the Jurisdiction Ecclesiastical. *F. N. B.* 63. *Reg. Orig.* 67. This Writ runs thus: *Rex Vic. S. Salut. Cum A. B. & C. D. quos ad Denunciationem vener. Patris J. Winton Episcopi, tanquam Excommunicatos, & claves Contemneres per Corpora sua secundum Consuetud. &c. per te Justiciari praeceperimus, donec Sanctae Ecclesiae tam de Contemptu quam de Injur. ei illata ab eis fuerit forisfacti; jamque ab ipso Episcopo Absolution. beneficium in form. meruerunt obtiner. sicut idem Episc. per Literas suas Patentes nobis significavit: Tibi Praecipimus quod ipsos A. B. & C. D. a Prisona qua detinent. si ea occasione, & non alia, detinent. in eadem, sine dilatione deliberari facias, &c.*

Excommunicato Recipiendo. Is a Writ whereby Persons *excommunicated* being for their Obstinacy committed to Prison, are unlawfully delivered, before they have given Caution to obey the Authority of the Church; by which it is commanded that they be sought after and imprisoned again. *Reg. Orig.* 67.

Execution, (Executio) Signifies the last Performance of an Act, as of a Judgment, &c. And is the Obtaining of Possession of any Thing recovered by Judgment of Law. Sir Edw. Coke, in his Reports, makes two Sorts of Executions; one final, another with a *Quousque*, tending to an End: An *Execution* final is that which makes Money of the Defendant's Goods, or extends his Lands, and delivers them to the Plaintiff, which he accepts in Satisfaction, and is the End of the Suit, and all that the King's Writ requires to be done: The other Writ with a *Quousque*, tho' it tendeth to an End, is not final; as in Case of a *Capias ad Satisfaciendum*, &c. which is not final; but the Body of the Party is to be taken, to the Intent to satisfy the Plaintiff, and his Imprisonment not being absolute, but until the Defendant do satisfy. 6 *Rep.* 87. A Man can have but one *Execution*; but it must be intended an *Execution* with Satisfaction, and the Body of the Defendant is no Satisfaction, only a Pledge for the Debt. 5 *Rep.* 86. When a Person dies in *Execution*, it is without Satisfaction; so that the Plaintiff may have a *Fieri facias* against the Goods, or *Elegit* against the Lands. *Ibid.* But where a Person was taken on a *Capias Utlagatum*, and died in Prison, the Plaintiff having chosen this *Execution*, which is the highest in Law; it has been held, that the Defendant dying, the Law will adjudge it a Satisfaction. *Cro. El.* 850. Though by Statute, if a Person in *Execution* dies, a new *Execution* shall issue against the Lands, &c. as if he had never been taken in *Execution*. 21 *Jac.* 1. *c.* 13. If an *Execution* be executed and filed, the Party can have no other *Execution* upon that Judgment; because there can be but one *Execution* with Satisfaction upon one Judgment. 1 *Lill. Abr.* 565. If the *Execution* be not return'd and filed, another *Execution* may be had: And if only Part of

the Debt be levied on a *Fieri facias*, another Writ of Execution may be sued out for the Residue thereof. *Ibid.* But if you once charge the Body of the Defendant in Execution on a *Capias satisfaciend.* You may not have any other Execution against his Goods, &c. except the Defendant make an Escape, or is privileged, or die in Execution. *Practif. Solic.* 248. Though if one take out any Writs of Execution, and they take no Effect, he may have other Writs on their Failure. *Hob.* 57. If a Person taken by *Ca. sa.* escapes, the Plaintiff may have a new Execution. *Cro. Car.* 174. In Case any Prisoner committed in Execution shall escape, any Creditor, at whose Suit he stands charged, may retake him by a new *Capias ad satisfaciend.* or sue forth any other Kind of Execution, as if the Body of such Prisoner had never been taken in Execution. *Stat. 8 & 9 W. 3. c. 27.* Where two are bound jointly and severally, and Judgment is had against both of them, if one in Execution escape, the Creditor may take out Execution against the other: But if he go by License of the Creditor, then the other will be discharged. *Cro. Car.* 53. If one in Execution be delivered by Privilege of Parliament, when the Privilege ceases, the Plaintiff may sue out a new Execution against him. *1 Jac. 1. c. 13.* If where two are bound jointly, they are sued severally, and several Judgments are had against them, as an *Elegit* is sued against one, and executed and return'd, and a *Capias satisfaciend.* against the other, he may bring *Audita Querela*: For there must be the same Kind of Process against both. *Cro. Jac.* 338. *2 Nelf. Abr.* 772. A Defendant cannot plead to any Writ of Execution, (tho' he may in Bar of Execution to a *Scire facias* brought); but if he hath any Matter after Judgment to discharge him of the Execution, he is to have *Audita Querela*. *1 Inst.* 290. If Husband and Wife are taken in Execution for the Debt of the Wife, the Wife shall be discharged; for the Husband being in Execution, the Wife shall not be so also, and because the Wife hath nothing liable to the Execution. *1 Lev.* 51. The Execution of a *Libervate* is good without being return'd; and where a Man is taken upon a *Ca. sa.* the Execution is good, tho' the Writ is not return'd: And so in all Cases where no Inquest is to be taken, but only Lands deliver'd, or Seisin had, &c. which are only Matters of Fact. *4 Rep.* 67. *5 Rep.* 89. The Writs of Execution at Common Law were only a *Fieri facias* on the Goods and Chattels, and a *Levari facias* to levy the Debt or Damages upon the Land and Chattels: Afterwards a *Capias ad satisfaciendum* was given by the Statute 25 Ed. 3. c. 17. And an *Elegit* by Stat. *Westm. 2. c. 18.* which makes the Body liable, and the future Profit of Lands, &c. *1 Inst.* 154. *2 Inst.* 394. The Reason why by the Common Law, where a Subject had Execution for Debt or Damages, he could not have the Body of the Defendant, or his Lands in Execution, (unless it were in special Cases) was, that the Defendant's Body might be at Liberty, not only to follow his own Affairs and Business, but also to serve his King and Country; and taking away the Possession of his Lands, would hinder the following of his Husbandry and Tillage. *2 Inst.* 394. Tho' neither the Body, nor Lands of the Debtor on a Judgment could be taken in Execution at Common Law, but only his Goods; yet in Action of Debt against an Heir, upon the Bond of his Ancestor, his Land which he had by Discent was subject to be taken in Execution.

3 Rep. 11. In Action of Debt against the Heir upon his Ancestor's Bond, there was Judgment by *Nil dicit*; and it was held that the Plaintiff should have Execution against the Heir, of any of his own Lands or Goods. *Dyer* 89, 149. Judgment was had against the Heir by *Nil dicit*, and a *Scire facias* being brought against him to have Execution, he pleaded *Riens per Descent*; it was adjudg'd that this Plea was too late after the Judgment by *Nil dicit*, and the Execution shall be on his own Lands. *Dyer* 344. But there is a Difference between a *Scire facias* and an Action of Debt brought against an Heir, upon a Bond of his Ancestor, in which the Heir is named. *Poph.* 193. On a Judgment for the Debt of an Ancestor, where the Heir hath made over Lands descended to him, Execution may be taken against such Heir to the Value of the Land, &c. for the Debt of his Ancestor, as if his own Debt. *Stat. 3 & 4 W. & M. c. 14.* If a Person have Judgment given against him for Debt or Damages, or be bound in a Recognizance and dieth, and his Heir be within Age, no Execution shall be sued of the Lands during the Minority; and against an Heir within Age, no Execution shall be sued upon a Statute Merchant or Staple, &c. *1 Inst.* 290. There is an Execution on Body, Lands and Goods, upon Statutes Merchant, Staple and Recognizances. *1 Inst.* 289. *2 Inst.* 678. Writs of Execution bind the Property of Goods only from the Time of the Delivery of the Writs to the Sheriff; who upon Receipt thereof indorses the Day of the Month when received: But Land is bound from the Day of the Judgment. *Stat. 29 Car. 2. c. 3. Cro. Car.* 149. Sheriffs may deliver in Execution all Lands whereof others shall be seised in Trust for him against whom Execution is had, on a Statute, Judgment, &c. *29 Car. 2. c. 3.* If there are Chattels sufficient, the Sheriff ought not to take the Lands; nor may Things fixed to the Freehold, Goods bought *bona fide*, Goods pawned, &c. be taken in Execution. *8 Rep.* 143. The Sale of Goods for a valuable Consideration, after Judgment, and before Execution awarded, is good: And if Judgment be given against a Lessee for Years, and afterwards he selleth the Term before Execution, the Term assign'd *bona fide* is not liable; also if he assign by Fraud, and the Assignee sells it to another for a valuable Consideration, it is not liable to Execution in the Hands of the second Assignee. *Godb.* 161. *2 Nelf. Abr.* 783. Where there is an Execution against Goods or Chattels, of a Tenant for Life, or Years, the Plaintiff before Removal of the Goods by the Execution is to pay the Landlord the Rent of the Land, &c. so as there be not above a Year due; and if more be due, paying a Year's Rent, the Plaintiff may proceed in his Execution, and the Sheriff shall levy the Rent paid as well as the Execution-Money. *Stat. 8 Ann. c. 17.* When a Judgment is signed, Execution may be taken out immediately upon it, and need not be delay'd till it is entered, it being a perfect Judgment of the Court before entered. *Lit.* 505. If Execution be not issued within a Year and a Day after Judgment, where there is no Fault in the Defendant, as if Writ of Error brought, &c. there must be a *Scire facias* to revive the Judgment; which in that Time may be had without moving the Court; but if it be of longer standing, the Court is to be moved for it. *1 Inst.* 290. *2 Inst.* 771. But if the Defendant be outlawed after Judgment, (as he may where he cannot be taken in Execution, or hath

hath no Lands or Goods to pay the Debt, &c. when the Suit is commenc'd by Original) the Plaintiff need not renew the Judgment by *Scire facias* to obtain Execution after a Year. 1 *Inst.* 290. It hath been adjudg'd, that by the Common Law, if a Man was outlaw'd after Judgment in Debt, the Plaintiff was at the End of his Suit, and he could have no other Process after that personally; but was put to his new Original, &c. 2 *Nelf. Abr.* 772. If the Plaintiff do not proceed upon the *Scire facias*, he may bring an Action upon the Judgment: And after Judgment against the Defendant, in Action where special Bail hath been given, the Plaintiff may have Execution against the Defendant, or prosecute his Bail. *Com. Law Com. plac'd* 206. If one be arrested upon Process in B. R. and puts in Bail, and afterwards the Plaintiff recovers, and the Defendant renders not himself according to Law, in Safeguard of his Bail, the Plaintiff may at his Election take Execution against the Principal, or his Bail; but if he takes the Bail, he shall never afterwards meddle with the Principal: If Two be bail, altho' one be in Execution, the Plaintiff may take the other; tho' if the Principal be in Execution, he cannot take the Bail. *Cro. Jac.* 320. The Court cannot divide an Execution, which is entire and grounded on the Judgment. *Mich.* 24 *Car. B. R.* As an Execution is an intire Thing, he who begins must end it; a new Sheriff may distrain an old one to sell the Goods on a *Distingas nuper Vicecom.* and to bring the Money into Court, or sell and deliver the Money to the new Sheriff; and the Authority of the old Sheriff continues by Virtue of the first Writ, so that when he hath seized, he is compellable to return the Writ, and liable to answer the Value according to the Return; likewise by the Seizure the Property of the Goods, &c. is dejected out of the Defendant, and he is discharg'd, whereby no further Remedy can be had against him. 1 *Salk.* 322. 3 *Salk.* 159. If a Person be discharg'd on an Execution for Error in *adjudicatione Executionis*, he may be in Execution again; but not in other Cases. *Litch.* 192. By Release of all Suits, Execution is gone; for no one can have Execution without Prayer and Suit, but the King only, in whose Case the Judges ought to award Execution *ex Officio*, without any Suit: And a Release of all Executions, bars the King. By Release of all Debts or Duties, the Defendant is discharg'd of the Execution, because the Debt or Duty on which it is founded is discharged: But if the Body of a Man be taken in Execution, and the Plaintiff release all Actions, yet he shall remain in Execution. 1 *Inst.* 291. Though if where a Judgment is given in Action of Debt, and the Defendant taken in Execution, if the Plaintiff releaseth the Judgment, the Body shall be discharged of the Execution: And if the Plaintiff after Judgment releaseth all Demands, the Execution is discharg'd. *Ibid.* A Person in Execution shall not be delivered out of Prison, but by Writ of *Superfedeas*. 1 *Lill. Abr.* 565. And if a Sheriff proceeds after a *Superfedeas* to stay Execution on Goods, &c. it is a great Contempt; and a Writ of Restitution may be awarded. 2 *Bulst.* 194. It hath been resolv'd, that a Writ of Error is a *Superfedeas* from the Time of the Allowance: Tho' if a Writ of Execution be executed before the Writ of Error is allow'd, it may be return'd afterwards. 1 *Salk.* 321. No Execution shall be stay'd by any Writ of Error or *Superfedeas*, after Verdict and Judgment, in any

Action upon the Case for Payment of Money, Covenant, Detinue, Trespass, &c. until Recognizance be entered into as directed by 3 *Jac.* 1. *Stat.* 13 *Car.* 2. c. 2. A Judgment was had against a Person at *Bristol*, and his Goods attach'd there; and the Court of B. R. being moved to stay the Execution, until a Writ of Error brought should be determined, they granted a *Habeas Corpus*, but nothing to stay the Execution. 1 *Bulst.* 268. All Judgments of Courts are to be executed in the peculiar Jurisdictions where given, and cannot be removed to be executed by the superior Courts. *Cro. Car.* 34. But if a Judgment given in another Court be affirm'd or revers'd for Error in B. R. because the Proceedings in the Court below are entered upon Record in the *King's Bench*, the Party shall have Execution in that Court: And so if a Judgment of Debt, &c. in the *Common Pleas* be affirm'd in B. R. on a Writ of Error. 5 *Rep.* 88. Though where the Record of a Judgment given in C. B. is remov'd into B. R. the Party cannot take out Execution upon it, without a *Scire facias quare Executionem habere non debeat*. 1 *Lill. Abr.* 562. And where a Writ of Error is brought in the *Exchequer Chamber*, to reverse a Judgment in B. R. if the Judgment is affirm'd there, yet that Court cannot make out Execution upon the Judgment affirm'd, but the Record must be transmitted back to the Court of *King's Bench*, where Execution must be done. 1 *Lill.* 565. Two recovered in Debt, and before Execution one of them died, and afterwards Execution was sued in both their Names; it was held no Error, and the Survivor may have Execution without a *Scire facias*. *Noy* 150. A *Capias ad satisfaciend.* may be executed upon a Prisoner in Prison for Felony; and if he be acquitted of the Felony, the Sheriff is to keep him. 1 *Lill. Abr.* 567. But where a Person is in Prison for criminal Matters, he ought not to be charged with a Civil Action, without Leave of the Court; yet if he be charged, he shall not be discharged. *Raym.* 58. A *Ca. sa.* will lie against a Man who is outlaw'd for Felony, and he may be taken in Execution at the Suit of a common Person. *Owen* 69. And if the Party was taken upon a *Capias Utlagat.* which is at the King's Suit, he shall be in Execution at the Suit of the Party, if he will. *Moor* 566. A Sheriff shall have his Fees for Executions, upon Writ of *Capias satisfaciend.* for the whole Debt; upon a *Fieri fac.* according to the Sum levied; and on an *Elegit* it is held by some, that he shall have Fees according to what is levied, and by others for the whole Debt recovered, because the Plaintiff may keep the Land 'till he is satisfied the intire Debt. 1 *Salk.* 331. In *Personal Actions*, Execution is either by *Capias ad satisfaciend.* or *Fieri facias* against the Body or Goods; or *Elegit* against the Lands, &c. In *Real and Mix'd Actions*, the Writs of Execution are *Habeere facias Seisinam*, to put the Party in Possession of his Freehold recovered by Judgment of Law; and *Habere facias Possessionem*, to put him in Possession of his Term, &c. 1 *Inst.* 289. 5 *Rep.* 86. Execution of a Fine is the Obtaining actual Possession of the Things contained in it, by Virtue thereof, which is by Entry into the Lands, or by Writ. *West. Symb. par.* 2. *sect.* 137. After Judgment issues Process of Execution; for it begins where the Action ends.

Execution of Criminals must be according to the Judgment; and the King cannot alter a Judgment from Hanging to Beheading, because no

Execution

Execution can be warranted unless it be pursuant to the Judgment. 3 *Inst.* 52, 211. *H. P. C.* 272. But there are antient Precedents, wherein Men condemn'd to be hang'd for Felony, have been beheaded by Force of a special Warrant from the King. *Bract.* 104. *Staundf.* 13. And the King may pardon Part of the *Execution* in Judgment for Treason, viz. all but Beheading. The Court may command *Execution* to be done without any Writ: Though sometimes *Execution* is commanded by Writ. 2 *Hawk. P. C.* 463. Judgment belongs to the Judge; but the *Execution* must be done by the Sheriff, &c. And an *Execution* cannot be lawfully made by any but the proper Officer; who may do it on the Precept of the Judge under his Seal: And if the Sheriff, or other Officer, alters the *Execution*, or any other executes the Offender, or if he is kill'd without Authority of Law, it is Felony. 2 *Hawk. Ibid.* Subsequent Justices have no Power by the Stat. 1 *Ed. 6. c. 7.* to award *Execution* of Persons condemn'd by former Judges; but if Judgment hath not been pass'd on the Offenders, the other Justices may give Judgment, and award *Execution*, &c. 2 *Hawk.* 27. *Execution* ought to be in the same County where the Criminal was tried and convicted; except the Record of the Attainder be removed into *B. R.* which may award *Execution* in the County wherein it sits. 3 *Inst.* 31, 211, 217. Where a Person attainted hath been afterwards at large, if on the Court's Demanding why *Execution* should not be had against him, he denies he is the same Person, it shall be tried by a Jury for that Purpose, and then he is to be executed. 2 *Hawk. P. C.* 463. If a Person, when attainted, stand mute to a Demand why *Execution* shall not go against him, the ordinary *Execution*, (and not Penance) shall be awarded. 2 *Hawk.* 462. In Case a Man condemn'd to die, come to Life after he is hang'd, as the Judgment is not executed 'till he is dead, he ought to be hung up again. *Finch* 389. The Body of a Traitor or Felon is forfeited to the King by the *Execution*; so that he may dispose of them as he pleases. The *Execution* of Persons under the Age of Discretion is usually respited, in order to a Pardon. 1 *Hawk.* 2.

Executione facienda, Is a Writ commanding Execution of a Judgment, and diversly used. *Reg. Orig.*

Executione facienda in Withernamium, A Writ that lies for Taking his Cattle, who hath convey'd the Cattle of another out of the County, so that the Sheriff cannot replevy them. *Reg. Orig.* 82.

Executione Judicii, Is a Writ directed to the Judge of an inferior Court to do Execution upon a Judgment therein, or to return some reasonable Cause wherefore he delays the Execution. *F. N. B.* 20. If Execution be not done on the first Writ, an *Alias* shall issue, and a *Pluries*, with this Clause, *vel Causam nobis significes quare*, &c. And if upon this Writ Execution be not done, or some reasonable Cause return'd why it is delay'd, the Party shall have an Attachment against him who ought to have done the Execution returnable in *B. R.* or *C. B.* *New Nat. Br.* 43. If the Judgment be in a Court of Record, this Writ shall be directed to the Justices of the Court where the Judgment was given, and not unto the Officer of the Court; for if the Officer will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may

amerce him. *Ibid.* One may have a Writ *de executione Judicii* out of the Chancery to execute a Judgment in an inferior Court, although a Writ of Error be brought to remove the Record, and reverse the Judgment; if he that brings the Writ of Error do not take Care to have the Record transcribed, and the Writ of Error return'd up in due Time. 1 *Lill. Abr.* 562.

Executor, (*Lat.*) Is one that is appointed by a Man's Last Will and Testament, to have the Execution thereof after his Decease, and the Disposing of all the Testator's Substance according to the Tenor of the Will: He is as much as *Heres designatus* or *Testamentarius* in the Civil Law, as to Debts, Goods, and Chattels of his Testator. *Terms de Ley* 321, 322. An *Executor* may be appointed by exprefs Words, or Words that amount to a direct Appointment; as if the Testator declares by his Will, that a certain Person shall have his Goods to pay Debts, and otherwise dispose of, &c. And *Executors* may be made upon Condition; for a fix'd Time; or some Part of the Estate. *Wood's Inst.* 320. Where there is no *Executor*, there is properly no Will; and where there is no Will, there can be no *Executor*: But this is understood of Goods, for where Lands in Fee are devised, this is good, tho' no *Executor* be named; *Executors* having nothing to do with Land, which is not Testamentary but by Act of Parliament. *Offic. Exec.* 3, 4. *Finch* 167. All Persons capable of Making a Will, are capable of being *Executors*. 3 *Cro.* 9. And a Woman Covert may be an *Executor*, and do any lawful Act which another *Executor* may do; but she may not damage her Husband thereby, by Assenting to a Legacy before Debts are paid, &c. 5 *Rep.* 27. A Feme Covert *Executrix* cannot release a Debt of her Testator's, or give away the Goods she hath as *Executrix*, &c. without the Husband, but the Husband may do it, and yet the Goods which the Wife hath as *Executrix* are not devided out of her, as her own Goods are; nor if she dies, shall they go to the Husband, but to her *Executors*, or the next of Kin, being Administrator of her Testator. *Offic. Exec. c.* 17. Husband and Wife must be named in Actions brought for Goods which the Wife is entitled to as *Executrix*. *Ibid.* An Infant may be an *Executor*; though he cannot act 'till he is seventeen Years of Age, and until that Time Administration *durante Minori etate* is to be granted. 6 *Rep.* 67. 4 *Inst.* 335. If Two are *Executors*, one whereof is under Age, he of full Age may solely prove the Will, &c. 1 *Lev.* 181. A Man attainted of Felony cannot make *Executors*; because he hath forfeited all that he had: But a Person outlawed may make *Executors*; so may an excommunicate Person, &c. 1 *Leon.* 326. *Cro. El.* 577. A Popish Recusant convict cannot be an *Executor*. 9 *Rep.* 37. A Mayor and Commonalty may be *Executors*. 1 *Roll. Abr.* 915. And if the King is made *Executor*, he appoints others to take the Execution of the Will upon them, and to take Account. 5 *Rep.* 29. Where *Executors* are appointed, they may accept of, or refuse the *Executorship*; but they may not refuse after Acceptance, nor on the other Hand accept after Refusal. 9 *Rep.* 37. When a Will with *Executors* is made, the Ordinary may send out Process against the *Executors* to come in and prove it; and if they do not come in, they are to be excommunicated; but if they come in and refuse to take upon them the Execution of the Will, then the Ordinary is to commit Administration: And the

the Refusal must be by some Act register'd in the Spiritual Court. *Offic. Exec.* If an *Executor* hath administred, he cannot refuse; but the Ordinary is to compel him to take upon him the *Executorship*. *Offic. Exec.* 38. *Executors* cannot refuse for a Time, but for ever; but they may have Time to advise upon it, and the Ordinary is to grant Letters *ad Colligendum*, not Administration. *Cro. El.* 92. An *Executor* refusing the *Executorship*, where Two are appointed, may not administer after the Death of his Companion, for then his Election is gone; and the *Executor* of the other *Executor* who proved the Will, may alone bring an Action for Money due to the first Testator, without joining him who refused. *Dyer* 160. If there are many *Executors* of a Will, and one of them only proves the Will, and takes upon him the *Executorship*, it is sufficient for all of them; but the rest may afterwards join with him, and intermeddle with the Testator's Estate: But if they all of them refuse the *Executorship*, none of them will ever after be admitted to prove the Will; the Ordinary in this Case grants Administration with the Will annex'd, and the Testator is in Law adjudg'd to die Intestate, and without *Executor*. *9 Rep.* 37. *1 Inst.* 113. *Perk.* 485. Where an *Executor* dies before Probate, it is the same; for such an *Executor's Executor* cannot prove the Will, because he is not named therein, and no one can prove a Will but he who is named *Executor* in it; but if the first *Executor* had proved the Will, then his *Executor* might have been *Executor* to the first Testator, there requiring no new Probate. *1 Salk.* 299. An *Executor* of an *Executor* may be *Executor* to the first Testator, but he may take upon him the *Executorship* of his own Testator, and refuse to intermeddle with the Estate of the other: And if the first *Executor* refuses, or dies before Probate, his *Executor* shall not administer to the first Testator: Nor can an *Executor* of an Administrator take Administration of the Goods of his Intestate. *Dyer* 372. A Testator having thought the *Executor* appointed a proper Person to be entrusted with his Affairs, the Ordinary cannot adjudge him disabled or *Incapax*; but a *Mandamus* shall issue from B. R. for the Ordinary to grant Probate of the Will, and admit the *Executor*, if he refuse him: Neither can the Ordinary insist upon Security from the *Executor*, as the Testator hath thought him able and qualified. *1 Salk.* 299. And altho' an *Executor* becomes Bankrupt, yet 'tis said the Ordinary cannot grant Administration to another: But if an *Executor* become *Non Compos*, the Spiritual Court may commit Administration for this natural Disability. *1 Salk.* 307. If an *Executor* take Goods of the Testator's, and convert them to his own Use; or if he either receive, or pay Debts of the Testator, or give Bond for Payment; make Acquittances for them, or demand the Testator's Debts as *Executor*; or give away the Goods of the Testator, &c. these are an Administration, so that he cannot afterwards refuse the *Executorship*: And it has been held, that if the Wife of the Testator take more Apparel than is necessary, it is an Administration. *Offic. Exec.* 39. All Goods and Chattels which belong'd to the Testator at the Time of his Death, in any Part of the World, come to the *Executor* as Assets, and make him chargeable to Creditors and Legatees; and Debts, &c. recovered by the *Executor*, by Action after the Death of the Testator, are to be accounted as Assets; but not before recovered. *6 Rep.* 47.

1 Inst. 374. If an *Executor* do never recover, or get in a Debt, he shall never be charged, provided he hath used his utmost Endeavours to recover it, and cannot do it. *1 Rep.* 98. And where an *Executorship* is controverted in the Spiritual Court by another *Executor* who sets up another Will; an Injunction may be granted to the Testator's Debtors not to pay any Money 'till the Title to the *Executorship* is settled. *Chanc. Rep.* 75. Tho' a Plantation be an Estate of Inheritance, yet being in a foreign Country, it is a Chattel in the Hands of *Executors* to pay Debts. *1 Ventr.* 358. The *Executor* is not only intitled to all personal Goods and Chattels of the Testator, of what Nature soever they are; but they are also accounted to be in his Possession, tho' they are not actually so; for he may maintain an Action against any one who detains them from him: He is likewise intitled to Things in Action; as Right of Execution on a Judgment, Bond, Statute, &c. *1 Inst.* 209. If where a Person to whom Money is awarded by Arbitrators, dies before the Day of Payment, it shall be paid to his *Executor*. *2 Ventr.* 249. *1 Danv. Abr.* 549. If Goods of the Testator are kept from the *Executor*, he may sue for them in the Spiritual Court, or at Common Law; and if one seised of a Messuage in Fee, &c. hath Goods in the House, and makes a Will and *Executors*, and dies, the *Executors* may enter into the House, and carry away the Goods. *Lit.* 69. An *Executor* may in convenient Time after the Testator's Death, enter into the House descended to the Heir, for removing and carrying away the Goods; so as the Door be open, or the Key be in the Door. *Offic. Exec.* 8. He may take the Goods and Chattels to himself, or give Power to another to seize them for him. *9 Rep.* 38. *Executors* having their Power wholly by the Will, may release an Action, Debt, or Duty, or do any Thing as *Executors* before Probate of the Will, so as afterwards they prove it; except it be bringing Actions for Debts, &c. But to maintain these they must shew the Testament prov'd, and the Probate is to be brought into Court before the Defendant will be bound to plead. *Plowd.* 277. *1 Inst.* 292. *1 Roll. Abr.* 917, 926. For the Goods of the Testator taken from them, or for Trespas upon the Land, &c. *Executors* may before the Will prov'd bring Actions of Trespas, Detinue, &c. And if they sell Cattle, or other Goods of the Testator, before the Will is prov'd, they may have Actions for the Money payable, before the same is proved: And an *Executor* may be sued for the Debts of the Testator before Probate of the Will, if he be *Executor* by his own Act of Administring, which makes him liable to Actions. *Offic. Exec.* 35. It has been ruled, that an *Executor* may commence an Action before Probate; but he cannot declare upon it, without producing in Court the Letters testamentary: He is not like an Administrator, who hath no Right till Administration committed; for his Right is the same before as after Probate of the Will, and the not Proving it is only an Impediment to the Action. *1 Salk.* 303. *Executors* may maintain Action of Trover for Goods converted in the Life of the Testator. *Cro. El.* 377. And by Statute, *Executors* shall have the like Writs, Actions and Process, as the Testator might have had; and Trespas and Damages for Wrong done to the Testator: Also *Executors* of *Executors* shall have Actions of Debt, Account, &c. as the first Testator; and answer for Goods, &c. as the first *Exe-*

cutors. 13 Ed. 1. 4 Ed. 3. c. 7. 25 Ed. 3. c. 5. The Word *Executor* is a Word collective; and doth comprehend in it the *Executor* of an *Executor*; for he is accountable for the first Testator's Goods, and is as it were his *Executor* for such Goods as remain unadministred by the first *Executor*. 1 Lill. Abr. 568. Formerly, if an *Executor* waited Goods, and left an *Executor*, and died, leaving Affets, his *Executor* should not be chargeable, because it was a personal Tort. 2 Lev. 110. But now it is otherwise by Statute 4 & 5 W. & M. c. 24. As the Law gives to *Executors* all Chattels, &c. of the Testator, so it subjects the *Executors* to every Person's Claim and Action, which he had against the Testator; for which Reason the *Executor* is said to be the Testator's Assignee, and to represent the Person of the Testator: But for personal Wrongs done by the Testator to the Person or Goods, &c. of another, the *Executor* doth not represent him; because Personal Actions die with the Person. 1 Inst. 209. 9 Rep. 89. No Action shall be brought against an *Executor* or Administrator to answer Damages out of his own Estate, upon any Promise to another, unless there be some Writing thereof signed by the Party to be charged therewith. Stat. 29 Car. 2. c. 3. Nothing can be Debt in the *Executor*, which was not Debt in the Testator; and if a Man covenants that his *Executor* shall pay 10 l. no Action lies against him for it. Cro. El. 252. So a Promise to pay the *Executor*, when the Testator is not named, is not good. Cro. Fac. 570. But a Testator may bind his *Executor* as to his Goods, though he himself is not bound. Ibid. And an *Executor* may recover a Duty due to the Testator, tho' he be not named. Dyer 14. Action lies against an *Executor* upon a collateral Promise made and broke by the Testator. Cro. Fac. 663. *Assumpsit* lies upon a Contract of the Testator; and the Reason is the same upon a Promise, where the Testator had a valuable Consideration. Palm. 329. Tho' a Debt upon simple Contract of the Testator, cannot be recovered of the *Executor* by Action of Debt; yet it may by *Assumpsit*. 1 Lev. 200. Where the Testator might have waged his Law, his *Executors* shall not be charged. 9 Rep. 87. If two Persons are bound jointly, and one of them dies, the Survivor only shall be charged, and not the other's *Executor*. Pasch. 16 Car. 2. And when there are two *Executors*, if one of them dies, Debt is to be brought against the surviving *Executor*, and not the Survivor and the *Executor* of the Deceased: But in Equity, the Testator's Goods are liable in whomsoever's Hands they are. 1 Leon. 304. Chanc. Rep. 57. Bills in Equity for Debts without Specialty, have been allow'd to be brought against *Executors*, with an Averment that they had Affets; and no Difference has been made where the Party seeks for Relief either before or after a Judgment given against him at Law. Moor 556. Affets shall be always intended, 'till the *Executors* alledge the Want of them in Excuse. 9 Rep. 90, 94. If an Obligee makes the Obligor *Executor*, this is a Release in Law of the Debt; but it shall be Affets in his Hands, if there be not Affets beside to pay other Creditors. 8 Rep. 136. 2 Roll. Abr. 920. Where an Obligor is made *Executor* by the Obligee, by Administ'ring some of the Goods, he hath accepted the *Executorship*, and 'tis that which makes the Release; because by being *Executor* he is the Person who is to receive the Money due on the Bond, and he is likewise the Person to pay it; and the Rule is, that where

the same Hand is to receive and pay, that amounts to an Extinguishment. 1 Salk. 305. But a Person who owed the Testator 400 l. was made *Executor*, where Debts, Legacies, and a residuary Estate were devised; and tho' it was insisted that the Debt was discharged by the Debtor's being made *Executor*, and that there was sufficient to pay the Debts and Legacies, yet it was decreed in Equity against the *Executor*, that he should pay the 400 l. to the Residuary Legatee. 1 Chanc. Rep. 292. It has been adjudg'd, that an Obligee making the Wife of an Obligor *Executrix*, had suspended the Action on the Bond so long as the *Executorship* continued; and that a Personal Action being suspended by the Act of the Party himself, is quite extinguished: This was in a Case where the Testator devised all his Goods to the Wife of the Obligor, and made her sole *Executrix*. Moor 855. Hutt. 128. If an Obligee is made *Executor* by the Obligor, the Debt is not released, but the Obligee may still sue for the Debt; unless he administers, when if he sues he must sue himself, which cannot be, and in this Case he may retain the Goods of the Obligor Testator in Satisfaction of his Debt. 2 Lev. 73. 2 Nelf. Abr. 785. If there be no Affets, the Obligee *Executor* may sue the Heir of the Obligor Testator in Action of Debt upon this Bond. 1 Salk. 304. 1 Lill. Abr. 575. If an *Executor* releases all Actions, Suits and Demands, it extends only to Demands in his own Right; not such as he hath as *Executor*. Show. 153. And where an *Executor* grants *Omnia bona sua*, though some are of Opinion that the Goods which he hath as *Executor* will pass; yet others hold the contrary. Noy 106. 4 Leon. 70. An *Executor* shall be charged with Rent in the *Detinet*, if he hath Affets; and if he continues the Possession, he shall be charged in the *Debet* and *Detinet*, in Respect of the Perception of the Profits, whether he hath Affets, or not. 1 Lev. 127. But an *Executor* is not suable in the *Debet* and *Detinet* for Part, and in the *Detinet* for the other Part; because they require several Judgments, viz. *De bonis propriis* for the *Debet* and *Detinet*, and *De bonis Testatoris* for the *Detinet*. 3 Lev. 74. If an *Executor* has a Term, and the Rent reserved is more than the Value of the Premises, in Action brought against him, he may plead the special Matter, viz. That he hath no Affets, and that the Land is of less Value than the Rent, and demand Judgment if he ought not to be charged in the *Detinet tantum*. 1 Salk. 297. It hath been held, that if an *Executor* alters the Property of Goods from the Testator to himself, by Paying a Debt to the Value; or by Paying the Rent of a Lease, and receiving the Profits or Part of the Profits equal to the Rent, the Goods and Profits received are his Own. Dyer 185, 187. 5 Rep. 31. Where a Man by Will devises that his Lands shall be sold for Payment of Debts, his *Executors* shall sell the Land, to whom it belongs to pay the Debts. 2 Leon. ca. 276. And if Lands are devised to *Executors* to be sold for Payment of the Testator's Debts, those *Executors* that act in the *Executorship*, or that will sell, may do it without the others. 1 Inst. 113. By Statute 21 H. 8. c. 4. Bargains and Sales of Lands, &c. devised to be sold by *Executors*, shall be as good, if made by such of the *Executors* only as take upon them the Execution of the Will, as if all the *Executors* had join'd in the Sale: If Lands are thus devised to pay Debts, a surviving *Executor* may sell them; but if the Devise be, that

that the *Executors* shall sell the Land, and not of the Land to them to be sold, here being only an Authority, not an Interest, if one dies, the other cannot sell. 1 *Lev.* 203. When Lands are devised for paying Debts, Goods in the Hands of an *Executor* shall not be liable; though in Case of an Administrator it is otherwise. *Ibid.* Each *Executor* hath the Whole of the Testator's Goods and Chattels, and each may sell or give the Whole; (But one of them cannot assign or release his Interest to the other; if he doth, it will be void). If one *Executor* grant his Part of the Testator's Goods, all passeth, and nothing is left in the other; for that each hath the Whole, and there are no Parts or Moieties between *Executors*: Yet one *Executor* may demise or grant a Moiety of the Land, for the whole Term, and so may the other; and this Way they may settle in Friends trusted for them a Moiety for each. *Offic. Exec.* c. 9. One *Executor* cannot regularly sue another at Law; but he may have Relief in Equity: In the Eye of the Law all are but as one *Executor*, and most Acts done by or to any one of them, are esteem'd Acts done by or to all of them. 1 *Roll. Abr.* 918. If where one *Executor* is sued, he plead that there is another *Executor*, he ought to shew that he hath administr'd. 1 *Lev.* 161. He only that administers is to be sued in Actions against *Executors*; but Actions brought by *Executors* are to be in the Name of all of them, tho' some do not take upon them the *Executorship*. 1 *Roll.* 924. An *Executor* is not disabled by Outlawry, to sue for the Debts of the Testator: Special Bail is not required of *Executors*, &c. in any Action brought for the Testator's Debt: And *Executors* or Administrators are not liable to Costs. *Stat.* 24 H. 8. If an *Executor* brings a Writ of Error, tho' the Judgment is affirm'd, he shall not pay any Costs; because as he is *Executor*, it is *in auter Droit*: Also an *Executor* shall not put in Bail on a Writ of Error, *Causa supra. Mich.* 5 W. & M. *Executors* are excused from paying Costs, as being presumed to have no Knowledge of the Affairs of the Testator; and therefore they shall pay Costs for not going on to Trial, or where the Cause of Action arises to the *Executor* himself, &c. 1 *Salk.* 207. 3 *Salk.* 106. Where any Judgment after Verdict shall be had, by or in the Name of an *Executor* or Administrator, an Administrator *de bonis non* may sue forth a *Scire facias*, and take Execution upon such Judgment. *Stat.* 17 Car. 2. c. 8. Before this Statute it was not so; where an *Executor*, &c. died, for Want of Privy the Administrator was to begin again. 2 *Nels. Abr.* 789. If an *Executor* makes himself a Stranger to the Will of the Testator, pleads *Ne unques Executor*, or any false Plea, and it is found against him, Judgment shall be *de bonis propriis*. In other Cases, *de bonis Testatoris*. *Cro. Jac.* 447. If on a *Sci. fac.* against an *Executor*, the Sheriff return a *Devastavit*; the Plaintiff shall have Judgment and Execution *de bonis propriis* of the Defendant: And if *Nulla bona* be return'd, he may have either a *Capias Satisfaciend.* or an *Elegit*. 2 *Nels.* 791. *Dyer* 185. But one *Executor* shall not be charged with a *Devastavit* made by his Companion; for the Act of one shall charge the other no further than the Goods of the Testator in his Hands amount to. *Cro. El.* 318. An *Executor* sells the Goods, but doth not receive the Money they were sold for; it hath been held a *Devastavit*. 1 *Lill. Abr.* 573. If an *Executor* does any

Waste, or misemploys the Estate of the Deceas'd, or doth any Thing by Negligence or Fraud, &c. it is a *Devastavit*, and he shall be charged for so much out of his own Goods. 8 *Rep.* 133.

The Duty and Office of an *Executor* is to bury the Testator in a decent Manner, according to his Rank and Quality, and with a due Regard to the Estate left after Debts are satisfied: For whatever an *Executor* lays out extravagantly in Funeral Charges, if there be not enough to pay Debts, he must bear it at his own Expence. *Wood's Inst.* 325. But all reasonable and necessary Funeral Charges must be allow'd before Debts and Legacies. 1 *Roll. Abr.* 926. The *Executor* is to make an Inventory of all the Goods and Chattels of the Deceas'd, with their Value, and of all Debts due to the Testator; and this Inventory ought to be made and apprais'd in the Presence of the *Executor*, by Two or more of the Creditors, or Two next of Kin to the Testator, or in their Default by Two or more of the Neighbours or Friends of the Deceas'd: And then the *Executor* must deliver the same upon Oath to the Ordinary. *Doct. & Stud.* c. 10. 21 H. 8. c. 5. Until the Inventory of the Testator's Goods is made and brought into the Office of the Ordinary, it shall be presumed that the *Executor* hath Assets to pay all the Debts of the Testator: The Inventory shews the Charge of the *Executor*, and his Account must be his Discharge, for so much as he can prove to be laid out in the Payments for Funeral Charges, making the Inventory, Probate of the Will, Debts and Legacies: This Account will discharge him of all Suits in the Spiritual Court; but will not discharge him of Suits at the Common Law, for there each particular must be again proved. *Wood* 328. An *Executor* is to pass his Account before the Ordinary, for the Goods and Chattels of the Testator; but the Ordinary may not call *Executors* to account *ex Officio*. 9 *Rep.* 39. 1 *Jac.* 1. c. 17. The Inventory of the Testator's Goods being made, or before if requisite, where there is enough to pay all Debts and Legacies, the *Executor* is to prove the Will before the Ordinary in common Form, by his own Oath, or by Witnesses, if required by those who have a Right to question it; and being exhibited in the Register's Office of the Ecclesiastical Court, a Copy in Parchment is delivered the *Executor* under the Ordinary's Seal, which is called the Probate. *Perk.* 486. 9 *Rep.* 37. 2 *Inst.* 488. One may prove a Will before the Ordinary, which contains Goods and Lands; tho' formerly a Prohibition was granted as to the Lands: And a Will of Freehold Land is to be proved by Witnesses in the Chancery. 1 *Ventr.* 207. 6 *Rep.* 23. The Proving of the Will is necessary for Goods and Chattels, to give the *Executor* Power to bring Actions, and confirm the Acts he did as *Executor* before: When this is done, the *Executor* is to pay all the Testator's Debts before any Legacies, in the Order following, *viz.* After the Funeral Charges, the King's Debt is to be preferr'd, then Debts on Judgments, and Statutes or Recognizances, on Mortgages, Rent upon Leases, &c. Bonds, Bills sealed, and other Specialties, Servants Wages, Debts on Notes, Shop-Books, &c. 1 *Roll. Abr.* 927. *Plowd.* 543. And if the *Executor* pays the Debts in any other Order, he is liable to the Payment of the Debts of a higher Degree, tho' out of his own Estate. *Doct. & Stud.* c. 10. Among Debts of equal Degree, the *Execu-*

tor may pay himself first: And those Debts that are first sued for, are to be first paid: Where two Judgments are given against an *Executor*, the Judgment given first shall be first satisfied; but if the Judgments were given against the Testator, he who first sues Execution, shall be paid before the other. *Noy Max.* 104. 3 *Leon. cap.* 364. If no Suit is begun against the *Executor*, he may pay the whole Debt to any other Creditor in equal Degree, tho' there be nothing left to pay another any Part of his Debt. *Wood's Inst.* An *Executor* pays a Debt upon Bond before a Statute broken, and afterwards the Statute is broken, the Payment of the Debt upon Bond, is a good Plea against the Statute. *Cro. Jac.* 9. Pending a Bill in Equity against an *Executor*, he may pay any other Debt of a higher Nature, or of as high a Nature, where he has legal Assets: But where there is a final Decree against an *Executor*, if he pays a Bond it is a Mispayment; for a Decree is in Nature of a Judgment. 2 *Salk.* 507. If there are several Debts due on several Bonds from the Testator, his *Executor* may pay which Bond-Debt he pleases, except an Action of Debt is actually commenced against him upon one of those Bonds; and in such Case, if pending an Action, another Bond-Creditor brings another Action against him, before Judgment obtained by either of them, he may prefer which he will by confessing a Judgment to one and paying him, which Judgment he may plead in Bar to the other Action. *Vaugh.* 89. An Action was brought against an *Executor*, and pending that Action, he procured another to commence an Action against him for a just Debt owing by the Testator, and the other had Judgment first, which was allowed a good Plea to the first Action; and the *Executor's* Consent to pay one Creditor before another, shall never be intended to be by Covin, but on considering the Circumstances of the Creditors, &c. *Sid.* 21. *Executors* sometimes confess Judgment presently to a Friend for his Debt, for they are not bound to stand Suit; and plead dilatory Pleas to a Stranger's Debt, that the Friend may be first paid upon the Execution: And *Executors* may give Precedence as they please before Execution: But if Judgment for 100*l.* is suffered, and the Plaintiff compounds for 60*l.* the Judgment for the whole Sum shall not be allowed to keep off other Creditors. 8 *Rep.* 133. In Action of Debt against an *Executor*, he may plead a Judgment obtained against him by another *ultra quoad* he hath not Assets, which Judgment is in Force; though Judgments are not to be kept on Foot by Fraud. *Sid.* 230. 1 *Ventr.* 76. If an *Executor* sued by several Creditors, pleads *Plene Administravit* to all at the same Time; and that he hath no Assets *prater* to pay one or two, he will make himself liable to all the Debts: He should plead specially to one Creditor, shewing what Assets he hath, or pay him, and plead fully administered. 1 *Lill. Abr.* 574. On a *Scire facias* against an *Executor*, he cannot plead fully administered, but must plead specially that no Goods of the Testator came to his Hands, whereby he might discharge the Debt; for he may have fully administered, and yet be liable to the Debt, where Goods of the Testator's afterwards come to his Hands. 1 *Lill.* 568. *Cro. Eliz.* 575. In *Sci. fac.* against *Executors*, upon a Judgment of the Testator, they pleaded *Plene Administravit*, by paying Debts upon Bonds *ante Notitiam*; It was adjudged no Plea, for at their Peril they ought

to take Notice of Debts upon Record, and pay them; and though the Recovery be in another County than that where the Testator lived: But where an Action is brought against *Executors* in another County than where they live, and they not knowing thereof, pay Debts upon Specialty, it is good. *Cro. Eliz.* 793. In pleading Debt by Bond against *Executors*, the Plaintiff should allege not only Goods left; but that there is no Debt upon Judgment, Statute, &c. 3 *Lev.* 218. If a Surety pay the Debt of his Principal, who is dead, 'tis said the *Executor* is not liable at Law to repay him, without a Promise; but he is liable in Equity. *Sid.* 89. 3 *Salk.* 96. A Debt devised by the Testator, is not to be paid by the Debtor to the Legatee, but to the *Executor*, who can give a sufficient Discharge for it, and is answerable to the Legatee if there be sufficient Assets. If an *Executor* pays out the Assets in Legacies, and afterwards Debts appear, of which he had no Notice, which he is obliged to pay; the *Executor* by Bill in Chancery may force the Legatees to refund. *Chanc. Rep.* 136, 149. One Legatee paid shall refund against another, and against a Creditor of the Testator, that can charge the *Executor* only in Equity: But if an *Executor* pays a Debt upon simple Contract, there shall be no Refunding to a Creditor of a higher Nature. 2 *Ventr.* 360. *Executors* are not bound to pay a Legacy, without Security to refund. *Chanc. Rep.* 149, 257. And if Sentence be given for a Legacy in the Ecclesiastical Court, a Prohibition lies, unless they take Security to refund. 2 *Ventr.* 358. If an *Executor* pay Legacies, and seven Years after Covenant is broken, for which Action is brought against the *Executor*; the Court inclined that it was a *Devastavit*, and that the *Executor* ought to have taken Security for his Indemnity upon Payment of the Legacies. *Allen* 38. But it has been adjudged, that a Covenant is no Duty till broken; and therefore since it is uncertain whether it will be broken or not, it shall be presumed it will not; and the Legacies being a present Duty shall be paid by the *Executor*, notwithstanding any Covenant not actually broken. *Stile* 37. 2 *Nelf. Abr.* 786. If one binds himself and his *Executors* in an Obligation, &c. to perform a certain Thing, and in his Will gives divers Legacies and dies, leaving Goods only sufficient to pay the Obligation when forfeited; this Obligation shall be no Bar to the Legacies, because it is uncertain whether the same may ever be forfeited: Though the *Executor* may therefore make a Delivery upon Condition, *viz.* to return the Legacies, if the Obligation become forfeit, and the Penalty be recovered. 1 *Roll. Abr.* 928. 2 *Ventr.* 358. The *Executor* is to pay the Legacies, after the Debts; and he may prefer a Legacy to himself, if nothing remains to discharge the other Legacies. *Plowd.* 545. *Offic. Exec.* 204. But *Executors* cannot in Equity pay their own Legacies first, where there is not enough to pay all of them; but shall have an equal Proportion with the rest of the Legatees. *Chanc. Rep.* 354. After the *Executor* hath his own Legacy, he may pay what Legacies he pleases first; or pay each Legatee a Part in Proportion, if there be not enough to pay every one his whole Legacy; and he is not bound to Order, as he is in the Payment of Debts due from the Testator. 2 *Ventr.* 358, 360. If there be a specific Legacy given of any Thing, as a Horse, Silver Cup, &c. it must be delivered before any other

other Legacy, provided there be Assets. *Offic. Exec.* 317. And if there be enough to pay all the Legacies, after the Debts are satisfied, the Legacies shall all be paid; but if there is not sufficient to pay Debts or more, the Legatees must lose their Legacies: If there be any Remainder undisposed of after the Debts and Legacies paid, by the Common Law it is said to belong to the Executor, by Virtue of the *Executorship*. *Plowd.* 526. But this hath been understood where the Executor hath had no Legacy, or other Provision by the Will: And a Man made his Will, giving only a small Legacy for Mourning, and appointed an Executor, without disposing of the Residue of his personal Estate, after Debts and Legacies paid; and it was adjudged that the Remainder should not go to the Executor, but be distributed among the Relations of the Testator by an Administration: The Testator was esteemed to die Intestate as to that Residue, and thereupon Administration shall be granted *quoad* the Residue. *1 Lill. Abr.* 579. *Wood's Inst.* 322. *4 Ann. in B. R.* A Testator made one Executor who was no Relation to him, and gave him 50*l.* And the next of Kin exhibited a Bill in Chancery for the *Residuum* of the Estate; and it was determined that the Executor should not have the Residue, but the next of Kin to the Testator: But if the Executor had been nearly related to the Testator, it might be otherwise; though in such Case if there were other Relations, in equal Degree, poor and indigent, Equity would give the Residue among them. *3 Salk.* 82. The Surplusage of an Estate, given to pay Debts, &c. after Debts, Legacies and Portions paid, hath been ordered by the Court of Chancery to go to the Heir. *Chanc. Rep.* 189. Overseers of a Will have nothing to do with the Execution of it, but are only to give Counsel and Advice to the Executors; and if they will not do their Duty, to complain of them to the Spiritual Court, &c.

Executor de son tort, Or Executor of his own Wrong, is he that takes upon him the Office of an Executor by Intrusion, not being so constituted by the Testator; or for Want thereof, appointed by the Ordinary to administer. *Dyer* 166. If an Executor of his own Wrong takes upon himself the Office of an Executor without any lawful Authority, he is chargeable to the rightful Executor, and to all the Creditors of the Testator, and likewise to the Legatees, so far as the Goods amount unto which he wrongfully possessed: And such an Executor is made by any Act of Acquisition, Transferring or Possessing himself of any of the Estate or Goods of the Deceased; but not by Acts of Necessity, Piety or Charity. *2 Nels. Abr.* 793. Where a Person gets the Goods of the Intestate into his Hands, he is chargeable for them as *Executor de son tort*, until he gives Satisfaction for them to the true Administrator; or satisfies the true Debt of the Intestate to the Value. *Cro. Eliz.* 88. And such a one cannot retain for his own Debt, against another Creditor. *5 Rep.* 31. For if an Executor of his own Wrong, to whom 20*l.* is owing, doth seize Goods to that Value intending to pay himself, it shall be Assets in his Hands to make him chargeable to any Creditor or Legatee. *5 Rep.* 30. And by Statute, Persons obtaining any Goods or Debts of an Intestate by Fraud, or procuring Administration to be granted to a Stranger, &c. are chargeable as Executors in their own Wrong, to the Value of the Goods or Debts, &c. And Executors and Ad-

ministrators of Executors in their own Wrong, shall be liable to pay the Debts of the Testator in like Manner as their Testator or Intestate. *43 Eliz. cap. 8.* *30 Car. 2. cap. 7.* If a Man who is neither Executor nor Administrator, acts as Executor; as when he takes into his Hands the Goods of the Deceased for his own Use, or alters the Property by Sale, &c. or delivers Goods of the Deceased to Creditors or Legatees, receives any Debt due to the Intestate, &c. he is Executor in his own Wrong, and shall answer as far as he acts. *5 Rep.* 31, 32. *8 Rep.* 135. *9 Rep.* 39. But every Taking of the Goods of the Deceased, is not enough to make one chargeable; as if a Person take away his own Goods in the House of the Deceased, or use some of the Deceased's Goods in the necessary Occasions of his Family, bury the Deceased, and sell some of his Goods for that Purpose, &c. *Dyer* 166, 167. *Noy's Max.* 102. When there is a rightful Executor, and a Stranger possesses himself of the Testator's Goods, without doing any further Act as Executor, he is not an *Executor de son tort*: But where there is neither an Executor or Administrator, it is otherwise; for there the Creditors have no Person against whom they may bring any Action but him who hath possessed himself of the Goods. *Dyer* 105. *Roll. Abr.* 918. If there is a lawful Executor that hath proved the Will, or a legal Administration granted, before a Stranger intermeddles with the Goods, the Stranger cannot be an Executor of his own Wrong; but is a Trespasser against the Executor, &c. who is to have his Remedy against the Stranger, and the Creditors may have their Remedy against the lawful Executor. *5 Rep.* 82. An Executor of his own Wrong, may be sued as Executor; and he shall be sued for Legacies, as well as a rightful Executor. *Noy* 13. Though an *Executor de son tort* cannot maintain any Suit or Action, because he cannot produce any Will to justify it: And he will be severely punished for a false Plea, for in such Case the Execution shall be awarded for the whole Debt, tho' he meddled with a Thing of very small Value. *Noy* 69. If a Plaintiff alleges that the Defendant administered of his own Wrong, and the Defendant demurs, it is a Confession of it to be true; and then an Action may be brought against the Defendant as *Executor de son tort*. *5 Mod.* 136. *1 Salk.* 298. An Executor of his own Wrong possesses himself of Goods, and afterwards Administration is granted him, he may by Virtue thereof retain Goods for his own Debt. *5 Rep.* 30. And where a Man took Possession of an Intestate's Goods wrongfully, and sold them to another, and then took out Administration, it was adjudged that the Sale was good by Relation. *Moor* 126. But where an *Executor de son tort* delivered Goods to one to whom Administration was afterwards granted, it was held that if the Administration had been granted to himself, it would not have purged the Tort, much less where granted to another; for he having once made himself liable to an Action as *Executor de son tort*, he shall never after discharge himself by Matter *ex post facto*. *Hob.* 49. An *Executor de son tort* shall be allowed in Equity, all such Payments which a rightful Executor ought to have paid. *2 Chanc. Rep.* 33. See more of Executors, under Administrators, Assets, Joint Executors, Wills, &c.

Executory, Is where an Estate in Fee created by Deed or Fine, is to be afterwards executed by Entry, Livery, Writ, &c. And Leases for Years, Rents, Annuities, Conditions, &c. are called

called Inheritances *Executory*. *Wood's Inst.* 293. *Estates executed* are when they pass presently to the Person to whom conveyed, without any After-Act. 2 *Inst.* 513.

Executory Devise. If a particular Estate is limited, and the Inheritance passes out of the Donor, this is a Contingent Remainder; but where the Fee by a Devise is vested in any Person, and to be vested in another upon Contingency, this is an *Executory Devise*. *Raym.* 28. And in all Cases of *Executory Devises*, the Estates descend until the Contingencies happen. 1 *Lutw.* 798. A Remainder of a Fee may not be limited by the Rules of Law, after a Fee-simple; for when a Man hath parted with his whole Estate, there cannot remain any Thing for him to dispose of: But of late Times a Distinction hath been made between an absolute Fee-simple and a Fee-simple which depends upon a Contingency, or is conditionally limited; especially where such a Contingency may happen in the Course of a few Years, or of one or two Lives; and where such a Remainder is limited by Will, it is called an *Executory Devise*. 2 *Nelf. Abr.* 797. An Estate devised to a Son and his Heirs, upon Condition that if he did not pay the Legacies given by the Will within such a Time, that then the Lands should remain to the Legatees, &c. and their Heirs: This Limitation of a Fee in Remainder, after a Fee limited to the Son, being upon the Contingency of the Son's Failing in Payment of the Legacies, was adjudged good by Way of *Executory Devise*. *Cro. El.* 833. And where the Father devised his Lands to his youngest Son and his Heirs, and if he died without Issue, living the eldest Son, then to him and his Heirs; this was held a good Remainder in Fee to the eldest Brother, after the conditional Contingent Estate in Fee to the Youngest, as depending upon the Possibility that he might be alive when his youngest Brother died without Issue; and his Dying without Issue, was a collateral Determination of his Estate, whilst the other was living. *Godb.* 282. 2 *Nelf. Abr.* 798. There can be no *Executory Devise* after an Estate-tail generally limited, because that would tend to a Perpetuity; and a Contingency is too remote where a Man must expect a Fee upon another's Dying without Issue generally: But dying without Issue, living another, may happen in a little Time, because it depends upon one Life; and therefore a Devise of a Fee-simple to one, but to remain to another upon such a Contingency, is now held good by *Executory Devise*. 2 *Cro.* 695. Sometimes cross Remainders in Tail by Implication, have been pleaded against *Executory Devises*. Formerly where a Term of Years, which is but a Chattel, was devised to one; and that if he died, living another Person, it should remain to the other Person, during the Residue of the Term, such a Remainder was adjudged void: For a Devise of a Chattel to one for an Hour, was a Devise of it for ever. *Dyer* 74. But since it has been held, that a Remainder of a Term to one, after it was limited to another for Life, was good: In a Case where a Testator having a Term devised that his Wife should have the Lands for so many Years of the Term as she should live; and that after her Death, the Residue thereof should go to his Sons and his Assigns; and this was the first Case wherein an *Executory Remainder* of a Term for Years was adjudged good. *Dyer* 358, 253. *Executory Devises*, as to Terms for Years, are not

extended beyond one Life, or Lives; they ought to arise within the Compass of one Life. 1 *Salk.* 229. Where there is an *Executory Devise*, there needs not any particular Estate to support it; and because the Person who is to take upon Contingency, hath not a present but a future Interest, his Estate cannot be barred by a common Recovery; and for that it was a Remainder not in Being when the Recovery was suffered, it has been adjudged it could not be barred by such a Recovery. 2 *Nelf. Abr.* 797, 798.

Exemplification of Letters Patent. Is a Copy or Transcript of *Letters Patent*, made from the Inrolment thereof, and sealed with the Great Seal of England; which *Exemplifications* are as effectual to be shewed or pleaded, as the *Letters Patent* themselves. But neither an *Exemplification* nor *Constat* was pleadable at Common Law, because they were only the Tenor of an Inrolment, and the Tenor of Record is not pleadable: Though by the Statutes of 6 R. 2. c. 4. 3 Ed. 6. and 13 Eliz. they are pleadable. 5 *Rep.* 53. One may exemplify a Patent under the Great Seal in Chancery; and also any Record or Judgment, in any of the Courts at *Westminster*, under the proper Seal of each Court; and such an *Exemplification* may be given in Evidence to a Jury, &c. 1 *Lill.* 583. A Rule made, or Writ filed, in any Court at *Westminster*, may be likewise exemplified in the Court where made or filed. 1651. C. B. But nothing but Matter of Record ought to be exemplified. 3 *Inst.* 173.

Exemplificatione. Is a Writ granted for the *Exemplification* of an original Record. *Reg. Orig.* 290.

Exemption. (*Exemptio*) Signifies a Privilege to be free from Service or Appearance; as Knights, Clergymen, &c. are exempted to appear at the County-Court by Statute; and Peers from being put upon Inquests. 6 *Rep.* 23. Also there is an *Exemption* from Tolls, Duties, &c. by the King's *Letters Patent*.

Exercitiale. Was anciently used for a Heriot: *Exercitiale Vironis sive Baronis Regis, qui est proximus ei, quatuor Equi.* *Leg. Edw. Confess.* 1.

Exfreolare. (From the Sax. *Frede, Frih, Peace*, and *Fritbian*) To break the Peace, or commit open Violence. *Leg. Hen.* 1. c. 31.

Ex grabi Querela. Is a Writ that lies for him to whom any Lands or Tenements in Fee are devised by Will, (within any City, Town or Borough, wherein Lands are devisable by Custom) and the Heir of the Devisor enters, and detains them from him. *Rep. Orig.* 244. *Old. Nat. Br.* 87. And if a Man devises such Lands or Tenements unto another in Tail, with Remainder over in Fee, if the Tenant in Tail enter, and is seised by Force of the Intail, and afterwards dieth without Issue; he in the Remainder shall have the Writ *Ex gravi Querela* to execute that Devise. *New. Nat. Br.* 441. Also where a Tenant in Tail dies without Issue of his Body, the Heir of the Donor, or he who hath the Reversion of the Land, shall have this Writ in the Nature of a *Formedon in the Reverter*. *Ibid.*

Exhenium or **Exennium.** A Gift or Present, and more properly a New-Year's Gift. — *In Expensis Domini Regis & Exennii eidem factis apud, &c. lxxv. sol.* — *Ex Compot. Dom. de Farend. M.S.*

Exhibit. (*Exhibitum*) A Word mentioned in the Statute 14 Car. 2. cap. 14. And where a Deed, or other Writing, is in a Suit in Chancery exhibited

tized to be proved by Witnesses, and the Examiner or Commissioners appointed, certify on the Back of it, that the Deed or Writing was shew'd to the Witness, to prove it at the Time of his Examination, and by him sworn to; this is called an *Exhibit* in Law Proceedings.

Exhibitio, An Allowance for Meat and Drink, such as was customary among the religious Appropriators of Churches, who usually made it to the depending Vicar; and the Benefactions settled for the Maintaining of Scholars in the Universities, not depending on the Foundation, are called *Exhibitions*. Paroch. Antiq. 304.

Exigendaries of the Common Pleas, (*Exigendarii de Banco Communis*) Are otherwise called *Exigentes*, by Stat. 10 H. 6. c. 4.

Exigent, (*Exigenda*) Is a Writ that lies where the Defendant in an Action Personal cannot be found, nor any Thing of his, within the County, whereby to 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 upon Pain of Outlawry: It is called *Exigent*, because it *exacteth* the Party, i. e. requires his Appearance or Forth-coming to answer the Law; and if he come not at the last Day's Proclamation, he is said to be *Quinquies Exactus*, and is outlawed. *Cromp. Jurisd.* 188. The Statutes requiring Proclamations on *Exigents* awarded in Civil Actions, are 6 Hen. 8. c. 4. and 31 Eliz. cap. 3. This Writ also lies in an Indictment of Felony, where the Party indicted cannot be found: And upon suing out an *Exigent* for a criminal Matter before Conviction, there shall be a Writ of Proclamation, &c. 3 Inst. 31. 4 & 5 W. & M. cap. 22. If a Person indicted of Felony absent so long that the Writ of *Exigent* is awarded, his Withdrawing will be deemed a Flight in Law, whereby he will be liable to forfeit his Goods; and though he renders himself upon the *Exigent*, after such Withdrawing, and is found Not guilty, 'tis said the Forfeiture shall stand. 5 Rep. 110. 3 Inst. 232. After a *Capias* directed to the Sheriff to take and imprison a Felon, &c. if he cannot be taken, an *Exigent* is awarded: And after a Judgment in a Civil Action, the *Exigent* is to go forth after the first *Capias*; but before Judgment there must be a *Capias*, *Alias* and *Pluries*. 4 Inst. 177. If the Defendant be in Prison, or beyond Sea, &c. he or his Executors may reverse the Award of the *Exigent*. See *Outlawry*.

Exigentarius, (*Exigendarius*) Is an Officer of the Court of *Common Pleas*; of which Officers there are four in Number: They make all *Exigents* and Proclamations, in Actions where Process of Outlawry doth lie; and also Writs of *Superfedeas*, as well as the *Prothonotaries*, upon such *Exigents* made out in their Offices. 18 Hen. 6. c. 9. But the Issuing Writs of *Superfedeas* is taken from them by an Officer in the same Court, constituted by Letters Patent by King Jam. 1.

Exilium, Signifies in Law Constrution, a Spoiling: And by the Statute of *Marlbridge* it seems to extend to the Injury done to Tenants, by altering their Tenure, ejecting them, &c. and this is the Sense that *Fleta* determines; who distinguishes between *Vastum*, *Destitutio* and *Exilium*; for he tells us that *Vastum* & *Destitutio* are almost the same, and are properly applied to Houses, Gardens or Woods; but *Exilium* is when Servants are enfranchised, and afterwards unlawfully turned out of their Tenements. — *Vastum*

& *Destitutio* fere *equipollent*, & *convertibiliter se habent in Domibus, Boscis & Gardinis; sed Exilium dici poterit, cum servi manumittuntur, aut a Tenementis suis injuriose ejiciuntur*. Flet. lib. 1. cap. 11.

— *Venditionem vel Exilium non faciant de Domibus, Boscis, vel hominibus, &c.* Stat. Marl. c. 25.

Exitus, Issue or Off-spring; and applied to the Issues, or yearly Rents and Profits of Lands. — *Et sciat vicecomes, quod Redditus, Blada in grangia, & omnia mobilia, prater equitaturam, Indumenta & Utenilia Domorum, continentur sub nomine Exituum*. Stat. Westm. 2. c. 43.

Exlegalitus, Is he who is prosecuted as an Outlaw. Leg. Edw. Confess. c. 38.

Ex mero motu, Are Words used in the King's Charters and Letters Patent, to signify that he grants them of his own Will and Motion, without Petition or Suggestion of any other: And the Intent and Effect of these Words, is to bar all Exceptions that might be taken to the Charters or Letters Patent, by alledging that the King in granting them was abused by false Suggestion. *Kitch.* 352.

Ex officio, Is so called from the Power a Person has by Virtue of an Office, to do certain Acts, without being applied to: As a Justice of Peace may not only grant Surety of the Peace, at the Complaint or Request of any Person, but he may demand and take it *Ex officio* at Discretion, &c. *Dalt.* 270. And by Stat. 1 Eliz. c. 1. the Queen by her Letters Patent may authorize any Persons exercising Ecclesiastical Jurisdiction, to administer an *Oath ex officio*, whereby a supposed Offender was compelled to confess, accuse, or clear himself of any criminal Matter, and thereby made liable to Censure or Punishment, &c. but the Branch of this Statute relating to the said Oath, is repealed by 17 Car. 1. c. 11.

Exoneratione facta, Was a Writ that lay for the King's Ward, to be freed from all Suit to the County-Court, Hundred-Court, Leet, &c. during the Wardship. *F. N. B.* 158.

Exoneratione facta ad Curiam Baron. A Writ of the same Nature, sued by the Guardian of the King's Ward, and directed to the Sheriff or Stewards of the Court, that they do not distrain him, &c. for not doing Suit of Court. *New. Nat. Br.* 352. And if the Sheriff distrain Tenants in ancient Demesne, to come to the Sheriff's Turn or Leet, they may have a Writ commanding the Sheriff to surcease, &c. *Ibid.* 359. Likewise if a Man have Lands in divers Places in the County, and he is constrained to come to the Leet where he is not dwelling, when he resides within the Precinct of another Leet, &c. then he shall have this Writ to the Sheriff to discharge him from coming to any other Court-Leet than in the Hundred where he dwelleth. *Ibid.* 357.

Expalmare, To strike any Person with the Palm of the Hand. *Blount.*

Ex parte, Of the one Part; as a Commission in Chancery *Ex parte*, is that which is taken out and executed by one Side or Party only, on the other Party's Neglecting or Refusing to join: When both Plaintiff and Defendant proceed, it is a Joint-Commission.

Ex parte satis, Is 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: And the Course in this Case is to sue this Writ out of the Chancery, directed to the Sheriff to take four

Main-

Mainpernors to bring his Body before the Barons of the Exchequer at a certain Day, and to warn the Lord to appear at the same Time. *F. N. B.* 129.

Expectant, Having Relation to or depending upon; and this Word is used in the Law with Fee, as *Fee-Expectant*: If Land is given to a Man and his Wife, to hold to them and their Heirs; in this Case they have a *Fee-simple*: But if it be given to them and the Heirs of their Bodies, &c. they have a *Fee-Expectant*; and thus it is opposite to *Fee-simple*. *Kitch.* 153.

Expeditare, (*Expeditare*) In the Laws of the Forest, signifies to cut out the Ball of Dogs Forefeet, for the Preservation of the King's Game: But the Ball of the Foot of a Mastiff is not to be taken out, but the three Claws of the Forefoot on the right Side are to be cut off by the Skin. *Crompt. Jurisd.* 152. *Manwood, cap.* 16. This relates to every Man's Dog who lives near the Forest; and was formerly done once in every three Years: And if any Person keeps a great Dog not *expeditated*, he forfeits to the King 3 s. 4 d. 4 *Inst.* 308.

Expeditæ Arbores, Trees rooted up, or cut down to the Roots. — *Inquiratur de Arboribus Expeditatis in Foresta.* *Fleta, lib.* 2. c. 41.

Expeditores, Are the Persons appointed by Commissioners of Sewers, to pay, disburse or expend the Money collected by the Tax for the Repairs of Sewers, &c. when paid into their Hands by the Collectors, on the Reparations, Amendments and Reformatations ordered by the Commissioners; for which they are to render Accounts when thereunto required. *Laws of Sewers*, 87, 88. These Officers are mentioned in the Statute 37 *Hen.* 8. c. 11. and other Statutes: The Steward who supervises the Repair of the Banks and Water-courses in *Rumney Marsh* is called the *Expeditior*.

Expensæ Litis, Costs of Suit allowed a Plaintiff or Defendant recovering in his Action. See *Costs*.

Expensis militum non levandis, &c. Is an ancient Writ to prohibit the Sheriff from levying any Allowance for Knights of the Shire, upon those that hold Lands in ancient *Demesne*. *Reg. Orig.* 261. For there is a Writ *De Expensis militum levandis*, for levying Expences for Knights of the Parliament, &c. *Reg. Orig.* 191.

Expleses, The Rents or Profits of an Estate, &c. Vide *Esplees*.

Explozator, A Scout; also a Huntsman or Chaser. — *In memoriam Henrici Croft Equitis aurati, Exploratoris in Hibernia Generalis, qui obiit Anno 1609.*

Exportation, Is the Shipping or Carrying out the native Commodities of England for other Countries; mentioned in the Statutes relating to the Customs. See *Importation*.

Extend, (*Extendere*) Is to value the Lands or Tenements of one bound by a Statute, &c. who hath forfeited his Bond, at such an indifferent Rate, as by the yearly Rent the Creditor may in Time be paid his Debt. *F. N. B.* 131.

Extendi facias, A Writ of Extent, whereby the Value of Lands is commanded to be made and levied, &c. *Reg. Orig.*

Extent, (*Extenta*) Signifies a Writ or Commission to the Sheriff for the Valuing of Lands or Tenements; and sometimes the Act of the Sheriff or other Commissioner upon this Writ. *Bro.* 313. *Stat.* 16 & 17 *Car.* 2. *cap.* 5. And it hath

been held more frequently to be the Estimate or Valuation of Lands, which when done to the utmost Value, is said to be the full *Extent*; whence come our extended Rents, or Rack-Rents. *Cowel.* And if one bound to the King by Specialty, or to others by Statute, Recognizance, &c. hath forfeited it; so that by the yearly Rent of the Debtor's Lands, the Creditor is to be paid his Debt; upon this the Creditor may sue a Writ to the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt, which is termed a *Liberate*. *F. N. B.* 131. This is after the *Extent* directed to the Sheriff to seise and value the Lands, &c. of the Debtor, to the utmost *Extent*. 4 *Rep.* 67. Lands and Goods are to be appraised and extended by the Inquest of twelve Men, and then delivered to the Creditor, in Order to the Satisfaction of his Debt: Every *Extent* ought to be by Inquisition and Verdict, by the Stat. *Westm.* 2. And the Sheriff without an Inquisition cannot execute the Writ. *Cro. Jac.* 569. The Body of the Cognisor, and all Lands and Tenements that were his at the Time of the Statute, &c. enter'd into, or afterwards, into whose Hands soever they come, are liable to the *Extent*. 2 *Inst.* 396. But Copyhold Lands are chargeable only during the Life of the Cognisor; and may not be extended by *Elegit*, so as to admit a Stranger to have Interest in the Lands held by Copy, without the Admittance of the Lord. Lands in ancient *Demesne*, Annuities, Rents, &c. are extendible. 1 *Roll. Abr.* 88. A Reversion of Lands, &c. may not be extended; but a Plaintiff had Judgment for his Debt and Damages *de Reversione cum acciderit*, and a special *Elegit* to extend the Moiety, &c. 2 *Sid.* 86. *Dyer* 373. An Advowson in gross, is not extendible on *Elegit*. &c. *Stat. Westm.* 2. *cap.* 18. An Office of Trust cannot be extended, because 'tis not assignable; and nothing shall be extended but what may be assigned over. *Dyer* 7. Though an Office is extendible in Equity. *Chanc. Rep.* 39. Goods and Chattels, as Leases for Years, Cattle, &c. in the Cognisor's own Hands, and not sold for valuable Consideration, are subject to the *Extent*. As the Lands are to be delivered to the Party at a reasonable yearly Value; so the Goods shall be delivered in *Extent* at a Price that is reasonable: And on a *Scire facias ad computand.* the Cognissee is to account according to the extended Value; not the real Value of the Land. *Harv.* 136. If the Extenders appraise and value the Lands too high, the Conussee at the Return of the Writ may pray that they may take and retain the Lands at the Rate appraised; and then 'tis said he may have Execution against their Lands for the Debt; but this may not be on *Elegit*. *Cro. Jac.* 12. It has been adjudged, that at the Return of the Writ, the Cognissee may refuse the Lands, &c. extended, if over-valued. *Cro. Car.* 148. The Cognisor cannot enter upon the Cognissee, when Satisfaction is received for the Debt, but is put to his *Scire facias* on an *Extent*: Though on an *Elegit*, the Defendant may enter, because the Land is only awarded, till the Debt which is certain is satisfied; whereas on *Extent*, the Land is to be held until the Debt, Damages and Costs, &c. are satisfied: And the Cognissee being in by Matter of Record, shall not be put out but by Matter of Record, viz. a *Scire facias* brought against him. 4 *Rep.* 67. *Marsh's Rep.* 207, 208. The Cognissee hath no absolute Property in Lands by the *Ex-*

tent, till the Delivery upon the *Liberate*; but notwithstanding, by the very *Extent* they are in *Custodia Legis* for his Benefit. *Cro. Car.* 106, 148. No actual Seisin can be on an *Extent*; and a Cognisee of a Statute-staple, &c. cannot bring Ejectment before the *Liberate*; nor can the Sheriff upon the *Liberate* turn the Ter-tenant out of Possession, as he may upon a *Hab. fac. Possessionem*. 1 *Ventr.* 41. Where there is an *Extent* upon a Statute, and a *Liberate* thereupon, but it is not returned, yet it is good; though regularly when Inquisitions are taken, the Writ ought to be returned. 4 *Rep.* 67. 1 *Lill. Abr.* 592. The Sheriff may be charged to make a Return of his Writ, if he put the Cognisee in Possession of Part only; and so the Cognisee may have Possession of the Whole. 2 *Nelf. Abr.* 774. But if a Person suing out an *Extent*, die before the Return of the Writ, the Sheriff may not proceed in his Inquisition, &c. afterwards; for there must be a Prosecution *de novo*. 1 *Cro.* 325. After a full and perfect Execution had by *Extent*, return'd and of Record, there shall never be any *Re-extent* upon an Evidtion: But if the *Extent* be insufficient in Law, there may be a new *Extent*. *Stat.* 32 *Hen.* 8. *cap.* 5. 1 *Inst.* 290. If Part of the Lands are evicted, the Cognisee is to hold over the Residue of the Land till the Debt is satisfied. 4 *Rep.* 66. Where Lands are delivered in *Extent*, it is as if the Cognisee had taken a Lease thereof for Years, till the Debt is satisfied; and he shall never afterwards take out a new Execution: The Cognisee having accepted the Land upon the *Liberate*, the Law presumes the Debt to be satisfied. 1 *Lutw.* 429. An *Extent* was filed, and though it was discovered that Lands were omitted, the Court would not grant a *Re-extent*. *Sid.* 356. Lands or Goods, &c. are not to be sold on an *Extent*; but delivered.

Extinguishment, (From *Extinguo*) Signifies a Consolidation: For Example; If a Man hath an yearly Rent out of Lands, and afterwards purchases the Lands whereout it ariseth, so as he hath as good an Estate in the Land as the Rent; now both the Property and Rent are consolidated or united in one Possessor; and therefore the Rent is said to be *extinguished*. Also where a Person has a Lease for Years, and afterwards buys the Property; this is a Consolidation of the Property and Fruits, and is an *Extinguishment* of the Lease: But if a Man have an Estate in Land but for Life or Years, and hath a higher Estate as a Fee-simple in the Rent; the Rent is not extinguished, but in Suspence for a Time: for after the Term, the Rent shall revive. *Terms de Ley* 327. *Extinguishment* of a Rent is a Destroying of the Rent by Purchase of the Land; for no one can have a Rent going out of his own Land; though a Person must have as high an Estate in the Land, as in the Rent, or the Rent will not be extinct. 1 *Inst.* 147. If a Person hath a Rent-charge to him and his Heirs, issuing out of Lands, and he purchaseth any Part of the Land to him and his Heirs; as the Rent is entire and issuing out of every Part of the Land, the whole Rent-charge is extinguished: But it is not so where one hath a Rent-service, and purchases Part of the Land out of which it issues; Rent-service, being apportionable according to the Value of the Land, so that it shall only extinguish the Rent for the Land purchased. *Litt.* 222. 1 *Inst.* 145. And if the Grantee of a Rent-charge, purchases Parcel of the

Lands, and the Grantor by his Deed granteth that he may distrain for the Rent in the Residue of the Land; this amounts to a new Grant. 1 *Inst.* 147. If a Man be seised of a Rent-charge in Fee, and grants it to another and his Heirs, and the Tenant attorns; the Grantor is without Remedy for the Rent in arrear before his Grant; and such Arrears become as it were extinct. *Vaugh.* 40. 1 *Lill. Abr.* 594. A. B. made a Lease for Years of Lands to another, and afterwards granted a Rent charge to C. D. who devised the said Rent to the said A. B. till 100*l.* should be levied; then to B. G. and died: Adjudged that by the Devise to A. B. the Rent was suspended, and that personal Thing once suspended by the Act of the Party, is extinguished for ever. *Dyer* 140. A Lease was granted to one for 100 Years, and the Lessee made a Lease for twenty Years, rendring Rent; afterwards the Lessee purchased the Reversion in Fee of the first Term, and it was held that he shall not have the Rent on his Lease, because that being incident to the Reversion of the first Term, is extinguished by the Reversion in Fee, both being in one Person. *Moor* 94. 2 *Nelf. Abr.* 821. When the Freehold cometh to the Term, the Estate for Years is extinct. *Nelf. Ibid.* 820. Where the Remainder of a Term is granted over to another, if the Party in Possession purchase the Fee-simple, though by this Means his Interest is extinguished; yet that shall not defeat the reversionary Interest. 10 *Rep.* 52. 2 *Nelf.* 820. A Fine, &c. of Lands, will extinguish a Term: And by Purchase of an Estate in Fee-simple, an Estate-tail in Land is extinct. 9 *Rep.* 139. Discent of Lands to the same Person who has a Term, will extinguish the Term. *Moor* 286. If a Copyholder takes a Lease of the Land held by Copyhold Tenure, his Copyhold is extinguished. *Cro. Eliz.* 7. And a Copyhold Estate is extinct whenever it becomes not demisable by Copy. *Coke's Copyhold* 62. When a Lessor enters tortiously upon the Lessee against his Consent, the Rent is extinguished. 2 *Lev.* 143. But it hath been adjudged that Rent is not extinct by the Entry of the Lessor, but only suspended; and revives by the Lessee's Re-entry. *Dyer* 361. If a Debtee makes the Debtor Executor, the Debt is extinct: And if a Feme Obligee take the Obligor to Husband, it amounteth to an *Extinguishment*. 1 *Salk.* 304. See *Unity of Possession*.

Extinguishment of Common. By purchasing Lands wherein a Person hath Common Appendant, the Common is extinguished. *Cro. El.* 594. A Release of Common in one Acre, is an *Extinguishment* of the whole Common. *Show. Rep.* 350. And where a Person hath Common of Vicinage, if he encloses any Part of the Land, all the Common is extinct. 1 *Brownl.* 174. If a Man hath a Highway appendant to Land, and afterwards purchaseth the Land wherein the Highway is, the Way is extinct.

Extinguishment of Liberties. If Liberties and Franchises granted by the King, come again to the Crown, they shall not be extinguished: But 'tis otherwise in the King's Grants of Felons Goods, Waifs, Strays, Wrecks, &c. 9 *Rep.* 25.

Extirpation, Is a Judicial Writ, either before or after Judgment, that lies against a Person who when a Verdict is found against him for Land, &c. doth maliciously overthrow any House, or extirpate any Trees upon it. *Reg. Jud.* 13, 56.

Extocare, To grub up Lands, and reduce them to Arable or Meadow. *Mon. Ang. tom. 2. p. 71.*

Extortion, (*Extorsio*, from *Extorqueo* to wrest away) Is an unlawful Taking by any Officer, &c. by Colour of his Office, of any Money, or valuable Thing, from a Person where none at all is due, or not so much is due, or before it is due. 1 *Inst.* 368. 10 *Rep.* 102. At the Common Law which was affirmed by the Statute of *Westm.* 1. *cap.* 26. it was *Extortion* for any Minister of the King, whose Office did any way concern the Administration and Execution of Justice, or the common Good of the Subject, to take any Reward for doing his Office, except what he received from the King: Though reasonable Fees for the Labour and Attendance of Officers of the Courts of Justice are not restrained by Statute, which are stated and settled by the respective Courts; and it has been thought expedient to allow these Officers to take certain immediate Fees in many Cases. 2 *Inst.* 209. 3 *Inst.* 149. 1 *Hawk.* P. C. 170, 171. The taking of Money by *Virtue* of an Office, implies the Act to be lawful; but to take any Money by *Colour* of an Office, implies an ill Action: And the Taking being for Expedition of Business, is judged by Colour of the Office. 2 *Inst.* 206. 1 *Inst.* 368. Also where an Officer is not allow'd by Law to take any Thing, and it would be *Extortion* to do it, a Promise to pay Money is void. 1 *Roll. Abr.* 16. There must be a positive Charge in Cases of *Extortion*, and that the Person charged with it took so much *Extorsive* or *colore Officii*; which Words are as essential as *Proditorie* or *Felonice* for Treason or Felony. 2 *Salk.* 680. *Extortion* by the Common Law is severely punished on Indictment by Fine and Imprisonment, and Removal of Officers from the Offices wherein committed: By Statute, Officers of Justices, &c. guilty of *Extortion*, are to render treble Value. 3 *Ed.* 1. c. 30. And there are divers Statutes for punishing *Extortions* of Sheriffs, Bailiffs, Gaolers, Clerks of the Assize, and of the Peace, Attornies and Solicitors, &c. 23 *H.* 6. 33. *H.* 8. 3 *Fac.* 1. 10 & 11 *W.* 3. Officers may be jointly indicted of *Extortion*, as they may be jointly guilty of the Offence. 1 *Salk.* 382. Against Attornies for *Extortion*, Action may be brought, and the Party grieved shall have treble Damages and Costs; but Information will not lie on the Statute 3 *Fac.* 1. c. 7. *Sid.* 434. 2 *Nels.* 822. If an Officer by terrifying another in his Office, take more than his ordinary Fees or Duties, he is guilty of *Extortion*; which may be compared to unlawful Usury, &c. And *Crompton* says, that Wrong done by any Man is a *Trespass*; but excessive Wrong is properly *Extortion*. *Crompt. Just.* 8. And *Extortion* has been deemed more odious than Robbery, because it carries an Appearance of Truth; and is often accompanied with Perjury in Officers, &c. by breaking their Oaths of Office. *Extortion* in a large Sense is taken for any Oppression by Power or Pretence of Right. 1 *Hawk.* P. C. 170.

Extracta Curia; The Issues or Profits of holding a Court, arising from the customary Fees, &c. *Paroch. Antiq.* 572.

Extracts Of Writings or Records, being Notes thereof. See *Estrats*.

Extrajudicial, Is when Judgment is pass'd in a Cause, not depending in that Court where given; or wherein the Judge has not Jurisdiction.

Extra-parochial, Signifies to be out of any Parish; and where any Thing is privileged and exempt from the Duties of a Parish. Stat. 22 & 23 *Car.* 2. c. 3. §. 67. & *Stat.* 13 & 14 *Car.* 2. c. 12.

Extravagants, Are certain Constitutions of Popes, so called, because they are *Extra Corpus Canonicum Gratiani*, *sive* *Extra Decretorum libros vagantur*. Du Cange.

Extumæ, Reliques in Churches and Tombs. — *Carular. Abbat. Glaston. M.S. f. 15.*

Exuperare, To Overcome; and it sometimes signifies to Apprehend or Take, as, *Exuperare vivum vel Mortuum*. Leg. Edm. c. 2.

Ey, *Insula*, an Island; from which comes *Eyet*, a small Island or Islet, vulgarly called *Eyght*. *Domesd.*

Every Of Hawks. See *Aery*, *Eyze*, Vide *Eire*, and *Justices in Eyre*.

F.

F Is a Letter wherewith *Felons*, &c. are branded and mark'd with an hot Iron, on their being admitted to the Benefit of Clergy. See the Stat. 4 *H.* 7. c. 13.

Fabrick Lands, Are Lands given towards the Rebuilding or Repairing of Cathedrals and other Churches: For in ancient Time, almost every Person gave by his Will, more or less, to the *Fabrick* of the Cathedral or Parish-Church where he lived; and Lands thus given were called *Fabrick Lands*, being *ad Fabricam reparandum*: These Lands are mentioned in the Statute 12 *Car.* 2. c. 8.

Facta Armorum, Feats of Arms, Jests, Tournaments, &c. — *Rex Ricardus in Angliam transiens Statuit Facta Armorum, quæ vulgo Torneamenta dicuntur, in Anglia exerceri*. Hist. Joh. Brompton, in Ric. 1. p. 1261.

Facto, In Fact; as where any Thing is actually done, &c. See *De facto*.

Factor, Is a Merchant's Agent residing beyond the Seas, or in any remote Parts, constituted by Letter or Power of Attorney: And one *Factor* may be concerned for several Merchants, and they shall all run a joint Risque of his Actions. If the Principal give the *Factor* a general Commission to Act for the best, he may do for him as he thinks fit; but otherwise he may not. Tho' in Commissions at this Time, it is common to give the *Factor* Power in expresse Words to Dispose of the Merchandize, and deal therein as if it were his own; by which the *Factor's* Actions will be excused, tho' they occasion Loss to his Principal. *Lex Mercat.* 151. A bare Commission to a *Factor* to sell and dispose of Merchandize, is not a sufficient Power for the *Factor* to entrust any Person, or to give a farther Day of Payment than the Day of Sale of the Goods; for in this Case, on the Delivery of the one, he ought to receive the other: And by the general Power of doing as if it were his own, he may not trust out an unreasonable Time; *viz.* beyond one, two or three Months, &c. the usual Time allow'd for the Commodities dispos'd of; if he doth, he shall be answerable to his Principal out of his own Estate. 1 *Bulst.* 103. 7 *Fac.* 1. B. R. If a *Factor* buys Goods on Account of his Principal, where he is used so to do, the Contract of the *Factor* shall oblige the Principal to a Performance of the Bargain; and he is the proper Person to be prosecuted, on Non-performance: But if the *Factor* enters

enters into a Charter-Party of Affreightment with a Master of a Ship, the Contract obliges him only; unless he lades aboard generally his Principal's Goods, when both the Principal and Lading become liable for the Freight, and not the Factor. *Goldsb. 157.* Goods remitted to a Factor, ought to be carefully preserv'd; yet if the Factor buy Goods for his Principal, and they receive Damage after in his Possession, thro' no Negligence of his, the Principal shall bear the Loss: And if a Factor be robb'd, he shall be discharg'd in Account brought against him by his Principal, 4 *Rep. 83.* He is accountable for all lawful Goods which shall come to his Hands: And if the Factor has Orders from his Principal not to sell any Goods but in such a manner, and he breaks those Orders, he is liable to the Loss or Damage that shall be received thereby: And where any Goods are bought or exchanged, without Orders, it is at the Merchant's Courtesy whether he will accept of them, or turn them on his Factor's Hands. *Lex Mercat. 154, 155.* When a Factor has bought or sold Goods pursuant to Orders, he is immediately to give Advice of it to his Principal; least the former Orders should be contradicted before the Time of his giving Notice, whereby his Reputation might possibly suffer: And where a Factor has made a considerable Profit for his Principal, he must take due Care in the Disposition of the same; for without Commission or particular Orders, he is answerable. *Ibid.* A Factor shall suffer for not observing of Orders; and no Factor acting for another Man's Account in Merchandize, can justify Receding from the Orders of his Principal, tho' there may be a Probability of Advantage by it: If he make any Composition with Creditors without Orders, he shall answer it to his Principal. *Ibid.* Factors ought to observe the Contents of all Letters from their Principals, or written to them by their Order; and to be very diligent and punctual in giving speedy and particular Answers: They should make it their Business to study the Nature, Value, Rise and Fall of Merchandizes, as well here at Home as Abroad, and also the proper Seasons of Buying and Selling, &c.

Factorage, Is 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: In the *West-Indies*, the Commission runs at about 8 per Cent. but in *France* and *Spain*, &c. not above 2 per Cent. and in *Holland* but one and a half per Cent. *Lex Mercat. 155.*

Factum, A Man's own Fact, Act, or Feat; and particularly used in the Civil Law. See *Fait.*

Faculty, (*Facultas*) As restrained from the Original and active Sense, to a particular Understanding in Law, is used for a Privilege granted to a Man by Favour and Indulgence, to do that which by Law he ought not to do. And for the Granting of 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; who has Power by the Stat. 25 H. 8. c. 21. to grant Dispensations, as to marry Persons without the Banes first ask'd, to eat Flesh on Days Prohibited, (and every Diocesan may make the like Grants) to Ordain a Deacon under Age, for a Son to succeed the Father in his Benefice, one to have two or more

Benefices incompatible, &c. And in this Court are registred the Certificates of Bishops and Noblemen granted to their Chaplains, to qualify them for Pluralities and Non-Residence. 4 *Inst. 337.*

Fasting-Men, or Fastening-Men, In *Mon. Angl. Tom. 1. p. 100.* are render'd to signify Vassals: But *Cowel* thinks they rather mean Pledges or Bondsmen; which by the Customs of the Saxons, were fast bound to answer for one another's peaceable Behaviour.

Fig, (From the Saxon *Pece, intervallum*) Is a Knot or Excreescency in Cloth; and in this Sense it is used in the Stat. 4 *Ed. 4. c. 1.*

Faggot, A Badge wore in the Times of Popery, by Persons who had recanted and abjured what the then Powers adjudg'd Heresy: Those poor Wretches that oppos'd the Doctrine of the Arbitrary Priesthood, were condemn'd not only to the Penance of carrying a Faggot, as an Emblem of what they had merited, to such an appointed Place of Solemnity; but for a more durable Mark of Infamy, they were to have the Sign of a Faggot embroidered on the Sleeve of their upper Garment: And if this Badge or Faggot was at any Time left off, it was often alledged as the Sign of *Apostacy.*

Faida, Malice or deadly Feud. *Leg. H. 1. c. 88.*

Failure of Record, Is when 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, *Nul tiel 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 fails to do it, then he is said to fail of his Record, and the Plaintiff shall have Judgment to recover. *Terms de Ley, 329.* In Debt upon an Escape, the Plaintiff declared, that he had obtained a Judgment in an Inferior Court, upon which the Defendant was taken, and the Sheriff suffered him to escape; the Defendant pleaded *Nul tiel Record*, and being at Issue brought in the Record at the Day; by which it appear'd that there were several Variances in the Continuances and Process; but because the Plaintiff, Count, and Judgment certified, did agree with the Plaintiff's Declaration, it was held that those Variances made no Failure of Record. *Hob. 179. 2. Nelf. Abr. 823.* In *Formedon* for the Manor of *Isfield*; the Defendant pleaded in Bar a Common Recovery of the said Manor against the Donee in Tail, who replied *Nul tiel Record*, and the Defendant having brought in the Record, it appear'd that the Recovery was of the Manor of *Iffield*; and adjudg'd, that this being in a Common Recovery, shall be no Failure of Record for this small Variance, but shall be amended being the Misprision of the Clerk. 5 *Rep. 46.* And where a Fine with Proclamations was levied, and upon an Issue of *Nul tiel Record*, on which it was brought in at the Day, tho' the Year of the King was left out in the Proclamations made in one Term, as it was expressed in the Proclamations of the other two Terms, they were held to be right, and the Omission no Failure of Record. *Dyer 234.* If a Judgment, &c. be reversed for Error, *Nul tiel Record* may be pleaded. 8 *Rep. 142.* And where a Tenor only of a Record, &c. is brought in, it is a Failure of Record. *Dyer 187. 2. Nelf. 824.*

Faint-Action, (*Fr. Feinte*) A Feigned Action; such that altho' the Words of the Writ are true, yet for certain Causes the Plaintiff hath no Title

to recover thereby: But a *False Action* is properly where the Words of the Writ are *false*. 1 *Inst.* 361.

Faint-Pleader, Is a fraudulent, false or collusive manner of Pleading, to the Deceit of a Third Person; against which, among other Things, was made the Statute 3 *Ed. 1. c. 29*.

Fair-Pleader, Or not Pleading fairly, &c. See *Beaupleader*.

Fair, (*Fr. Feire*, *Lat. Nundina*) A solemn or greater Sort of Market, granted to any Town by Privilege, for the more speedy and commodious Providing of such Things as the Subject needeth; and the Utterance of what Commodities we abound in above our own Uses and Occasions: And both our *English* and the *French* Word seems to come from *Feria*, because it is incident to a *Fair* that Persons shall be privileged from being molested or arrested in it, for any other Debt or Contract than what was contracted in the same, or at least was promis'd to be paid there. Stat. 17 *Ed. 4. c. 2.* and 1 *R. 3. c. 6.* It is generally kept once or twice in the Year; and a *Mart* is a great Fair holden every Year. 2 *Inst.* 221. The Court of Piepowder is incident to every Fair, &c. And there is a Toll usually paid in Fairs and Markets, on the Sale of Things tollable, and for Stallage, Picage, &c. But this is not incident to a Fair or Market, without special Grant; for where it is not granted, such a Fair or Market is accounted a *Free Fair* or Market. 2 *Inst.* 220. Cro. Eliz. 559. By the Statute 2 *Ed. 3. c. 15.* Fairs are not to be kept longer than they ought by the Lords thereof, on Pain of their being seised into the King's Hands, until such Lords have paid a Fine for the Offence; and Proclamation is to be made how long Fairs are to continue: Also no Merchant shall sell any Goods or Merchandize at a Fair after the Time of the Fair is ended, under the Penalty of forfeiting double the Value of the Goods sold, one fourth Part whereof to the Prosecutor, and the rest to the King. 5 *Ed. 3. c. 5.* Any Citizen of London may carry his Goods or Merchandize to any Fair or Market in England at his Pleasure: Whereas an Ordinance had been made by the Lord Mayor, Aldermen and Citizens, that no Citizen should go to any Fair or Market out of the said City. 3 *H. 7. c. 9.* Owners of Fairs and Markets are to appoint Toll-takers or Book-keepers, on Pain of 40 s. and they shall enter and give Account of Horses sold, &c. 2 & 3 *P. & M. c. 7.* and 31 *Eliz. c. 12.* See *Market*.

Fait, (*Factum*) Is in Law Signification a Deed or Writing, lawfully executed to bind the Parties thereto. *Vide Deed*.

Faitours (*Fr.*) In the Statute 7 *R. 2. c. 5.* is used for Evil Doers; and may be interpreted Idle Livers, from *Faitardise*, which signifieth a Kind of sleepy Disease, proceeding of too much Sluggishness: And in the said Statute it seems to be synonymous with Vagabond. *Terms de Ley*, 331.

Falang, A Jacket or Close Coat, *Blount*.

Falcatura, One Day's Mowing of Grass; a customary Service to the Lord by his inferior Tenants: *Falcata* was the Grass fresh mowed, and laid in Swathes; and *Falcator*, the servile Tenant performing the Labour. *Kennet's Gloss*.

Falco, A Falcon. — *K. John*, in the 14th Year of his Reign, granted to *Owen Fitz-David*, and others, *Omnes accipitres & Falcones gentiles & spuriarios*, &c. — Pat. 14 *Joh.*

Falda, A Sheep-fold — *Et quod Oves sint levantes & cubantes in propria Falda*, &c. Rot. Chart. 16 *Hen. 3. m. 6.*

Faldage, (*Faldagium*) Is a Privilege which several Lords anciently reserved to themselves, of setting up Folds for Sheep in any Fields within their Manors, for the better Manurance of the same; and this was usually done not only with their own, but their Tenant's Sheep, which they called *Setta falda*. This Faldage is term'd in some Places a *Fold-Course*; and in old Charters *Faldoca*, i. e. *Libertas Faldæ*, or *Faldagii*.

Faldata, A Flock or Fold of Sheep; as many as were usually folded in one Pen, or Fold. *Cowel*.

Faldæcurtus, A Sheep-Walk, or Feed for Sheep. 2 *Ventr. Rep.* 139.

Faldsey, **Fald-fee**, A Fee or Rent paid by some customary Tenants for Liberty to fold their Sheep upon their own Land.

Faldstoz, (*Sax.*) The highest Seat of a Bishop, enclos'd round with a Lettice. *Blount*.

Faldwoth, A Person of Age, that he may be reckoned of some Decennary. *Du Fresne*.

Faleræ, (*Lat. Phalera*) The Tackle and Furniture of a Cart or Wain. *Mon. Angl. Tom. 2. f. 256.*

Falesta, A great Rock, Bank or Hill by the Sea-side. *Domesd.*

Fallow-land, *Vide Warectum & Terra Warecta*.

Fallum, Is a Sort of Land, as appears by the *Monasticon Anglicanum*. — *De duobus acris & viginti Fallis in*, &c. *Mon. Tom. 2. 425.*

False Claim, By the Forest Laws, is where a Man claims more than is his Due, and is amerced and punished for the same. A Person had a Grant by Charter of the Tenth of all the Venison in the Forest of Lancaster, viz. *In Carne tantum, sed non in Corio*; and because he made a False Claim, by alledging that he ought to have the Tenth of all Venison within the Forest, as well in *Carne*, as in *Corio*, therefore he was in *Misericordia de Decima Venationis sue in Corio non percipiendo*. *Manwood*, cap. 25. num. 3.

False Imprisonment, (*Falsum Imprisonamentum*) Is a Trespass committed against a Person, by Arresting and Imprisoning him without just Cause, contrary to Law; or where a Man is unlawfully detained, without legal Process: And it is also used for a Writ which is brought upon this Trespass. If a Person be any way unlawfully detain'd, it is *False Imprisonment*; and considerable Damages are recoverable in these Actions. 1 *Inst.* 124. The Law favours Liberty, and the Freedom of a Man from Imprisonment, so that *False Imprisonment* is a great Offence; and lawful Imprisonment is so far pitied, that by several Statutes, as well as by the Common Law, Defaults are saved on that Account. *Wood's Inst.* 16. The King cannot give any Power to imprison, where Imprisonment may not be awarded by the Common Law. 2 *Brownl.* 18. And if a Person is imprison'd on any By-Law of a Corporation, &c. it is *False Imprisonment*; because a By-Law to imprison is against *Magna Charta*, *quod nullus Liber Homo Imprisonetur*, &c. 5 *Rep.* 64. It is the same of a Custom to imprison Persons: But 'tis incident to a Court of Record to imprison. 2 *Nelf. Abr.* 827. If a Justice of Peace, &c. commits a Person without just Cause, it is *False Imprisonment*: And a Constable cannot imprison a Man at his Pleasure, to compel him to do any Thing required by Law; but is to carry him before a Justice. *Ibid.* 1 *Leon.* 327. If erroneous Process issues out of a Court that hath Jurisdiction of the Matter,

Matter, and the Bailiff or Officer executes it, whereby the Party is imprison'd, the Officer shall be excused in Action of *False Imprisonment*: But if the Court out of which the Process issues hath no Cognizance of the Cause, it is otherwise; for in such Case the Officer will not be excused. 10 Rep. 75. An Officer hath a Warrant upon a *Capias ad Satisfaciend.* against an Earl, or Countess, &c. who are privileged in their Persons, and he arrests them; 'tis said Action of *False Imprisonment* will not lie against the Officer, because he is not to examine the Judicial Act of the Court, but to obey. 6 Rep. 56. 10 Rep. 75. Where a Person is taken and imprison'd on a Process unduly obtain'd, Action of *False Imprisonment* may be brought by the Party imprison'd, against him at whose Suit he is imprison'd; but not against the Officer that executes it. 1 Lill. Abr. 595. If an Arrest is made by one who is no legal Officer, it is *False Imprisonment*, for which Action lies. 1 Inst. 69. Action of *False Imprisonment* lies against a Bailiff for arresting a Person without Warrant, tho' he afterwards receives a Warrant: And so it is if he arrest one after the Return of the Writ is past; for it is then without Writ. 2 Inst. 53. If a Warrant be granted to arrest or apprehend a Person, where there are several of the Name, and the Bailiff or other Officer arrests a wrong Person, he is liable to Action of *False Imprisonment*; and he is to take Notice of the right Party at his Peril. Dyer 244. Moor 457. A Man arrested of a Sunday may bring his Action of *False Imprisonment*; but one has been refused to be released in such a Case. 5 Mod. 95. When a Person is kept longer in Hold than he ought, tho' he was at first lawfully imprison'd, it is *False Imprisonment*: If a Bailiff demand more than his just Fees, when offer'd him, and keep a Person in Custody thereupon, it is *False Imprisonment*, and punishable: And if a Sheriff, or Gaoler, keeps a Prisoner in Gaol, after his Acquittal, for any Thing except for Fees, it is unlawful Imprisonment. 2 Inst. 482. Wood 16. Unlawful Imprisonment is sometimes called *Duress of Imprisonment* where one is wrongfully imprison'd 'till he seals a Bond, &c. 2 Inst. 482. A Man under Arrest, or in Stocks, &c. is said to be in Prison: And in a common Arrest, where lawful, the Officer may make any Place his Prison, because the Writ commands that *Habeas Corpus ejus coram, &c. apud Westm.* which is a general Authority. 1 Salk. 401. In criminal Cases, where a Man is falsely imprison'd, he may bring a *Habeas Corpus*, and upon Return of the Writ, setting forth the Cause of the Commitment, if it appears to be against Law, he shall be discharg'd; or he may be bailed, if it be doubtful, &c. 4 Inst. 182.

False Judgment, (*Falsum Judicium*) Is a Writ that lieth where *False Judgment* is given in the County-Court, Court-Baron, or other Courts not of Record. F. N. B. 17, 18. This Writ may be brought on a Judgment in a Plea, Real or Personal: And for Errors in the Proceedings of Inferior Courts; or where they proceed without having Jurisdiction, Writ of *False Judgment* lieth: Tho' the Plaintiff assign Errors in a Writ of *False Judgment*, he shall not say, *In hoc Erratum est, &c.* but *unde queritur diversimodo sibi Falsum Judicium factum fuisse, Judicium in hoc, &c.* Moor 73. 2 Nels. Abr. 829. If Writ of *False Judgment* abate for Default in the Writ, the Plaintiff shall not have a *Scire facias ad audiend. Errores* upon the Record certified; because it comes without an

Original; but if the Plaintiff dies, and *False Judgment* is given in the Inferior Court, his Heir shall have a *Sci. fac. ad audiend. Error.* against him who recovered upon that Record, which is removed into C. B. And where the Plaintiff in a Writ of *False Judgment* is Nonsuit, it was formerly a Question, whether the other Party shall sue Execution upon this Record so removed against the Plaintiff, without suing out a *Scire facias*; but it has been adjudg'd that he may do it. Hill. 23. H. 6. New Nat. Br. 39. When a Record is removed into B. R. by Writ of *False Judgment*, if the Party alleges Variance between the Record removed, and that on which Judgment was given, the Trial shall be by those who were present in Court when the Record was made up. 2 Lutw. 957. A Man shall not have a Writ of *False Judgment* but in a Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them, New Nat. Br. 40. A Tenant at Will, according to the Custom of the Manor, which is Tenant by Copy of Court-Roll, shall not have a Writ of *False Judgment* upon a Judgment given against him: But where *False Judgment* is given on a Writ of *Justicies*, directed to the Sheriff, the Party grieved shall have a *Faux Judgment*, altho' the Judgment be for Debt, or Trespass above the Sum of 40 s. Ibid. Upon *False Judgment* before Bailiffs, or others who hold Plea by Prescription, in every Sum in Debt by Bill before them, a Party shall not have Writ of *False Judgment*; but a Writ of Error thereupon. M. 4. E. 4. For Defaults of Tenants for Life, in Writs of Right, &c. *Faux Judgment* lies by him in Reversion: And this Writ may be brought against a Stranger to the Judgment, if he be Tenant of the Land. A Judgment shall be intended good till reversed by Writ of *False Judgment*, &c. See *Accedas ad Curiam*, and *Attaint*.

Falſe Latin, A Latin Word which is significant, tho' it be not good Latin, yet an Indictment, Declaration or Fine, shall not be made void by it: If the Word is not Latin, nor allowed by the Law, and it be in a material Point, it makes the whole vicious. 3 Rep. 121. *Falſe Latin* will not vitiate a Writ, Plea, Declaration, Grant or Decd. 2 Nels. 830. Vide *Latin*.

Falſe Tokens, As where Persons get Money or Goods into their Hands, by forg'd Letters, or other counterfeit Means, is punishable by Imprisonment, &c. by Statute 33 H. 8. c. 1. See *Counterfeits*.

Falſify, Seems to signify as much as to prove a Thing to be *false*. Perk. 383.

Falſifying a Record, A Person that purchases Land of another, who is afterwards outlawed of Felony, &c. may *falseify the Record*, not only as to the Time wherein the Felony is suppos'd to have been committed, but also as to the Point of the Offence: But where a Man is found guilty by Verdict, a Purchaser cannot *falseify* as to the Offence; tho' he may for the Time, where the Party is found guilty generally in the Indictment, &c. because the Time is not material upon Evidence. 2 Hawk. P. C. 459. And any Judgment given by Persons who had no good Commission to proceed against the Person condemn'd, may be *falseified* by shewing the Special Matter, without Writ of Error. Ibid. Also where a Man is *attainted* of Treason or Felony, if he be afterwards pardoned by Parliament, the Attainder may be *falseify'd*, by him or his Heir, without Plea. Ibid.

Falsifying a Recovery. Issue in Tail may falsify a Recovery suffered by Tenant 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 bound before by a Fine, 2 Nels. Abr. 831. But where there was Tenant for Life, Remainder in Tail, and Reversion in Fee, Tenant for Life suffer'd a common Recovery, in which he in Remainder was vouch'd, and the Uses were declared to him, who had the Remainder in Tail; it was adjudged, that by the Recovery all Remainders and Reversions were barred, and that they could not falsify this Recovery. 10 Rep. 43. He in Reversion suffered a common Recovery, and declared the Uses; his Heir shall not falsify it by pleading that his Father had nothing at the Time of the Recovery, because he is estopp'd to say he is not Tenant to the *Præcipe*. Godb. 189. An Infant brought an Assise in B. R. Pending which Action the Tenant brought an Assise against the Infant in C. B. for the same Land, and had Judgment by Default, which he pleaded in Bar to the Assise brought by the Infant; who set forth all this Matter in his Replication, and that the Demandant at the Time of the second Writ brought was Tenant of the Land, and prayed that he might falsify this Recovery; and it was held that he might, because he could not have Writ of Error, or Attaint. Godb. 271. 2 Cro. 264. It has been determined, that a Recovery is not so firm, but it may be falsified in Point of Recovery of the Thing it self, between the same Parties. *Ibid.*

Falsionarius, A Forger.—*Et quod Falsionarios Chartam, &c. detegent.* Hoveden 424.

Falso retorno Brebium, Is a Writ that lieth against the Sheriff who hath Execution of Process, for false Returning of Writs. Reg. Jud. 43.

Familia; Signifies all the Servants belonging to a particular Master; but in another Sense, it is taken for a Portion of Land, sufficient to maintain one Family: It is sometimes mentioned by our Writers to be a Hide of Land, which is also called a *Manse*; and sometimes *Carucata* or a Plough-land. Blount.

Fanaticks, Are Persons pretending to be Inspired, and being a general Name for Quakers, Anabaptists, and all other Sectaries, and factious Dissenters from the Church of England. Statute 13 Car. 2. c. 6.

Fanatio, (Mensis Fanationis) Is the Fawning Season, or Fence-Month in Forests. Kennet's Gloss.

Fannatum Frumentum, Wheat or Bread-Corn fann'd and clean'd up with a Wind-fan fit for Use. Mon. Angl. Tom. 1. p. 136.

Farandman, (Sax.) A Traveller or Merchant Stranger, to whom by the Laws of Scotland Justice ought to be done with all Expedition, that his Business or Journey be not hindered. Skene, cap. 140.

Fardel of Land, (Fardella terra) Is generally accounted the fourth Part of a Yard-Land; but according to Noy, (in his compleat Lawyer, pag. 57.) it is an eighth Part only, for there he says that two Fardels of Land make a Nook, and four Nooks a Yard-Land.

Farding-deal, (Quadrantata terra) Signifies the fourth Part of an Acre: And besides Quadrantata terra, we read of Obolata, Denariata, Solidata and Librata terra, which probably arise in Proportion of Quantity from the Farding-deal, as an Half-penny, Penny, Shilling, or Pound in Money, rise in Value; and then must Obolata be Half an Acre,

Denariata an Acre, Solidata twelve Acres, and Librata terra twelve-score Acres of Land: But some hold Obolata to be but Half a Perch, and Denariata a Perch; and I find Viginti Libratas terra vel redditus. Reg. Orig. 94. 248. whereby it seems that Librata terra is so much as yields 20 s. per Annum. F. N. B. 87. Spelm. Gloss.

Fare, (Sax.) A Voyage or Passage by Water; but more commonly the Money paid for such Passage, in which Sense we now use it. 3 P. & M. c. 16.

Farinagium, Toll of Meal or Flower.—*Et quod de cetero Molendinarius non capiat Farinagium,* &c. Ordin. Insul. de Jersey 17 Edw. 2.

Farleu, Is Money paid by Tenants in the West of England in lieu of a Heriot: And in some Manors in Devonshire, Farleu is distinguished to be the best Goods; as Heriot is the best Beast, payable at the Death of a Tenant. Cowel.

Farlingarii, Are Whoremongers and Adulterers. Sax.

Farm, or Ferm, (Lat. Firma, From the Sax. Feorm, i. e. Food, and Feormian to feed or yield Viſuals) Signifies a large Messuage and Land, taken by Lease under a certain yearly Rent, payable by the Tenant; and in former Days about the Time of William the 1st, called the Conqueror, these Rents were reserved in Viſuals and other Necessaries arising from the Land; but afterwards in the Reign of King H. 1. were altered and converted into Money. Locare ad Firmam is sometimes taken for as much as to let or set to Farm; and the Reason of it may be in Respect of the firm or sure hold the Tenants thereof have above Tenants at Will. A Farm in Lancashire is called *Ferm-bolt*; in the North a Tack, and in Essex a *Wike*: And Ferm is taken in various Ways. Plowd. 195.

Farmer, Is he that tenants a Farm, or is Lessee thereof: Also generally every Lessee for Life, Years, or at Will, is called Farmer. Terms de Ley. As this Word implies no Mystery, except it be that of Husbandry, Husbandman is the proper Addition for a Farmer. 2 Hawk. 188. By Statute, no Parson or Spiritual Person may take Farms or Leases of Land, on Pain of forfeiting 10 l. per Month, &c. 21 H. 8. c. 13. And no Person whatsoever shall take above two Farms together, and they to be in the same Parish, under the Penalty of 3 s. 4 d. a Week. 25 H. 8.

Farthing, Was the fourth Part of a Saxon Penny, as it is now of the English Penny.

Farthing of Gold, (Quasi fourth Thing) A Coin used in ancient Times, containing in Value the fourth Part of a Noble, viz. 20 d. Silver, and in Weight the sixth Part of an Ounce of Gold. It is mentioned in the Stat. 9 H. 5. c. 7. where it is ordained, that there shall be good and just Weight of the Noble, Half-Noble, and Farthing of Gold, &c.

Farthing of Land, Seems to differ from Farding-deal; for it is a large Quantity of Land: In a Survey Book of the Manor of West Slapton in Com. Devon. is entered thus: A. B. holds six Farthings of Land at 126 l. per Annum.

Farundel of Land, The same with Farding-deal.

Fassus, (Fr. Faisseau) A Faggot of Wood. Mon. Angl. Tom. 2. p. 238.

Fasting-Days, Are Days of Fasting and Humiliation, appointed to be observed by Publick Authority. There are six Days of Fasting enjoined by our Church, at certain Times in the Year, men-

tioned

tioned in ancient Statutes, particularly the 2 & 3 Ed. 6. c. 19. and 5 Eliz. c. 5. and by 12 Car. 2. c. 14. the 30th of January is ordained to be a Day of Fasting and Repentance, for the Murder of King Charles 1. Other Days of Fasting which are not fix'd, are occasionally appointed by the King's Proclamation. Tho' Abstinence from eating of Flesh is required on those Days, by our Laws, politically enacted, it is made penal to affirm that any Eating of Fish, or Forbearing of Flesh, is necessary to Salvation. 1 Hawk. P. C. 8. See *Embring Days*.

Fastermans, Among the Saxons were Pledges. *Leg. Ed. Confess. cap. 38. Vide Festingmen.*

Fat, or **Uate**, Is a large wooden Vessel used by Malsters and Brewers, for measuring of Malt with Expedition, containing eight Bushels or a Quarter. *Stat. 1 H. 5. c. 10. and 11 H. 6. c. 8.* It is also a leaden Vessel, or Pan, made use of by Brewers to run their Wort into; and by others for the making of Salt at *Droitwich*, in the County of *Worcester*.

Fatua mulier, A Whore. *Cum quadam Fatua muliere cum nuda exiitit deprehensus. Du Fresne.*

Faufetum, A Faucet, Musical Pipe, or Flute; but *Blount* applies it to a shrill Singing. — *Organum & de. entum Faufetum in divino Officio omnibus nostris, &c. interdicimus.*

Fautores, Are Favourers or Supporters of Others; Abettors of Crimes, &c.

Feal. The Tenants by Knight's Service did swear to their Lords to be Feal and Leal, i. e. to be Faithful and Loyal. *Spel. de Parliament. 59.*

Fealty, (*Fidelitas*, Fr. *Feaulte*, i. e. *Fides*) 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 Lands by the Oath of Fealty, has it in the freest manner; because all Persons that have Fee, hold *per Fidem* and *fiduciam*, that is, by Fealty at the least. *Smith de Repub. Angl. lib. 3. cap. 8.* This Fealty, which is used in other Nations, as well as *England*, at the first Creation of it bound the Tenant to Fidelity; the Breach whereof was the Loss of his Fee. It is usually mentioned with *Homage*, but differs from it; being an Obligation permanent, which binds for ever: And these differ in the Manner of the Solemnity; for the Oath of *Homage*, is taken by the Tenant kneeling; but that of *Fealty* is taken standing, and includes the six following Things, viz. 1. *Incolume*, that he do no bodily Injury to the Lord. 2. *Tutum*, that he do no secret Damage to him in his House, or any Thing which is for his Defence. 3. *Honestum*, that he do him no Injury in his Reputation. 4. *Utile*, that he do no Damage to him in his Possessions. 5. *Facile*; and, 6. *Possibile*, that he render it easy for the Lord to do any Good, and not make that impossible to be done which was before in his Power to do: All which is comprised in *Leg. H. 1. c. 5.* Fealty has likewise been divided into *General* and *Special*; *General*, to be perform'd by every Subject to his Prince; and *Special*, required only of such as in respect of their Fee, are tied by Oath to their Lords. *Grand Custum. Normand.* Fealty *Special* is with us perform'd either by Freemen, or by Villains. The Particulars of the Oath of Fealty, as it is used by the Feudists, is well express'd by *Zafius*, in his *Traſtat. de Feudis*, Part 7. Num. 15, 16. which is worthy comparing with the usual Oath taken here in *England*. By *Stat. 17 Ed. 2.* the Form of this Oath is appointed, and as now observ'd, it runs as follows, viz.

I A. B. will be to You my Lord C. True and Faithful, and bear to You Fealty and Faith for the Lands and Tenements which I hold of You; And I will truly do and perform the Customs and Services that I ought to do to You. So help me God. The Oath is administered by the Lord, or his Steward; the Tenant holding his Right-hand upon the Book, and repeating after the Lord, &c. the Words of the Oath; and then kissing the Book. *Terms de Ley.* This Oath is in some Manors neglected; but in Copyhold Manors, where Courts are kept, and Copyhold Estates granted, it is generally used: Lessees for Life, or Years, ought to do Fealty to their Lords, for the Lands they hold; and there can be no Tenure without some Service. *Wood's Inst. 183.* But a bare Tenant at Will, shall not do Fealty, because he hath no certain Estate; and the Matter of an Oath ought to be certain. *Litt. 131, 132. 1 Inst. 93.* Fealty is incident to all manner of Tenures, except *Frankalmoin* and Tenancy at Will. *Ibid.* *Fidelitas est Fidei, obsequii & servitii ligamen, quo particulariter Vassalus Domino asringitur.* *Spelm.*

Feasts, Anniversary Times of Feasting and Thanksgiving, as *Christmas*, *Easter*, *Whitsuntide*, &c. The four Feasts which our Laws especially take Notice of, are the Feasts of the *Annunciation* of the Blessed Virgin Mary, of the *Nativity* of St. John the Baptist, of St. Michael the Archangel, and of St. Thomas the Apostle; on which Quarterly Days, Rent on Leases is usually reserved to be paid. See the *Stat. 5 & 6 Ed. 6. 3 Jac. 1. c. 1. 12 Car. 2. c. 30.*

Fees of Attornies and Officers, Are Considerations paid and allow'd them as a Reward and Remuneration for their Pains and Labour; and in respect to Officers, they are granted to excite them to Diligence in executing their Offices. They differ from *Wages*, which are paid to Servants for certain Work and Labour done in a certain Space; whereas *Fees* are disbursed, to Officers, &c. for the transacting of Business which occasionally occurs. If a Client when his Business in Court is dispatch'd, refuseth to pay the Officer his Court-Fees; the Court on Motion will grant an Attachment against him, on which he shall be committed until the Fees are paid. 1 *Lil. Abr. 598.* Ecclesiastical Courts have not Power to establish Fees; for tho' they may think them reasonable, that is not binding: Yet if a Person bring a *Quantum Meruit* for Fees, and the Jury find for him, then they become establish'd Fees. 1 *Salk. 333.* Action of Debt, or Case, lies for an Attorney for his Fees, against him that retain'd him in his Cause. *Mich. 22 Car. B. R.* And Attornies are not to be dismis'd by their Clients, till their Fees are paid. 1 *Lil. 142.* But Attornies are not to demand more than their just Fees; nor to be allow'd Fees to Counsel without Tickets, &c. *Stat. 3 Jac. 1. c. 7.* There were no Fees due to Sheriffs for executing their Offices, till the *Stat. 19 Eliz. &c.* which allows them Fees for executing Writs of Execution, &c. By the *Statute of Westm. 2. 13 Ed. 1. c. 42 & 44.* the ancient Fees of Officers of Courts of Justice were ordained: And by Statutes, not only the Fees of Sheriffs, but of Gaolers, Bailiffs, &c. are limited. See *Extortion*.

Fee-Estate, (*Feodum*, or *Fendum*) Fee, comes of the French Fief, i. e. *Pradium beneficiarum, vel res clientelaris*, or from the Sax. *Feb*, viz. *Mercus, Stipendium, quasi dicitur status Beneficiarius*; and is said to be that Estate which we hold by the Benefit

Benefit of another, and for which we do Service or pay Rent to the chief Lord: And is applied to all those Lands and Tenements which are held by perpetual Right, by an Acknowledgment of any Superiority to a higher Lord. The Writers on this Subject, divide all Lands wherein a Man hath a perpetual Estate to him and his Heirs, into *Allodium* and *Feudum*: *Allodium* they define to be every Man's Land, &c. which he possesseth merely in his own Right, without Acknowledgment of Service or Payment of any Rent to another; and this is a Property in the highest Degree: But *Feudum* is such Land as is held of another, for which Service is done or Rent is paid, as an Acknowledgment thereof. All the Land in England, except the Crown-Lands in the King's own Hands in Right of his Crown, are in the Nature of *Feudum*, or *Fee*; for tho' many have Lands by Descent from their Ancestors, and others have bought Land, it cannot come to an: either by Descent or Purchase, but with the Burden that was laid upon him who had *Novel Fee*, or first of all received it from his Lord; so that there is no Person hath *Directum Dominium*, i. e. the very Property or *Demain* in any Land but the King, in Right of his Crown: And notwithstanding he that hath *Fee*, hath *jus perpetuum* & *utile Dominium*, yet he owes a Duty for it, and therefore it is not simply his own; and he that can say most of his Estate, saith thus: *I am seised of this or that Land or Tenement, in my Demain, as of Fee; seistus inde in Dominico meo ut de Feodo*, which is as much as if he said, it is my *Demain* or proper Land to me and my Heirs for ever; but yet I hold it in Nature of a Benefit from and of another. *Camb. Britan.* 93. All that write of *Feudis*, hold that *Feudatarius* hath not an entire Property in his *Fee*: And as *Fee* cannot be without *Faalty*, sworn to a Superior, the Lands of the Crown are not properly *Fee*; for no Man may grant that our King or Crown oweth *Faalty* to any Superior on Earth. The Word *Fee* is sometimes used for the Compass or Circuit of a Lordship or Manor, as we say the *Lord of the Fee*, &c. as well as the particular Estate of the Tenant: And also for a perpetual *Right incorporeal*; as to have the Keeping of Prisons, &c. in *Fee*, *Bract. Lib.* 2. cap. 5. *Old Nat. Br.* 41. And when a Rent or Annuity is granted to one and his Heirs, it is a *Fee Personal*. *1 Inst.* 1, 2. *Fee* is commonly divided into *Fee Absolute*, otherwise called *Fee-Simple*; and *Fee Conditional*, term'd otherwise *Fee-Tail*. *Fee-Simple*, (*Feodum simplex*) is where a Man hath Lands or Tenements, to hold to him and his Heirs for ever: *Fee-Tail* is an Estate whereof one is seised with Limitation, to him and the Heirs of his Body, &c. *Litt.* 14, 16. All Estates at the Common Law were *Fee-Simple*; and all other Estates and Interests are derived out of it, wherefore there must be a *Fee-Simple* at last in some Body. *Litt.* 647. To have *Fee-Simple* implies that it is without Limitation to what Heirs, but to Heirs generally: Tho' it may be limited by Act of Parliament. *4 Inst.* 206. It is the Word *Heirs* makes the Inheritance, and a Man cannot have a greater Estate. *Litt.* 1. If Lands are given or granted to a Man and his Successors, this creates no *Fee-Simple*: But if such a Grant be made to a Corporation, it is a *Fee-Simple*; and in Case of a sole Corporation, as a Bishop, Parson, &c. a *Fee-Simple* is to them and their Successors. *Wood* 119. An Estate is granted to a Person, to hold to him for ever, or to him and

his Assigns for ever, is only an Estate for Life; the word *Heirs* being wanting to make it *Fee-Simple*: But in Wills, which are more favour'd than Grants, the *Fee-Simple* and Inheritance may pass without the word *Heirs*. *1 Inst.* 19. 9. And a *Fee-Simple* may be created by Deed of Feoffment; which would be an Estate-Tail by Will; as where Lands are given to another, and his Heirs Male, &c. without the word *Body*. *Hob.* 32. A Gift to a Man and his Children, and their Heirs, is a *Fee-Simple* to all that are living; tho' if Land is given to a Man and his Heir, in the singular Number, it is but an Estate for Life; and the Heir cannot take by Descent, he being but one, and therefore 'tis said shall take Nothing. *1 Inst.* 8. *Lit. Rep.* 6. A *Fee-Simple* cannot come after a *Fee-Simple*; nor can a Remainder, it being an absolute Estate, and nothing can come after it. *Dyer* 33. A *Fee-Simple* determinable upon a Contingency, is a *Fee* to all Intents; tho' not so durable as absolute *Fee*. *Vaugh.* 273. In pleading Estates in *Fee-Simple*, they may be generally alleged; but the Commencement of Estates-Tail, and other particular Estates, must regularly be shewed. *1 Inst.* 303. Tho' *Fee-Simple* is the most ample Estate of Inheritance, it is subject to many Incumbrances; as Judgments, Statutes, Mortgages, Fines, Jointures, Dower, &c. And there is a *Fee-Simple Conditional*, where the Estate is defeasible by not performing the Condition; and a *Qualified Fee-Simple*, which may be defeated by a Limitation, &c. This is called a *Base Fee*, upon which no Remainder or Reversion can be expectant. *1 Inst.* 18. *10 Rep.* 97. See *Descent*, *Executory Devise*, *Wills*.

Fee Expectant, (*Feudum Expectativum*.) See *Expectant*.

Fee-Farm, (*Feudi Firma*) Is when the Lord upon Creation of the Tenancy, reserves to himself and his Heirs, either the Rent for which it was before let to Farm or was reasonably worth, or at least a fourth Part of the Value; without Homage, *Faalty* or other Services, beyond what are especially comprised in the Feoffment. *2 Inst.* 44. By *Fitzherbert*, a third Part of the yearly Value of the Land may be appointed for the Rent, where Lands are granted in *Fee-Farm*, &c. *F. N. B.* 210. Tho' *Fee-Farm Rents* seem to be more or less, according to the Conditions of the Purchase of the Land, out of which they are issuing. *1 Inst.* 143. It is the Nature of *Fee-Farm*, that if the Rent be behind and unpaid for the Space of two Years, then the Feoffor or his Heirs may bring an Action to recover the Lands, &c. *Brit. cap.* 66. num. 4.

Fee-Farm Rents of the Crown. The *Fee-Farm Rents* remaining to the Kings of England from their *ancient Demesnes*, were many of them alienated from the Crown in the Reign of King *Charles 2.* And by Stat. 22 *Car.* 2. c. 6. the King was enabled by Letters Patents to grant *Fee-Farm Rents* due in Right of his Crown to Trustees, to make Sale thereof; and the Trustees were to convey the same by Bargain and Sale to Purchasers, &c. But it has been observ'd, that Men were so very doubtful of the Title to Alienations of this Nature, that whilst these Rents were exposed to Sale for ready Money, scarce any would deal for them, and they remain'd unfold; till what made Men earnest to buy them, was the Stop upon some of his Majesty's other Payments, which occasioned Persons to resort to this as the most eligible in that Conjunction: No Tenant in

Tail,

Tail, of any of the said Rents, is enabled to bar the Remainder. 22 & 23 Car. 2. c. 24. On the Taxing of *Fee-Farm Rents*, Receivers, &c. were to allow to the Persons paying them so much in the Pound as the Land-Tax amounts to. Stat. 9 & 10 W. 3. c. 18.

Felagus, (*Quasi Fide cum eo ligatus*) A Companion, but particularly a Friend, who was bound in the *Decennary* for the good Behaviour of another. In the Laws of King *Ina*, it is said, if a Murderer could not be found, &c. the Parents of the Person slain should have six Marks, and the King forty; if he had no Parents, then the Lord should have it: *Et si Dominus non haberet, Felagus ejus*. LL. Inæ, cap. 15.

Feld, Is a Saxon Word, signifying *Field*; and in its Compound it signifies *Wild*, as *Feld-Honey*, is *Wild Honey*, &c. *Blount*.

Fele Homagers, Were Faithful Subjects, from the Sax. *Fai*, i. e. *Fides*.

Felo de se, One who lays violent Hands on himself, and is the Occasion of his own untimely Death. When a Person with Deliberation and direct Purpose kills himself, by Hanging, Drowning, Stabbing, &c. this is *Felo de se*; but the Person that commits this Felony, must be of the Age of Discretion, and *Compos Mentis*: And therefore if an Infant under 14 Years of Age, or a Lunatick during his Lunacy, or one distracted by a Disease, or an Ideot, kills himself, it is not Felony. 3 Inst. 54. *Dalt. ch. 145*. Also if a Person during the Time that he is *Non Compos Mentis* giveth himself a Mortal Wound, tho' he dieth thereof when he recovers his Memory; he is not *Felo de se*, because at the Time of the Stroke he was not *Compos Mentis*. *Dalt. 342, 344*. It is *Felo de se* where a Man maliciously attempts to kill another, and falls upon his Sword, &c. whereby he kills himself; but he must be the only Agent. 1 Hawk. P. C. 68. He who desires and periwades another Man to kill him, is not *Felo de se*; his Assent being void in Law, and the Person killing him a Murderer. *Kelw. 136*. A *Felo de se* shall forfeit all his Goods and Chattels, Real and Personal; but not until it is lawfully found by the Oath of twelve Men, before the Coroner *super visum Corporis*, that he is *Felo de se*. 3 Inst. 55. By the Return of the Inquisition, the Goods, &c. are vested in the King: Tho' it hath been said, that Goods of a *Felo de se* are forfeited before Inquisition, viz. immediately upon committing the Fact. 1 Lev. 8. But see 5 Rep. 110. where it is adjudged that they are not forfeited till it is found of Record. The Lands of Inheritance of a *Felo de se* are not forfeited, by Reason he was not attainted in his Life-time; nor is such a Person's Wife barred of Dower, or his Blood corrupted. 1 Hawk. 68. If a Judgment is obtain'd by a Plaintiff in any Action, and the Plaintiff hangs himself, so as to become *Felo de se*, the Debt is forfeited to the King. 1 Saund. 36. 2. Nelf. Abr. 840. Goods are forfeited to the King by a *Felo de se*, for the Loss of a Subject, and Breach of the Peace. 1 Plowd. 261. But these Forfeitures are oftentimes saved, by the Coroner's Jury finding their Verdict *Lunacy*; to which they are inclinable on a favourable Interpretation, that it is impossible for a Man in his Senses to do a Thing so contrary to Nature; but if this Argument be good, Self-Murder can be no Crime, because a Madman cannot be guilty of any Crime. 1 Hawk. 67. If a Person *Felo de se* is secretly made away with, that the Coroner can't view the Body;

Presentment is to be made of it by Justices of Peace, &c. to entitle the King to the Forfeiture of Goods. 5 Rep. 110. Where a Person is found *Felo de se*, who on Account of Lunacy, &c. ought not to be so; or where one is return'd *Non Compos*, when in Truth the Party is *Felo de se*, &c. if there be no Fault in the Coroner, or Incertainty in the Inquisition, a *Melius Inquirendum* will not be granted; but the Inquisition is traversable in B. R. 3 Mod. 238. 2 Nelf. Abr. 840. Altho' there can be no *Melius Inquirendum*. 'tis said the Court may order an Indictment to be against the *Felo de se*; and if that be found, his Goods shall be forfeited. 1 Lill. Abr. 601. A Pardon of Murder doth not pardon *Felo de se*; but a Pardon of all Felonies and Forfeitures doth: By Custom and Practice, the Bodies of *Felo's de se's* are buried in the Highway, &c.

Felons Goods. The Statute *de Prærogativa Regis*, 17 Ed. 2. c. 1. grants to the King, among other Things, the Goods of Felons and Fugitives. If the King grant to a Man and his Heirs *Felons Goods*, the Grantee cannot devise them, &c. on the Statute 32 H. 8. because they are not of an yearly Value; but where a Person is seized of a Manor, to which they are appendant, it is otherwise, for they will pass as appurtenant. 3 Rep. 32. A Person committed to Prison on Suspicion of Felony, having the Money taken from him which he had about him before Conviction, brought an Action of Trespass for seizing his Money, &c. on the Stat. 1 R. 3. c. 3. by which it is enacted, that no Person shall take the Goods of another, &c. *Raym. 414. 2 Nelf. 839*. See *Flight*.

Felony, (*Felonia*, Fr. *Felonnie*) As Sir Edward Coke tells us, is derived from the Latin word *Fel*, or from the old Sax. *Fell*, one signifying Gall, and the other Fiery; and his Reason is, because either of these Words are suitable to the Crime, which is always intended to be done with a bitter or fierce Mind: But the learned *Spelman* gives a different Account of the Derivation of this Word, that it comes from the Saxon word *Feah*, which signified a Reward or Estate, and the German *Lon*, which in English is Price; as this was formerly a Crime punished with the Price, viz. the Loss of Estate. *Mod. Jusdice 179*. And before the Reign of K. Hen. 1. Felonies were punished by Pecuniary Fines; for he was the first who ordered Felons to be hanged, about the Year 1108. The Judgment against a Man for *Felony* hath been the same since the Reign of this King, i. e. That he be hanged by the Neck till Dead; which is entered *suspendatur per Collum*, &c. There is another Derivation of the word *Felony*, from the Sax. *Felen*, i. e. *Errare, delinquere*, which seems to be most agreeable with the Offence. *Blount*. *Felony* was anciently every Capital Crime perpetrated with an evil Intention: All Capital Offences by the Common Law came generally under the Title of *Felony*; and could be express'd by no Word but *Felony*; which must of Necessity be laid in an Indictment of *Felony*. 1 Inst. 391. It is always accompanied with an evil Intention; and therefore shall not be imputed to any Misanimadversion: But the bare Intention to commit a *Felony* is so very Criminal, that at the Common Law it was punishable as *Felony*, where it mis'd of its Effect through some Accident; and as our Law now is, the Party may be severely fined for such an Intention. 1 Hawk. P. C. 65. *Felony* is included in High Treason. H. P. C. 11. We account

count any Offence *Felony*; that is in Degree next Petit Treason; and at this Day *Felony* includes Petit Treason, Murder, Homicide, Sodomy, Rape, Burning of Houses, Burglary, Robbery, Breach of Prison, Rescous and Escape, after one is imprison'd or arrested for *Felony*, &c. It is either by the *Common Law*, or by *Statutes*: *Felony* by the *Common Law* is against the Life of a Man, as Murder, Manslaughter, *Felo de se*, *Se Defendendo*, &c. Against a Man's Goods, such as Larceny, and Robbery: Against his Habitation, as Burglary, Arson or House-burning; and against Publick Justice, as Breach of Prison. 3 *Inst.* 31. Piracy, Robbery, or Murder upon the Sea, are *Felonies* punishable by the *Civil Law*; and likewise by Statute: And *Felonies* by Statute, are very numerous. *Mod. Just.* 180. Also *Felonies* are of a *Publick*, or *Private* Nature; hurtful to the Commonwealth, or immediately hurtful to particular Persons, &c. *Felony* is distinguished from lighter Offences, in that the Punishment of it is Death; but not always, for Petit Larceny is *Felony*, and the Indictment against such an Offender must run, *Felonice cepit*, yet it is not punished by Death, tho' it be Loss of Goods: And of *Felonies* in general, there are two Sorts; one which for the first Offence is allowed *Clergy*, and another that is not; but *Clergy* is granted where it is not expressly taken away by Statute. *Staundf. lib.* 1. *Felony* is punished by Loss of Life, and of Lands, not entailed, Goods and Chattels; but the Statutes make a Difference in some Cases concerning Lands, as the 37 H. 8. c. 6. And *Felony* ordinarily works Corruption of Blood; unless a Statute making an Offence *Felony*, ordains it shall be otherwise, as some Statutes do. The Punishment of a Person for *Felony*, by our ancient Books, is, 1st, To lose his Life. 2dly, To lose his Blood, as to his Ancestry, and so as to have neither Heir nor Posterity. 3dly, To lose his Goods. 4thly, To lose his Lands; and the King shall have *Annum Diem & Vastum*, to the Intent that his Wife and Children be cast out of the House, his House pull'd down, and all that he had for his Comfort or 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 *Felony* at Common Law. 3 *Inst.* 47, 59, 90. And when Persons are to undergo Judgment of Life and Member for any Crime by Statute, it is *Felony* thereby, whether the word *Felony* be mentioned or not. 1 *Hawk.* 107. All *Felonies* are several, and cannot be joint; so that a Pardon of one Felon, cannot discharge another: But the *Felony* of one Man may be dependent upon that of another, and the Pardon of the one by a necessary Consequence enure to the Benefit of the other, as in Cases of Principal and Accessary, &c. 2 *Hawk.* P. C. 387, 380. Private Persons may arrest Felons, by their own Authority, or by Warrant from a Justice of Peace: And every private Person is bound to assist an Officer to take Felons, &c. 2 *Hawk.* 75. And if a Person be brought before a Justice upon Suspicion of *Felony*, where a *Felony* is committed, tho' it appears on Examination that he is not guilty, yet it is said he is not to be discharged without Trial. *Lamb.* 229. But one ought not to be arrested upon Suspicion of *Felony*, except there be *probabilis Causa* shewed for the Ground of the Suspicion. 1 *Lill. Abr.* 603. Officers may break open a House to take a Felon, or any Person justly

suspected of *Felony*; and if an Officer hath a Warrant to take a Felon, who is killed in resisting, it is not *Felony* in the Officer; but if the Officer is killed, it is otherwise. *Dalt.* 289. Persons indicted of *Felony*, &c. where there are strong Presumptions and Circumstances of Guilt, are not replevisable; but for Larceny, &c. when Persons are committed who are of good Reputation, they may be bailed. 2 *Hawk.* 101. If one be committed to Prison for one *Felony*, the Justices of Gaol-Delivery may try him for another *Felony* for which he was not committed, by Virtue of their Commission, 1 *Lill.* 602. A Felon refusing to plead, and put himself upon his Trial, shall be put to the Penance of *Paine fort & Dure*, &c. If a Felon stands Mute by the Act of God, the *Felony* is to be enquired of by Jury, and whether the Prisoner be the same Person, and all other Matters in the same manner as if the Criminal had pleaded. 2 *Hawk.* 327. And it may be enquired of by Inquest of Office, whether he do so of Malice or by the Act of God. *Ibid.* Where a married Woman commits *Felony*, in Company with her Husband, it shall be presumed to be done by his Command, and she shall be excused. 3 *Inst.* 310. If a Person to whom Goods are delivered on a pretended Buying them, runs away with them, it is *Felony*; and a Guest stealing Plate set before him at an Inn, &c. is *Felony*, also Persons who have the Charge of Things, as a Servant of a Chamber, &c. may be guilty of *Felony*: And the least Removing of a Thing in Attempts of *Felony*, is *Felony*, tho' it be not carried off. 3 *Inst.* 308. *Raym.* 275. But Goods must not be of a base Nature, such as Dogs, &c. nor *Fera Natura*, as Deer, Hares, &c. except they be made tame, when it will be made *Felony* to steal them. If any Turkeys, Geese, Poultry, Fish in a Trunk, &c. are taken away, it is *Felony*. 3 *Inst.* 309, 310.

Felonies by Statute, Are the following, *viz.* To embezzle the King's Armour, Munition, Naval Stores, &c. to the Value of 20 s. is declared to be *Felony*; but not to cause Corruption of Blood, &c. And the Prosecution must be in a Year. 31 *Eliz.* c. 4. Acknowledging Bail in the Name of another Person, who is not Privy or Consenting, is *Felony* without Benefit of Clergy. 21 *Jac.* 1. c. 26. Bankrupts not surrendering to be examined, and not discovering their Estates, or removing or embezzling any Money or Effects to the Value of 20 l. are guilty of *Felony*: And their Goods and Estate shall be forfeited and divided to and among the Creditors. 4 & 5 *Ann.* c. 17. and 5 *Geo.* c. 24. Buggery with Man or Beast, is *Felony* without Benefit of Clergy; and the Act extends to Women as well as Men. 25 H. 8. To commit any Offence of Burglary, in stealing Goods from a House, Shop, Warehouse, Coach-house, &c. to the Value of 5 s. tho' no Body be therein, or there is no actual Breaking, is *Felony* excluded Clergy. 10 & 11 W. 3. Burning of Barns, Buildings, Stacks of Corn, &c. is made *Felony*; tho' it works no Corruption of Blood. 22 & 23 Car. 2. Destroying of Cattle, the Offenders shall suffer as in Cases of *Felony*. 22 Car. 2. Mixing blanched Copper with Silver, to make it heavier and resemble Gold Coin; or receiving or paying counterfeit Money, or Coin unlawfully diminished, is *Felony*; but incurs no Corruption of Blood, or Loss of Dower. 8 & 9 W. 3. To inroll a Deed in the Name of another, without his Privy or Consent, is *Felony*. 21 *Jac.* 1. c. 26. Putting out of

of Eyes, &c. of any one, is *Felony* without Benefit of Clergy. 22 & 23 Car. 2. c. 1. Counterfeiting Exchequer Bills, or any Indorsement thereon, &c. or tendering such Bills in Payment knowingly, is made *Felony*. 8 & 9 W. 3. 7 Ann. To acknowledge a *Fine* of Lands in the Name of another Person, not privy or consenting, is *Felony*. 21 Jac. 1. Forging a Deed or Writing to the Intent the Inheritance of Land may be defeated or charged, or the Title troubled, &c. for the second Offence, after a former Conviction, is made *Felony*. 5 Eliz. c. 14. Forging the Seal of the Bank of England, or any Bank Bills; and Forging the Common Seal of the South-Sea Company, or any Bond of the said Company, are *Felony*. 7 & 8 W. 3. 9 Ann. so is also the Forgery of Exchequer Bills, or any Indorsements thereon; and of Lottery Tickets and Orders, or altering the Number or principal Sum of any Order; forging any Warrant of the South-Sea Company, &c. or Letter of Attorney to transfer Stock, or to receive any Annuity, Perforating or Forging the Name of any Proprietor, &c. 8 & 9 Ann. 3. & 6 Geo. 8 Geo. Forging of Stamps on Vellum, Paper, &c. is likewise *Felony*. 10 Ann. To destroy Horses in the Night-time, is *Felony*; but wounding them incurs a Forfeiture of treble Damages only. 22 & 23 Car. 2. Horse-stealing is *Felony* without Benefit of Clergy. 2 & 3 Ed. 5. Malicious Burning of Houses, &c. was made *Felony*, by 22 & 23 Car. 2. And Demolishing of Meeting-Houses, Dwelling-Houses, &c. is *Felony*, by the Act against Riots, 1 Geo. c. 6. Persons Hunting in the Night-time in Forests, Chases, &c. disguised with painted Faces, and concealing the Fact on Examination, is *Felony*. 1 H. 7. If any Person having their Faces black'd, arm'd with Fire Arms, &c. shall unlawfully hunt, kill or steal any Deer in any Forest, steal any Fish out of a Pond, &c. or shoot at any Person; or send any threatening Letter demanding Money or other valuable Thing of another; or kill or wound any Cattle; cut down any Trees in any Avenue, Garden, &c. they are guilty of *Felony* without Benefit of Clergy, and if the Offenders are not taken, the Hundred shall make Satisfaction not exceeding 200 l. 9 Geo. c. 22. The Acknowledging or Procuring to be acknowledged of a *Judgment* in the Name of another Person, is *Felony*. 21 Jac. 1. Conspiracy or Imagination, tho' by Words only, to kill the King, or any of the King's Council, or any Lord of the Realm, &c. within the King's Household, is *Felony*, the Offenders being thereof convicted by twelve of the said Household before the Lord Steward, &c. 3 H. 7. c. 14. Cutting off any Limb or Member, or maliciously disabling any Member, with Intent to maim or disfigure a Person, is *Felony* without Benefit of Clergy. 22 & 23 Car. 2. Persons marrying a second Husband or Wife, the first being living, is *Felony*: But if either of them be absent abroad above seven Years, without Notice of his or her's being alive, the other may marry again. 1 Jac. 1. Stealing or Taking away a Woman against her Will, that has Lands or Goods, or is Heir apparent, and marrying her, is *Felony*. 3 H. 7. Slitting or Cutting off the Nose, &c. is *Felony*, excluded Clergy. 22 & 23 Car. 2. If Pick-pockets take above 12 d. from the Person of another *clam* & *secrete*, without his Knowledge, it is *Felony*. 8 Eliz. c. 4. Not only setting out Pirates, but assisting or advising any Piracy, or receiving or conceal-

ing any Pirate, &c. is *Felony*. 11 & 12 W. 3. c. 7. And trading with Pirates, furnishing them with Stores, &c. or boarding any Vessel, and throwing over-board Goods, &c. is Piracy and *Felony*, by 8 Geo. c. 24. Wilful Poisoning is Murder and *Felony*; and the Aiders, Abettors, &c. shall suffer Death. 1 Ed. 6. It is *Felony* for any Person to break Prison, being in for *Felony*, by 1 Ed. 2. Assaulting and striking, or attempting to kill a Privy Counsellor, when in the Execution of his Office, is *Felony* without Benefit of Clergy. 9 Ann. Those who receive, relieve or maintain Priests and Jesuits, knowingly, are guilty of *Felony*. 27 Eliz. 2. To commit a Rape on any Maid within Age, or any married Woman, Maid at full Age, or any other Woman, by Force and against her Will, was formerly punishable only by Fine and Imprisonment; but the Stat. Westm. 2. made it *Felony*: And by 18 Eliz. c. 7. it is *Felony* to know a Woman carnally under the Age of Ten Years, tho' she consent. Acknowledging a *Recognizance*, or Statute, in the Name of another Person, not privy and consenting, is *Felony*. 21 Jac. 1. c. 26. Imbezilling of Records is made *Felony*, by 8 H. 6. Rioters assembled, being Twelve in Number, not dispersing within an Hour after Proclamation made for that Purpose, &c. shall be guilty of *Felony*, 1 Geo. c. 5. Suffering a Recovery of Lands in the Name of another, is *Felony*. 21 Jac. 1. Robbery of Churches, &c. is *Felony*, by 23 H. 8. c. 1. Robbery on the Highway is *Felony* by the Common Law; and the 13 Ed. 1. orders a Hue and Cry to be made from Town to Town, and County to County, &c. after the Robbers; also 40 l. Reward is given for apprehending a Robber on the Highway, (as it is in several other Cases by other Statutes) by 4 & 5 W. & M. Servants purloining or imbezilling their Master's Goods, &c. to the Value of 40 s. is *Felony*. 12 Ann. Destroying and killing of Sheep, is made *Felony*. 22 & 23 Car. 2. Wilful casting away a Ship, or causing the same to be done; or making of Holes in the Bottom or Sides tending to the Loss of the Ship, &c. is *Felony*. 1 Ann. 12 Ann. Soldiers departing from their Captains without License; raising a Mutiny, or resisting a superior Officer, &c. are guilty of *Felony*. 18 H. 6. 10 Ann. &c. Stabbing a Person, not having a Weapon drawn, if he dies in six Months, is Murder and *Felony*, excluded Clergy. 1 Jac. 1. Stealing of Goods and Chattels, which Persons by Contract are to use, is *Felony*. 6 & 7 W. 3. and receiving stolen Goods knowingly, and comforting the Felon, is *Felony*. If any Thief-taker or other Person takes a Reward for helping of another to stolen Goods, and do not prosecute the Felon, he is guilty of *Felony*. 4 Geo. c. 11. Cutting out the Tongue of any Person maliciously, and lying in Wait for that Purpose, is *Felony*. 22 & 23 Car. 2. Doing any Witchcraft, &c. whereby any Person shall be killed, consumed, or lamed, &c. is *Felony*, without Benefit of Clergy: And Persons taking upon them by Inchantment to tell where Treasure is, or Goods lost, &c. may be found; or hurting any Person in his Body, destroying Cattle, &c. by Witchcraft, for the second Offence, is *Felony*. 1 Jac. 1. c. 12. Taking and stealing away Woollen-Cloth from the Tenters in the Night-time, is declared to be *Felony*. 22 Car. 2. c. 5. Persons maliciously setting on Fire, burning or causing to be burnt any Wood, Underwood, &c. are guilty of *Felony*. 1 Geo. 48. And by late Statutes,

Persons convicted of *Felony* or Larceny within the Benefit of Clergy, may be ordered by the Court by whom convicted to be transported to the Plantations for Seven Years; and for *Felony* excluded Clergy, the Offenders may be pardon'd and transported for Fourteen Years: But if any Felon thus under Transportation shall return before the End of the Time limited, he shall suffer Death; tho' the King may pardon the Transportation, and allow of the Return of the Offender, Satisfaction being made to the Proprietor. 4 Geo. c. 11. 6 Geo. c. 23. See Clergy, Larceny, &c.

Feme Covert, Is a married Woman; who is also said to be *Covert Baron*. Stat. 27 Eliz. c. 3.

Fence, Is a Hedge, Ditch, or other Inclosure of Land, for the better Manurance and Improvement of the same. And Action of the Case lies, for not repairing of Fences, whereby Cattle comes into the Ground of another and do Damage. 1 Salk. 335. Also it is presentable in the Court-Baron, &c. Throwing down Fences, made on Title of *Approvement*, the adjoining Town shall make it good; where the Offenders are not known, or not indicted, &c. Stat. 13. Ed. 1. c. 46.

Fence-Month, (*Mensis Prohibitionis*, or *Mensis Vetus*) Is a Month wherein Female Deer in Forests, &c. do *fawn*, and therefore it is unlawful to hunt in Forests during that Time; which begins fifteen Days before *Midsummer*, and ends fifteen Days after it, being in all thirty Days. *Manw. Part 2. cap. 13. Stat. 20 Car. 2. c. 3.* Some ancient Foresters call this Month the *Defence-Month*, because then the Deer are to be defended from being disturbed, and the Interruptions of fear and Danger; as there are certain *Defence-Months* for Fish, particularly Salmon, as appears by the Stat. *Westm. 2. c. 47, &c.* Serjeant Fleetwood saith, that the *Fence-Month* hath been always kept with Watch and Ward, in every Bailiwick through the whole Forest, since the Time of *Canutus*. *Fleetwood's Forest Laws*, p. 5.

Fengeld, (*Sax.*) A Tax or Imposition exacted for the repelling of Enemies. — *Pecunia vel Tributum ad arcendos Hostes erogatum*. M.S. Antiq.

Fens, (*Paludes*) Are low marshy Grounds, or Lakes of Water; for the Draining whereof in this Kingdom, several Statutes have been enacted. The Stat. 4 Jac. 1. c. 8. & 13. makes Provision for draining and securing from Inundation the drown'd Grounds and Marshes of *Lesnefs* and *Fants* in *Kent*; and the *Fens* and low Grounds in the *Isle of Ely*. The 15 Car. 2. c. 17. appoints *William, Earl of Bedford*, and other Adventurers, a Corporation, for the draining of *Bedford Level* in *Bedfordshire*, consisting of a Governor, Bailiffs and Conservators, &c. who have Power to lay and levy Taxes within the great Level of the *Fens*; and also to erect Works within the same, for carrying the Water to the Sea, making Satisfaction to the Owners of Lands for Injury received; and throwing down any of the said Works, incurs treble Damages, &c. By 16 & 17 Car. 2. c. 11. *Deeping Fens*, &c. in *Lincolnshire*, are to be drained from Water; and *Edward Earl of Manchester*, and several others, are declared Undertakers thereof, on certain Trusts, with Power to erect Banks, Bridges, Drains, Locks, Sluices, &c. for Recovery of the said *Fens*; and Assessees of Lands held by the Adventurers under the Trusts, may hold Assemblies for making of By-Laws, for the Management of the Works of Draining; they may charge the Owners of the

Land by an Acre Tax, &c. and on Default of Payment, sell the Defaulters Lands, &c.

Feod or Feud, Is said to be a Right which a Tenant or Vassal hath in Land, or some immoveable Thing of his Lord's, to use the same, and take the Profits thereof hereditarily; rendering unto the Lord such Feodal Duties and Services as belong to Military Tenure, &c. *Spelm. of Tenures*, cap. 1.

Feodal, (*Feodalis, vel Feudalis*) Of or belonging to the Fee. Stat. 12 Car. 2. c. 24.

Feodality, Fealty paid to the Lord by his Feodal Tenant — *Fecit Feodalitatem suam, prout decet dicto Domino*. Cartular. Rading, M.S.

Feodary or feudary, (*Feudatarius*) An Officer of the Court of Wards, appointed by the Master of that Court, by Virtue of the Statute 32 H. 8. c. 26. whose Business it was to be present with the *Escheator* in every County at the finding of Offices of Lands, and to give in Evidence for the King as well concerning the Value as the Tenure; and his Office was also to survey the Lands of the Ward, after the Office found, and to rate it. He did likewise assign the King's Widows their Dowers; and receive all the Rents of Wards Lands within his Circuit, which he answered to the Receiver of the Court. This Office seems to be wholly taken away by Stat. 12 Car. 2. cap. 24.

Feodary, Was the Tenant who held his Estate by Feodal Service: And Grantees, to whom Lands in Feud or Fee were granted by a superior Lord, were sometimes called *Homagers*; and in some Writings are term'd *Vassals*, *Feuds* and *Feodataries*. See *Feuds*.

Feoffment, (*Feoffamentum*, from the Gothick Word *Feudum*, and signifies *Donationem Feudi*) Is a Gift or Grant of any Manors, Messuages, Lands or Tenements, to another in Fee, to him and his Heirs for ever, by the Delivery of Seisin and Possession of the Thing given or granted: And in every Feoffment, the Giver or Grantor is called the *Feoffor*, and he that receives by Virtue thereof, is the *Feoffee*. *Littleton* says, the proper Difference between a *Feoffor* and a *Donor*, is, that the one gives in *Fee-Simple*; the other in *Fee-Tail*. *Litt. lib. 1. cap. 6. Accompl. Conv. 1 Vol. 78.* The Deed of Feoffment is our most ancient Conveyance of Lands: And in Records we often find Fees given to Knights under the Phrases of *De veteri Feoffamento*, and *De novo Feoffamento*; the first whereof were such Lands as were given or granted by K. Hen. 1. And the others, such as were granted after the Death of the said King, since the Beginning of the Reign of Hen. 2. At Common Law the usual Conveyance was by Feoffment, to which Livery and Seisin was necessary, the Possession being thereby given to the Feoffee; but if Livery and Seisin could not be made, by Reason there was a Tenant in Possession, the Reversion was granted, and the particular Tenant attorn'd. 1 Inst. 9. 49. And a Feoffment is said to excel the Conveyance by Fine and Recovery; it clearing all Disseisins, Abatements, Intrusions, and other wrongful Estates, which no other Conveyance doth: And for that it is so solemnly and publickly made, it has been of all other Conveyances the most observed. *West. Symb. 235. Plowd. 554.* It bars the Feoffor of all collateral Benefit, as Conditions, Powers of Revocation, Writs of Error, &c. and destroys contingent Uses. 1 Inst. 5. But a Feoffment may not be of such Things whereof Livery and Seisin

Seisin may not be made; for no Deed of Feoffment is good to pass an Estate without Livery of Seisin; and if either of the Parties die before Livery, the Feoffment is void. *Plowd.* 214, 219. Tho' where a Feme Feoffor made a Feoffment of Lands with Livery in View, and then married the Feoffee before the Livery was executed by actual Entry; it was adjudg'd the Livery might be executed after Marriage, the Feoffee having not only an Authority to enter, but an Interest passed by the Livery in View, and the Woman did all on her Part to be done. 1 *Ventr.* 186. There must be Livery of Seisin in all Feoffments, Gifts in Tail, &c. where a corporeal Inheritance or Freehold doth pass: And without Livery, the Deed is no Feoffment, Gift or Demise. *Lit.* 59. 8. *Rep.* 82. But a Freehold may pass without Livery by the Statute 27 *H. 8. c.* 10. By Force of which Statute, a Feoffment to the Use of the Feoffor, Feoffee, &c. supplies the Place of Livery and Seisin. *Wood's Inst.* 239. A Feoffment being a Common Law Conveyance, and executed by Livery, makes a Transmutation of Estate; but a Conveyance on the Statute of Uses, as a Covenant to stand seised, &c. makes only a Transmutation of Possession, and not of Estate. 2 *Lev.* 77. 1 *Ventr.* 378. Where a Man makes a Feoffment, without any Consideration; by that, the Estate and Possession passes, but not the Use, which shall descend to his Heir. 1 *Leon.* 182. A Feoffment in Fee is made to the Use of such Persons, and for such Estates, as the Feoffor shall appoint by his Will, or to the Use of his Last Will; by Operation of Law the Use vests in the Feoffor, and he is seised of a qualified Fee, viz. until he makes his Will, and declares the Uses; and after the Will is made it is only directory, for nothing passes by it but all by the Feoffment. 6 *Rep.* 18. *Moor* 567. A Feoffment in Fee, upon Condition, &c. was inrolled, but no Livery made; and it was adjudged no good Feoffment, but the Inrollment shall conclude the Person to say that it was not his Deed. *Poph.* 6. 2 *Nels. Abr.* 844. If a Bargain and Sale of Lands be not inrolled, and the Bargainor deliver Livery and Seisin of the Lands *secundum formam Chartae*, &c. it has been held a good Feoffment. 2 *And.* 68. A Feoffment in Fee made upon Condition not to alien, the Condition is void; but if Livery is had, the Feoffment is good against the Feoffor. 2 *Cro.* 596. Tenant in Tail makes a Feoffment in Fee; the Inheritance of the Tail is not given to the Feoffee by the Feoffment, nor is he thereby Tenant in Tail; for none shall be Tenant in Tail but he only who is comprehended in the Gift made by the Donor: But it gives away all the immediate Estate the Feoffor had. *Plowd.* 562. *Hob.* 335. If Lessee for Life, and the Reversioner in Fee, make a Feoffment in Fee by Deed, each gives his Estate; the Lessee his by Livery, and the Fee from him in Remainder. 6 *Rep.* 15. & *Lill. Abr.* 609. A Feoffment was made *Habendum* to the Feoffee and his Heirs, after the Death of the Feoffor, and Livery was made; yet it was held to be a void Feoffment, for an Estate of Freehold in Lands cannot begin at a Day to come: But where a Lessor made a Lease for Lives, and granted the Reversion to another for Life, whose Estate for Life was to begin after the Death of the Survivor of the other Lessees for Life, this was adjudg'd a good Estate in Reversion for Life. *Hob.* 171. 2 *Nels. Abr.* 846. A Deed of Feffment is always applied to a corporeal and immoveable Thing:

And is made by the Words, have Granted, Bargained, Enfeoffed, &c. The Way of pleading a Feoffment is thus, viz. That A. B. was seised in Fee of the Place where, &c. and being so seised, Feoffavit quendam C. D. inter alia per nomina omnium, &c. habend. & tenend. &c. prefat. C. D. & heredibus suis in perpetuum ad solum opus & usum, &c. 3 *Salk.* 165.

Form of a Deed of Feoffment of Lands.

THIS Indenture made, &c. Between A. B. of &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That the said A. B. for and in Consideration of the Sum of Five hundred Pounds of lawful Money of Great Britain, to him in hand paid by the said C. D. the Receipt whereof the said A. B. doth hereby confess and acknowledge, and for other good Causes and Considerations him thereunto moving, he the said A. B. hath granted, bargained and sold, aliened, enfeoffed, released, and confirmed, and by these Presents doth grant, bargain, and sell, alien enfeoff, &c. unto the said C. D. his Heirs and Assigns for ever, All that Messuage or Tenement situate, &c. now in the Possession of, &c. and also the Reversion and Reversions, Remainder and Remainders, Rents and Services thereof, and all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said A. B. of, in and to the same Premises, and of, in and to every Part and Parcel thereof. To have and to hold the said Messuage, and all and singular the Premises abovementioned, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and behoof of him the said C. D. his Heirs and Assigns for ever, under the yearly Rent of Fourpence. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Heirs and Assigns, that he the said C. D. his Heirs and Assigns, shall and may from Time and Time, and at all Times hereafter, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said Premises abovementioned, to be hereby granted, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said A. B. his Heirs or Assigns, and of all and every other Person and Persons whatsoever claiming or to claim, by, from or under him, them, or any of them. And further, that he the said A. B. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Messuage and Premises abovementioned, or any Part thereof, by, from or under him, shall and will at all Times hereafter, at the Request and Costs of the said C. D. his Heirs or Assigns, make, do and execute, or cause or procure to be made, done and executed, all and every further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect Granting, Conveying, and Assuring of the said Premises hereby granted, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and behoof of the said C. D. his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent or Purpose whatsoever. And Lastly, the said A. B. hath made, ordained, constituted and appointed, and by these Presents doth make, ordain, constitute and appoint E. F. of, &c. and G. H. of, &c. his true and lawful Attornies jointly, and either of them severally, for him and in his Name, into the said Messuage and Premises, with the Appurtenances hereby granted and conveyed, or mentioned to be granted and conveyed, or into some Part thereof, in the Name of the whole, to enter, and full and peaceable Possession and Seisin there-

of for him, and in his Name, to take and have; and after such Possession and Seisin so thereof taken and had, the like full and peaceable Possession and Seisin thereof, or of some Part thereof, in the Name of the Whole, unto the said C. D. or to his certain Attorney or Attornies in that Behalf, to give and deliver, To hold to him the said C. D. his Heirs and Assigns for ever, according to the Purport, true Intent and Meaning of these Presents, ratifying, confirming and allowing all and whatsoever his said Attornies, or either of them, shall do in the Premises. In Witness, &c.

Ferdfare, (Sax.) Is to be discharg'd from going to War. — *Significat quietantiam eundi in exercitum.* Fleta, lib. 1. cap. 47.

Ferdmit, (Sax. *Fird*, exercitus, & *Wite* pœna) Was used for being quit of Manslaughter; committed in the Army. Fleta, lib. 1. Though it is rather a Fine imposed on Persons for not going forth in a military Expedition; to which Duty all Persons who held Land, were in Necessity obliged: And a Neglect or Omission of this common Service to the Publick, was punished with a pecuniary Mulct called the *Ferdwite*. Cowel.

Ferial Days, (*Dies FERIALES*, *Feriae*,) According to the Latin Dictionary, are Holy-Days, or Days vacant from Labour. But in the Statute 27 H. 6. c. 5. *Ferial Days* are taken for working Days; all the Days of the Week, except Sunday: The Week-Days, as distinguish'd from Sunday, the Profane from the Sacred, were called *Dies FERIALES*, by a Charter dat. 28. Mart. 1448. — Ex Cartular. Eccl. Elyensis. M.S.

Ferling, (*Ferlingus*) The fourth Part of a Penny, &c. *Assis. panis & Cervis.* 51 H. 3.

Ferlingata terræ, A Quarter or fourth Part of a Yard-land. — *Decem acra faciunt Ferlingatam, 4. Ferlingatæ faciunt Virgatam, & 4. Virgata faciunt Hidam, &c.* In antient Records there is Mention of *Ferlingus* and *Ferdingus terra*. Mon. Angl. Tom. 2. f. 8. See *Fardel of Land*.

Ferm, (*Firma*) A House and Land let by Lease, &c. Vide *Farm*.

Fermay, (From the Sax. *Feorme*, *Victus*) Is an Hospital; and we read of Friars of the *Fermay*.

Fermisona, The Winter-Season of killing Deer; as *Tempus Pinguedinis* is the Summer Season. *Quod idem Hugo & heredes sui de cetero quolibet anno possunt capere in predicto Parco de, &c. unam Damam in Fermisona inter Festum Sancti Martini & Purif. Beate Mariæ, Et unam Damam in Pinguedine inter Festum, &c. Fin. Concor. in Cur. Dom. Regis apud Litchfield coram Roger de Turkilby, &c. inter Hugonem de Acover Quer. & Will. de Aldethley Desfor. Penes Will. Dugdale, Mil'.*

Fernigo, A Piece of waste Ground where Fern grows. *Cartular. Abbat. Glasfon. M.S.*

Ferramentum, *Ferramenta*, The iron Tools or Instruments of a Mill. — *Et reparare Ferramenta ad tres Carucas, i. e. The iron Work of three Ploughs.* Lib. Niger Heref.

Ferrandus, An iron Colour, particularly applied to Horses, which we at this Time call an Iron grey.

Ferrure, (Fr.) The Shoing of Horses. Blount.

Ferry, 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: It is usually to cross a large River. *Terms de Ley.*

Ferspeken, To speak suddenly. — *Nemo potest, &c. placitare sine eo, nec cogi debet Rectum ejus Ferspeken de omnibus causis, &c.* Leg. H. 1. c. 61.

Festa in Cappis, Were some grand Holy-Days, in which the whole Choirs of Cathedrals wore Caps. *Vitæ Abbat. S. Alban. pag. 80, 83.*

Festingmen. The Saxon *Festman* signifies a Surety or Pledge; and to be free of *Festingmen*; was probably to be free of Frank-pledge, and not bound for any Man's Forth-coming, who should transgress the Law. *Mon. Angl. Tom. 1. p. 123.*

Festing-penny, Earnest given to Servants when hired or retained in Service, so called in some Northern Parts of England, from the Sax. *Festnian*, to fasten or confirm.

Festum, A Feast; *Festum S. Michaelis*, the Feast of St. Michael, &c. See *Feasts*.

Feud, (*Feida*) Signifies in the German Tongue *Guerram*, Lat. *Bellum*; and according to Lambard, *Capitales Inimicitias*: And *Feud* used in Scotland is a Combination of Kindred for Revenging the Death of any of their Blood against the Killer, and all his Race; or any other great Enemy. *Skene.*

Feudbote, A Recompence for Engaging in a *Feud*, and the Damages consequent; it having been the Custom in antient Times, for all the Kindred to engage in their Kinsman's Quarrel. *Sax. Dict.*

Feuds, (*Feoda*) Estates in Lands were originally at Will, and then they were called *Munera*; afterwards they were for Life, and then they were termed *Beneficia*, and for that Reason the Livings of Clergymen are so called at this Day; and afterwards they were made Hereditary, when they were called *Feoda*, and in our Law *Fee-simple*. *Rel. Spel. 9.* When *Hugh Caput* usurped the Kingdom of France, about the Year 947, to support himself in such Usurpation, he granted to the Nobility and Gentry, that whereas 'till then they enjoy'd their Honours for Life, or at Will only, they should from thenceforth hold them to them and their Heirs; which was imitated by William called *The Conqueror*, upon his Accession to the Crown of England, for 'till his Reign *Feuds* or *Fees* were not hereditary, but only for Life, or for some determinate Time. 3 *Salk. 165.*

Feudal and Feudary. See *Feodal* and *Feodary*.

Fiat, In our Law is a short Order or Warrant of some Judge for making out and allowing certain Processes, &c. If a *Certiorari* be taken out in Vacation, and tested of the precedent Term, the *Fiat* for it must be signed by a Judge of the Court, some Time before the Effoin-Day of the subsequent Term, otherwise it will be irregular: But it is said there is no Need for any Judge to sign the Writ of *Certiorari* it self; but only where it is required by Statute. 1 *Salk. 150.* 2 *Hawk. 289.*

Fiction of Law, (*Fictio Juris*) Is allow'd of in several Cases: The Seisin of the Conusee in a Fine is but a *Fiction in Law*; it being an invented Form of Conveyance only. 1 *Lill. Abr. 610.* And a Common Recovery is *Fictio Juris*, a formal Act or Devise by Consent, where a Man is desirous to cut off an Estate-tail, Remainders, &c. And it supposes a Recompence in Value to those that lost the Estate. 10 *Rep. 42.* By *Fiction of Law*, a Bond made beyond Sea, may be pleaded to be made in the Place where abroad in *Islington* in the County of *Middlesex*, &c. to try the same here; without which it cannot be done. 1 *Inst. 261.* And so it is in some other Cases; but the Law ought not to be satisfied with *Fictions*, where it may be otherwise really satisfied; and *Fictions* of

of Law shall never be carried farther, than the Reasons which introduce them necessarily require. 1 *Lil.* 610. 2 *Hawk.* 320.

Fidem mentiri, Is when a Tenant doth not keep that Fealty which he hath sworn to the Lord. *Leg. H.* 1. c. 53.

Fief, Which we call *Fee*, is the contrary to Chattels: In Germany, certain Districts or Territories are called *Fiefs*; where there are *Fiefs of the Empire*.

Fieri facias, Is a judicial Writ, given by the Statute of *Westm.* 2. 13 *Ed.* 1. that lies where Judgment is had for Debt or Damages recovered in the King's Courts against any Man; by which Writ the Sheriff is commanded to levy the Debt and Damages of the Goods and Chattels of the Defendant, &c. *Old Nat. Br.* 152. This Writ must be sued out within a Year and a Day after the Judgment; or the Judgment must be revived by *Scire facias*: But if a *Fieri facias* be not executed, a second *Fieri facias* or *Elegit* may be sued out; and 'tis said some Years after, without a *Scire facias*, provided Continuances are entered from the first *Fi. fa.* which 'tis also held may be entered after the second *Fi. fa.* taken out, unless a Rule is made that Proceedings shall stay, &c. *Sid.* 59. 2 *Nelf. Abr.* 776. There may be a *Testatum Fieri facias* into another County, if the Defendant hath not Goods enough in the County where the Action is laid to satisfy the Execution; and the *Fieri facias* for the Ground of the *Testatum*, may be return'd of Course by the Attornies, as Originals are. 2 *Salk.* 589. If all the Money is not levied on a *Fieri facias*, the Writ must be return'd before a second Execution can be issued; because it is to be grounded on the first Writ, by reciting that all the Money was not levied. 1 *Salk.* 318. Where the Sheriff levies Goods by *Fieri facias*, and doth not return the Writ, and afterwards another *Fieri facias* is brought to levy the Money, the Defendant might plead this Matter. *Godb.* 171. And where the Sheriff sells Goods which he levied by *Fieri facias*, and doth not pay the Money, Action of Debt will lie against him, because the Defendant is discharged as to the Plaintiff, and the Sheriff is now become his Debtor in Law; and if the Sheriff die after he hath levied the Debt, the like Action will lie against his Executors, as it is a Duty when levied. *March Rep.* 13. *Cro. Car.* 387. If a Sheriff that hath seized Goods by *Fieri facias* is going out of his Office, he must deliver them to the new Sheriff, and return his Writ executed *pro tanto*; and he ought not to deliver them to the Owner, by Reason the Writ of Execution is warranted by a Record, and therefore the Discharge thereof must appear by Record. *Yelv.* 44. Upon a *Fieri facias* the Sheriff return'd, that he had levied Goods *ad valentiam* of the Debt; the Return being filed, a Motion was made that he might bring in the Money, which not being done, an Attachment was granted, and then the Sheriff appeared and prayed to amend the Return, for that the Goods were damaged by Lying, and he could not get Buyers; but it was adjudg'd that the Return shall not be altered, for he might have returned this at first by Way of Excuse; and having return'd that he had levied Goods *ad valentiam*, he shall pay the Money. *Sid.* 407. The Sheriff may sell the Goods on a *Fieri facias*, and take the Money; though he cannot take the Money upon a *Capias sati faciend.* that Writ not warranting him to do it. *Lutw.* 588. But the

Sheriff cannot deliver the Goods by him taken in Execution to the Plaintiff, in Satisfaction of his Debt; because his Authority is to sell the Goods. *Ibid.* 589. 1 *Lill. Abr.* 611. A Sheriff took Goods in Execution upon a *Fieri facias*, whereupon a Stranger promis'd the Officer to pay him the Debt, in Consideration he would restore them; on *Indebitatus Assumpsit* brought for the Money, it was objected upon a Demurrer, that it was ill, for that it was like a Consideration to suffer a Prisoner to escape; but it was held, that as upon a *Fieri facias* Goods are to be sold by the Sheriff, and the Writ is to raise the Money, this is no more in Effect than a Sale for that Purpose. 1 *Salk.* 28. By the Seizure of the Goods, the Sheriff hath a Property in them; but Goods of a Stranger, &c. in the Possession of the Defendant, shall not be seized in Execution; for the Sheriff at his Peril must take Notice whose Goods they are: Tho' if the Sheriff enquires by a Jury where the Property is lodg'd, and it is found that they are the Defendant's Goods, when they are not, this will indemnify the Sheriff. *Dalt. Sher.* 60. *Wood's Inst.* 608. The Sheriff cannot break open the Door of an House to execute a *Fieri facias* upon the Goods of the Owner or Occupier; but he may on the Goods of a Stranger, Request being first made, and Denial to open it; for a Man's House shall be a Protection for his own Goods only, and not for the Goods of another. 5 *Rep.* 91. 2 *Nelf. Abr.* 775. If the Defendant is a beneficed Clergyman, and the Sheriff returns *Quod est Clericus beneficiatus*, &c. a Writ shall go to the Bishop of the Diocese to levy the Debt, &c. *De bonis Ecclesiasticis*, who thereupon sends forth a Sequestration of the Profits of the Clerk's Benefice, directed to the Church-wardens, &c. But this Writ of Sequestration must be renewed every Term. 2 *Inst.* 4. 472, 627. By Virtue of a *Fieri facias* a Term for Years may be sold, as well as any other Goods, and without an Inquest or Jury: Also Corn growing may be sold. 8 *Rep.* 96. 1 *Roll. Abr.* 892. And if the Sheriff on a *Fieri facias*, &c. selleth a Term for Years, and afterwards the Judgment is reversed; the Term shall not be restored, but the Money for which it was sold. 8 *Rep.* 141. A Term is sold on an Execution by *Fieri facias*; the Sale of the Term is good, tho' the Judgment be revers'd, and Restitution shall be only of the Money: But where a Term is delivered to the Plaintiff upon an *Elegit*, and then the *Elegit* is reversed, Restitution shall be of the Term. *Cro. Jac.* 246. Where upon a *Fieri facias* the Sheriff sells a Term, reciting it falsely, as to its Commencement and Ending, &c. the Sale is void, because there is no such Term: Yet if he recites it generally, and being of divers Years yet to come, sells all the Interest which the Defendant had in the Land, the Sale will be good. 4 *Rep.* 74. If an Execution is sued on a *Fi. fac.* and the Defendant dies before it is executed, it may be served on the Defendant's Goods in the Hands of his Executor or Administrator. *Cro. Eliz.* 181. Two *Fieri facias's* are delivered the same Day to the Sheriff against the same Person; he is bound to execute that first which was first delivered; and if he executes the last first, he must answer it to the Party that brought the First, who may bring an Action against him; but the Execution shall stand good. 1 *Salk.* 330. By the Common Law Goods were bound from the Day of the *Teste* of the Writ; but by Statute 29 *Car.* 2. they are bound

bound only from the Time of Delivery, &c. *Ibid.* The Sheriff having taken Goods, and levied the Money by Virtue of a *Fieri facias*, ought to bring it into Court, and not pay it to the Party. *Godb.* 147. See *Execution*.

Form of a Writ of Fieri facias.

Georgius, &c. *Præcipimus tibi quod de Bonis & Catallis C. D. &c. in Balliva tua Fieri facias trigint. libr. quas A. B. nuper in Cur. nostr. coram nobis apud Westm. recuperavit vers. eum de Debito necnon, &c. qui idem A. B. nuper in eadem Cur. nostr. coram nobis adjudicat. fuer. pro dampnis suis que sustinuit tam occasione detentionis debiti ill. quam pro mis. & custag. suis per ipsum circa sect. suam in hac parte appoit. unde convict. est sicut nobis constat de Recordo, Et Denar. ill. habeas coram nobis apud Westm. die, &c. prox. post, &c. ad reddend. præfat. A. B. de debito & dampnis prædict. Et habeas ibi tunc hoc breve. Teste, &c.*

Fifteenth, Are a Tribute or Imposition of Money upon Cities, Boroughs, &c. through the Realm, not upon the Poll, or this or that Person, but in general upon the whole City or Town; and it is so called, because it amounts to a *Fifteenth Part* of that which the City hath been antiently valued at, or a *Fifteenth* of every Man's Personal Estate according to a reasonable Valuation. And every Town knew what was a *Fifteenth Part*, which was always the same; whereas a *Subsidy* raised on every particular Man's Lands or Goods, was adjudg'd uncertain: And in that Regard the *Fifteenth* seems to have been a Rate formerly laid upon every Town, according to the Land or Circuit belonging to it. *Cambd. Britan.* 171. There are certain Rates mentioned in *Domesday*, for Levying this Tribute yearly; but since, though the Rate be certain, it is not to be levied but by Parliament. By 31 *Ed.* 3. c. 13. a *Fifteenth* was granted, for Pardons, &c. The 7 *Ed.* 6. c. 4. granted a *Subsidy* and two *Fifteenths* by the Temporalty, &c. And in the 1, 5, &c. *Eliz.* and 1, 3 & 18 *fac.* 1. *Fifteenths* and *Tenths* were granted for Maintaining the Wars, &c.

Fightwite, (*Sax.*) Signifies a Mulct for Making a Quarrel to the Disturbance of the Peace.

— *Mulcta ob Commissam pugnam in Perturbationem Pacis: In exercitu Regis 120 sol. luebatur Fightwita i. e. Forisfactura pugna.* M.S. Codex.

Filacer or **Filizer**, (*Filazarius*, from the Lat. *Filum*) Is an Officer of the Court of *Common Pleas*, called by this Name as he *files* those Writs whereon he makes out Process. There are Fourteen of these *Filizers* in their several Divisions and Counties; and they make forth all Writs and Processes upon original Writs, issuing out of the Chancery, as well real, as personal and mix'd, returnable in that Court: And in Actions merely Personal, where the Defendants are returned summoned, they make out *Pones* or Attachments; which being return'd and executed, if the Defendant appears not, they make forth a *Distingas*, and so *ad infinitum*, or until he doth appear: If he be return'd *Nihil*, then Process of *Capias* infinite, &c. They enter all Appearances and Special Bails, upon any Process made by them: And make the first *Scire facias* upon Special Bails, Writs of *Habeas Corpus*, *Distingas* nuper *Viccomitem* vel *Balicum*, and all *Superfedeas's* upon Special Bail: In Real Actions, Writs of View, of Grand and Petit *Cape*, &c. And also Writs of *Adjourn*

ment of a Term, in Case of publick Disturbance, &c. And until an *Order* of Court 14 *fac.* 1. they enter'd Declarations, Imparances and Pleas, and made out Writs of Execution, and divers other judicial Writs, after Appearance: But that *Order* limited their Proceedings to all Matters before Appearance, and the *Prothonotaries* to all after. The *Filizers* of the *Common Pleas* have been Officers of that Court before the Statute 10 *H.* 6. c. 4. wherein they are mentioned: And in the *King's Bench*, of later Times, there have been *Filizers*, who make out Process upon original Writs returnable in that Court, on Actions *contra Pacem*, &c.

File, (*Filacium*) A Thread, String or Wire, upon which Writs, and other Exhibits in Courts and Offices are fastened or *filed*, for the more safe Keeping and ready Turning to the same. A *File* is a Record of the Court; and the *Filing* of Process of a Court, makes it a Record of it. 1 *Lill.* 112. An original Writ may be *filed* after Judgment given in the Cause, if sued forth before: And Declarations, &c. are to be *filed* in the Office. *Ibid.* 113. Affidavits must be *filed*, some before read in Court; and some presently when read in Court. Before *Filing*, a Record removed by *Certiorari*, the Justices of B. R. may refuse to receive it, if it appears to be for Delay, &c. and remand it back for the Expedition of Justice: But if the *Certiorari* be once *filed*, the Proceedings below cannot be revived. 2 *Hawk.* 7. 204. An Indictment, &c. cannot be amended after *filed*.

Field-Ale or **Fildale**, A Kind of Drinking in the *Field*, by Bailiffs of Hundreds; for which they gathered Money of the Inhabitants of the Hundred to which they belong'd: But it has been long since prohibited. *Bract.* 4 *Inst.* 307.

Filiolus, Is properly a little Son, also a Godson. — *Filiolus quem de sacro Fonte suscepit.* Dugd. *Warwicksh.* 697.

Filum Aquæ, Is the Thread or Middle of the Stream, where a River parts two Lordships: *Et habebunt istas Buttas usque ad Filum Aquæ prædictæ.* Ex Reg. Priorat. de Wormley, fol. 3. Mon. Angl. Tom. 1. fol. 390. *File du Mer*, the Tide of the Sea. *Rot. Parl.* 11 *H.* 4.

Finders, Are mentioned in several antient Statutes, and seem to be the same with those which we now call *Searchers*; who are employ'd for the Discovery of Goods imported or exported, without paying Custom. *Stat.* 18 *Ed.* 3. 14 *R.* 2. c. 10. and 17 *R.* 2. c. 5. 1 *H.* 4. c. 13, &c.

Fine, (*Finis*) Is a final Agreement or Conveyance upon Record, for the Settling and Assuring of Lands and Tenements, acknowledged in the King's Court by the Cognisor to be the Right of the Cognissee. *Accomp. Convey.* 1 Vol. 89. This Word hath divers Uses or Significations; but it is most commonly, *Amicabilis Compositio* & *Finalis Concordia*, *ex consensu* & *Licentia Domini Regis vel ejus Jusficiariorum*, or a Covenant made before Justices and enter'd of Record for Conveyance of Lands, Tenements, or any Thing inheritable, to cut off all Controversies: *Et Finis dicitur Finalis Concordia quia finem litibus imponit.* *Glanv.* lib. 8. c. 1. *Bract.* lib. 5. A *Fine* was antiently a Determination of a real Controversy; but now it is generally a feigned Action upon a Writ of Covenant, &c. and supposes a Controversy where in Reality there is none, to secure the Title that a Man hath in his Estate against all Men; or to cut off *Intails*, and with more Certainty convey the Title

tle of Lands, &c. either in Fee-simple, Fee-tail, for Life, or Years, whereupon also a Rent may be reserved. *West's Symb. par. 2.* Originally the *final Concord* was instituted and allow'd, in Regard that by the Law and antient Course of Proceedings, no Plaintiff could agree without Licence of the Court: And *Fines* have been formerly levied in Personal Actions; but Time hath wrought other Uses of them, viz. to cut off Intails, and pass the Inheritance of Lands, though the same be not controverted, to whom we think good; and a *Fine* may be levied on a Writ of Right, &c. in any Real Action, tho' not on an Original in a personal Action; and the common Writ of Covenant on which a *Fine* is levied, is not a Personal but a Real Action. As a *Fine* is a Concord acknowledged before a competent Judge, touching Hereditaments or Things immovable, and for its better Credit imputed to be made in the Presence of the King, because levied in his Court; therefore it binds Women covert, being Parties, and others whom ordinarily the Law disables to act, for this Reason, that all Presumption of Deceit is excluded, where the King and his Court of Justice are supposed to be privy to what is transacted. And *Fines* are now levied in the Court of *Common Pleas* at *Westminster*, on Account of the Solemnity thereof, ordained by the Statute of 18 Ed. 1. 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 Assize 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. *Dyer* 224. And *Fines* are also taken by Commissioners in the Country, empower'd by *Dedimus Potestatem*, one whereof named must be a Knight; and the Writ of *Dedimus* doth surmise, that the Parties who are to acknowledge the *Fine* are not able to travel to *Westminster* for the Doing thereof: These Commissions general and special, issue out of the Chancery. By the *Common Law* all *Fines* were levied in Court: But the Statute 15 Ed. 2. allows the *Dedimus Potestatem* to Commissioners, who may be punished for Abuses, and the *Fines* taken before them set aside: And it is said an Information may be brought by him in Reversion against Commissioners who take the Caption of a *Fine*, where a married Woman, &c. is an Infant. 3 Lev. 36. In the Levying of *Fines* in Court, a Pleader shall say *Sir Justice conge de Accorder*, &c. And when the Sum for the King's *Fine* is agreed, after Proclamation and Crying the Peace, the Pleader shall repeat the Substance of the *Fine*, &c. *Stat. de Finibus*. 18 Ed. 1. Touching the Form of *Fines*, it is to be considered upon what Writ or Action the *Concord* is to be made; and there must first pass a Pair of Indentures between the Cognisor and Cognisee, whereby the Cognisor covenants to pass a *Fine* to the Cognisee of such Things, by a Time limited; and these Indentures preceding the *Fine*, are said to lead the Uses of the *Fine*: But by the Statute 4 & 5 Ann. the Uses of a *Fine*, &c. may be declared after the *Fine* levied, and be good in Law. Upon this the Writ of Covenant is brought by the Cognisee against the Cognisor, who then yields to pass the *Fine* before the Judge; and so the Acknowledg-

ment being recorded, the Cognisor and his Heirs are presently concluded, and all Strangers (not excepted) after five Years past: And if the Writ whereon the *Fine* is grounded, be not a Writ of Covenant, which is usual, but of *Warrantia Charta*, or a Writ of Right, or of Customs and Services, &c. then the Writ is to be served upon the Party that is to acknowledge the *Fine*, and he appearing doth it accordingly. *West. Sect. 23. Dyer* 179. By Statute, a *final Concord* cannot be levied in the King's Court, without original Writ, &c. And when a *Fine* is pass'd, it is to be in the Presence of the Parties, who are to be of full Age, good Memory, &c. And if a Feme Covert be one, she is to be privately examined if she consent freely, for if she doth not, the *Fine* cannot be levied. *Stat. 18 Ed. 1.* A *Fine* after the Ingrossing is to be openly read and proclaimed in the Court of C. B. and a Transcript to be sent to the Justices of Assize, and another to the Justices of the Peace of the County where the Land lieth, to be openly proclaimed there; which being certified, concludes all Persons; Feme Coverts, Persons under Age, in Prison, &c. excepted, if they lay Claim, by Way of Action or Entry, in five Years: Also Persons out of the Land, or *Non sane Memoriae*, &c. have the like Term of Years after their Imperfections are removed. 1 R. 3. c. 7. And by subsequent Acts, *Fines* after Ingrossing are to be proclaimed in Court the same Term, and the Three next Terms, formerly Four several Days in each Term; but of late only once in the Term wherein ingross'd, and once in each of the succeeding Terms. 4 H. 7. 31 Eliz. c. 2. The Day and Year of acknowledging a *Fine*, and Warrant of Attorney for the Suffering a Recovery, are to be certified with the Concord: And an Office has been erected for the Inrollment of Writs for *Fines*, &c. the Fees whereof are limited and appointed; likewise the Chirographer the first Day of every Term is to fix in the Court of C. B. a Table containing the *Fines* passed in the Term before in every County, &c. by 23 Eliz. c. 3. There are in every *Fine* five Parts, viz. 1st, An original Writ, usually a Writ of Covenant. 2. The *Licentia Concordandi*, or King's Licence, for which the King hath a *Fine*, called the *King's Silver*. 3. The Concord it self, containing the Agreement between the Parties how the Land, &c. shall pass, being the Foundation and Substance of the *Fine*; it begins, *Et est concordia talis*, &c. 4. The Note of the *Fine*, or Abstract of the original Contract. 5. The Foot of the *Fine*, which includes all, setting forth the Day, Year, and Place, and before what Justices the Concord was made, &c. Of this there are Indentures made forth in the Office, which is called the Ingrossing of the *Fine*; and it beginneth thus, *Hec est finalis Concordia facta in Curia Domini Regis apud Westm. a die Pasche in quindecim dies, anno*, &c. 2 Inst. 511, 517. 'Tis said, the Concord being the compleat *Fine*, it shall be adjudg'd a *Fine* of that Term in which the Concord was made, and the Writ of Covenant returnable. 1 Salk. 341. A Concord cannot be of any Thing but what is contained in the Writ of Covenant: And the Note of the *Fine* remaining with the Chirographer, it hath been held, *est Principale Recordum*. 3 Leon. 254. As to *Fines*, there are various Kinds: They are either with Proclamations, or without; that with Proclamations, is term'd a *Fine according to the Statutes*. 1 R. 3. c. 7. and 4 H. 7. c. 24. And such a *Fine* is every *Fine* that is pleaded intended

to be, if it be not shewed what *Fine* it is; and these *Fines* are the best Sort, and most used; also if there be Error in the Proclamations, it shall be taken as a good *Fine* at Common Law. 3 Rep. 86. A *Fine* may stand, though the Proclamations according to the Statute are made irregularly; for *Fines* are Matter of Record, and remain in Substance and Form as they were before. *Plowd.* 265. If Tenant in Tail levies a *Fine*, and dies before all the Proclamations are made, tho' the Right of the Estate-tail descends upon the Issue, immediately on the Death of the Ancestor; yet if Proclamations are made afterwards, such Right shall be barred by the *Fine*, by the Statute 4 H. 7. and 32 H. 8. 3 Rep. 84. The *Fine* without Proclamations is called a *Fine at the Common Law*, levied in such Manner as was us'd before the 4 H. 7. c. 24. and is still of the like Force as by the Common Law, to discontinue the Estate of the Cognisor, if the *Fine* be executed. A *Fine* also with or without Proclamations, is either executed or executory: A *Fine executed* is such a *Fine* as of its own Force gives present Possession to the Cognisee, without any Writ of Seisin to enter on the Lands, &c. as a *Fine sur Cognissance de Droit come ceo*; and in some Respects a *Fine sur Release*, &c. are said to be executed. A *Fine executory* doth not execute the Possession in the Cognisee, without Entry or Action, but requires a Writ of Seisin; as the *Fine sur Cognissance de Droit tantum*, &c. unless the Party be in Possession of the Lands; for if he be in Possession at the Time of Levying the *Fine*, there needs not be any such Writ, or any Execution of the *Fine*; and then the *Fine* will enure by Way of Extinguishment of Right, not altering the Estate or Possession of the Cognisee, however it may better it. *West. Set.* 20. *Fines* are likewise single or double: *Single*, where an Estate is granted by the Cognisor to the Cognisee, and nothing is thereby rendered back again from the Cognisee to the Cognisor. The *double Fine* is that which doth contain a Grant or Render back again from the Cognisee, of the Land it self, or of some Rent, Common, or other Thing out of it; many Times limiting Remainders to Strangers, &c. *West. Set.* 21, 30. And a *Fine* is sometimes called a *double Fine*, when the Lands lie in several Counties: *Fines* are further divided into four Sorts, viz. A *Fine sur Cognissance de Droit come ceo*, &c. A *Fine sur done Grant & Render*; a *Fine sur Cognissance de Droit tantum*; and a *Fine sur Concessit*: The *Fine sur Cognissance de Droit come ceo* is a single *Fine* levied with Proclamations, according to the Statute 4 H. 7. And it is the principal and surest Kind of *Fine*, it being said to be executed, because it gives present Possession (at least in Law) to the Cognisee, so that he needs no Writ of *Hab. facias Seisinam*, or other Means for Execution thereof; for it admits the Possession of the Lands of which the *Fine* is levied to pass by the *Fine*, so that the Cognisee may enter, and the Estate is thereby in him, to such Uses as are declared in the Deed to lead the Uses thereof. But if it be not declared by Deed to what Use the *Fine* was levied, such *Fine* shall be to the Use of the Cognisor that levied the same. 2 Inst. 513. If the Cognisee of a *Fine* levied of Lands, do pay Money unto the Cognisor at the Time of the *Fine* levied, and there is no Use declared of the *Fine*, the Law will construe the *Fine* to the Use of the Cognisee: And if there be no Money paid by the Cognisee,

nor any Use declared, the *Fine* shall enure to the Cognisor that levied it. *Pasch. 23 Car. B. R.* Where a *Fine* is levied to the Use of two Persons in Tail, &c. in Consideration of Marriage, tho' the Deed to lead its Uses do not mention any Marriage had between them, yet it hath been adjudg'd that the Estate-tail is executed before Marriage; for the *Fine* doth carry the Uses, and they are perfected by the *Fine*, notwithstanding the Consideration is perfected afterwards; but without a *Fine*, the Marriage must be had, before any Use could arise. 1 Leon. 138. If a Feme Covert alone declares the Uses of a *Fine* intended to be levied by Husband and Wife of her Land, and the Husband alone declares other Uses; it has been held that both Declarations of Uses are void, and the Use shall follow the Ownership of the Lands: But in another Case, it was determined that the Uses declared by the Wife were void; and the Uses declared by the Husband, good only against himself, during the Coverture. 2 Rep. 56. If Husband and Wife levy a *Fine* of the Lands of the Wife, and he alone declares the Uses, this shall bind the Wife, if her Dissent doth not appear; because otherwise it shall be intended that she did consent. *Ibid.* 59. A *Fine sur Cognissance de Droit come ceo*, &c. may not be levied to any Person but one that is Party to the Writ of Covenant; tho' a Vouchee after he hath enter'd into the Warranty to the Demandant, it is said, may confess the Action, or levy a *Fine* to the Demandant, for he is then suppos'd to be Tenant of the Land, though he is not a Party to the Writ; and yet a *Fine* levied by the Vouchee to a Stranger, is void. No single *Fine* can be with a Remainder over to any other Person not contained in it: But if A. levy a *Fine* to B. *Sur Cognissance de Droit come ceo*, and B. by the same Concord grants back the Land again to A. for Life, Remainder to E. the Wife of A. for her Life, Remainder to A. and his Heirs; this will be a good *Fine*. *Plowd.* 248, 249. A *Fine sur Done Grant & Render*, is a double *Fine*, being in a Manner two *Fines*, i. e. A *Fine sur Cognissance de Droit come ceo*, &c. and a *Fine sur Concessit*, both form'd into one; whereby the Cognisee after a Release and Warranty made to him by the Cognisor of the Lands contained therein, doth grant and render back to the Cognisor the Lands, &c. And thereby oftentimes limiting Remainders to Persons that are Strangers, and not named in the Writ of Covenant. This *Fine* is partly executed and partly executory; and as to the first Part of it, is altogether of the same Nature with a *Fine sur Cognissance de Droit come ceo*; but as to the second Part, containing a Grant and Render back, it is taken in Law to be rather a private Conveyance or Charter between Party and Party, and not as a Writ of Judgment upon Record: And this Render is sometimes of the whole Estate, and sometimes of a particular Estate, with Remainder or Remainders over; or of the Reversion, and sometimes with Reservations of Rent and Clause of Distress, and Grant thereof over by the same *Fine*. 5 Rep. 38. A. B. and C. D. levied a *Fine* of Lands, and the Cognisee by the same *Fine* rendered back the Land to A. B. in Tail, reserving a Rent to himself, &c. the Rent and Reversion shall pass, though in one *Fine*; and it shall enure as several *Fines*. *Cro. Eliz.* 727. A *Fine* and Render is a Conveyance at Common Law, and makes the Cognisor on the Render back

back a new Purchaser; by which Lands arising on the Part of the Mother, may go to the Heirs on the Part of the Father, &c. 1 Salk. 337. 2 Nelf. Abr. 864. The *Fine Sur Concessit* is where the Cognisor is seised of the Lands contained therein, and the Cognisee hath no Freehold in it, but it passeth by the *Fine*: This *Fine* is used to grant away Estates for Life, or Years; and it is executory, so that the Cognisees must enter or have a Writ of *Hab. fac. Seisinam* to obtain Possession; if the Parties to whom the Estate is limited, at the Time of Levying such *Fine*, be not in Possession of the Thing granted. A *Fine Sur Cognisance de Droit tantum* is also a *Fine* executory, and much of the Nature of a *Fine Sur Concessit*; it is commonly made use to pass a Reversion, and then it is expressed by such *Fine* that the particular Estate is in another, and that the Cognisor willeth that the Cognisee shall have the Reversion, or that the Land shall remain to him after the particular Estate is spent: And sometimes it is used by Tenant for Life, to make a Release (in Nature of a Surrender) to him in Reversion, but not by the Word *Surrender*; for it is said a particular Tenant, as for Life, &c. cannot surrender his Term to him in Reversion by *Fine*; but he may grant and release to him by *Fine*. Plowd. 268. Dyer 216. A *Fine* upon a Release, &c. shall not be intended to be to any other Use, but to him to whom it is levied. 3 Leon. 61. A *Fine* is called a *Feoffment of Record*, and is of great Antiquity, for we read of *Fines* before the Conquest. 2 Inst. 511. But it hath been held, that a *Fine* is improperly called a *Feoffment of Record*; tho' it hath the Effects of a *Feoffment*, where he that levies it is seised of the Freehold at the Time of the *Fine* levied. 1 Salk. 340. Lands bought of divers Persons, by several Purchasers, may pass in one *Fine*, to save Charges; but the Writ of Covenant must be brought by the Vendee against all the Vendors, and every Vendor warrant against him and his Heirs. If a Feme sole marries after the *Dedimus Potestatem* to take her *Fine*, &c. the *Fine* shall nevertheless be pass'd as her *Fine*. Dyer 246. And if either of the Parties Cognisors die after the King's Silver is entered, the *Fine* shall be finished, and be good. 1 Cro. 469. A Record of a *Fine* may be amended, (if the King's Silver is paid) where it is the Misprision of the Clerk. 5 Rep. 43.

Form of a *Præcipe* and Concord of a *Fine*.

South'ton ff. *Præcipe* Willielmo B. Armig. & Annæ Uxor. ejus quod fuisse, &c. Tenen. Thomæ D. Ar. Con. &c. de uno Messuagio, quadragint. Acris terra, sexagint. acr. prati, septuagint. Acris Pastura, &c. cum pertin. in, &c. Et nisi, &c.

ET est Concordia talis scilicet quod præd. Willielmus & Anna Recognover. Tenement. præd. cum pertin. &c. esse jus ipsius Thomæ D. Ut ill. quæ idem Thomas habet de dono præd. Willielmi & Annæ Et ill. Remiser. & quiet. Clam. de ipsis Willielm. & Ann. & hered. ipsius Willielmi præfat. Thomæ & hered. suis imperpetuum, Et præterea idem Willielmus & Anna concesser. pro se & hered. ipsius Willielmi quod ipsi Warrant. præfat. Thomæ & hered. suis Tenement. præd. cum pertin. contra ipsos Willielmum & Annam & hered. ipsius Willielmi imperpetuum. Et pro hac, &c.

A *Præcipe* and Concord of a *Fine Sur Done Grant* & Render.

Wilts ff. *Præcipe* A. B. Ar. quod fuisse, &c. Ten. C. D. Armig. Convention. &c. de un. Messuagio sive Tenemento, &c. cum pertin. in, &c. Et nisi, &c.

ET est Concordia talis scilicet quod præd. A. Recogn. Tenement. præd. cum pertin. esse Jus ipsius C. ut ill. quæ idem C. habet de dono præd. A. Et ill. Remisit & quiet. Clam. de ipso A. & heredibus suis præd. C. & heredibus suis imperpetuum, Et præterea idem A. Concessit pro se & hered. suis quod ipsi Warrant. Tenement. præd. cum pertin. præfat. C. & hered. suis contra ipsum & hered. suis imperpetuum, Et pro hac Recogn. remission. quiet. Clam. Warrant. Fine & Concordia idem C. concessit præd. A. Tenement. præd. cum pertin. Et ill. ei reddidit in eadem Cur. habend. & tenend. eidem A. & heredibus quos idem A. procreaverit de Corpore F. Uxor ejus tenend. de Capitalibus Dominis Feodi ill. per servitia quæ ad præd. Tenement. pertin. Et si contigerit quod idem A. obiret sine hered. per ipsum de Corpore ipsius F. procreat. tunc post Deceßum ipsius A. præd. Tenement. cum pertin. integre reman. præd. F. tenend. &c. tota vita ipsius F. Et post Deceßum ipsius F. præd. Tenement. cum pertin. integre remanen. rectis hered. præd. C. &c. Et pro hac, &c.

Form of an Indenture to lead the Uses of a *Fine*, on a Purchase.

THIS Indenture made, &c. Between W. B. of, &c. Esq; and A. his Wife, of the one Part, and T. D. of, &c. of the other Part, Witnesseth, that for and in Consideration of the Sum of 1000 l. of lawful British Money to the said W. B. and A. his Wife in Hand paid by the said T. D. The Receipt whereof they do hereby acknowledge, and for divers other good Causes and Considerations, he the said W. B. hath covenanted and granted, and by these Presents doth covenant and grant, to and with the said T. D. his Heirs and Assigns, That he the said W. B. and A. his Wife, shall and will on this Side, and before the End of Easter-Term next coming, before the King's Majesty's Justices of his Court of Common Pleas at Westminster, in due Form of Law, levy and acknowledge unto the said T. D. and his Heirs, one *Fine Sur Cognisance de Droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that Messuage or Tenement, with the Appurtenances, situate, &c. And also of all those Pieces or Parcels of Land lying and being, &c. and containing, &c. with all and singular their Appurtenances, all which said Premises were formerly purchas'd of, &c. and are now in the Tenure of, &c. And also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Acres and Things, and in such Manner as by the said T. D. or his Counsel learned in the Law shall be reasonably devised or advised and required. Which said *Fine* so to be had and levied; and all and every other *Fine* and Fines already had, or at any Time hereafter to be had, levied, sued or prosecuted of the said Premises, or any Part thereof, by it self or jointly, with any other Lands or Tenements, by or between the said Parties to these Presents, or by or between them or any or either of them, and any other Person or Persons, as for and concerning all

and singular the said Premises above-mentioned with the Appurtenances, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure, to and for the only proper Use and Behoof of the said T. D. his Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever. In Witness, &c.

An Indenture declaring the Uses of a Fine, by Way of Settlement.

THIS Indenture made, &c. Between A. B. of, &c. Esq; and M. his Wife, of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That the said A. B. and M. his Wife, for the Settling and Assuring of the Manors, Lands, Tenements, Hereditaments and Premises herein after mentioned, to the several Uses herein after declared and limited, and for divers other good Causes and Considerations, he, the said A. B. hath covenanted and granted, and by these Presents doth for himself, his Heirs and Assigns, covenant and grant, to and with the said C. D. his Heirs and Assigns; and the said M. Wife of the said A. B. doth hereby consent and agree, that the said A. B. and M. his Wife shall and will, before the End of Michaelmas-Term next ensuing, acknowledge and levy in due Form of Law, before his Majesty's Justices of the Court of Common Pleas at Westminster, unto the said C. D. his Heirs and Assigns, one Fine Sur Conusance de Droit come ceo, &c. with Proclamations to be thereupon had according to the Form of the Statute in that Case made, of all that the Manor of, &c. And of all that Messuage or Farm called, &c. and also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Manor and Premises above-mentioned, and of every Part and Parcel thereof with the Appurtenances, by the Names of twenty-five Messuages, fifteen Cottages, two Mills, Four hundred Acres of Land, Three hundred Acres of Meadow, Five hundred Acres of Pasture, thirty Acres of Wood, and thirty Pounds Rent, and Common of Pasture for all Manner of Cattle, &c. with the Appurtenances in, &c. as aforesaid. And it is hereby agreed by and between the said Parties to these Presents, and the true Meaning hereof is, and it is hereby so declared, That the Fine so as aforesaid, or in any other Manner to be had and levied of the said Manor and Premises, or any Part thereof; and also all and every other Fine and Fines already had, levied, or to be had and levied of the same Premises, or any Part thereof, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure, and the said C. D. and his Heirs, and all and every other Person and Persons, and his and their Heirs now standing and being seised, or which at the Perfecting of the said Fine shall stand or be seised of the said Manor and Premises, or any Part thereof, shall at all Times hereafter stand and be seised thereof, and of every Part thereof, with the Appurtenances, to and for the several Uses, Intents and Purposes herein after limited, expressed and declared, (that is to say) As for and concerning the said Manor, with its Rights, Members, and Appurtenances, and all and singular the Messuages, Cottages, Lands, Tenements, Commons, Wastes, Waste-Grounds, Mines, Royalties, Rents and Hereditaments whatsoever, to the same Manor belonging or appertaining, or accepted, reputed, or taken as Part, Parcel, or Member thereof, to the Use and Behoof of the said A. B. and M. B. for and during the Term of their natural Lives, and the Life of the longest Liver of them, without Impeachment of or for any Manner of Waste; and with full Power and Authority for the said A. B. alone, during his Life, and after his Death, for the said M. alone, during her

Life, to make and grant any Lease or Leases, or Grant or Grants by Copy of Court-Roll, for one, two, or three Life or Lives, in Possession or Reversion, of any Lands or Tenements, Parcel of the said Manor, which have been usually so granted; provided that there shall be no more than three Lives at any one Time in Being on the said Premises, or any Part thereof, and so as the usual Rents, Heriots and Services, or more shall be reserved on such Leases and Copies respectively; and from and after the Decease of the said A. B. and M. his Wife, and the Survivor of them, then to the Use and Behoof of the right Heirs of the said A. B. for ever. And as for and concerning all and singular the said Messuage or Farm called, &c. with the Appurtenances, whereof the said Fine shall be so levied, and whereof no Use is herein before declared, to the only proper Use and Behoof of the said A. B. &c. his Heirs and Assigns for ever; and to and for none other Use, Intent or Purpose whatsoever. In Witness, &c.

A Fine may be levied of any Thing whereof a *Præcipe quod reddat* lies, as of Lands, Rents, &c. or of any Thing whereof a *Præcipe quod faciat* lies, as Customs, Services, &c. or whereof a *Præcipe quod permittat*, or *Præcipe quod teneat* may be brought. 2 Inst. 513. And almost any Kind of Contract may be made and expressed by a Fine, as by a Deed; and therefore it may be so made that one of the Parties shall have Land, and the other a Rent out of it; and that one shall have it for a Time, and another for another Time; also a Lease for Years, or a Jointure for a Wife, may be made; and a Gift in Tail, and a Remainder over, may be limited and created thereby. 1 Rep. 76. The King, and all Persons who may lawfully grant by Deed, may levy a Fine; but not Infants, Ideots, Lunatics, &c. 7 Rep. 32. Civil Corporations, as Mayor and Commonalty, &c. may levy a Fine of Land belonging to their Body: But Bishops, Deans and Chapters, Parsons, &c. are restrained from levying of Fines to bind their Successors. All Persons that may be Grantees, or that may take by Contract, may take by Fine: Though in Cases of Infants, Feme Coverts, Persons attainted, Aliens, &c. who, it is said, may take by Fine, before the Ingrossing of the Fine, there goes a Writ to the Justices of C. B. *quod permittat finem Levare*. Litt. 669. Tenant in Fee-simple, Fee-tail general, or special, Tenant in Remainder or Reversion, may levy a Fine of their Estates; so may Tenant for Life, to hold to the Cognisee for Life of Tenant for Life: But a Person who is Tenant, or hath an Interest only for Years, cannot levy a Fine of his Term to another. 3 Rep. 77. 5 Rep. 124. As Fines may be levied of Things in Possession; so they may be levied of a Remainder or Reversion, or of a Right in futuro. 3 Rep. 90. But if a Lessee for Years, or a Disseisee, or one that hath Right only to a Reversion or Remainder, levy a Fine to a Stranger that hath nothing in the Land, this Fine will be void or voidable as to the Stranger; and he that hath Cause to except against it, may shew that the Freehold and Seisin was in another at the Time of the Fine levied, and that *Partes Finis nihil habuerunt tempore Levationis Finis*, and by this avoid the Fine: And yet a Disseisor, who hath a Fee-simple by Wrong in him, may levy a Fine to a Stranger that hath nothing in the Land, like unto one that is rightfully seised of Land in Fee, &c. and it will be a good Fine. Plowd. 353. 3 Rep. 87. If the Cognisor of a Fine hath nothing in the Land pass'd, at the Time

Time of the *Fine* levied, the *Fine* may be avoided: Yet where the Cognisor or Cognisee is seised of an Estate of Freehold, whether by Right or by Wrong, the *Fine* will be a good *Fine* in Point of Estate. 41 E. 3. 14. 22 H. 6. 43. 27 H. 8. *Fines* may be had of all Things in esse tempore *Finis*, which are inheritable; but not of Things uncertain; or of Lands held in Tail by the King's Letters Patent; of Land restrained from Sale by Act of Parliament; or of Lands in Right of a Man's Wife, without the Wife, &c. 5 Rep. 225. West. Sess. 25. Lands assured for Dower, or Term of Life, or in Tail; to any Woman by Means of her Husband, or his Ancestors, cannot be conveyed away from her by *Fine*, &c. without her Assent: But if a Woman and her Husband levy a *Fine* of her Jointure, she is barred of the same, though if the Jointure be made after Coverture, when the Wife hath her Election to have her Jointure or Dower on the Husband's Death, it is said this will be no Bar of her Dower in the Residue of the Land of the Husband. Dyer 358. Leon. 285. No *Fine* of the Husband alone, of the Lands of the Wife, shall hurt her, but that she or her Heirs, or such as have Right may avoid it; but if she joins with him, it shall bind her and her Heirs. 37 H. 8. Women Coverts ought to be cautious in levying *Fines* with their Husbands of their own Lands; and if a married Woman under Age levies a *Fine* of her Lands, she cannot reverse it during her Husband's Life, nor after his Death, if she be of full Age when he dies; but if the Husband dies during her Minority, she may. Dyer 359. Wood's Inst. 243. A married Female ought not to be admitted alone without her Husband to levy a *Fine*; and if she be receiv'd, the Husband may avoid the *Fine* by Entry; but if he do not, it is good to bar her and her Heirs, except she be an Infant at the Time of the *Fine* levied: The Husband and Wife together may dispose of her Land, &c. 12 Rep. 122. If Baron and Feme levy a *Fine*, the Feme within Age, she may be brought into Court by *Habeas Corpus*; and if it be found by Inspection that she is under Age, it hath been adjudged, where the Baron and Feme brought a Writ of Error, that as to both, *quod Finis Revocetur*. 1 Leon. 116, 117. 3 Salk. 168. Husband and Wife, Tenants in Special Tail, the Husband only levies a *Fine*, this bars the Issue in Tail; but it remains in Right to the Wife as to her self, and to all the Estates and Remainders depending upon it, and to all the Consequences of Benefits to her self and others, so long as she lives, as if the *Fine* had not been levied. Hob. 257, 259. If a Husband make a Feoffment of the Wife's Land upon Condition, which is broken, and the Feoffee levies a *Fine*, and the Husband and Wife dies having Issue, and five Years pass; the Heir is barred to enter as Heir to the Father upon the Condition, but he shall have five Years after the Death of his Father as Heir to his Mother. Plowd. 367. If a Woman with a second Husband acknowledge a *Fine*, it shall not bind her; though if she levies a *Fine* with her right Husband by a wrong Christian Name, she is bound by *Estoppel* during her Life, and the Tenant may plead, that she by such a Name levied the *Fine*. 1 Aff. pl. 11. Brook 117. When the Husband and Wife join in a *Fine* of the Wife's Lands, all the Estate passeth from her, and he is join'd only for Conformity; so that if the *Fine* levied by Husband and Wife in such a Case be reversed, she shall have Restitution.

2 Rep. 77. A Husband and his Wife covenanted to levy a *Fine* of the Lands of the Wife, to the Use of the Heirs of the Body of the Husband on the Wife, Remainder to the Husband in Fee; both dying without Issue, it was held that the Heir of the Wife had the Title, because the Limitation to the Heirs of the Body of the Husband was merely void, there being no precedent Estate of Freehold for Life, &c. to support it as a Remainder. 2 Salk. 675. 4 Mod. 153. If a Widow having an Estate in Dower accept of a *Fine*, and by the same *Fine* render back the Land for 100 Years, &c. this is a Forfeiture of her Estate within the Stat. 11 H. 7. 20. by which Statute she may not make a greater Estate than for her own Life; if she do, it is a present Forfeiture. 2 Cro. 689. If Tenant for Life grants a greater Estate by *Fine* than for his own Life, it is a Forfeiture: And if there be Tenant for Life, and Remainder for Life, and the Tenant for Life levy a *Fine* to him in Remainder and his Heirs, both their Estates are forfeited, the Tenant for Life by Levying the *Fine*, and the Remainder-Man for Life by Accepting it. 2 Lev. 202. Where a *Fine* is levied by Tenant for Life, for a greater Estate, the *Fine* may be good; but it is a Forfeiture of the Estate of Tenant for Life, whereof he in Remainder, &c. may take present Advantage and enter: And where a Person enters for a Forfeiture, all Estates are avoided. Dyer 111. But if such a Tenant for Life levy a *Fine Sur Grant & Release* to the Cognisee for the Life of Tenant for Life; or by *Fine* grant a Rent out of the Land for a longer Time, the *Fine* is good, and there will be no Forfeiture of the Estate of Tenant for Life: So likewise if a *Fine* be levied of Lands by Tenant for Life to a Stranger, who thereby acknowledges all his Right to be in the Tenant for Life, and releases to him and his Heirs. 27 Ed. 1. 1. 44 Ed. 3. 36. If there be Tenant in Tail upon Condition not to alien, or discontinue the Lands, &c. if he doth, the Donor to re-enter; and his Issue levy a *Fine* of the Land, this is a Forfeiture of the Estate. 1 Leon. 292. A *Fine* is levied by Lessee for Life, &c. who continues the Possession, and pays the Rent; it shall not bind the Lessor, who shall have five Years Claim after the Determination of the Lessee's Estate, &c. 3 Rep. 77, 78. If one doth levy a *Fine* of my Land, while I am in Possession, this will not hurt me; nor where a Stranger levies a *Fine* of my Lands let to a Tenant, if the Tenant pays me his Rent duly: And if there is Tenant in Tail, or for Life, Remainder in Tail, &c. And the first Tenant in Tail, or for Life, bargains and sells the Land by Deed inrolled, and levies a *Fine* to the Bargainee, the Remainders are not bound; for the Law adjudges them always in Possession. 9 Rep. 106. Lessees who pretend Title to the Inheritance of the Lands, cannot by *Fine* bar the Inheritance. 3 Rep. 77. But if a Lease is made for Years, and the Lessor before Entry of the Lessee levies a *Fine* with Proclamations, and the Lessee doth not make his Claim within five Years, the Lessee is barred, and no Relief can be had for him; for though the Lessee for Years cannot levy a *Fine*, yet he shall be barred by a *Fine* levied by the Tenant of the Land, &c. 5 Rep. 124. If a Person hath a Remainder depending on an Estate for Years, and the Termor is disseised, and a *Fine* is levied and five Years pass, &c. the Termor and Reversioner are barred: Because the Termor might presently have

entered, and he in Remainder had an Assise. *West. Sect.* 183. In case a Person enters upon and puts out a Copyholder, and the Disseisor doth levy a *Fine* of the Lands, if the Copyholder suffer five Years to pass after the Disseisin and *Fine*, without making any Claim, the Interest of the Copyholder and his Lord are hereby barred for ever: And if a Copyholder makes a Feoffment in Fee upon good Consideration, and the Feoffee levies a *Fine* with Proclamations, and five Years pass, the Lord is barred; but if a Copyholder himself levies a *Fine*, and five Years do pass, the Lord is not barr'd, for the Copyholder not having a Freehold, the *Fine* will be void. *Wood's Inst.* 247, 248. A *Fine* of *Cestui que Trust* shall bar and transfer a Trust, as it should an Estate at Law, if it were on a good Consideration. *Chanc. Rep.* 49. And *Fines* of *Cestui que Use* are as good as if levied of immediate Possessions, &c. 1 R. 3. 2 *Nelf. Abr.* 860. Interests in Estates which may be barred by *Fine*, are either Interests by Common Law, or by Custom; as Copyholds, &c. And if I have a Fee-simple, and am disseised, and the Disseisor levies a *Fine* with Proclamations, and I do not claim within five Years after, I and my Heirs (Allowance being made for Impediments) are barred for ever. *Plowd.* 353. 3 *Rep.* 79. A *Fine* with Proclamations levied by Persons of Lands entailed to them or their Ancestors, &c. is a good Bar against their Heirs, claiming only by such Intail. 32 H. 8. c. 36. But though such *Fine* bars the Estate-tail and the Issue in Tail, yet it doth not Remainders or Reversions; though Recoveries bar them all. And if one makes his Title as Heir by another, and not by him that levied the *Fine*, he is not barred. 1 *Cro.* 377. Also he that is privy in Blood only, and not in Estate, is not within the Statutes to be barred by a *Fine*: As if Lands are given to a Man and the Heirs Females of his Body, and he hath a Son and a Daughter, and the Son levies a *Fine* and dies without Issue, this is no Bar to the Daughter; for notwithstanding she be Heir to his Blood, yet she is not Heir to the Estate, nor need make her Conveyance to it by him; but if the Father had levied the *Fine*, it would have been otherwise. *Trin.* 21 *Fac.* A *Fine*, &c. cannot destroy an executory Estate, which depends upon Contingencies, as it is uncertain whether there will ever be an Estate in Being for the *Fine* to work upon; but a *Fine* and Recovery will bar an Estate in Remainder, as that is an Estate vested. 1 *Lill. Abr.* 617. If a *Fine* be levied of Lands in Ancient Demesne, it doth not bar by the Statute of Non-claim. *Lutw.* 781. Estates by Statute-Merchant, Statute-Staple, and *Elegit*, may be barred, if a *Fine* is levied, and those that have Right suffer five Years to pass without Claim, &c. 5 *Rep.* 124. As Deans, Bishops, Parsons, &c. are prohibited by Statute to levy *Fines*, and may not have a Writ of Right, they are not barred by five Years Non-claim, and their Non-claim will not prejudice their Successors. *Plowd.* 138, 375. If a Corporation which hath an absolute Estate, so as to maintain a Writ of Right, is disseised of Land, and a *Fine* is levied by the Disseisor; if they claim not in five Years, they are barred: But in such Case it is said, that every Successor being Head of the Corporation, may have a new five Years to make their Claim. *Plowd.* 537. By the ancient Common Law, he that had Right was to make his Claim, &c. within a Year and a Day of the *Fine* levied and

the Execution thereof, or he was barred for ever: But this Bar is now gone; and if a *Fine* without Proclamations according to the Common Law be now levied, he that hath Right may make his Claim or Entry, &c. at any Time to prevent the Bar. 1 *Inst.* 254, 262. By Statute, a Claim or Entry to avoid the Bar of a *Fine* is to be made in five Years: And no Claim or Entry shall avoid any *Fine* with Proclamations, unless an Action be commenc'd within one Year after such Entry, and prosecuted with Effect. 1 R. 3. c. 7. 4 & 5 *Ann.* c. 16. The Statutes 4 H. 7. c. 24. and 32 H. 8. c. 36. declare the Force of *Fines*, how far they bar Parties, Privies, and Strangers; and to bar is to take away the Entry or Action of him that hath Right: Privies in Blood, as Heirs of the Cognisor are barred presently by a *Fine*; but Strangers to the *Fine*, such as are not Parties nor Privies, have five Years to enter and claim their Rights, &c. *Plowd.* 367, 375. Feme Coverts have five Years after the Death of their Husbands, to avoid the *Fine* of the Husband of the Wife's Lands; and also to claim their Dower: And if they do not make their Claim in that Time by Action or Entry, they are barred by Statute. *Dyer* 72. 2 *Rep.* 93. An Infant shall have five Years after he comes of Age, although he was in his Mother's Womb at the Time of the *Fine* levied. *Plowd.* 359. And an Infant is allow'd Time during his Minority to reverse his own *Fine*, and prevent the Bar; and if not reversed during that Time, their *Fines* will be good. *Aff. pl.* 53. Strangers out of the Realm at the Time of the *Fine* levied, shall have five Years after their Return to prevent the Bar; and so if they were in *England* when the *Fine* was levied, and within five Years are sent in the King's Service by his Commandment. *Plowd.* 366. A Person in *Scotland* or *Ireland* shall be said to be out of the Realm. 4 H. 7. Madmen, &c. have five Years after the Cure of their Maladies, and though the Infirmary happen after the *Fine* levied, if before the last Proclamation. *Plowd.* 367. *Dyer* 3. And they who have divers Defects, have five Years after the last Infirmary removed; but if the Impediments are once wholly gone, and afterwards the Party relapses into the like again, the five Years shall begin immediately after the first Removal; and if the Party dies, his Heir shall not have a new five Years. *Plowd.* 375. *Dyer* 133. If a Feme Covert dies during the Coverture, being no Party to the *Fine*, &c. or if an Infant, being Party to the *Fine*, and having present Right, dies in his Infancy: If a Person beyond Sea when the *Fine* was levied, never return, &c. a Person in Prison dies whilst therein; or if one *Non Compos*, &c. dies such; in all these Cases, their Heirs are not limited to any Time. 2 *Inst.* 519, 520. Five Years are given after a Remainder falls; and five Years after the Forfeiture of Tenant for Life. *Plowd.* 374. And he that hath two Titles, shall have Two five Years to make his Claim. *Jenk. Ca.* 45. Where a Claim is to be in Equity within five Years after Levying the *Fine*, the Claim must be by *Subpoena*. *Chanc. Rep.* 279. A future Interest of another Person, cannot be barred by *Fine* and Non-claim, until five Years after it happens; as in Case of a Remainder or Reversion. 2 *Rep.* 93. *Raym.* 151. And where there is no present nor future Right in Land, &c. only a Possibility at the Time of Levying the *Fine*, a Person may enter and claim when he pleases. 10 *Rep.* 49. Also when there is only a Right to a Rent, &c. if-

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suing out of Lands, and not the Land in the *Fine*, the Persons that have it are not barred at all. 5 Rep. 124. No *Fine* bars any Estate in Possession or Reversion, which is not divested and put to a Right. 9 Rep. 106. He that at the Time of a *Fine* levied had not any Title to enter, shall not be immediately barred by the *Fine*: But this is in Case of an Interest not turned to a Right, where a Man is not bound to claim; and not in the Case of Tenant in Tail, barring his Issue. 32 Hen. 8. When an Estate is put to a Right, and there comes a *Fine* and Non-claim, it is a perpetual Bar. Carter 32, 163. A *Fine*, Grant and Render was levied, and a *Scire facias* brought and Judgment given, and also Writ of Seisin awarded, but not executed; and afterwards a second *Fine* was levied and executed, and five Years passed; it was the Opinion of the Court that the second *Fine* barred the first. March's Rep. 194. 2 Nels. Abr. 864. A *Fine* was levied, and five Years passed without bringing a Writ of Error; and it was held a good Bar by the Word *Actions*, within the Stat. 4 H. 7. cap. 14. Cro. Jac. 333. But it has been adjudged that where five Years pass, that shall not hinder, where the *Fine* is erroneous. 2 Nels. Abr. 838. And *Fines* may be reversed for Error, so as the Writ of Error be brought in twenty Years, &c. and not afterwards, by Stat. 10 & 11 W. 3. c. 14. *Fines* are not reverfible for false *Latin*, Rasure, Interlineation, Misentry, &c. or any Want of Form; but 'tis otherwise if of Subtance. 23 Eliz. A *Fine* shall not be reversed for small Variance, which will not hurt it; nor is there Occasion for a precise Form in a Render upon a *Fine*, because it is only an *amicable Assurance* upon Record. 5 Rep. 38. If a *Fine* be levied of Lands in a wrong Parish, though the Parish in which they lie be not named, it will be a good *Fine*, and not be erroneous, being an *amicable Assurance*: And a *Fine* of a Close may be levied by a *Lieu Conus* in a Town, without mentioning the Town, Vill, &c. Godb. 440. 2 Cro. 574. 2 Mod. 47. If there be Want of an Original, or not Writs of Covenant for Lands in every County; or if there is any notorious Error, in the Suing out a *Fine*, or any Fraud or Deceit, &c. Writ of Error may be had to make void the *Fine*. 1 Inst. 9. 1 Cro. 469. So if either of the Parties dies before finished, &c. And if the Cognisor die before the Return of the Writ of Covenant, (though after the Caption of the *Fine*) it is said it may be reversed. 3 Salk. 168. A Writ of Error may be brought in B. R. to reverse a *Fine* levied in C. B. and the Transcript only, not the very Record of the *Fine* is removed in these Cases: But if the Court of B. R. adjudge it erroneous, then a *Certiorari* goes to the Chirographer to certify the *Fine* it self, and when it comes up it is cancelled. 1 Salk. 341. And where on a Writ of Error in B. R. to reverse a *Fine* in C. B. the *Fine* was affirmed; a Writ of Error *coram vobis Residen*. hath been allowed to lie. Ibid. 357. The Court of B. R. will not reverse a *Fine*, without a *Sci. fac.* returned against the Tertenant, because the Cognisees are but nominal Persons. Ibid. 339. A *Fine* may be set aside, by pleading that neither of the Parties had any Thing in the Estate, at the Time of Levying the *Fine*, &c. But those that are privy to the Person that levied the *Fine*, are etopped to plead this Plea. 3 Rep. 88. In the Pleading a *Fine* or Recovery to Uses, the Deeds need not be set forth; but the Pleader is

to say, that the *Fine*, &c. was levied to such Uses, and produce the Deeds in Evidence to prove the Uses. 8 W. 3. B. R. *Fines* levied before the Justices in Wales; or in the Counties Palatine of Chester, Durham, &c. have the same Effect as *Fines* levied before the Justices of C. B. 34 & 35 H. 8. 2 & 3 Ed. 6. 5 Eliz. &c. Sometimes a Sum of Money paid for the Income of Lands, &c. let by Lease, is called *Fine*: And *Fine* also signifies an Amends, or Punishment for an Offence committed, in which Case a Man is said *facere finem de Transgressionem cum Rege*, &c. And in all Cases it is a final Conclusion or End of Differences.

Fine adnullando levato de Tenemento quod fuit de antiquo Dominico, Is a Writ directed to the Justices for disannulling a *Fine* levied of Lands in *ancient Demeasne*, to the Prejudice of the Lord. Reg. Orig. 15. *Fine capiendo pro Terris*, &c. a Writ lying where a Person upon Conviction of any Offence by Jury, hath his Lands and Goods taken into the King's Hands, and his Body is committed to Prison, to be remitted his Imprisonment, and have his Lands and Goods redelivered him, on obtaining Favour for a Sum of Money, &c. Reg. Orig. 142. *Fine levando de Tenementis tentis de Rege in Capite*, &c. was a Writ directed to the Justices of C. B. to admit of a *Fine* for the Sale of Land holden of the King in *Capite*. Reg. Orig. 167. *Fine non capiendo pro pulchre Placitando* is a Writ to inhibit Officers of Courts to take *Fines* for fair Pleading. Reg. Orig. 179. *Fine pro Redisseisina capienda*, &c. a Writ lying for the Release of one imprisoned for a Redisseisin, on Payment of a reasonable *Fine*. Reg. Orig. 222.

Fines for Alienation, Were *Fines* paid to the King by his Tenants in Chief, for Licence to alien their Lands, according to the Statute 1 Ed. 3. cap. 12. But these are taken away by the Stat. 12 Car. 2. c. 24.

Fines for Offences. Among the Ancients, all Punishments were by *Fine*; but in Process of Time this Sort of Punishment became too mild, and then for some Crimes Death was inflicted: And as to the Definition of a *Fine*, it is a Sum of Money which one is to pay to the King, for any Contempt or Offence against the Government. 3 Inst. 218. 3 Salk. 32. All *Fines* belong to the King, and the Reason is, because the Courts of Justice are supported at his Charge; and wherever the Law puts the King to any Charge for the Support and Protection of his People, it provides Money for that Purpose. Bract. 129. Where a Statute imposes a *Fine* at the Will and Pleasure of the King, that is intended of his Judges, who are to impose the *Fine*. 4 Inst. 71. Courts of Record only can *fine* and imprison a Person: And such a Court may *fine* a Man for an Offence committed in Court in their View, or by Confession of the Party recorded in Court. 1 Lill. Abr. 621. A Man shall be *fined* and imprisoned for all Contempts done to any Court of Record against the Commandment of the King's Writs, &c. 8 Rep. 60. If a Person is arrested coming to the Courts of Justice to answer a Writ, the Offender doing it shall be *fined* for the Contempt: But there has been a Difference made where it is done by the Plaintiff in the Writ, and a Stranger, who it is said shall not be *fined*. 9 H. 6. 55. 1 Danv. 469. If an Officer of the Court neglects his Duty, and gives not due Attendance; a Clerk of the Peace doth not draw an Indictment

ment well in Matter of Form, on Return thereof upon a *Certiorari* to remove the Indictment into B. R. If a Sheriff, &c. make an insufficient Return of a *Habeas Corpus* issuing out of B. R. &c. Or if Justices of Peace proceed on an Indictment after a *Certiorari* issued to remove the Indictment, the Court may set a *Fine* upon them, 1 *Lill.* 620. Where a Juror at the Bar will not be sworn, he may be *fined*. 7 *H.* 6. 12. And if one of the Jury depart without giving his Verdict; or any of the Jury give their Verdict to the Court before they are all agreed, they may be *fined*. 8 *Rep.* 38. 40 *Aff.* 10. In all Actions *quare Vi & Armis*, &c. the Defendant shall be *fined*. 8 *Rep.* 59. If a Writ abates through the Default of the Plaintiff, he shall be *fined*: And so if the Plaintiff be nonsuited. 34 *Aff.* 9. And if in Appeal of Maihem, &c. against several, some are found Guilty, and the Plaintiff prays Judgment against them only, and relinquishes his Suit against the others, he shall be *fined* for not proceeding against the Rest. 22 *Aff.* 82. If in an Action a Man denies his own Deed, and this is found against him by Verdict, he shall be *fined* for his Falsity, and the Trouble to the Jury. 8 *Rep.* 60. 1 *Dann.* 471. But where a Person denies a Recovery or other Record, to which he himself is Party, he shall not be *fined*; for it is not his Act but the Act of the Court, and he does not deny it absolutely, but *non habetur tale Recordum*. *Ibid.* All *Capiatur Fines* are taken away by Stat. 4 & 5 *W. & M.* cap. 12. Except where a Defendant pleads *Non est factum*, and it is found against him. 1 *Lill. Abr.* 621. In Trespass, Assault and Battery, &c. there can be no *Capiatur pro Fine* entered since the Statute 5 & 6 *W.* 3. but instead thereof the Plaintiff is to have so much in Costs allowed him, to pay to the King for the *Fine*; And in B. R. Judgment is entered up without any Notice of the *Fine*, the Law being altered by this Statute: In C. B. they enter their Judgments *nihil de Fine quia remittitur per Stat.* 1 *Salk.* 54. 2 *Nels. Abr.* 847. To every *Fine* Imprisonment is incident; and when the Judgment is *quod Defendens Capiatur*, that is *Capiatur quousque finem fecerit*. 8 *Rep.* 59. Where an Offender is to be *fined*, the usual Judgment is *Quod Capiatur*, i. e. to be imprisoned till the *Fine* is paid: But if the *Fine* is tendered, there ought to be no Imprisonment. 1 *Ventr.* 116. When a Person is *fined* to the King, notwithstanding the Body remains in Prison, it is said the King shall be satisfied the *Fine* out of the Offender's Estate. 4 *Leon. v.* 393. A *Fine* may be mitigated in the same Term wherein it was set, it being under the Power of the Court during that Time; but it may not be done afterwards. *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 comes in before the Conviction, and submits himself to the Court, they may assess a less *Fine*; for he is not convicted, and perhaps never might. 3 *Salk.* 33. The Court of *Exchequer* may mitigate a *Fine* certain, because it is a Court of Equity, and they have a Privy Seal for it. *Ibid.* A Defendant being indicted for an Assault, confessed it, and submitted to a small *Fine*; and it was adjudged that in such a Case he may produce Affidavits to prove on the Prosecutor that it was *son Assault*, and that in Mitigation of the *Fine*; though this cannot be done

after he is found Guilty. 1 *Salk.* 55. Where a Person is found Guilty of a Misdemeanor upon Indictment, and fined, he cannot move to mitigate the *Fine*, unless he appear in Person; but one absent may submit to a *Fine*, if the Clerk in Court will undertake to pay it. 1 *Ventr.* 209, 270. 1 *Salk.* 55. 2 *Hawk.* 446. It is a common Practice in the Court of B. R. to give a Defendant Leave to speak with the Prosecutor, i. e. to make Satisfaction for the Costs of the Prosecution, and also for Damages sustained, that there may be an End of Suits; the Court at the same Time shewing on that Account an Inclination to set a moderate *Fine* on Behalf of the King. *Wood's Inst.* 653. And in Cases where Costs are not given by Law, after a Prosecutor has accepted Costs from the Defendant, he cannot aggravate the *Fine*; because having no Right to demand Costs, if he takes them, it shall be intended by way of Satisfaction of the Wrong. 2 *Hawk. P. C.* 292. A Joint Award of one *Fine* against divers Persons, is erroneous; it ought to be several against each Defendant; as otherwise one who hath paid his Part might be continued in Prison till all the others have paid theirs likewise, which would be in Effect to punish him for the Offence of another. 2 *Hawk.* 446. A Man was *fined* a great Sum who drank a Health to the pious Memory of a Traitor, that was executed, &c. *Raym.* 376. 3 *Mod.* 52. *Fines* to the King are *estreated* into the *Exchequer*.

Fines le Roy, Are all *Fines* to the King; and under this Head are included *Fines* for *Original Writs*. Originals in *Trespass* on the Case, where the Damages are laid above 40 *l.* pay a *Fine*, viz. from 40 *l.* Damages to 100 Marks, 6 *s.* 8 *d.* from 100 Marks to 100 *l.* the *Fine* is 10 *s.* From 100 *l.* to 200 Marks, 13 *s.* 4 *d.* From 200 to 400 Marks, 16 *s.* 8 *d.* From 400 Marks to 200 *l.* it is 1 *l.* *Fine*; and so for every 100 Marks more, you pay 6 *s.* 8 *d.* and every 100 *l.* further 10 *s.* *Practif. Attorn.* 1 *Edit.* pag. 132. And *Fines* are paid for Original Writs in *Debt*; for every Writ of 40 *l.* *Debt*, 6 *s.* 8 *d.* and if it be of 100 Marks, 6 *s.* 8 *d.* and for every 100 Marks, 6 *s.* 8 *d.* &c. Also for every Writ of *Plea of Land*, if it be not a Writ of Right Patent, which is for the yearly Value of 5 Marks, 6 *s.* 8 *d.* and so according to that Rate. 19 *Hen.* 6. 44. 7 *H.* 6. 33. *New Nat. Br.* 212.

Finire, To fine, or pay a *Fine* upon Composition and making Satisfaction, &c. It is the same with *Finem facere*, mentioned in *Leg. H.* 1. cap. 53. And in *Brompton*, p. 1105. — *Quando Rex Scotiæ cum Domino Rege Finivit*, &c. And in *Hovedon*, p. 783.

Finis, Death, so called; because *Vita Finitur morte*. *Blount.*

Finors of Gold and Silver, Are those Persons that purify and separate Gold and Silver from other coarser Metals, by Fire and Water. 4 *H.* 7. c. 2.

Firfare and Firboite; See *Ferdfare* and *Fird-wit*. *Leg. Canuti*, par. 2. c. 22.

Fire-rocks. Church-wardens in *London* and within the Bills of Mortality, are to fix *Fire-Cocks*, &c. at proper Distances in Streets, and keep a large Engine and Hand-Engine for extinguishing *Fire*, under the Penalty of 10 *l.* &c. *Stat. 6 Ann.* c. 31. *Firing Houses*, see *Arson*.

Firebare, (*Sax.*) Signifies a Beacon or high Tower by the Sea-side, wherein were continual Lights, either to direct Sailors in the Night, or to

to give Warning of the Approach of an Enemy.

— *Quod sine dilatione levare & reparari fac. signa* & Firebares super montes altiores in quolibet Hundredo, ita quod tota patria, per illa signa, quotiescunque necesse fuerit, prævire potest, &c. Ordinatio observandis à Lynne usque Yarmouth. Temp. Ed. 2.

Firebote, Fuel for Firing for necessary Use, allowed by Law to Tenants out of the Lands, &c. granted them. See *Eflowers*.

Firma, Is taken for Victuals, Provisions; also Rent, &c.

Firma Alba, Rent of Lands let to Farm paid in Silver, not in Provision for the Lord's House.

Firmam Noctis, Was a Custom or Tribute paid towards the Entertainment of the King for one Night, according to *Domesday*. — Comes Meriton T. R. E. Reddebat Firmam unius Noctis, &c. i. e. Provision or Entertainment for one Night, or the Value of it. Temp. Reg. Edw. Confess.

Firmam Regis, Anciently pro Villa Regia, seu Regis Manerio. Spelm.

Firmatio, Firmationis Tempus, Doe-Season, as oppos'd to Buck-Season. 31 Hen. 3. Firmatio significat alio Supplying with Food. Leg. Ina, c. 34.

Firmitas, A Fortification or Castle of Defence well fortified: Et nimia Festinatione Saxonum casas seu Firmitates subito introivit. Du Cange.

Firmura. Will. de Cressi gave to the Monks of Blyth, a Mill, cum libera Firmura of the Dam of it. — Reg. de Blyth. This has been interpreted Liberty to scour and repair the Mill-Dam, and carry away the Soil, &c. And Dr. Thornton englishtes it *Free-Firmage*.

First-fruits, (*Primitia*) Are the Profits after Avoidance, of every Spiritual Living for the first Year, according to the Valuation thereof in the King's Books. These were given in ancient Time to the Pope throughout all Christendom; and were first claimed by him in England of such Foreigners as he bestowed Benefices on here by way of Provision; afterwards they were demanded of the Clerks of all Spiritual Patrons, and at Length of all other Clerks on their Admission to Benefices: But upon the Throwing off the Pope's Supremacy in the Reign of King Hen. 8. they were translated to and vested in the King, as appears by the Stat. 26 H. 8. c. 3. And for the Ordering thereof, there was a Court erected 32 Hen. 8. but dissolved Anno 1. Mar. Though by 1 Eliz. these Profits are reduced again to the Crown, yet the Court was never restored; for all Matters formerly handled therein, were transferred to the Exchequer, within the Survey of which Court they now remain. By the Statute 26 Hen. 8. the Lord Chancellor, &c. is empowered to examine into the Value of First-fruits; and Clergymen entering on their Livings before the same are paid or compounded, are to forfeit double Value. But the 1 Eliz. c. 4. ordains, that if an Incumbent on a Benefice do not live Half a Year, or is ousted before the Year expired, his Executors are to pay only a fourth Part of the First-fruits; and if he lives the Year, and then dies, or be ousted in six Months after, but Half of the First-fruits shall be paid. And by this Statute Livings not above 10 l. per Ann. &c. are discharged from Payment of these Duties: As are also Benefices under and not exceeding 50 l. a Year, by Stat. 5 Ann. c. 24. The 2 Ann. cap. 11. settles upon a Corporation the First-fruits of all Benefices for the Maintenance of the poor Clergy; which is called the Corporation of the Bounty of Q. Anne. See 3 Geo. c. 10.

Fish and Fishing. No Fisherman shall use any Net or Engine, to destroy the Fry of Fish: And Persons using Nets or Engines for that Purpose, or taking Salmon or Trout out of Season, or any Fish under certain Lengths, are liable to forfeit 20 s. And Justices of Peace, and Lords of Leets, have Power to put the Acts in Force. 13 R. 2. 17 R. 2. 1 El. c. 17. None shall fish in any Pond or Moat, &c. without the Owner's License, on Pain of three Months Imprisonment. 31 H. 8. cap. 2. And no Person shall take any Fish in any River, without the Consent of the Owner, under the Penalty of 10 s. for the Use of the Poor, and treble Damages to the Party grieved, leviable by Distress of Goods; and for Want of Distress, the Offender is to be committed to the House of Correction for a Month: Also Nets, Angles, &c. of Pochers may be seized, by the Owners of Rivers, or by any Persons, by Warrant from a Justice of Peace, &c. 22 & 23 Car. 2. cap. 25. 4 & 5 W. & M. c. 23. The Stat. 4 & 5 Ann. cap. 21. was made for the Increase and Preservation of Salmon in Rivers in the Counties of Southampton and Wilts; requiring that no Salmon be taken between the 1st of August and 12th of November, or under Size, &c. And by 1 Geo. c. 18. Salmon taken in the Rivers Severn, Dee, Wye, Were, Ouse, &c. are to be 18 Inches long at least; or the Persons catching them shall forfeit 5 l. And Sea Fish sold must be of the Lengths following, viz. Bret and Turbot 16 Inches, Bril and Pearl 14, Codlin, Bais and Muller 12, Sole, Plaice 8, Flounders 7, Whiting 6 Inches long, &c. on Pain of forfeiting 20 s. to the Poor, and the Fish. Vide the Statute.

As to *Right of Fishing*, It has been held that where the Lord of a Manor hath the Soil on both Sides, 'tis a good Evidence that he hath the *Right of Fishing*, and it puts the Proof upon him who claims *Liberam Piscariam*; but where a River ebbs and flows, and is an Arm of the Sea, there 'tis common to all, and he who claims a Privilege to himself must prove it; for if Trespass is brought for fishing there, the Defendant may justify that the Place where is *Brachium Maris*, in quo unusquisque subditus Domini Regis habet & habere debet *Liberam Piscariam*: 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. He who is Owner of the Soil of a private River, hath *Separalis Piscaria*; and he that hath *Libera Piscaria*, hath a Property in the Fish, and may bring a possessory Action for them; but *Communis Piscaria* is like the Case of all other Commons. 2 Salk. 637.

Fishery. The Crown hath Power to direct 20 s. out of every 100 l. South-Sea Stock, to be applied for improving the Fishery of the Kingdom, carried on to Greenland, and in other Northern Seas. Stat. 9 Ann. c. 21. 5 Geo. c. 18.

Fishgarth, A Dam or Wear in a River, made for the Taking of Fish, especially in the Rivers of Ouse and Umler. 23 H. 8. c. 18.

Fisato, A Place covered with standing Water. Mon. Angl. Tom. 1. p. 209.

Flecta, A feather'd or fledged Arrow, a Fleet Arrow. Radulphus de F. tenet, &c. per servitium reddendi per Annum viginti Flectas Dom. Reg. 9 Edw. 1.

Fledwite or **Flightwite**, (From the Sax. Flyht, fuga, & Wite, multa) In our ancient Law signifies a Discharge from Amerciaments, where a Person

Person having been a *Fugitive*, comes to the Peace of our Lord the King, of his own Accord or with License. *Rassal*.

Fleet, (Sax. *Fleet*, i. e. *Flota*, a Place of Running-water, where the Tide or *Float* comes up) Is a famous Prison in London, so called from the River or Ditch, on the Side whereof it stands. To this Prison Men are usually committed for Contempt to the King and his Laws, particularly against the Courts of Justice; or for Debt, when Persons are unable or unwilling to satisfy their Creditors: There are large Rules, and a Warden belonging to the Fleet-Prison, &c. *Stat. 8 & 9 W. 3. cap. 7.*

Fleet of Ships, See *Flota Navium*, and *Navy Royal of England*.

Flem, *Elema*, (From the Sax. *Flean*, to kill or slay) An Outlaw; and by Virtue of the Word *Flemaflare* were claimed *Bona felonum*, as may be collected from a *Quo Warranto*. *Temp. Ed. 3.*

Flemenesfrit, *Flemenesfrinthe*, *Flymenasfrynthe*, Signifies the Receiving or Relieving of a Fugitive or Outlaw. *Leg. Inæ, cap. 29. 47. LL. Hen. 1. c. 10, 12.*

Flemeswite, (Sax.) *Fleta*, Who writes of this Word, interprets it *Habere Catalla Fugitivorum*. *Lib. 1. c. 47.*

Flidethrift, Or more truly *Slidebriest*, otherwise called *Shovegroat*, is the Game we now call *Shovel-board*, mentioned in the *Stat. 33 H. 8. c. 9.*

Flighers, Mafts for Ships. — *Concessi etiam eis Flighers ad suam propriam Navem, colligendas in territorio, &c. Mon. Ang. Tom. 2. p. 799.*

Flight For any Crime committed, which implies Guilt. See *Fugitives*.

Flood-mark, The Mark which the Sea makes on the Shoar, at flowing Water and the highest Tide: It is also called *High-water Mark*.

Florence, An ancient Piece of English Gold Coin: Every Pound-Weight of old Standard Gold was to be coined into fifty Florences, to be current at six Shillings each; all which made in Tale fifteen Pounds, or into a proportionate Number of Half-Florences or Quarter Pieces, by Indenture of the *Mint*. *18 Ed. 3.*

Flozin, A Foreign Coin, in Spain 4s. 4d. Germany 3s. 4d. and Holland 2s. And in some Parts of Germany, Accounts are kept in *Florins*.

Flota navium, A Fleet of Ships. — *Rex, &c. Sciatis quod constituimus Johannem de R. Admirallum nostrum Flotæ Navium ab ore aquæ Thamise versus partes occidentales, &c. Rot. Francia, 6 R. 2. m. 21.*

Flotages, Are such Things as by Accident swim on the Top of great Rivers; the Word is sometimes used in the Commissions of *Water-Bailiffs*.

Flotsam, Is when a Ship is sunk or cast away, and the Goods are floating upon the Sea. *5 Rep. 106.* *Flotsam*, *Fetsam* and *Lagan*, are mentioned together; *Fetsam* being where any Thing is cast out of the Ship when in Danger, and the Ship notwithstanding perisheth; and *Lagan* is when heavy Goods are thrown over-board before the Wreck of the Ship, which sink to the Bottom of the Sea. *Lex Mercat. 149.* The King shall have *Flotsam*, *Fetsam* and *Lagan*, when the Ship is lost, and the Owners of the Goods are not known; but not otherwise. *F. N. B. 122.* Where the Proprietors of the Goods may be known, they have a Year and a Day to claim *Flotsam*. *1 Keb. 657.* *Flotsam*, *Fetsam*, &c. any Person may

have by the King's Grant, as well as the Lord Admiral, &c. *Lex Mercat. 149.*

Storage, (*Focagium*) The same with *House-bote* or *Fire-bote*.

Focal, A Right of taking Wood for Firing: *In eadem Haila 10. Carratas Focalis recipiendas annuatim per visum servientis mei. Mon. Angl. Tom. 1. pag. 779.*

Foder, (Sax. *Foda*, i. e. *alimentum*) Any Kind of Meat for Horses, or other Cattle: And among the *Feudists* it is used for a Prerogative of the Prince, to be provided with Corn and other Meat for his Horses, by his Subjects, in his Wars or other Expeditions. *Hotom. de verb. Feudal.*

Fodertorium, Provision or Fodder, to be paid by Custom to the King's Purveyor. *Cartular. St. Edmund. M.S. fol. 102.*

Foesa, (Fr. *Foison*) Grass, Herbage. *Mon. Angl. tom. 2. pag. 506.*

Fogage, (*Fogagium*) Fog or rank After-grass, not eaten in Summer. *LL. Forestar. Scot. c. 16.*

Foiterers, By *Blount* are interpreted to be Vagabonds. See *Faitours*.

Folt-lands, (Sax.) Copyhold Lands so called in the Time of the Saxons, as Charter-Lands were called *Boc-lands*. *Kitch. 174.* *Folcland* was *Terra Vulgi* or *Popularis*, the Land of the vulgar People, who had no certain Estate therein, but held the same under the Rents and Services accustomed or agreed at the Will only of their Lord the Thane; and it was therefore not put in Writing, but accounted *Prædium Rusticum & Ignobile*. *Spelm. of Feuds, c. 5.*

Folcmote or **Folkmoete**, (Sax. *Folcgemot*, i. e. *Conventus Populi*) Is compounded of *Folk*, *populus*, and *Mote* or *Gemote*, *convenire*; and signified originally as *Sommer* in his *Saxon Dictionary* tells us, a general Assembly of the People, to consider of and order Matters of the Common Wealth: *Omnes proceres Regni & Milites & Liberi homines universi totius Regni Britannie facere debent in pleno Folcmote Fidelitatem Domino Regi, &c. Leg. Edw. Confess. cap. 35.* And Sir Henry Spelman says the *Folcmote* was a Sort of annual Parliament, or Convention of the Bishops, Thanes, Aldermen and Freemen, upon every *May-day* yearly; where the Laymen were sworn to defend one another, and to the King, and to preserve the Laws of the Kingdom, and then consulted of the Common Safety. But Dr. Brady infers from the Laws of our Saxon Kings, that it was an inferior Court, held before the King's Reve or Steward, every Month to do *Folk Right*, or compose smaller Differences, from whence there lay Appeal to the Superior Courts. *Brady's Gloss. pag. 48.* *Manwood* mentions *Folkmoete* as a Court holden in London, wherein all the Folk and People of the City did complain of the Mayor and Aldermen, for Misgovernment within the said City: And this Word is still in Use among the Londoners; and denotes *Celebrem ex tota Civitate conventum*. *Stow's Survey.* According to *Kennet*, the *Folkmoete* was a Common Council of all the Inhabitants of a City, Town or Borough, convened often by Sound of Bell to the *Mote-hall* or *House*; or it was applied to a larger Congress of all the Freemen within a County, called the *Shire-mote*, where formerly all Knights and military Tenants did Fealty to the King, and elected the annual Sheriff on the 1st of October, till this popular Election to avoid Tumults and Riots devolved to the King's Nomination, *Anno 1315. 3 Ed. 1.* After which

which the *City Folk-mote* was swallowed up in a select Committee or *Common Council*; and the *County Folk-mote*, in the *Sheriff's Tourn and Assises*. 3. The Word *Folk-mote* was used for any Kind of Popular or Publick Meeting; as of all the Tenants at the *Court-Leet* or *Court-Baron*, in which Signification it was of a less Extent. — *Paroch. Antiq.* 120.

Foldage and **Fold-course**, A Liberty to fold Sheep, &c. See *Faldage* and *Faldfee*.

Folgarii, Menial Servants; *Eos qui aliis deserviunt. Braet. lib. 3. tract. 2. c. 10.* House-keepers by the Saxons were called *Husfastene*; and their Servants or Followers, *Folgheres* or *Folgeres*. LL. Hen. 1. cap. 9.

Footgeld, (From the Sax. *For, Pes, & Geldan, solvere*) Is as much as *Pedis Redemptio*, and signifies an Amercement for not cutting out and expeditating the Balls of great Dogs Feet in the Forest: To be quit of *Footgeld* is a Privilege to keep Dogs within the Forest unawed, without Punishment. *Manwood, par. 1. p. 86.*

Forage, (Fr. *Fourage*) Hay and Straw for Horses, particularly for the Use of Horse in an Army. — *Et le dit J. Trovera herbe & feyn & Forage pour un Hakeney, &c.* M.S. Penes Wal. Blount. Bar.

Foragium, Straw when the Corn is thrashed out. *Coewel.*

Forbalk, (*Forbalca*) Lying forward or next the Highway. *Petr. Blesensis Contin. Hist. Croyland, pag. 116.*

Forbare, Is to bar or deprive one of a Thing for ever. 9 R. 2. c. 2. & 6 H. 6. c. 4.

Forbatudus, Is when the Aggressor in Combat is slain. — *Et sic est veritas sine ullo concludio & in sua culpa secundum Legem Forbatudum fecit, &c.*

Forbilher of Armour, (*Forbator*) *Si quis Forbator arma alicujus suscepit, ad purgandum, &c.* LL. Aluredi, M.S. cap. 22.

Force, (*Vis*) Is most commonly applied in *pejorem partem*, the evil Part, and signifies any unlawful Violence. It is defined by *West* to be an Offence, by which Violence is used to Things or Persons; and he divides it into *Simple* and *Compound*; *Simple Force* is that which is so committed that it hath no other Crime accompanying it; as if one by *Force* do only enter into another Man's Possession, without doing any other unlawful Act: *Mix'd* or *Compound Force* is when some other Violence is committed with such a Fact, which of it self alone is criminal; as where any one by *Force* enters into another Man's House, and kills a Man, or ravishes a Woman, &c. And he makes several other Divisions of this Head; as *True Force*, and *Force after a Sort*, &c. *West Symbol. par. 2. Sect. 65.* By the Law any Person may enter a Tavern, a Landlord may enter his Tenant's House to view Repairs, &c. But if he that enters a Tavern, commits any Force or Violence, or he that enters to view Repairs, breaketh the House, &c. it shall be intended that they entered for that Purpose. 8 Rep. 146. All Force is against the Law; and it is lawful to repel Force by Force: There is a *Maxim* in our Law, *Quod alias bonum & Justum est, Si per vim vel fraudem petatur, malum & injustum est.* 3 Rep. 78.

Fine-force, Is where a Person is forced to do that which he can no Ways help; when we say he doth it *Fine-force*: So that it seems to signify an absolute Necessity or Constraint not avoidable. *Old Nat. Br. 68. 35 H. 8. c. 12. 6 Rep. 111.*

Forcible Entry, (*Ingressus manu forti factus*) Is a violent actual Entry into Houses or Lands: And *Forcible Detainer* is a With-holding by Violence, and with strong Hand, of the Possession of Land, &c. whereby he which hath Right of Entry is barred or hindered. *Writ of Forcible Entry* lies where one is seised of a Freehold, and is put out thereof with Force; or if he is disseised peaceably, and afterwards the Disseisor doth hold and detain the same by Force. F. N. B. 54. When 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: If one enter another's House, without his Consent, although the Door be open, &c. These are *Forcible Entries* punishable by Law. 1 Inst. 257. So when a Tenant keeps Possession of the Land at the End of his Term against the Landlord, it is a *Forcible Detainer*. Cro. Jac. 199. And if a Lessee takes a new Lease of another Person, whom he conceives to have better Title, and at the End of the Term keeps Possession against his own Landlord, this is a *Forcible Detainer*. Ibid. Also Persons continuing in Possession of a defeazible Estate, after the Title is defeated, are punishable for *Forcible Entry*; for continuing in Possession afterwards, amounts in Law to a new Entry. 1 Inst. 256, 257. And an Infant, or Feme Covert may be Guilty of *Forcible Entry* within the Statutes, in Respect of Violence committed by them in Person; but not in Respect of what is done by others at their Command, their Commands being void. 1 Inst. 357. Indictment of *Forcible Entry* lies not only for Lands, but for Tithes; and also for Rents: But not against a Lord entring a Common with Force, for which the Commoner may not indict him, because it is his own Land. Cro. Car. 201, 486. And no Man can be Guilty of *Forcible Entry*, for entring with Violence into Lands or Houses in his own sole Possession, at the Time of Entry; as by breaking open Doors, &c. of his House, detained from him by one who has the bare Custody of it: But Jointenants, or Tenants in Common, may be Guilty of *Forcible Entry*, and holding out their Companions. 1 Hawk. P. C. 147. A Person is not Guilty of a *Forcible Detainer*, by barely refusing to go out of a House, and continuing therein in Despight of another. Ibid. 146. And no Words alone can make a *Forcible Entry*, although violent and threatening, without Force used by the Party. 1 Lill. Abr. 514. 1 Hawk. 145. At Common Law, any one who had a Right of Entry into Lands, &c. might regain Possession thereof by Force; but this Liberty being much abused, to the Breach of the publick Peace, it was found necessary that it should be restrained by Statute: At this Day he who is wrongfully dispossessed of Goods, may justify the Retaking them by Force. Lamb. 135. Cromp. 70. Kelw. 92. By Statutes, none shall enter into any Lands or Tenements, but where Entry is given by Law, and in a peaceable Manner, though they have Title of Entry, on Pain of Imprisonment, &c. And when a *Forcible Entry* is committed, Justices of Peace are empowered to view the Place, and enquire of the Force by a Jury summoned by the Sheriff of the County; and cause the Tenements to be seised and restored, and imprison the Offenders till they pay a Fine. 5 R. 2. cap. 7. 15 R. 2. cap. 2. 8 H. 6. c. 9. The Justices of Peace are not

to enquire into the Title of either Party : And there shall be no Restitution upon an Indictment of *Forcible Entry* or Detainer, where the Defendant hath been in quiet Possession for three Years together without Interruption, next before the Day of the Indictment found, and his Estate in the Land not ended ; which may be alledged in Stay of Restitution, and Restitution is to be staid till that be tried, if the other will traverse the same, &c. *Dalt.* 312. *Stat.* 31 *Eliz.* cap. 11. If a Disseisee within three Years makes a lawful Claim, this is an Interruption of the Possession of the Disseisor. *H. P. C.* 139. Though it has been adjudged, that it is not the Title of the Possessor, but the Possession for three Years, which is material. *Sid.* 149. Since the Statute 5 R. 2. if W. R. is seised of Lands, and L. R. having good Right to enter, doth accordingly enter *Manu forti*, he may be indicted notwithstanding his Right, &c. 3 *Salk.* 170. For a *Forcible Detainer* only 'tis said there is no Restitution, the Plaintiff never having been in Possession ; but there may be Restitution where *Forcible Entry* and Detainer are found. 1 *Ventr.* 23. *Sid.* 97, 99. The Justices on *Forcible Detainer* may punish the Force upon View, and fine and imprison the Offenders ; but cannot meddle with the Possession. *Sid.* 156. And it hath been held, that in *Forcible Entry* and Detainer, the Jury are to find all or none ; and not the Detainer, without the *Forcible Entry*. 1 *Ventr.* 25. A Reversioner cannot bring Action of *Forcible Entry*, because he cannot be expelled, though he may be disseised. *Dyer* 141. And the Words in the Writ to maintain the Action are that the Defendant *Expulit & Disseisvit*, &c. yet it is said that every Disseisin implies an Expulsion in *Forcible Entry*. 2 *Cro.* 31. The Possession of the Termor is the Possession of him in Reversion : And where a Lessee for Years is put out of Possession by Force, Restitution must be to him in Reversion, and not the Lessee ; and then his Lessee may re-enter. 1 *Leon.* 327. A Termor may say that he was expelled, and his Landlord in Reversion disseised ; or rather that the Tenant of the Freehold is disseised, and he the Lessee for Years expelled. 4 *Mod.* 248. 2 *Nelf. Abr.* 869. A Copyholder cannot be disseised, because he hath no Freehold in his Estate ; but he may be expelled : And a Copyhold Tenant may be restored, where he is expelled wrongfully ; but if the Indictment be only of Disseisin, as he may not be disseised, there can be no Restitution but at the Prayer of him that hath the Freehold. *Yelv.* 81. 2 *Cro.* 41. Indictment for *Forcible Entry* must be laid of *Libetum Tenementum*, &c. to have Restitution by the Statute 15 R. 2, &c. 2 *Cro.* 157. Though by 21 *Jac.* 1. cap. 15. Justices of Peace may give like Restitution of Possession to Tenants for Years, Tenant by *Elegit*, Statute-staple, &c. and Copyholders, as to Freeholders. Justices of Peace only have Power to enquire of *Forcible Entry* : But an Indictment of *Forcible Entry* may be removed from before Justices of Peace into the Court of B. R. *coram Rege*, which Court may award Restitution. 11 *Rep.* 65. A Record of Justices of Peace of *Forcible Entry*, is not traversable ; but the Entry and Force, &c. may be traversed in Writing, and the Justices may summon a Jury for Trial of the Traverse. 1 *Salk.* 353. The Finding of the Force being in Nature of a Presentment by the Jury, is traversable ; and if the Justices of Peace refuse the Traverse, and

grant Restitution, on removing the Indictment into B. R. there the Traverse may be tried ; and on a Verdict found for the Party, &c. a Re-restitution shall be granted. *Sid.* 287. 2 *Salk.* 588. If no Force is found at a Trial thereof before Justices, Restitution is not to be granted ; nor shall it be had till the Force is tried ; or ought the Justices to make it in the Absence of the Defendant, without calling him to Answer. 1 *Hawk. P. C.* 154. No other Justices of Peace but those before whom the Indictment was found, may either at Sessions or out of it award Restitution ; the same Justices may do it in Person, or make a Precept to the Sheriff to do it, who may raise the Power of the County to assist him in executing the same. 1 *Hawk.* 152. And the same Justices of Peace may also supersede the Restitution, before it is executed ; on Insufficiency found in the Indictment, &c. But no other Justices, except of the Court of B. R. A *Certiorari* from B. R. is a *Superfedeas* to the Restitution ; and the Justices of B. R. may set aside the Restitution after executed, if it be against Law, or irregularly obtained, &c. 1 *Salk.* 154. If Justices of Peace exceed their Authority, Information may be brought against them in B. R. A Conviction for *Forcible Entry*, before a Fine is set, may be quashed on Motion ; but after a Fine is set, it may not ; the Defendant must bring Writ of Error. 2 *Salk.* 450. Indictments for *Forcible Entry* must set forth that the Entry was *Manu forti*, to distinguish this Offence from other Trespases *Vi & Armis* ; and there are many Niceties to be observed in drawing the Indictment, otherwise it will be quashed. 1 *Cro.* 461. *Dalt.* 298. There must be Certainty in this Indictment ; and no Repugnancy, which is an incurable Fault. An Indictment of *Forcible Entry* was quashed, for that it did not set forth the Estate of the Party : So where the Defendant had not been in Possession peaceably three Years before the Indictment, without saying before the Indictment found, &c. And Force shall not be intended when the Judgment is generally laid, for it must be always expressed. 2 *Nelf. Abr.* 867, 869. If a Plaintiff proceeds not criminally by Indictment for *Forcible Entry*, but commences a Civil Action on the Case, which he may do on the Statute of Hen. 6. the Defendant is to plead *Not guilty*, or may plead any special Matter, and traverse the Force ; and the Plaintiff in his Replication must answer the special Matter, and not the Traverse ; and if it be found against the Defendant, he is convicted of the Force of Course ; whereupon the Plaintiff shall recover treble Damages and Costs. 3 *Salk.* 169. Though *Forcible Entry* is punishable either by Indictment or Action ; the Action is seldom brought, but the Indictment often.

Form of an Indictment for a *Forcible Entry*.

JUR' &c. quod A. B. & C. D. de, &c. assumptis & associatis sibi ipsis aliis malefactoribus & pacis Dom. Regis perturbator. modo hostili armatis quorum nomina Furatores præd. penitus ignorant die & anno, &c. apud, &c. in Com. præd. Vi & Armis, viz. Baculis gladiis, &c. & aliis armis defensivis & invasivis in unum messuagium cum pertin. in, &c. præd. super pacificam Possessionem cujusdam E. F. intraverunt & quilibet eorum intravit de quo quidam messuagio præd. E. F. adtunc Possessionatus fuit pro termino, &c. Et præd. A. B. & C. D.

C. D. alii malefactores præd. Vi & Armis præd. E. F. à Possessione sua præd. Ejecerunt Expulerunt & Amoverunt & præfat. E. F. sic inde Expulsum a præd. messuagio cum pertin. illicite ac manu forti adtunc Extratenuer', &c. Et adhuc extratenuent contra pacem dict. Dom. Regis, &c. Et contra formam Statut. &c.

A Writ of Forcible Entry, according to the Statute.

REX Vic. & salutem. Si A. B. fecerit, &c. tunc pone C. D. &c. ad Respondend. tam nobis quam præfat. A. B. quare cum in Statuto in Parlamento apud Westm. Anno Regni Regis Hen. nup. Regis Angliæ sexti. progenitor. nostri octavo tenio edit. inter cetera continet. Quod si aliqua persona de aliquibus terris seu Tenementis manu forti Expulsa sit & Disseisit. vel pacifice expellat. & postea manu forti extrateneat. vel aliquod Feoffment. vel Discontinuatio inde post talem Ingress. pro jure Possessor. Defraudando & tollend. aliquo modo fiat, habeat pars in hac parte gravata versus talem Disseis. Assisam nova Diss. vel Breve de Transgr. & si pars gravata per Assisam vel per Action. Transgr. recuperet & per Verdict' vel alio modo per debit. Legis formam inveniat. quod pars Def. in Terr. & Tenement. vi Ingress. fuerit, vel ea post Ingressum suum per vim tenuerit recuperet. Querens Damna sua ad triplum versus Def. & ulter. finem & Redemption. nobis faciat; Præd. C. D. præfat. A. B. de Liber. Tenemento suo in, &c. manu forti Expulsi & Disseisivit, & eum sic Expulsi & Disseis. extratenuer de eod. in nostri Contemptum, & ipsius A. B. Dampn. non modicum & gravam. ac contra formam Statuti præd. & contra pacem nostram. Et habeas ibi nomina Pleg. & hoc. Breve. Teste, &c.

Forcible Marriage, Of a Woman of Estate is Felony; for by the Stat. 3 Hen. 7. cap. 2. it is enacted, That if any Persons shall take away any Woman having Lands or Goods, or that is Heir apparent to her Ancestor, by Force and against her Will, and marry or defile her, the Takers, Procurers, Abettors, and Receivers of the Woman taken away against her Will, and knowing the same, shall be deemed principal Felons: But as to Procurers and Accessaries, they are to be before the Offence committed, to be excluded the Benefit of Clergy, by 39 El. c. 9. The Indictment on the Stat. 3 H. 7. is expressly to set forth, that the Woman taken away had Lands or Goods, or was Heir apparent, and also that she was married or defiled, because no other Case is within the Statute; and it ought to alledge that the Taking was for Lucre: It is no Excuse that the Woman at first was taken away with her Consent; for if she afterwards refuse to continue with the Offender, and be forced against her Will, she may from that Time properly be said to be taken against her Will: And it is not material whether a Woman so taken away, be at last married or defiled with her own Consent or not, if she were under the Force at the Time, the Offender being in both Cases equally within the Words of the Act. 3 Inst. 61. H. P. C. 119. 1 Hawk. P. C. 109, 110. Those Persons who after the Fact receive the Offender, are but Accessaries after the Offence, according to the Rules of the Common Law: And those that are only Privy to the Marriage, but not Parties to the Forcible Taking away, are not within the Act. H. P. C. 119. A Man may be indicted for taking away a Woman by Force in another County; for the Continuing of the Force in any County amounts to a Forcible Taking

there. *Ibid.* Taking away any Woman Child, under the Age of sixteen Years and unmarried, out of the Custody and against the Will of the Father, Guardian, &c. the Offender shall suffer Fine and Imprisonment. Stat. 4 & 5 P. & M. cap. 8. This is a Force against the Parents: And an Information will lie for seducing a young Man or Woman from their Parents, against their Consents, in order to marry them, &c. 3 Cro. 557. Raym. 473.

FORD, (Forda) A shallow Place in a River, made so by damming or penning up the Water. Mon. Ang. Tom. 1. pag. 657.

FORDOL, (From the Sax. Fore, before, and dola a Part or Portion) Signifies a But or Head-band, shooting upon other Bounds. Cordet.

Foretheapum, Praemption, from the Sax. Fore, ante, and Ceapean, i. e. Nundinari, Emere. — Et non licebat iis aliquod Foretheapum facere Burghmannis, & dare Theolonium suum. Chron. Brompton. Col. 897, 898. and LL. Æthelredi, c. 23.

Foreclosed, Shut out, or excluded; as the Barring the Equity of Redemption on Mortgages, &c. 2 Inst. 298.

Foregoers. The King's Purveyors were so called, from their going before to provide for his Household. 36 Ed. 3. 5.

Foreign, (Fr. Forain, Lat. Forinsecus, Extraneus) Strange or outlandish, of another Country; and in our Law, is used adjectively, being joined with divers Substantives in several Senses. Kitch. 126.

Foreign Attachment, Is an Attachment of Foreigners Goods, found within a Liberty or City, for the Satisfaction of some Citizen, to whom the Foreigner is indebted; or of Money in the Hands of another Person, due to him against whom an Action of Debt is brought, &c. See Attachment.

Foreign Court, At *Lemster* (Anciently called *Leominster*) There is the Borough and the Foreign Court; which last is within the Jurisdiction of the Manor, but not within the Liberty of the Bailiff of the Borough: So there is a Foreign Court of the Honour of Gloucester. Clans. 8 Ed. 2. Foreign bought and sold is a Custom within the City of London, which being found prejudicial to the Sellers of Cattle in *Smithfield*, it was enacted 22 & 23 Car. 2. that as well Strangers, as Freemen may buy and sell any Cattle there.

Foreign Kingdom, Is a Kingdom under the Dominion of a Foreign Prince; so that Ireland, or any other Place, subject to the Crown of England, cannot with us be called Foreign; though to some Purposes they are distinct from the Realm of England. If two of the King's Subjects fight in a Foreign Kingdom, and one of them is killed, it cannot be tried here by the Common Law; but it may be tried and determined by the Constable and Marshal, according to the Civil Law; or the Fact may be examined by the Privy Council, and tried by Commissioners appointed by the King in any County of England, by Stat. 3 Inst. 48. 33 H. 8. One *Hutchinson* killed Mr. *Colson* abroad in Portugal, for which he was tried there and acquitted, the Exemplification of which Acquittal he produced under the Great Seal of that Kingdom; and the King being willing he should be tried here, referred it to the Judges, who all agreed, that the Party being already acquitted by the Laws of Portugal, could not be tried again for the same Fact here. 3 Keb. 785. If a Stranger of Holland, or any Foreign King-

Kingdom, buys Goods at London, and gives a Note under his Hand for Payment, and then goes away privately into Holland; the Seller may have a Certificate from the Lord Mayor, on Proof of Sale and Delivery of the Goods; upon which the People of Holland will execute a legal Process on the Party. 4 Inst. 38. Also at the Instance of an Ambassador or Consul, such a Person of England, or any Criminal against the Laws here, may be sent from a Foreign Kingdom hither.

Foreign Plea, Is a Plea in Objection to a Judge, where he is refused as incompetent to try the Matter in Question, because it arises out of his Jurisdiction. Kitch. 75. Stat. 4 H. 8. cap. 2. And if a Plea of issuable Matter is alledged in a different County from that wherein the Party is indicted or appealed; by the Common Law, such Pleas can only be tried by Juries returned from the Counties wherein they are alledged. 2 Hawk. P. C. 404. But by the Stat. 33 H. 8. cap. 14. all Foreign Pleas triable by the County, upon any Indictment for Petit Treason, Murder or Felony, shall be forthwith tried without any Delay, before the same Justices afore whom the Party shall be arraigned, and by the Jurors of the same County where he is arraigned, notwithstanding the Matter of the Pleas are alledged to be in any other County or Counties: Though as this Statute extends not to Treason, nor Appeals, it is said a Foreign Issue therein must still be tried by the Jury of the County wherein alledged. 3 Inst. 17. H. P. C. 255. In a Foreign Plea in a Civil Action, the Defendant ought to plead to that Place where the Plaintiff alleges the Matter to be done in his Declaration; and the Defendant may plead a Foreign Plea where a Matter is transitory, or not transitory; but in the last Case he must swear to it. Sid. 234. 2 Nels. 871. When a Foreign Plea is pleaded, the Court generally makes the Defendant put it in upon Oath, that it is true; or will enter up Judgment for Want of a Plea: But if a Plea in B. R. &c. be only to the Jurisdiction of the Court, or a Plea of Privilege, &c. if they are not put in on Oath, Judgment shall not be signed for Want thereof. 5 Mod. 335. Foreign Answer is such an Answer as is not triable in the County where made: And Foreign Matter is that Matter which is done in another County, &c.

Foreign Service, Is that whereby a man Lord holds of another, without the Compass of his own Fee: Or that which a Tenant performs either to his own Lord, or to the Lord paramount, out of the Fee. Kitch. 299. Of these Services, Bracton say thus: *Item sunt quedam servitia, quæ dicuntur Forinfeca, quævis sunt in Charta de Feoffamento expressa & nominata; & quæ ideo dici possunt Forinfeca, quia pertinent ad Dominum Regem, & non ad Dominum Capitalem, &c. Quandoque enim nominantur Forinfeca, large sumpto vocabulo, quoad servitium Domini Regis, quandoque scutagium, quandoque servitium Domini Regis, & ideo Forinfecum dici potest, quia sit & capitur Foris, sive extra servitium quod sit Domino Capitali.* Bract. lib. 2. c. 16. And Foreign Service seems to be Knights-Service, or Escuage uncertain. Perkin, 650. — *Salvo Forinfeco Servitio.* Mon. Ang. Tom. 2. pag. 637.

Foreigners, Though made Denizens, or naturalized here, are disabled to bear Offices in the Government, to be of the Privy Council, Members of Parliament, &c. by the Acts of

Settlement of the Crown. 12 W. 3. cap. 2. 1 Geo. cap. 4.

Forejudger, (*Forjudicatio*) A Judgment whereby a Person is deprived or put by the Thing in Question. Bract. lib. 4. To be forejudged the Court is when an Officer or Attorney of any Court is expelled the same for some Offence; or for not appearing to an Action, on a Bill filed against him, &c. And in the latter Case, he is not to be admitted to practise in the Court, till he appears. 2 Hen. 4. cap. 8. If an Attorney privileged in C. B. is sued, after a Bill filed against him, he is to be called in Court, and a Rule must be made to Plead; and if upon that Rule, he doth not appear, he shall be forejudged the Court; after he is forejudged, but not before, he may be arrested as another Person, &c. Practif. Solic. 322. He shall lose his Office, and be forejudged the Court. — *Forjudicare interdum est male Judicare.* Spelm.

Forechoke, (*Develictum*) Is of the same Meaning with *Forsaken* in modern Language: In one of our Statutes, it is specially used for Lands or Tenements seised by a Lord, for Want of Services performed by the Tenant, and quietly held by such Lord beyond a Year and a Day; now the Tenant, who seeing his Land taken into the Hands of the Lord, and possessed so long, and not pursuing the Course appointed by Law to recover it, doth in Presumption of Law disavow or forsake all the Right he hath to the same; and then such Lands shall be called *Forechoke*. Stat. 10 Ed. 2. c. 1.

Forest, (*Foresta*, *Saltus*) Signifies a great or vast Wood; *Locus Sylvæstris & Saluosus*. Our Law-Writers define it thus, *Foresta est Locus ubi fera inhabitant vel includuntur*; others say, it is called *Foresta, quasi ferarum statio, vel tuta mansio ferarum*. Manwood in his *Forest Laws* gives this particular Definition of it: A Forest is a certain Territory or Circuit of woody Grounds and Pastures, known in its Bounds, and privileged, for the peaceable Being and Abiding of wild Beasts, and Fowls of Forest, Chase and Warren, to be under the King's Protection for his princely Delight; replenished with Beasts of Venary or Chase, and great Coverts of Vert for Succour of the said Beasts; for Preservation whereof, there are particular Laws, Privileges and Officers belonging thereunto. Manw. part. 2. cap. 1. Forests are of that Antiquity in England, that (except the New Forest in Hampshire, erected by William called the Conqueror, and Hampton-Court erected by King Hen. 8.) it is said there is no Record or History doth make any certain Mention of their Erections and Beginnings; though they are mentioned by several Writers, and in divers of our Laws and Statutes. 4 Inst. 319. Our ancient Historians tell us, that New Forest was raised by the Destruction of twenty-two Parish Churches, and many Villages, Chapels and Manors, for the Space of thirty Miles together; which was attended with divers Judgments on the Posterity of King Wil. 1. who erected it; for William Rufus was there shot with an Arrow, and before him Richard the Brother of Hen. 1. was there killed; and Henry Nephew to Robert, the eldest Son of the Conqueror, did hang by the Hair of the Head in the Boughs of the Forest like unto Absalom. Blount. Besides the New Forest, there are sixty-eight other Forests in England; thirteen Chases, and more than seven hundred Parks: The four principal Forests, are New Forest

Forest on the Sea, Shirewood Forest on the Trent, Dean Forest on the Severn, and Windsor Forest on the Thames. The Way of making a *Forest* is thus: Certain Commissioners are appointed under the Great Seal of *England*, who view the Ground intended for a *Forest*, and fence it round with Metes and Bounds; which being returned into the Chancery, the King causeth it to be proclaimed throughout the County where the Land lieth, that it is a *Forest*, and to be governed by the Laws of the *Forest*, and prohibits all Persons from hunting there without his Leave; and then he appointeth Officers fit for the Preservation of the Vert and Venison, and so it becomes a *Forest* by Matter of Record. *Manw. cap. 2.* Tho' the King may erect a *Forest* on his own Ground and Wastes; he may not do it in the Ground of other Persons, without their Consents; and Agreements with them for that Purpose, ought to be confirmed by Parliament. *4 Inst. 300.* Proof of a *Forest* appears by Matter of Record; as by the *Eyres* of the Justices of the *Forest*, other Courts, and Officers of *Forests*, &c. and not by the Name in Grants. *12 Rep. 22.* As Parks are enclosed with Wall, Pale, &c. so *Forests* and Chafes are inclosed by Metes and Bounds; such as Rivers, Highways, Hills, &c. which are an Inclosure in Law; and without which there cannot be a *Forest*. *4 Inst. 317.* And in the Eye of the Law, the Boundaries of a *Forest* go round about as it were a Brick Wall, directly in a right Line the one from the other; and they are known either by Matter of Record, or Prescription. *Ibid.* Bounds of *Forests* may be ascertained by Commission from the Lord Chancellor, and Commissioners, Sheriffs, Officers of *Forests*, &c. are empowered to make Inquests thereof. *Stat. 16 & 17 Car. 1. c. 16.* Also the Boundaries of *Forests* are reckoned a Part of the *Forest*; for if any Person kill or hunt any of the King's Deer in any Highway, River, or other inclusive Boundary of a *Forest*, he is as great an Offender as if he had killed or hunted Deer within the *Forest* it self. *4 Inst. 318.* By the Grant of a *Forest*, the Game of the *Forest* does pass; and Beasts of *Forest* are the Hart, Hind, Buck, Doe, Boar, Wolf, Fox, Hare, &c. The Seasons for Hunting whereof are as follow, viz. That of the Hart and Buck, begins at the Feast of St. John Baptist, and ends at *Holy-rood Day*; of the Hind and Doe, begins at *Holy-rood*, and continues till *Candlemas*; of the Boar, from *Christmas* to *Candlemas*; of the Fox, begins at *Christmas*, and continues till *Lady-day*; of the Hare, at *Michaelmas*, and lasts till *Candlemas*. *Dyer 169. 4 Inst. 316.* Not only Game, &c. are incident to a *Forest*, but also a *Forest* hath divers special Properties. 1. A *Forest* truly and strictly taken cannot be in the Hands of any but the King; for none but the King hath Power to grant Commission to be a Justice in *Eyre* of the *Forest*: But if the King grants a *Forest* to a Subject, and granteth farther that upon Request made in Chancery, he and his Heirs shall have Justices of the *Forest*, then the Subject hath a *Forest* in Law. *4 Inst. 314. Cro. Jac. 155.* The second Property of a *Forest* is the Courts; as the Justice-Seat, the *Swainmote*, and Court of Attachment. The third Property is the Officers belonging to it; as first the Justices of the *Forest*, the Warden or Warder, the Verderors, Foresters, Aqisters, Regarders, Keepers, Bailiffs, Beadles, &c. Tho' as to the Courts, the most especial Court of a *Forest* is the *Swainmote*, which is no less incident

to it, than a Court of *Pie-powders* to a Fair: And if this fail, there is nothing remaining of a *Forest*, but it is turned into the Nature of a Chafe. *Manw. cap. 21. Crompt. Jur. 146.* There is but one Chief Justice of the *Forests* on this Side *Trent*, and he is named *Justiciarius Itinerans Forestarum*, &c. *citra Trentam*; and there is another *Capitalis Justiciarius*, and he is *Justiciarius Itinerans omnium Forestarum ultra Trentam*, &c. who is a Person of greater Dignity, than Knowledge in the Laws of the *Forest*; and therefore when Justice-Seats are held, there are associated to them such as the King shall appoint, who together with him determine *Omnia placita foresta*, &c. *4 Inst. 315.* A Justice in *Eyre* cannot grant Licence to fell any Timber, unless it be *sedente Curia*, or after a Writ of *Ad quod Damnum*: And it hath been resolved by all the Judges, that though Justices in *Eyre*, and the King's Officers within his *Forests*, have Charge of Venison, and of Vert or green Hue, for the Maintenance of the King's Game, and all Manner of Trees for Covert, Bruise and Pannage; yet when Timber of the *Forest* is sold, it must be cut and taken by Power under the Great Seal or the Exchequer Seal, by View of the Foresters, that it may not be had in Places inconvenient for the Game: And the Justice in *Eyre*, or any of the King's Officers in the *Forest*, cannot sell or dispose of any Wood within the *Forest* without Commission; so that the Exchequer and the Officers of the *Forest* have *Divisum Imperium*, the one for the Profit of the King, the other for his Pleasure. *3d Vol. Read. on Stat. pag. 304, 305.* Also no Officer of the *Forest* can claim Windfalls, or Dotard Trees, for their Perquisites, because they were once Parcel of the King's Inheritance; but they ought to be sold by Commission, for the King's best Benefit. *Ibid.* If any Officers cut down Wood, not necessary for Browse, &c. they forfeit their Offices. *9 Rep. 50.* The Lord of a *Forest* may by his Officers enter into any Man's Wood within the Regard of the *Forest*, and cut down Browse-Wood for the Deer in Winter. *2. par. Game Law, p. 46.* A Prescription for a Person to take and cut down Timber-trees in a *Forest*, without View of the Forester, it is said may be good: But of this *Quere*, without Allowance of a former *Eyre*, &c. If a Man hath a Wood in a *Forest*, and hath no such Prescription, the Law will allow him to fell it, so as he doth not prejudice the Game, but leave sufficient Vert; but it ought to be by Writ of *Ad quod Damnum*, &c. *4 Inst. Cro. Jac. 155.* And every Person in his own Wood in a *Forest*, may take *House-bote* and *Hay-bote*, by View of the Forester; and so may Freeholders by Prescription, Copyholders by Custom, &c. *1 Ed. 3. cap. 2.* The Wood taken by View of the Forester, ought to be presented at the next Court of Attachment, that it was by View, and may appear of Record. Fences, &c. in *Forests* and Chafes, must be with low Hedges; and they may be destroyed, though of forty Years Continuance, if they were not before. *Cro. Jac. 156.* He whose Wood is in Danger of being spoiled, for Want of repairing Fences by another, ought to request the Party to make good the Hedges; and if he refuse, then he must do it himself, and have Action on the Case against the other that should have done it. *1 Jones 277.* A Person may have Action at Common Law, for a Trespass in a *Forest*, as to Wood, &c. to recover his Right. *Sid. 296.* The Court of Justice in *Eyre* may proceed upon the Presentments or Verdicts

dicts in the *Swainmote*, &c. And Presentments and Convictions of the Court of *Attachement* and *Swainmote*, must be delivered to the Lord Chief Justice in Eyre, at the next Court of Justice-Seat, &c. where Judgment is to be given: And the Plea of the *Forest* runs thus; *Presentatio per Forestarios, & Convictio per Viridarios, &c.* The Court of *Attachement*, or *Woodmote* in *Forests*, is kept every forty Days; at which the *Foresters* bring in the *Attachments de viridi & venatione*, and the *Presentments* thereof, and the *Verderors* do receive the same, and inrol them; but this Court can only enquire, and not convict. 4 *Inst.* 289. The Court of *Swainmote* is holden before the *Verderors*, as Judges, by the Steward of the *Swainmote*, thrice in the Year: The *Freeholders* within the *Forest*, are to appear at this Court, to make *Inquests* and *Juries*; and this Court may enquire *de superoperatione Forestariorum & aliorum Ministrorum Forestæ & de eorum Oppressionibus populo nostro illatis*: It may enquire of Offences, and convict also; but not give Judgment. *Ibid.* The Court of the *Chief Justice in Eyre*, or *Justice-Seat*, is a Court of Record, and hath Authority to hear and determine all *Trespases*, *Pleas* and *Causés* of the *Forest*, &c. within the *Forest*, as well concerning *Vert* and *Venison*, as other *Causés* whatsoever; and this Court cannot be kept oftner than every third Year. As before other Justices in Eyre, it must be summoned forty Days at least before the Sitting thereof; and one Writ of Summons is to be directed to the Sheriff of the County, and another Writ *Custodi Forestæ Domini Regis vel ejus locum tenenti, &c.* Which Writ of Summons consists of two Parts; first, to summon all the Officers of the *Forest*, and that they bring with them all Records, &c. Secondly, all Persons which claim any Liberties or Franchises within the *Forest*, and to shew how they claim the same: If there be erroneous Judgment at the Justice-Seat, the Record may be removed by Writ of Error into B. R. 4 *Inst.* 291. The Court of *Regard*, or Survey of Dogs, is holden likewise every third Year, for Expedition or Lawing of Dogs; by cutting off to the Skin three Claws of the *Forefeet*, to prevent their running at and killing of Deer. By Statute, three Courts of *Swainmote* are to be held for *Forests* in the Year; one fifteen Days before *Michaelmas*, another about *Martinmas*, and the third fifteen Days before *Midsummer*: And *Presentments* of *Trespases* of Green Hue, and hunting in *Forests*, must be made at the next *Swainmote* by *Foresters*, &c. Also no Officer of the *Forest* shall surcharge the *Forest*, on Pain of Imprisonment by the Justices of the *Forest*. *Charta de Foresta*. 9 Hen. 3. cap. 1. *Ordinatio de Foresta* 24 Ed. 1. Justices of *Forests*, &c. may make Deputies. 32 H. 8. cap. 35. The Chief Warden of the *Forest* is a great Officer, next to the Justice of the *Forest*, to bail and discharge Offenders; but he is no judicial Officer: And the Constable of the Castle where a *Forest* is, by the *Forest* Law is Chief Warden of the *Forest*, as of *Windsor-Castle*, &c. A *Verderer* is a judicial Officer of the *Forest*, and chosen in full County, by the King's Writ: His Office is to observe and keep the Assises or Laws of the *Forest*, and view, receive and inrol the *Attachments* and *Presentments* of all *Trespases* of the *Forest*, of *Vert* and *Venison*, and to do equal Right and Justice to the People: The *Verderors* are the Chief Judges of the *Swainmote* Court; although the Chief

Warden, or his Deputy, usually sits there. 4 *Inst.* 292. The *Regarder* is to make *Regard* of the *Forest*, and to view and enquire of Offences, *Concealments*, *Defaults* of *Foresters*, &c. Before any Justice-Seat is holden, the *Regarders* of the *Forest* must make their *Regard*, and go through and view the whole *Forest*, &c. They are ministerial Officers, constituted by Letters Patent of the King, or chosen by Writ to the Sheriff. 4 *Inst.* 291. A *Forester* is in legal Understanding a sworn Officer ministerial of the *Forest*, and is to watch over the *Vert* and *Venison*, and to make *Attachments* and true *Presentments* of all manner of *Trespases* done within the *Forest*: A *Forester* is also taken for a *Woodward*: This Officer is made by Letters Patent, and 'tis said the Office may be granted in Fee or for Life. 4 *Inst.* 293. Every *Forester* when he is called at a Court of Justice-Seat, ought upon his Knees to deliver his Horn to the Chief Justice in Eyre; so every *Woodward* ought to present his Hatchet to my Lord. A *Riding Forester* is to lead the King in his Hunting. 1 *Jones* 277. The Office of *Forester*, &c. though it be a Fee-simple, cannot be granted or assigned over, without the King's Licence. 4 *Inst.* 316. If a *Forester* by Patent for Life, is made Justice of the same *Forest pro hac vice*, the *Forestership* is become void; for these Offices are incompatible, as the *Forester* is under the Correction of the Justice, and he cannot judge himself. 4 *Inst.* 310. An *Agister's* Office is to attend upon the King's Woods and Lands in a *Forest*, receive and take in Cattle, &c. by *Agistment*, that is to depasture within the *Forest*, or to feed upon the *Pawnage*, &c. And this Officer is constituted by Letters Patent. 4 *Inst.* 293. Persons inhabiting in the *Forest*, may have *Common* of *Herbage* for Beasts commonable within the *Forest*; but by the *Forest* Law, Sheep are not commonable there, because they bite so close that they destroy the *Vert*; and yet it has been held, that Sheep may be commonable in *Forests* by Prescription. 3 *Bulst.* 213. There may be a Prescription for *Common* in a *Forest* at all Times in the Year; though it was formerly by the Opinion of our Judges, that the *Fence-month* should be excepted. 3 *Lev.* 127. A *Forest* may be *disafforested* and laid open; but Right of *Common* shall remain. *Poph.* 93. He that hath a Grant of the *Herbage* or *Pawnage* of a Park, *Forest*, &c. cannot take any *Herbage* or *Pawnage*, but of the *Surplusage* over and above a competent and sufficient Pasture and Feeding for the Game; and if there be no *Surplusage*, he that hath the *Herbage* and *Pawnage*, cannot put in any Beasts; if he doth, they may be driven out. 3 *Vol. Read. on Stat.* 305. None may gather Nuts in the *Forest*, without Warrant. A *Ranger* of a *Forest* is one whose Business it is to recharge the wild Beasts from the *Purlicus* into the *Forest*, and to present Offences within the *Purlicu*, and the *Forest*, &c. And though he is not properly an Officer in the *Forest*, yet he is a considerable Officer of and belonging to it. The *Beadle* is a *Forest* Officer, that warns all the Courts of the *Forest*, and executes Process, makes all Proclamations, &c. 4 *Inst.* 313. There are also *Keepers* or *Bailiffs* of Walks in *Forests* and Châtes, which are subordinate to the *Verderors*, &c. And these Officers cannot be sworn on any *Inquests* or *Juries* out of the *Forest*. If any Man hunt Beasts within a *Forest*, although they are not Beasts of the *Forest*, they are punishable by the *Forest* Laws; because all

Hunting

hunting there, without Warrant, is unlawful. 4 *Inst.* 314. If Deer be hunted in a *Forest*, and afterwards by hunting it is driven out of the *Forest*, and the *Forester* follows the Chase, and the Owner of the Ground where driven kills the Deer there; yet the *Forester* may enter into the Lands and retake the Deer: For Property in the Deer is in this Case by Pursuit. 2 *Leon.* 201. He that hath any manner of License to hunt in a *Forest*, Chase, Park, &c. must take heed that he do not abuse his License, or exceed his Authority; for if he do, he shall be accounted a Trespasser *ab initio*, and be punished for that Fact as if he had no License at all. *Manw.* 280, 288. Every Lord of Parliament, sent for by the King, may in coming and returning kill a Deer or two in the King's *Forest* or Chase through which he passes; but it must not be done privily, without the View of the *Forester* if present; or if absent by causing one to blow a Horn, because otherwise he may be a Trespasser, and seem to steal the Deer. *Chart. Forest.* c. 11. 4 *Inst.* 308. *Lex Foresta* is a private Law, and must be pleaded. 2 *Leon.* 209. But it hath been observed, that the Laws of the *Forest* are established by Act of Parliament, and for the most Part contained in *Charta de Foresta*. 9 *H.* 3. and 34 *Ed.* 1. By the Law of the *Forest*, Receivers of Trespassers in hunting or killing of Deer, knowing them to be such, or any of the King's Venison, are principal Trespassers; tho' the Trespass was not done to their Use or Benefit, as the Common Law requires; by which the Agreement subsequent amounts to a Commandment: But if the Receipt be out of the Bounds of the *Forest*, they cannot be punished by the Laws of the *Forest*, being not within the *Forest* Jurisdiction, which is local. 4 *Inst.* 317. If a Trespass be done in a *Forest*, and the Trespasser dies, it shall be punished after his Death in the Life-time of the Heir, contrary to the Common Law. Hue and Cry may be made by the *Forest* Law for Trespass, as to Venison; tho' it cannot be pursued but only within the Bounds of the *Forest*. 4 *Inst.* 294. And not pursuing Hue and Cry in the *Forest*, a Township, &c. may be fined and amerced. In every Trespass and Offence of the *Forest* in Vert or Venison, the Punishment is to be imprisoned, ransomed, and bound to the good Behaviour of the *Forest*, which must be executed by a judicial Sentence by the Lord Chief Justice in Eyre of the *Forest*. If any *Forester* find any Person hunting without Warrant, he is to arrest his Body, and carry him to Prison; from whence he shall not be delivered without special Warrant from the King, or his Justices of the *Forest*, &c. But by 1 *Ed.* 3. c. 8. Persons are bailable if not taken in the manner, as with a Bow ready to shoot, carrying away Deer killed, or smeared with Blood, &c. Tho' if one be not thus taken, he may be attached by his Goods. 4 *Inst.* 289. The Warden of the *Forest* shall let such to Mainprise until the Eyre of the *Forest*; or a Writ may be had out of the Chancery to oblige him to do it, and if he refuse to deliver the Party, a Writ shall go to the Sheriff to attach the Warden, &c. who shall pay treble Damages to the Party grieved, and be committed to Prison, &c. *Stat.* 1 *Ed.* 3. No Officer of the *Forest* shall take or imprison any Person, without due Indictment, or *per main ouvre*, with his Hand at the Work; nor shall constrain any to make Obligation against the Alliance of the *Forest*, on Pain to pay double Damages, and to be ransomed at the King's Will.

7 *R.* 2. c. 4. A *Forester* shall not be questioned for killing a Trespasser, who (after the Peace cried unto him) will not yield himself; so as it be not done out of some former Malice. 21 *Ed.* 1. But if Trespassers in a *Forest*, &c. kill a Man who opposes them, altho' they bore no Malice to the Person killed, it is Murder; because they were upon an unlawful Act, and therefore Malice is implied. *Roll. Abr.* 548. And if Murder be committed by such Trespassers, all are Principals. *Kel. Rep.* 87. If a Man comes into a *Forest* in the Night-time, the *Forester* cannot justify Bearing him before he make Resistance; but if he resists he may justify the Battery. Persons may be fined for concealing the killing of Deer by others; and so for carrying a Gun, with an Intent to kill the Deer: And he that steals Venison in the *Forest*, and carries it off on Horseback, the Horse shall be forfeited, unless it be a Stranger's ignorant of the Fact. 2 *Par. Game Law*, 34, 35. Where Heath is burned in a *Forest*, the Offenders may be fined: And if any Man cuts down Bushes and Thorns, and carries them away in a Cart, he is fineable; and the Cart and Horses shall be seized by the *Forest* Laws. *Ibid.* 36, 46. By *Charta de Foresta*, no Man shall lose Life or Member for killing the King's Deer in any *Forest*, &c. but shall be fined, and if he have nothing to pay the Fine, he shall be imprisoned a Year and a Day; and then be delivered, if he can give good Security not to offend for the future, and if not, he shall abjure the Realm: Before this Statute, it was Felony to hunt the King's Deer. 2 *Roll.* 120. To hunt in a *Forest*, Park, &c. in the Night disguised, if denied or concealed, upon Examination before a Justice of Peace, it is Felony: But if confessed, it is only Fineable. 1 *H.* 7. c. 7. By the 9 *Geo.* c. 22. If any Persons armed and disguised, shall appear in any *Forest*, Chase, &c. where Deer are kept, and hunt, wound, kill or steal any Deer; or if any Persons shall procure any one to join with them in any such unlawful Act; or shall rescue such an Offender, &c. they shall be guilty of Felony. And the Norman Kings punished those who hunted and killed Deer in *Forests* with great Severity, inflicting their Punishments in various Ways; as by Hanging, Forfeiture of Goods, and Loss of Limbs, Gelding, and putting out Eyes, &c. *W. 1. H. 1. R. 1.* &c. Felony committed within a *Forest*, is enquired of before the Judges of the Common Law, and not by the Justice of the *Forest*. See *Drift of the Forest, Chase and Purlieu*.

Forestagium, Seems to signify some Duty payable to the King's *Foresters*, as *Chiminage* or such like: *Et sint quieti de Thelonio & Passagio, & de Forestagio, &c.* *Chart.* 18 *E.* 1.

Forestal, (*Forestallamentum*, from the Sax. *Fore*, i. e. via & *Stal*.) Is to intercept on the Highway. *Spelman* says, it is *Via obstructio, vel itineris interceptio*; with whom agrees *Coke on Litt.* fol. 161. And according to *Fleta*, *Forestalling significat obstructionem Via vel Impedimentum transitus & fuga averiorum, &c.* lib. 1. cap. 24. In our Law, *Forestalling* is the Buying or Bargaining for any Corn, Cattle or other Merchandise, by the Way as they come to Fairs or Markets to be sold, before they are brought thither; to the Intent to sell the same again, at a higher and dearer Price. By the 5 & 6 *Ed.* 6. cap. 14. any buying or contracting for Merchandise, Victuals, or other Thing whatsoever in the Way, coming by Land

or Water to any Fair or Market, or to any Port, &c. to be sold, or causing the same to be bought, or dissuading People by Word, Letter, Message or otherwise, from bringing such Things to Market, or persuading them to enhance the Price after they are brought thither, is *Forestalling*: And the Party guilty of any Offence of *Forestalling*, &c. upon Conviction at the Quarter-Sessions by two Witnesses, on Bill, Information, Presentment, &c. shall, for the first Offence, lose the Goods so bought, or the Value of them, and suffer two Months Imprisonment; for the second Offence, he shall forfeit double the Value, and be imprisoned six Months; and for the third Offence, he shall lose all his Goods, be set upon the Pillory, and be imprisoned at the King's Pleasure. *Stat. ibid.* The Forfeitures are to the King's Use only, if there are no Informers; otherwise a Moiety goes to the King, and a Moiety to the Informer. All Endeavours to enhance the common Price of any Victuals or Merchandise, and Practices which have an apparent Tendency thereto, whether by spreading false Rumours, or buying Things in a Market before the accustomed Hour, or by buying and selling again the same Thing in the same Market, &c. are highly Criminal by the Common Law; and all such Offences anciently came under the general Appellation of *Forestalling*. 3 *Inst.* 195, 196. And so jealous is the Common Law of Practices of this Nature, which are a general Inconvenience and Prejudice to the People, and very oppressive to the poorer Sort, that it will not suffer Corn to be sold in the Sheaf before thrashed; for by such Sale the Market is in Effect *Forestalled*. 3 *Inst.* 197. *H. P. C.* 152. By the Common Law, Persons guilty of *Forestalling* upon an Indictment found, are liable to a Fine and Imprisonment, answerable to the Heinousness of their Offence. 1 *Hawk.* 235. See *Ingrosser*.

Forestaller, Is a Person guilty in any of the Instances and Particulars described of *Forestalling*. 5 & 6 *Ed. 6. c.* 14.

Forsang and *Forseng*, (From the Sax. *Fors*, ante & *fangen*, prendere) Is the Taking of Provision from any one in Fairs or Markets, before the King's Purveyors are served with Necessaries for his Majesty. — *Est captio obsoniorum, quæ in Foris aut Nundinis ab aliquo fit, priusquam Minister Regis ea ceperit quæ Regi fuerint necessaria.* Antecaptio vel preventio — *Et sint quieti de Wardwite & de Forseng, & Withfang, &c.* *Chart. Hen. 1. Hosp. Sancti Barth. Lond. Anno 1133.*

Forfeiture, (*Forisfactura*, Fr. *Forfait*) Signifies the Effect or Penalty of transgressing some Law; and not the Transgression itself. It is of Lands or Goods, and differs from *Confiscation*, in that *Forfeiture* is more general; whereas *Confiscation* is particularly applied to such as forfeit only to the King's Exchequer. *Staundf. P. C.* 186. There is a full *Forfeiture*, *Plena Forisfactura*, otherwise called *Plena Wita*, which is a *Forfeiture* of Life and Member, and all that a Man hath. *Leg. H. 1. cap.* 88. And there is Mention in some Statutes, of *Forfeiture* at the King's Will, of Body, Lands and Goods, &c. but this is not extended farther than Imprisonment, and Lands and Goods. 4 *Inst.* 66. *Forfeitures* are in Criminal Matters, where a Person is attainted of Treason, Felony, &c. And in Civil Cases, when Tenant in Tail makes Leases, not warranted by the Statute; a Copyholder commits Waste, refuses to pay his Rent, or do Suit of Court; and where an Estate is granted

on Condition, upon Non-performance thereof, &c. these will make a *Forfeiture*. 1 *Rep.* 15. Also Offices may be *Forfeited* by Neglect of Duty, &c. As all Estates are said to be derived from the Crown; so all *Forfeitures* and *Escheats* of Lands belong to the King, unless granted away. *Finch* 132, 164. In *Treason*, all Lands of Inheritance whereof the Offender was seised in his own Right, were *Forfeited* by the Common Law; and Rights of Entry, &c. 2 *Hawk. P. C.* 448. and the Inheritance of Things not lying in Tenure, as of Rent-Charges, Commons, &c. shall be *Forfeited* in High Treason: But no Right of Action whatsoever to Lands of Inheritance is *Forfeited*, either by the Common or Statute Law. *Ibid.* 449. All Lands, Tenements, &c. are *Forfeited* in Treason by Stat. 26 *H. 8. c.* 13. And the King shall be adjudg'd in Possession of Lands and Goods *forfeited* for Treason on the Attainder of the Offender, without any Office found, saving the Right of others. 33 *H. 8. c.* 20. Lands and Hereditaments in Fee-simple and Fee-tail, are *forfeited* in High Treason: But Lands in Tail could not be *forfeited* only for the Life of Tenant in Tail till the Statute 26 *H. 8.* by which Statute they may be *forfeited*. 2 *Hawk.* Where Tenant for Life, &c. is attainted, the King shall have the Profits of the Lands during the Life of such Tenant only. 2 *Inst.* 37. There shall be no *Forfeiture* of Lands for Treason of dead Persons, not attainted. 3 *Inst.* 12. Tho' the Chief Justice of B. R. as Sovereign Coroner may view the Body of a Person killed in a Rebellion, and make a Record thereof, whereby he shall *forfeit* Lands and Goods. *Wood's Inst.* 654. And a Man may be attainted by Act of Parliament. After the Decease of the Pretender, no Attainder for Treason shall make any *Forfeiture* to disinherit the Heir. *Stat. 7. Ann. c.* 21. Upon Outlawry in Treason or Felony, the Offender shall *forfeit* as much as if he had appeared, and Judgment had been given against him, so long as the Outlawry is in Force. 3 *Inst.* 52, 212. For *Petit Treason*, Murder, Burglary, Robbery, and all Felonies for which the Offenders shall suffer Death, they shall *forfeit* all their Lands in Fee-simple, Goods and Chattels. 1 *Inst.* 391. 1. *Lill. Abr.* 628. In *Man-slaughter*, the Offender *forfeits* Goods and Chattels: And in *Chance-medley*, and *se Defendendo*, Goods and Chattels; but the Offenders have their Pardon of course. 1 *Inst.* 391. Those that are hanged by *Martial Law* in Time of War, *forfeit* no Lands. 1 *Inst.* 13. And for Robbery or Piracy, &c. on the Sea, if tried in the Court of Admiralty by the Civil Law, and not by Jury, there is no *Forfeiture*: But if a Person be attainted before Commissioners, by Virtue of the Statute 28 *H. 8.* there works a *Forfeiture*. 1 *Lill. Abr.* The King shall have Goods of Felons, and Year, Day and Waste in their Lands, &c. which afterwards go to the Lord of the Manor of whom held. *Magn. Chart. c.* 22. & 17 *Ed. 2. c.* 14. Tho' tis said the Profits of Lands whereof a Person attainted of Felony is seised of an Estate of Inheritance in Right of his Wife, or of an Estate for Life only in his own Right, are *forfeited* to the King, and nothing is *forfeited* to the Lord. 3 *Inst.* 19. *Fitz. Affis.* 166. By the Conviction of a Felon, his Goods and Chattels are *forfeited*; but by Attainder, his Lands and Tenements. 1 *Inst.* 291. The *Forfeiture* in Case of Felony shall relate to the Time mentioned in the Indictment when the Felony was committed, as to the avoid-

ing

ing of Estates and Charges after; but for the mean Profits of the Land, it shall relate only to the Judgment. 1 *Inst.* 390. Goods or Lands of one arrested for Felony, shall not be seised before he is convicted or attaint of the Felony; on Pain of forfeiting double Value. 1 *R. 3. c. 3.* Goods of a Felon, &c. cannot be seised before forfeited; tho' they may be inventoried, and a Charge made thereof before Indictment. *Wood's Inst.* 659. In Treason or Felony, the Delinquent may sell his Goods, be they Chattels Real or Personal, *bona fide*, before Conviction, for his Maintenance in Prison; for the King hath no Interest in the Forfeiture till Conviction. 8 *Rep.* And where Goods of a Felon are pawned before he is attainted, the King shall not have the Forfeiture of the Goods till the Money is paid to him to whom they were pawned. 3 *Inst.* 17. 2 *Nelf. Abr.* 874, 875. A Trust of a Term shall be forfeited for Felony: Tho' 'tis said a Trust in a Freehold shall not be forfeited for Treason. *Cro. Jac.* 512. Goods of Persons that fly for a Felony, are forfeited to the Lord of the Franchise, when the Flight is found of Record. 2 *Inst.* 281. A *Felo de se* forfeits all his Goods and Chattels. 3 *Inst.* 55. For *Misprison* of Treason, the Forfeiture is Goods and Chattels, and Profits of Lands during Life. 1 *Inst.* 392. In a *Premunire*, Lands in Fee-Simple are forfeited, with Goods and Chattels. 1 *Inst.* 129. For *Petit Larceny* the Offender forfeits his Goods. 1 *Inst.* 391. And for *standing Mute*, where Persons are adjudged to Penance, in Cases of Felony, there is a Forfeiture of Goods and Chattels; and so for challenging above 35 Jurors, &c. 3 *Inst.* 227. Drawing a Weapon upon a Judge, or striking another in the King's Courts, incurs Forfeiture of the Profits of Lands for Life, and of Goods: And it is the same Forfeiture for rescuing a Prisoner in or before any of the Courts, committed by the Justices. 2 *Cro.* 367. 3 *Inst.* 141. *Artificers* going out of the Kingdom, and teaching their Trades to Foreigners, are liable to forfeit all their Lands, &c. by Stat. 5 *Geo.* 1. 27.

Forfeited Estates. There are several Statutes appointing Commissioners of forfeited Estates, on Rebellions in this Kingdom and Ireland: By 11 *Ed.* 12 *W.* 3. c. 3. all Lands and Tenements, &c. of Persons attainted or convicted of Treason or Rebellion in Ireland, were vested in several Commissioners and Trustees for Sale thereof; and any Person or Society might purchase any of the said Lands, and the Conveyances being inrolled, they should be actually seised thereof: And the Commissioners had Power to proceed summarily, and determine by Examinations on Oath, &c. The 1 *Geo.* c. 50. appointed Commissioners to enquire of forfeited Estates in England and Scotland, on the Rebellion at *Preston*, &c. And the Estates of Persons attainted of Treason were vested in his Majesty for Publick Uses; but afterwards in Trustees, to be sold for the Use of the Publick; and Purchasers to be *Protestants*. The Commissioners had Power to summon Claimants, and determine Claims, &c. for which they were a Court of Record; and five Judges were assigned to be a Court of Delegates, to hear and determine Appeals. The Commissioners gave up their Accounts to the King, and both Houses of Parliament: And were also impowered to enquire of Estates of *Popish Recusants*, and Lands given to *superstitious Uses*; two thirds of the former being liable to Forfeiture, and the latter

vested in the Crown, &c. See 1 *Geo.* c. 50. and 4 *Geo.* c. 8.

Foragabel, (Foragabulum) A small reserved Rent in Money, or Quit-Rent: — *Ita quod ego Henricus M. vel Heredes mei nihil juris de Tenemento, &c. exceptis vi. denar. de Forgabulo annuatim percipiendis ad Pascha pro omnibus servitiis.* Ex *Chartul. Abbat. de Rading.* M.S. f. 88.

Forge, (Forgia) A Smith's Forge, to melt and work Iron. — *Henricus Rex concessisse, &c. & unam Forgiam Ferrariam ita liberam.* *Chart. Hen.* 2.

Forgery, (From the Fr. Forger, i. e. accudere, to beat on an Anvil, or bring into Shape) Is where a Person fraudulently makes and publishes false Writings, to the Prejudice of another Man's Right; or it signifies the Writ that lies against him who commits such an Offence, the Penalty whereof is declared in the Stat. 5 *Eliz.* c. 14. The Latin Word used to describe this Offence, is *Fabricare*: And there can be no Forgery, where none can be prejudiced by it but the Person doing it. 1 *Salk.* 375. Forgery by the Common Law extends to a false and fraudulent making or altering of a Deed or Writing, whether it be a Matter of Record, or any other Writing, Deed or Will. 3 *Inst.* 169. 1 *Roll. Abr.* 65. Not only where one makes a false Deed; but where a fraudulent Alteration is made of a true Deed, in a material Part of it, as by making a Lease of the Manor of *Dale* appear to be a Lease of the Manor of *Sale*, by changing the Letter D into an S, or by altering a Bond, &c. for 500 *l.* expressed in Figures, to 5000 *l.* by adding a new Cypher, these are Forgery: So it is if a Man finding another's Name at the Bottom of a Letter, at a considerable Distance from the other Writing, causes the Letter to be cut off, and a general Release to be written above the Name, &c. Also a Writing may be said to be Forged, where one being directed to draw up a Will for a sick Person, doth insert some Legacies therein falsely of his own Head; tho' there be no Forgery of the Hand or Seal, for the Crime of Forgery consists as well in endeavouring to give an Appearance of Truth to a meer Falsity, as in counterfeiting a Man's Hand, &c. 1 *Hawk. P. C.* 182, 183. 3 *Inst.* 170. But a Person cannot regularly be guilty of Forgery, by any Act of Omission; as by omitting a Legacy out of a Will, which he is directed to draw for another: Tho' it has been held, that if the Omission of a Bequest to one cause a material Alteration in the Limitation of an Estate to another; as if the Devisor directs a Gift for Life to one Man, and Remainder to another in Fee, and the Writer omit the Estate for Life, so that he in the Remainder hath a present Estate upon the Death of the Devisor, not intended to pass, this is Forgery. *Noy* 118. *Moor* 760. If one write a Will without any Direction, and bring it to the Testator, who is not of perfect Memory, and he signs it, it is said this doth not amount to Forgery. *Ibid.* If a Feoffment be made of Land, and Livery and Seisin is not indorsed when the Deed is delivered, and afterwards on selling the Land for a valuable Consideration to another, Livery is indorsed upon the first Deed; this hath been adjudged Forgery both in the Feoffor and Feoffee; because it was done to deceive an honest Purchaser. *Moor* 665. And when a Person knowingly falsifies the Date of a second Conveyance, which he had no Power to make, in order to de-

ceive a Purchaser, &c. he is said to be guilty of Forgery. 3 *Inst.* 169. 1 *Hawk.* 182. It seems to be no way material, whether a forged Instrument be made in such manner, that if it were in Truth such as it is counterfeited for, it would be of Validity or not. 1 *Sid.* 142. The Counterfeiting Writings of an inferior Nature, as Letters and such like, is not properly Forgery; but the Deceit is punishable. 1 *Hawk.* 184. By Statute 1 H. 5. c. 3. A Forger or Publisher of False Deeds, was to pay Damages, Fine and Ransom. And by 5 *Eliz.* c. 14. If any Person alone or with others, shall falsely forge or make, or cause to be forged and made, or assent to the Forging of any Deed or Writing sealed, Court-Roll, or Will in Writing, to the Intent that the Freehold or Inheritance of Lands may be defeated or charged; or shall pronounce, publish, or shew forth in Evidence any such forged Writing as true, knowing of the Forgery; and shall be convicted thereof, upon an Action founded on this Statute, or otherwise by Bill, &c. in the King's Bench or Exchequer, he shall pay double Costs and Damages to the Party grieved, and be set on the Pillory, and have both his Ears cut off, and his Nostrils slit, and shall forfeit to the King the Issues and Profits of his Lands and Tenements during Life, suffer perpetual Imprisonment, &c. And if any one shall forge or falsely make any Deed or Writing, containing a Lease for Years of Lands (not Copyhold) or an Annuity in Fee, for Life or Years, or any Obligation, Acquittance, Release, or other Discharge of any Debt or personal Demand, or publish or give in Evidence the same knowingly; he shall pay to the Party injured double Costs and Damages, and shall be likewise set on the Pillory, and lose one of his Ears, and be imprisoned for a Year. And if any Person shall be guilty of a second Offence, it shall be adjudged Felony, without Benefit of Clergy. Stat. *Ibid.* The Forgery of a Deed of Gift of meer personal Chattels, is not within the Words of the Statute; which are Obligation, Acquittance, Release, &c. 3 *Leon.* 170. And Forging an Assignment of a Lease is not within the Act, because it doth not charge the Lands, but only transfers an Interest which was in Being before. *Noy* 42. Forgery of a Lease of Lands in Ireland is not within this Statute. 3 *Leon.* 170. Where there is a Penalty in an Obligation, &c. the Party grieved by a forged Release thereof, shall recover double the Penalty as Damages, and not of the Debt appearing in the Condition. 3 *Inst.* 172. As to Publishing a Deed, knowing the same to be forged, it has been resolved, that if a Person is informed by another that a Deed is forged, if he afterwards publishes it as true, he is within the Danger of this Statute. *Ibid.* 171. The King may pardon the corporal Punishment which tends to common Example; but the Plaintiff cannot release it: If the Plaintiff release or discharge the Judgment or Execution, &c. it shall only discharge the Costs and Damages, and the Judges shall proceed to Judgment upon the Residue of the Pains, and award Execution upon the same. 5 *Rep.* 50. 5 *Eliz.* c. 12. But in an extraordinary Case a Forgery hath been compounded; and the Defendant discharged, on paying a small Fine. 3 *Salk.* 172. In an Information for Forgery, it was adjudged that no Person who is or may be a Loser by the Deed forged, or who may receive any Benefit or Advantage by the Verdict being found against the Defendant, shall be a Witness for the

King. *Hardy.* 331. A Person convicted of Forgery, and adjudged to the Pillory, &c. whereby he becomes Infamous, is not allowed to be a Witness; but it is a good exception to his Evidence. *Hawk.* P. C. 432. And one convicted of this Crime, may be challenged on a Jury, so as to be incapable to serve as a Juror; and it hath been holden, that Exceptions to Persons found guilty of Perjury or Forgery, as well as Felony, &c. are not saved by a Pardon. 2 *Hawk.* 417. The Court of B. R. will not ordinarily, at the Prayer of the Defendant, grant a *Certiorari* for Removal of an Indictment of Forgery, &c. 1 *Sid.* 54. Persons guilty of Forgery or Perjury are not indictable before Justices of Peace, &c. Forging of Exchequer and Bank Bills, Lottery Tickets, Letters of Attorney to transfer Stock, &c. See Felony.

Forinsecus, Outward, or on the Outside; as the Ridge or Furrow to be left in Ground for a Path or common Way. *Kennet's Gloss.*

Forinsecum Manerium, The Manor as to that Part of it, which lies without the Town, and not included within the Liberties of it—*Summa reddituum Assisorum de Manerio Forinseco Banbury*, &c. Paroch. Antiq. 351.

Forinsecum Servitium, The Payment of extraordinary Aid, oppos'd to *Intrinsecum Servitium*, which was the common and ordinary Duties, within the Lord's Court. *Kenn. Gloss.* See *Foreign Service*.

Forisbannitus, Signifies banished: *Expulsus a Scotia*, Forisbannitus *ab Anglia*, &c. Mat. Paril. Ann. 1245.

Forisfamiliari. When a Son accepts of his Father's Part of Lands, in the Life-time of the Father, and is contented with it; he is said to be *Forisfamiliari*, and cannot claim any more. *Blount*.

Forland, (*Forlandum*) Lands extending further or lying before the rest; also a Promontory. *Mon. Angl. Tom.* 2. fol. 332.

Forletland, Was Land in the Bishoprick of Hereford granted or leased *dum Episcopus in Episcopatu steterit*, so as the Successor might have the same for his present Revenue: This Custom has been long since diffus'd, and the Land thus formerly granted is now let by Lease as other Lands, tho' it still retains the Name by which it was anciently known. *Butterfield's Surv.* 56.

Form, Is required in Law Proceedings, otherwise the Law would be no Art; but it ought not to be used to snare or entrap. Stat. 27 *Eliz.* *Hob.* 232.

Forma Pauperis, Is where any Person has just Cause of Suit, and is so poor, that he cannot bear the usual Charges of suing at Law, or in Equity: In this Case, upon his making Oath that he is not worth 5 *l.* his Debts being paid, and bringing a Certificate from some Lawyer that he hath Cause of Suit, the Judge admits him to sue *in forma Pauperis*, i. e. without paying Fees to Counsellor, Attorney or Clerk: This had Beginning from the Statute 11 H. 7. c. 12. by which it is enacted, that poor Persons having Cause of Action or Suits, shall have Original Writs, Counsel and Attornies, assign'd them *gratis*. On proceeding in *Chancery*, *Affidavit* is first made that the Plaintiff is not worth 5 *l.* in Lands, Tenements, Goods or Chattels, his wearing Apparel, and the Matters of the Suit excepted; and then a *Petition* is drawn up and presented to the Lord Chancellor or Master of the Rolls, praying to be admitted *in forma Pauperis*, and to have Counsel,

&c. assigned him; who are neither to take Fees, nor make any Contract for Recompence, on Pain of Punishment; and no Counsellor or Attorney assigned shall refuse to proceed, without shewing good Cause to the Lord Chancellor, &c. *Pract. Sol.* 24. If a Cause goes against a *Pauper*, or a Plaintiff in *forma Pauperis* be Nonsuit; he shall not pay Costs to the Defendant, but shall suffer such Punishment in his Person as the Court shall award. 23 *H.* 8. c. 15. 1 *Litt. Abr.* 634. 2 *Sid.* 261. *Paupers* using Delays to vex their Adversaries, or being proved to be vexatious Persons, and having many frivolous Suits depending, will be *dispaupered* by the Court; for the Law doth not assist them to do Injury to others. 1 *Litt.* 633.

Formedon, (*Breve de Forma donationis*) Is a Writ that lies for him who hath Right to Lands or Tenements by Virtue of any *Intail*, growing from the Statute of *Westminster* 2. cap. 2. It is a Writ of Right for Recovery of Lands, and is of three Kinds, viz. in *Descender*, *Remainder* and *Reverter*: *Formedon in Descender* lieth where Tenant in Tail enfeoffs a Stranger, or is disseised and dieth, the Heir shall have this Writ to recover the Land. *Formedon in Remainder* lies where one gives Land in Tail, and for Default of Issue the Remainder to another in Tail, &c. If the Tenant in Tail die without Issue, and a Stranger abates and enters into the Land, he in Remainder shall have this Writ. *Formedon in the Reverter* lieth where Land is entailed to certain Persons and their Issue, with Remainder over for Want of Issue, and on the Remainder failing to revert to the Donor, and his Heirs; now if Tenant in Tail dies without leaving any Issue, and likewise he in Remainder, then the Donor or his Heirs to whom the Reversion comes, shall have this Writ for Recovery of the Estate, in Case it be aliened, &c. *Reg. Orig.* 238, 242. *E. N. B.* 111. *Formedon in Descender* is the highest Writ a Tenant in Tail can have: And where Tenant in Tail aliens, or is disseised of his Estate, or if a Recovery is had against him by Default, and he die, his Heir shall have a *Formedon*, it being the only Remedy the Heir may have for the Possession of his Ancestor; but if he be outed of his own Possession, as if he be seised, and put out, he shall have his Writ of *Assise*. There is a Writ of *Formedon in Descender*, where *Partition* of Lands held in Tail, being made among *Parceners*, &c. and one alieneth her Part, her Heir shall have this Writ: And by the Death of one Sister without Issue, the Partition is made void, and the other shall have the whole Land as Heir in Tail. *New Nat. Br.* 476, 477. Also there is a Writ of *Formedon in simul tenuit*, that lies for a Coparcener against a Stranger upon the Possession of the Ancestor; which may be brought without naming the other Coparcener who hath her Part in Possession. *Ibid.* 481. This Writ may be likewise had by one Heir in *Gavelkind*, &c. of Lands entailed; and where the Lands are held without Partition. A Demandant in a Writ of *Formedon*, ought to make his Descent by all which did hold the Estate, otherwise the Writ will abate; and the Demandant should always be made Cousin and Heir, or Son and Heir to him who was last seised of the Tail; but the surest Way is to make every Man named in the Writ Son and Heir in the Writ, and it is not material whether they were seised or not, altho' they are named Heir. 8 & 11 *H.* 6.

Form of Writ of Formedon in Descender, &c.

REX, &c. Vic. S. Salutem. Pr. A. B. quod reddat C. D. Unum Messuagium, &c. cum pertin. in, &c. Quam T. B. dedit R. B. & hered. de Corpore suo exeuntibus, & qua post mortem, &c. If in Remainder; quod T. B. dedit R. B. & hered. de Corp. suo exeunt. Ita quod si idem R. B. sine hered. de Corpore suo exeunt. obiret, prad. Messuag. prefat. C. D. & hered. remaneret, & quod post, &c. prefat. C. D. remanere debet per formam Donationis prad. Eo quod prad. R. B. obiit sine hered. de Corpore suo exeunte, ut dicit, &c. If in Reverter, quod T. D. Pater prad. C. D. cujus bares ipse est, dedit, &c. & hered. de Corporibus ipsor. ad prefat. C. D. Reverti debet per formam Donationis prad. Eo quod prad. &c. obierunt sine hered. de Corporibus suis exeunt. ut dicit, & nisi, &c.

In a *Formedon in Descender*, The Demandant is to set forth the Pedigree: In *Formedon in Remainder*, that the Tenant in Tail is dead without Issue; but in a *Formedon in Reverter* the Donor, &c. need not shew the Pedigree of the Issue, nor who was last seised, because he is supposed to be a Stranger to them. 2 *Nelf. Abr.* 880. Where a Fee-simple is demanded in a *Formedon in Reverter*, the Taking of the Profits ought to be alledged in the Donor, and Donee: If an Estate Tail is demanded, it must be alledged in the Donee only. 1 *Lutw.* 96. The Writ of *Formedon* is now rarely brought, except in some special Cases, where it cannot be avoided; and the Trying Titles by *Ejectione firma* supplies its Place at an easier Rate.

Fozmella, A certain Weight of about seventy Pounds, mentioned in the *Statute of Weights and Measures.* 51 *H.* 3.

Foznagium, *Furnagium*, (Fr. *Fournage*) Signifies the Fee taken by a Lord of his Tenants; bound to bake in the Lord's common Oven, or for a Permission to use their own; this was usual in the Northern Parts of England. *Plac. Parl.* 18 *Ed.* 1.

Foznication, (*Fornicatio*, from the *Fornices* in Rome, where lewd Women prostrated themselves for Money) Is Whoredom, or the Act of Incontinency in single Persons; for if either Party be married, it is *Adultery*. The Stat. 1 *Hen.* 7. c. 4. mentions this Crime; which by an Act made Anno 1650. during the late Times of *Usurpation*, was punished with three Months Imprisonment for the first Offence; and the second Offence 'tis said was made Felony. *Scobel's Collect.* The *Spiritual Court* hath Cognizance of this Offence: And formerly *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 *Domesd.* 2 *Inst.* 488.

Fozpise, (*Forprisum*) An Exception or Reservation, in which Sense it is used in the Statute 14 *Ed.* 1. This Word is frequently inserted in Leases and Conveyances, wherein *Excepted* and *Foreprised* is an usual Expression. In another Signification it is taken for any Exaction; according to *Thorn*, Anno 1285.

Fozses, (*Catadupa*) Water-falls so called in *Westmoreland.* Camb. Britan.

Fozspeaker, An Attorney or Advocate in a Cause. *Blount.*

Foztia, Power, Dominion or Jurisdiction: And we read of *Infortiare Placitum*, by Judges assembled. *Leg. H.* 1. c. 29.

Foztiori, à *Fortiori* or *Multo fortiori*, Is an Argument often used by *Littleton*, to this Purpose: If it be so in a Feoffment passing a new Right,

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much more is it for the Restitution of an ancient Right, &c. Co. Lit. 253, 260.

Fortilice and Fortility, (*Fortilescum*) Signifies a fortified Place, Bulwark or Castle; as it is said within the Towns and Fortilities of Berwick and Carlisle, anno 11 Hen. 7. cap. 18.

Fortlet, (*Fr.*) A Place or Fort of some Strength; or rather a little Fort. *Old Nat. Br.* 45.

Fortuna, Is that which is called in our Law Treasure-trove, i. e. *Thesaurum ducente Fortuna invenire*. — *Inquirendum est per 12. Jurator. pro Rege, &c. quod fideliter presentabunt omnes Fortunas, Abjuraciones, &c.*

Fortunium, A Tournament or Fighting with Spears; or an Appeal to Fortune therein. *Mat. Paris. Anno 1241.*

Fossa, A Ditch full of Water; wherein Women committing Felony were drowned: It has been likewise used for a Grave in antient Writings. See *Furca*.

Fossatum, (*Lat.*) A Ditch or Place fenced round with a Ditch or Trench; also it is taken for the Obligation of Citizens, to repair the City Ditches. *Fossatura* signifies the same with *Fossatum*: And the Work or Service done by Tenants, &c. for Repairing and Maintenance of Ditches is called *Fossatorum operatio*; and the Contribution for it *Fossagium*. *Kenner's Gloss.*

Fosseway, (From *Fossus*, digged) Was antiently one of the four principal Highways of England, leading through the Kingdom; which had its Name from its being supposed to be digged and made passable by the Romans, and having a Ditch upon one Side. *Cowel.*

Fosterland, (*Sax.*) Is Land given or allotted for the Finding of Food or Victuals; as for Monks in Monasteries, &c.

Fosterlean, (*Sax.*) Nuptial Gifts, which we call a Jointure, or Stipend for the Maintenance of the Wife. — *Postea sciendum est cui Fosterlean pertineat, vadiet hoc Brigdunia & plegient amici sui.*

Fother or Fodder, (From the Teuton. *Fuder*) Is a Weight of Lead, containing eight Pigs, and every Pig one and twenty Stone and a Half; so that it is about a Tun or common Cart-load: Among the Plumbers in London it is Nineteen hundred and an Half; and at the Mines it is Two and twenty hundred Weight and a Half. *Skene.*

Fovea, A Place for Burial of the Dead. *Statut. Eccl. Paulin. London. M.S. 29.*

Foundation, The Founding and Building of a College or Hospital is called *Foundatio, quasi fundatio, or fundamenti locatio*. Co. lib. 10. The King only can found a College; but there may be a College in Reputation, founded by others. *Dyer 267.* If it cannot appear by Inquisition, who it was that founded a Church or College, it shall be intended it was the King; who has Power to found a new Church, &c. *Moor 282.* The King may found and erect an Hospital, and give a Name to the House, upon the Inheritance of another, or licence another Person to do it upon his own Lands; and the Words *Fundo, Creo, &c.* are not necessary in every Foundation, either of a College or Hospital made by the King, but it is sufficient if there be Words equivalent: The Incorporation of a College or Hospital is the very Foundation; but he who endows it with Lands is the Founder; and to the Erection of an Hospital, nothing more is requisite but the Incorporation and Foundation. 10 Rep. Case of Sutton's Hosp. Persons seised of Estates in Fee-simple, may erect and found Hospitals for the Poor, by Deed inrolled in Chan-

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cery, &c. which shall be incorporated, and subject to such Visitors as the Founder shall appoint, &c. Stat. 39 Eliz. Where a Corporation is named, it is said the Name of the Founder is Parcel of the Corporation. 2 Nels. 886. Tho' the Foundation of a Thing may alter the Law, as to that particular Thing; yet it shall not work a general Prejudice. 1 Lill. Abr. 634.

Founder of Metal, (From the *Fr. Foundre*, to melt or pour) Is he that melts Metal, and makes any Thing of it by Pouring or Casting it into a Mould. 17 R. 2. c. 1. Whence is *Bell founder*, a Fount of Letters, &c.

Fourcher, (*Fr. Fourchir*) Signifies a putting off, or delaying of an Action; and has been compared to flammering, by which the Speech is drawn out to a more than ordinary Length of Time, as by *Fourching* a Suit is prolonged, which might be brought to a Determination in a shorter Space. This Device is commonly used when an Action or Suit brought against two Persons, who being jointly concern'd, are not to answer till both Parties appear; and is where the Appearance or *Essoin* of one, will excuse the other's Default, and they agree between themselves that one shall appear or be *essoind* one Day, and for Want of the other's Appearing, have Day over to make his Appearance with the other Party; and at that Day allow'd the other Party doth appear, but he that appear'd before doth not, in Hopes to have another Day by Adjournment of the Party who then made his Appearance. *Terms de Ley 356.* This is called *Fourcher*; and in the Statute of *Westm. 1. c. 42.* it is termed *Fourcher by Essoin*; where are Words to this Effect, viz. Coparceners, Jointenants, &c. may not *fourch* by *Essoin*, to *essoin* severally; but shall have only one *Essoin*, as one sole Tenant. And *Anno 6 Ed. 1. c. 10.* it is used in like Manner: The Defendants shall be put to answer without *Fourching*, &c. 23 H. 6. c. 2. 2 Inst. 250. *Fourcher* in the Latin is writ *Furcare*; because it is two fold.

Fraction. The Law makes no Fraction of a Day; if any Offence be committed, in Case of Murder, &c. the Year and Day shall be computed from the Beginning of the Day on which the Wound was given, &c. and not from the precise Minute or Hour. 2 Hawk. 163. See Co. Litt. 255.

Fractitium, Is made Use of for arable Land. — *Pratum de Mura & tres Acr. terra de Fractitio. Mon. Angl. Tom. 2. 873.*

Fractura navum, Wreck of Shipping at Sea.

Frampole Fences, Are such Fences as the Tenants in the Manor of *Writtel* in *Essex*, set up against the Lord's Demains; and they are entitled to the Wood growing on those Fences, and as many Poles as they can reach from the Top of the Ditch with the Helve of an Axe, towards the Reparation of their Fences. It is thought the Word *Frampole* comes from the *Sax. Frempul*, profitable; or that it is a Corruption of *Franc-pole*, because the Poles are free for the Tenants to take: But Chief Justice *Brampton*, whilst he was Steward of the Court of the Manor of *Writtel*, acknowledged that he could not find out the Reason why these Fences were called *Frampole*; so that we are at a Loss to know the Truth of this Name etymologically.

Franchilanus, (*Fr. Franchi*, i. e. free) A Freeman. — *Sciatis me dedisse, cum Villanis, & Franchilano, & cum Tenuris eorum, &c. Chart. Hen. 4.* And we find *Francus homo* used for a Freeman in *Domesday*. Franchise,

Franchise, (*Fr.*) Is taken for a Privilege or Exemption from ordinary Jurisdiction, as for a Corporation to hold Pleas to such a Value, &c. And sometimes it is an Immunity from Tribute, when it is either personal or real, that is belonging to a Person immediately, or by Means of this or that Place whereof he is Chief or a Member. *Crompt. Jurisd.* 141. There is also a *Franchise Royal*; which seems to be that where the King's Writ runs not. 28 H. 6. c. 4. But *Franchise Royal* is said by some Authors, to be where the King grants to one and his Heirs, that they shall be quit of Toll, &c. *Bratt. lib. 2. cap. 5.* A *Franchise* in general is a Royal Privilege in the Hands of a Subject; and may be vested in Bodies Politick or Corporations, either aggregate or sole, or in many Persons that are not Corporations, (as in Borough-Towns, &c.) or in a single Person: And *Franchises* are of different Kinds; such as the *Principality of Wales*, *Counties Palatine*, *Counties*, *Hundreds*, *Ports of the Sea*, &c. Then there is a *Franchise* or *Liberty* of having a *Leet*, *Manor* or *Lordship*, as well as a *Liberty* to make a Corporation, and to have Cognisance of Pleas; and *Bailiwicks* of Liberties, the *Liberty* of a *Forest*, *Chafe*, &c. *Fairs and Markets*, *Felons Goods*, *Goods of Fugitives*, *Outlaws*, *Decadants*, *Treasure Trove*, *Waifs*, *Estrays*, *Wrecks*, &c. All these come under *Franchises* and *Liberties*. *F. N. B.* 230. 2 *Inst.* 221. All *Franchises* and *Liberties* are derived from the Crown, and some are held by Charter; but some lie in Prescription and Usage, without the Help of any Charter. *Finch* 164. And Usage may uphold *Franchises*, which may be claim'd by Prescription, without Record either of Creation, Allowance or Confirmation; and Wreck of the Sea, Waifs, Strays, Fairs and Markets, and the like, are gained by Usage, and may become due without Matter of Record. 2 *Inst.* 281. 9 *Rep.* 27. But Goods of Felons and Outlaws, and such like, grow due by Charter, and cannot be claimed by Usage, &c. *Ibid.* It hath been adjudg'd, that Grants of *Franchises*, made before the Time of Memory, ought to have Allowance within Time of Memory in the *King's Bench*, or before the Barons of the *Exchequer*, or by some Confirmation on Record; and 'tis said they are not Records pleadable, if they have not the Aid of some Matter of Record, within Time of Memory; and such antient Grants, after such Allowance, shall be construed as the Law was when they were made, and not as it hath been since alter'd: But *Franchises* granted within Time of Memory are pleadable without any Allowance or Confirmation; and if they have been allowed or confirmed as aforesaid, the *Franchises* may be claimed by Force thereof, without shewing the Charter. 9 *Rep.* 27, 28. 2 *Inst.* 281, 494. There have been formerly several antient Prerogatives divided from the Crown, beside the *Franchises* aforementioned; as Power to pardon Felony, make Justices of Assise, and of the Peace, &c. Tho' by the Statute 27 H. 8. c. 24. they were resumed and re-united to the Crown; and the King cannot grant Power to another to make Strangers born, Denizens here, because such Power is by Law inseparably annex'd to his Person. 7 *Rep.* 25. By the Statute of *Magna Charta*, 9 H. 3. c. 37. The *Franchises* and *Liberties* of the City of London, and all other Cities, Towns, &c. are confirmed. The 30 Ed. 1. ordains, that a Writ shall issue out to the Sheriffs of Counties, to permit all Men to enjoy their antient Liberties and *Franchises*; and

on Proclamation made, they shall shew their Tenures to the Justices of Assise, or forfeit their *Franchises*. All Writs, Proseses, &c. in *Franchises*, are to be made in the King's Name; and Stewards, Bailiffs, and other Ministers of Liberties, shall attend the Justices of Assise, and make due Execution of Proseses, &c. 27 H. 8. Some *Franchises*, as *York*, *Bristol*, &c. have Return of Writs, to whom Mandates are directed from the Courts above, to execute Writs and Proseses: And a Mayor or Bailiff of a Town or Liberty, may have Liberty to keep Courts, and hold Pleas in a certain Place according to the Course of the Common Law; and Power to draw Causes out of the King's Courts, by an exclusive Jurisdiction: But the Causes here may be removed to the superior Courts. 1 *Inst.* 114. 4 *Inst.* 87, 224. A *Franchise* hath no Relation to the County wherein it lies; for it is not necessary to set forth the County when any Thing is shewed to be done within a Liberty or *Franchise*. *Trin.* 23 *Car. B. R.* If a *Franchise* fails to administer Justice within the same, the *Franchise* shall not be allow'd; but on any such Failure, the Court of B. R. may compel the Owners of the *Franchise*, &c. to do Justice; for this Court ought to see Justice equally distributed to all Persons. 1 *Lill. Abr.* 635. *Franchises* may be forfeited and seised when they are abused, for Mis-user or Non-user; and where there are many Points, a Mis-user of any One will make a Forfeiture of the Whole upon a *Quo Warranto* brought. *Kitch.* 65. And where *Franchises* come to the Crown again from whence derived, by Forfeiture, &c. they are *extinguished*; but in some Cases 'tis said they are not. For Contempt of the King's Writ, in a County Palatine, &c. the Liberties may be seised, and the Offenders fined; and the Temporalities of a Bishop, have been adjudg'd to be seised until he satisfied the King for such a Contempt, on Information exhibited, &c. *Cro. Car.* 183. Where-ever the King is Party to a Suit, as in all Informations and Indictments, the Proseses ought to be executed by the Sheriff, and not the Bailiff of any *Franchise*, whether it have the Clause *Non omittas*, &c. or not; for the King's Prerogative shall be preferred to any *Franchise*. 2 *Hawk.* 284. And Sheriffs upon a *Non omittas*, or on a *Capias Utlagatum*, or *Quo minus*, may enter and make Arrests in any *Franchise*. 1 *Lill.* 635. If a Person claims *Franchises* which he ought not to have, it is a Usurpation upon the King. See *Quo Warranto*.

Francigenæ, Was the general Appellation of all Foreigners. Vide *Englevery*.

Frank, A French gold Coin, worth about a French Shilling; but in Computation twenty *Sols*, which is a *Livre*, and twenty Pence in our Money.

Frankalmoign, (*Libera Eleemosyna*) Is a Tenure by Spiritual Service, where an Ecclesiastical Corporation, sole or aggregate, holdeth Land to them and their Successors, of some Lord and his Heirs in free and perpetual Alms: And perpetual supposes it to be a Fee-simple; though it may pass without the Word *Successors*. *Litt.* 133. 1 *Inst.* 94. A Lay Person cannot hold in free Alms: And when a Grant is in *Frankalmoign*, no Mention is to be made of any Manner of Service; for it is free from any Temporal Service, and is of the highest Nature, because it is a Tenure by Spiritual Service. *Litt.* 137. None can hold in *Frankalmoign* but by Prescription, or by Force of some

Some Grant made before the Statutes of *Mortmain*. 7 Ed. 1. c. 36. and 18 Ed. 1. c. 1. so that the Tenure cannot at this Day be created, to hold of a Founder and his Heirs in free Alms: But the King is not restrained by the Statutes; nor a Subject licensed or dispensed with by the King, to make such a Grant, &c. 1 *Inst.* 98, 99. And if an Ecclesiastical Person holds Lands by Fealty and certain Rent, the Lord may at this Time confirm his Estate, to hold to him and his Successors in *Frankalmoign*; for the former Services are extinct, and nothing is reserved but that he should hold of him, which he did before; whereby this Change and Alteration is not within the Statute 18 Ed. 1. of *Quia emptores Terrarum*. *Litt.* 540. 1 *Inst.* 99, 306. Tenure in *Frankalmoign* is incident to the inheritable Blood of the Donor or Founder; except in Case of the King, who may grant this Tenure to hold of him and his Successors. *Litt.* 135. And the Reason why a Grant in *Frankalmoign*, since the Stat. 18 Ed. 1. is void, except in the Case of the King, &c. is, because none can hold Land by this Tenure, but of the Donor; whereas that Statute enjoins, that it be held of the Chief Lord, by the same Service by which the Feoffor held it; tho' the King may grant away any Estate, and reserve the Tenure to himself. 1 *Inst.* 99, 223. If any Persons that hold Lands or Tenements in *Frankalmoign*, make any Failure in doing such Divine Service as they ought, the Lord may make Complaint of it to the Ordinary or Visitor; which is the King, if he be Founder, or a Subject where he was appointed Visitor upon the Foundation; and the Ordinary, &c. may punish the Negligence, according to the Ecclesiastical Laws. *Litt.* 136. 1 *Inst.* 96. Also for Neglect in performing Divine Service in certain, the Lord may distrain: But *Frankalmoign* is said to be held by Service uncertain; and where the Tenure is tied to certain Services, as to read Prayers every Friday, &c. this is not *Frankalmoign*, but Tenure by Divine Service; it is Lands given in Alms, but not in free Alms. *Britton*, cap. 66. The Tenure by *Frankalmoign* is an ancient Tenure, chiefly to be met with in Grants to Religious Houses, Bishops, Deans, Colleges, &c. and is become out of Use.

Frankchase, Is a Liberty of *Free Chase*; by which all Persons that have Lands within the Compass thereof, are prohibited to cut down any Wood, &c. without the View of the Forester, though it be in their own Demesnes. *Crompt. Jurisd.* 187.

Frankfee. (*Feudum liberum*) That Land, according to *Broke*, which is in the Hands of the King or Lord of any Manor being the Demesnes of the Crown is called *Frankfee*; and that in the Tenant's Hands is Ancient Demesne. *Bro. Tit. Demesne*. In the *Register* of Writs, we find that is *Frankfee*, which a Man holds at the Common Law, to him and his Heirs; and not by such Service, as is required in Ancient Demesne, according to the Custom of the Manor: And that the Lands in the Hand of King Edward the Confessor, at the Making of the Book of *Domesday*, were Ancient Demesne, and all the rest *Frankfee*; wherewith *Fitzherbert* agrees. *Reg. Orig.* 12. F. N. B. 161. And the Author of the *Terms of the Law* defines *Frankfee* to be a Tenure pleadable at the Common Law; and not in Ancient Demesne. *Terms de Ley* 358. ——— *Feudum Francum est, pro quo nullum Servitium prestatum Domino*. *Frachinensis*, lib. 7. cap. 39.

Frankferm, Was Lands or Tenements, changed in the Nature of the Fee, by Feoffment, &c. out of Knights Service, for certain yearly Services. *Britton*, cap. 66. See *Fee farm*.

Frank-Law, (*Libera Lex*) Is applied to the Benefit of the Free and Common Law of the Land. You may find what it is by the contrary, from *Crompton* in his Justice of Peace; where he says, he that for any Offence loseth his *Frank-Law*, falls into these Mischiefs, viz. He may never be impanelled upon any Jury or Assize; or be permitted to give any Testimony: If he hath any Thing to do in the King's Courts, he must not attend them in Person, but appoint his Attorney therein for him: And his Lands shall be estreated, and his Body committed to Prison, &c. *Crompt. Jurisd.* 156. *Lib. Assis.* 59. See *Conspiracy*.

Frank-Marriage, (*Liberum Maritagium*) Is where a Man seised of Land in Fee-simple, gives it to another with his Daughter, Sister, &c. in Marriage; to hold to them and their Heirs: And it is a Tenure in special Tail, growing from these Words in the Gift, i. e. *Sciatis, &c. me A. B. dedisse & concessisse, &c. T. B. filio meo & Annæ Uxor. ejus, filia, &c. in Liberum Maritagium unum Messuagium, &c.* *Litt.* 17. *West. Symb. par.* 1. lib. 2. sect. 303. The Effect of which Words is, that they shall have the Land to them and the Heirs of their Bodies; and shall do no Services to the Donor, except Fealty, until the fourth Degree. *Glanvil*, lib. 7. cap. 18. And *Fleta* gives this Reason why the Heirs do no Service until the fourth Degree: *Ne Donatores vel eorum heredes per Homagium receptionem, a reversione repellantur*. And why in the fourth Descent and downward, they shall do Services to the Donor; *Quia in quarto gradu vehementer presumitur, quod Terra est pro defectu heredum Donatoriorum reversura*. *Fleta*, lib. 3. cap. 11. All this appears in *Bracton*, lib. 2. cap. 7. where it is said, that Lands in *Frank-Marriage* are *quæta & libera ab omni seculari servitio, &c. usque ad tertium heredem, & usque ad quartum gradum*. Also *Bracton* divides Marriage into *Liberum Maritagium* and *Maritagium servitio obligatum*; which last was where Lands were given in Marriage, with a Reservation of the Services to the Donor, which the Donee and his Heirs were bound to perform for ever; but neither he, or the next two Heirs, were obliged to do Homage, which was to be done when it came to the fourth Degree, and then, and not before, were required to be perform'd both Services and Homage. *Bract.* lib. 2. Lands given by one Man to another with a Wife in *Frank-Marriage*, amounts by Implication to a Gift in Fee-tail; which in this Case may be created without the Words *Heirs or Body*. *Litt.* 17. *Wood's Inst.* 120. A Gift in *Frank-Marriage* might be made as well after as before Marriage: And such a Gift was a Fee-simple before the Statute of *Westm.* 2. but since, it is usually a Fee-tail: These Gifts were common in former Times, whereon Questions in Law did arise; but are now disused. 2 *Nelf. Abr.* 888.

Frankpledge, (*Franci plegium*, from the Fr. *Franc*. i. e. *Liber*, and *Pledge*, *Fidejussor*) Signifies a Pledge or Surety for the Behaviour of *Freemen*; it being the ancient Custom of this Kingdom, borrowed from the *Lombards*, that for the Preservation of the publick Peace, every free-born Man at the Age of Fourteen, (Religious Persons, Clerks, &c. excepted) should give Security for his Truth towards the King and his Subjects, or be committed to Prison; whereupon a certain

certain Number of Neighbours, usually became bound one for another, to see each Man of their Pledge forth-coming at all Times, or to answer the Transgression done by any gone away: And when ever any one offended, it was forth-with inquired in what Pledge he was, and then those of that Pledge either produced the Offender within One and thirty Days, or satisfied for his Offence. This was called *Frank-pledge*; and this Custom was so kept, that the *Sheriffs* at every *County-Court*, did from Time to Time take the Oaths of young Persons as they grew to fourteen Years of Age, and see that they were settled in one *Decennary* or other; whereby this Branch of the Sheriff's Authority was called *Visus Franci-plegii*, or *View of Frank-pledge*. At this Day no Man ordinarily giveth other Security for the Keeping of the Peace, than his own Oath; so that none answereth for the Transgression of another, but every Person for himself. 4 *Inst.* 78. Living under *Frank-pledge* has been termed Living under *Law*, &c. See the Statute of *View of Frank-pledge*. 18 Ed. 2. And *Court-Leet*, *Deciner*, &c.

Frank Tenement, A Possession of Freehold Lands and Tenements. See *Freehold*.

Fraxetum, A Corruption of *Fraxinetum*, is taken for a Wood, or woody Ground, where *Aspes* grow. 1 *Inst.* 4.

Frateria, A Fraternity, Brotherhood or Society of Religious Persons, who were bound to pray for the good Health and Life, &c. of their living Brethren, and the Souls of those that were dead: In the Statutes of the Cathedral Church of *St. Paul's* in *London*, collected by *Ralph Baldock*, Dean, 1295. there is one Chapter *de Frateria Beneficiorum Ecclesie S. Pauli*, &c.

Frater nutritius Used in antient Deeds for a Bastard Brother. *Malmsh.*

Fratres conjurati, Are sworn Brothers or Companions; sometimes those were so called who were sworn to defend the King against his Enemies. *Hoveden*, pag. 445. *Leg. W. 1.* — *Præcipimus ut omnes Liberi homines sint Fratres conjurati ad Monarchiam nostram & Regnum nostrum contra Inimicos pro posse suo defendendum.* *Leg. Ed. 1.* cap. 35.

Fratrueles, The Sons of two Brothers; as *successit Fratrueles ejus in Regnum*, &c.

Fratres pures, Were certain Friars, wearing black and white Garments; of whom Mention is made by *Walsingham*, pag. 124.

Fratriagium, Is a younger Brother's Inheritance; and whatever the Sons possess of the Estate of the Father, they enjoy it *ratione* *Fratriagii*, and are to do Homage to the elder Brother for it, who is bound to do Homage for the Whole to the superior Lord. *Bract. lib. 2. cap. 35.*

Fraud, (*Fraus*) Is Deceit in Grants and Conveyances of Lands, and Bargains and Sales of Goods, &c. to the Damage of another Person. *F. N. B.* 98. Every Gift or Feoffment of Lands, made by Fraud, shall be void; and the Disfeisee shall recover his Estate. *Stat. 1 R. 2. c. 9.* Fraudulent Assurances of Lands or Goods to deceive Creditors, are to be void; and the Creditors shall have Execution thereof. 50 *Ed. 3. c. 6.* By the Statute 13 *Eliz. c. 5.* all fraudulent Conveyances as to Creditors, are made void; and by 27 *Eliz. c. 4.* they are made void as to Purchasers: And Persons justifying or putting such Grants, &c. in Use as good, and *bona fide* made, shall forfeit a Year's Value of the Lands, and the whole Value of Goods and Chattels, and

be also imprisoned, &c. Where Lands are convey'd with Clause of Revocation, &c. and afterwards sold for valuable Consideration, the first Conveyance shall be void against the Purchaser; but this is not to extend to Mortgages made *bona fide*. And Devises of Lands, Rents, &c. are deemed fraudulent and void, against Creditors upon Bonds, or other Specialties. 3 & 4 *W. & M.* Also Judgments against Purchasers of Lands for a valuable Consideration, shall be deemed Judgments only from the Signing, &c. 29 *Car. 2. c. 3.* The Stat. 13 *Eliz.* makes a fraudulent Deed void against Creditors, but not against the Party himself, his Executors or Administrators, for against them it remains good: And a Conveyance made by Fraud is not void by the Statute against all Persons, but only against those who afterwards come to the Land upon valuable Consideration. *Cro. El.* 445. *Cro. Jac.* 271. Grants and Conveyances are to be on good Consideration, and *bona fide*, or they will be fraudulent; and a Grant *bona fide* is made without any Trust, &c. A Grant upon good Consideration, except it be also *bona fide*, is not within the Proviso of the Act 13 *Eliz. 3 Rep.* 81. Consideration valuable is Money, Marriage, &c. and not natural Affection, &c. A Man made a Lease for twenty-one Years, in Trust for his Daughter 'till Marriage; and if she married with his Consent, then to her during the Term; this 'till Marriage, has been held *fraudulent* as to a Purchaser: But after Marriage it is good, because Marriage is an Advancement to the Daughter, and taking Effect made it upon valuable Consideration, which a Marriage is always taken to be, and the Husband was drawn in by this Conveyance to marry her. 1 *Sid.* 133. It has been adjudg'd, That if a Father makes a Feoffment to another, for the Advancement of his Daughters, or his younger Sons, or for Payment of his Debts; and afterwards enfeoffs his eldest Son or Heir, this is not *Fraud* or Collusion within the Statute, for he is bound in Law to make Provision for his Children: But where there is a Grandfather, Father, and two Sons, and the Grandfather (living the Father) conveys his Land to either of the Sons, this is out of the Statute 32 *H. 8.* because it is not a common Thing so to do, and the Father ought to have the immediate Care of his Children; tho' if he is dead, then it belongeth to the Grandfather. 6 *Rep.* 76. If a Man levy a Fine to the Use of himself for Life, Remainder to his Son in Tail, and after sells the Fee-simple to another, he as a Purchaser shall avoid this Conveyance upon the Statute 27 *Eliz.* because it was *voluntary*, and therefore *fraudulent*; so it had been if he had settled the Remainder on his Wife, unless there had been a Consideration on precedent Marriage. *Sid.* 133. 3 *Salk.* 174. But it was ruled by *Hale* Chief Justice, that a Deed may be *voluntary*, and not *fraudulent*, as where a Father having an extravagant Son, settles his Land so that he may not spend all; this is good, if there is no Consideration of Money. 1 *Mod.* 119. Although every *voluntary* Conveyance is *prima facie* deem'd *fraudulent* against Purchasers, yet some Circumstances may alter the Case: An Infant promised, on his Marriage, to settle his Estate when he came of Age, upon himself and his Issue; and this was held a sufficient Consideration, tho' an Infant by Law is not compellable to fulfil such Promise. 2 *Lev.* 147. A Feme Covert joins with her Husband in the Alienation of her Jointure, and hath

a new Deed of Settlement of other Lands dated the same Day, in Lieu thereof, without Articles or Agreement precedent to this second Settlement; this is not *fraudulent* against a Purchaser, though the Lands in the new Settlement are more in Value than those in the First; for the old Settlement being destroyed, and a new one made on the same Day, it shall be presumed that there was an Agreement for it. 2 *Lev.* 70, 71. The Husband who married a Wife an Inheritor, promised, that if she would join with him in a Sale of her Land, and let him have the Money to pay his Debts, that he would leave her 400 *l.* at his Death; about six Months after the Lands were sold, he gave Bond to a Stranger to leave his Wife the 400 *l.* And it was adjudged that this was not *fraudulent quoad* Creditors, but good against them. 2 *Lev.* 148. A Person makes a voluntary Conveyance, and then mortgages the same Land, and the first Deed is upon a Trial found *fraudulent*; then he to whom the Deed was made exhibited his Bill in *Equity* to redeem the Mortgage, and it was held, that though the first Deed was *fraudulent quoad* the Mortgage-Money, yet it was good to pass the Equity of Redemption. *Chanc. Rep.* 59. Where a Lease is made with a Proviso, that if the Lessor pays 10 *s.* the Lease shall be void; because 10 *s.* is not the Value of the Lease and Land, but only limited as a Power of Revocation, it is *fraudulent* as to a Purchaser: But if a Man mortgages his Land for 100 *l.* with Proviso, that if he pay 100 *l.* the Lease shall be good against a Purchaser. *Cro. Jac.* 455. In *Chancery* it has been decreed, That if a Man conveys his Land to Friends in Trust, to the Use of his Children, &c. to defraud a Purchaser, the Trust shall go in *Equity* to the Purchaser; also it shall be liable for Debts, to satisfy the same. *Totbil* 43, 44. A Husband assign'd a Term of his Wife's, in Trust for his Wife; and it was held *fraudulent* against Purchasers. *Chanc. Rep.* 225. If a Man make an Assignment of his Lease, and yet keeps Possession of the Lands, the Deed of Assignment will be judg'd *fraudulent*. By the *Common Law*, an Estate made by *Fraud*, shall be avoided only by him who hath a former Right, Title, Interest, Debt, or Demand. 3 *Rep.* 83. If one indebted do really sell Lands, tho' to avoid Payment of Debts; if the Vendee be not privy to the Intent, the Sale to him is good: For as to the Vendee there is no *Fraud* in the Case. *Mich.* 24 *Car. B. R.* A Man gives his Goods to his Son, they are nevertheless liable as to his Creditors; but if he gives them to one of his Creditors, without any Trust or Covin, it shall not be *fraudulent* to make him liable to other Creditors. 3 *Salk.* 174. If a Man is indicted, and give away his Goods to prevent a Forfeiture, the King shall have them upon an Attainder or Conviction; though 'tis otherwise if he sell them for a good Consideration, to one who had no Notice of the Indictment. *Ibid.* If Tenant for Life commit a Forfeiture, and he in the Reversion enters, this shall be as a *fraudulent* Conveyance with Respect to Creditors. *Ventr.* 257. *Fraudulent* Gifts, or Grants of Goods to defraud the Lord of his Heriot, shall be void; and the Value of the Goods forfeited. 13 *Eliz.* 5. Gifts made in Secret are liable to Suspicion of *Fraud*: A general Gift of all a Man's Goods may be reasonably suspected to be *fraudulent*, even though there be a true Debt owing to the Party to whom made. 3 *Rep.*

80, 81. And the several Marks or Badges of *Fraud*, in a Gift or Grant of Goods are, if it be general, without Exception of some Things of Necessity; if the Donor still possesses and uses the Goods; if the Deed be secretly made; if there be a Trust between the Parties; or if it be made pending the Action. 3 *Rep.* 80, &c. And where a Person is Party to a *Fraud*, all that follows by Reason of that *Fraud* shall be said to be done by him. *Cro. Jac.* 469. But where *Fraud* is not expressly averr'd, it shall not be presumed; nor shall the Court adjudge it to be so, 'till the Matter is found by Jury. 10 *Rep.* 56. *Fraudulent* Conveyances to multiply Votes at Election of *Knights of the Shire*, shall be taken against the Persons making them as free and absolute; and all Securities for Redeeming or Restoring, &c. to be void. *Stat.* 10 *Ann. c.* 23. A *Presentation* to a Benefice, or *Administration* of Goods obtained by *Fraud*, are void; and so is Sale of Goods by *Fraud*, altho' in open Market, &c.

Fraus Legis. If a Person having no Manner of Title to a House, procure an Affidavit of the Service of a Declaration in Ejectment, and thereupon gets Judgment; and by Virtue of a Writ of *Hab. fac. Possessionem* turns the Owner out of Possession of the House, and seises and converts the Goods therein to his own Use, he may be punished as a Felon; because he used the Process of the Law with a felonious Purpose, in *fraudem Legis*. *Raym.* 276. *Sid.* 254.

Fredum, Was a Composition made by a Criminal, to be freed from Prosecution, of which the third Part was paid into the *Exchequer*. See *Delatura*.

Free-Bench, (*Francus Bancus*, i. e. *Sedes Libera*) Is that Estate in Copyhold Lands which the Wife hath on the Death of her Husband for her Dower, according to the Custom of the Manor: But it is said the Wife ought to be espous'd a Virgin; and is to hold the Land only so long as she lives sole and continent. *Kitch.* 102. Of this *Free-Bench*, several Manors have several Customs; and *Fitzherbert* calls it a Custom whereby in certain Cities the Wife shall have the whole Lands of the Husband for her Dower, &c. *F. N. B.* 150. In the Manors of *East and West Enborne* in the County of *Berks*, and the Manor of *Torre* in *Devonshire*, and other Parts of the *West of England*, there is a Custom; that when a Copyhold Tenant dies, his Widow shall have her *Free-Bench* in all his Customary Lands, *Dum sola & casta fuerit*; but if she commits Incontinency, she forfeits her Estate: Yet nevertheless, on her coming into the Court of the Manor, riding backward on a *Black Ram*, with his Tail in her Hand, and saying the Words following, the Steward is bound by the Custom to re-admit her to her *Free-Bench*; the Words are these,

Here I am,
Riding upon a Black Ram,
Like a Whore as I am:
And for my Crincum Crancum,
I have lost my Binkum Bankum;
And for my Tail's Game,
Have done this worldly Shame;
Therefore pray Mr. Steward let me have my
Land again.

This is a Kind of *Penance*, among jocular Tenures and Customs, to purge the Offence.

Free-booter, Signifies a Person who fights without Pay, in Hopes of getting some Booty.

Freehold, (*Francbor. us*) Is Ground claimed in some Places, more or less, beyond, or without the Fence: It is said to contain two Foot and a Half, in *Mon. Angl. Tom. 2. pag. 241.*

Free-Chapel, (*Libera Capella*) A Chapel so called, because it is exempt from the Jurisdiction of the Diocesan. Those *Chapels* are properly *Free-Chapels* which are of the King's Foundation, and by him exempted from the Ordinary's Visitation: Also *Chapels* founded within a Parish for the Service of God, by the Devotion and Liberality of Pious Men, over and above the Mother-Church, and endow'd with Maintenance by the Founders, which were free for the Inhabitants of the Parish to come to, were therefore called *Free-Chapels*. *Reg. Orig. 40, 41.* The *Free-Chapel* of St. Martin le Grand is mentioned in the Stat. 3 Ed. 4. c. 4. as are others likewise, by antient Statutes: But these *Chapels* were given to the King, with the *Chantries*, &c. 1 Ed. 6. c. 14.

Freehold, (*Liberum Tenementum*) Is that Land or Tenement which a Man holds in Fee-simple, Fee-tail, or for Term of Life. *Bract. lib. 2. cap. 9.* And is described to be of two Sorts: *Freehold in Deed*, and *Freehold in Law*; the First, being the real Possession of Lands, &c. in Fee, or for Life; and the other, the Right a Person hath to such Lands or Tenements, before his Entry or Seizure. *Freehold* is also extended to *Offices*, which a Man holds either in Fee, or for Life: And in the *Register* of Writs it is said, that he who holds Land upon an Execution of a *Statute-Merchant*, until he is satisfied the Debt, *Tenet ut Liberum Tenementum sibi & assignatis suis*; and the same of a Tenant by *Elegit*; but such Tenants are not *Freeholders*, only as *Freeholders* for their Time, 'till they have received the Profits of the Land to the Value of their Debt. *Reg. Judic. 68, 73.* A Lease for ninety-nine Years, &c. determinable upon a Life or Lives is not a Lease for Life to make a *Freehold*, but a Lease for Years or Chattel determinable upon Life or Lives: And an Estate for One thousand Years is not a *Freehold*, or of so high a Nature as an Estate for Life. *Co. Litt. 6.* He that hath an Estate for the Term of his own Life, or the Life of another, hath a *Freehold*, and no other of a less Estate; though they of a greater Estate have a *Freehold*, as Tenant in Fee, &c. *Litt. 57.* When a Man pleads *Liberum Tenementum* generally, it shall be intended that he hath an Estate in Fee; and not a bare Estate for Life. *Cro. Eliz. 87.* An Estate of *Freehold* cannot by the *Common Law* commence *in futuro*; but it must take presently in Possession, Reversion, or Remainder. 5 *Rep. 94.* A Man made a Deed of Gift to his Son and his Heirs, of Lands after his Death, and no Livery was made; now if there had been Livery, it had been void, because a *Freehold* cannot commence *in futuro*: And it has been held, that it shall not enure as a Covenant to stand seised, by Reason of the Word *Give*; by which was intended a Transmutation of the Estate, and not to pass it by Way of Use. *March Rep. 50, 51.* A *Freehold* Lease for Life, of any Thing, if it be *in Esse* before, it is said cannot begin at a Day to come. 1 *Inst. 5.* Whatsoever is Part of, or fix'd to the *Freehold*, goes to the Heir; and Glass-Windows, Wainscot, &c. affix'd to the House, are Parcel of the House, and cannot be removed by Tenants. 4 *Rep. 63, 64.* But it hath been adjudg'd,

that if Things for Trade, &c. are fixed to the *Freehold* by the Lessee, he may take them down and remove them, so as he do it before the End of the Term, and he do not thereby injure the *Freehold*. 1 *Salk. 368.* Any Thing fix'd to the *Freehold*, as a Furnace, Windows, Boards, &c. of a House, may not be taken in Distress for Rent. 2 *Danv. Abr. 641.* Though it is not Felony to steal any Thing annex'd to the *Freehold*; such as Lead on a Church or House, Corn or Grass growing on the Ground, Apples on a Tree, &c. this is only Trespass: But if they are severed from the *Freehold*, whether by the Owner or the Thief, if he sever them at one Time, and take them away at another, it is Larceny to take them. 12 *Aff. 32.* 1 *Hawk. 93.* The Statute, of *Magna Charta*, c. 29. ordains, that no Person shall be disseised of his *Freehold*, &c. but by Judgment of his Peers, or according to the Law of the Land; which doth not only relate to common Disseisins, but the King may not otherwise seize into his Hands the *Freehold* of the Subject. *Wood's Inst. 614.* *Freehold* Estates, of certain Values, are required by Statutes to qualify Jurors; Electors of Knights of the Shire in Parliament, &c.

Freeholders, Are such as hold any *Freehold* Estate: By the antient Laws of Scotland, *Freeholders* were called *Milites*; and *Freehold*, in this Kingdom, hath been sometimes taken in Opposition to *Villanage*, it being Lands in the Hands of the Gentry and better Sort of Tenants, by certain Tenure, who were always *Freeholders*, contrary to what was in the Possession of the inferior People, held at the Will of the Lord. *Lambard.*

Freight, (*Fr. Fret*) Signifies the Money paid for Carriage of Goods by Sea; or in a larger Sense, it is taken for the Cargo, or Burthen of the Ship. Ships are freighted either by the Tun, or by the Great; and in Respect to Time, the *Freight* is agreed for at so much *per Month*, or at a certain Sum for the whole Voyage. If a Ship freighted by the Great, happens to be cast away, the *Freight* is lost; but if a Merchant agrees by the Tun, or at so much for every Piece of Commodities, and by any Accident the Ship is cast away, if Part of the Goods is saved, it is said he ought to be answered her *Freight pro rata*: And when a Ship is insured, and such a Misfortune happens, the Insured commonly transfer those Goods over to the Assurers, towards a Satisfaction of what they make good. *Lex Mercat. or Merchant's Compan. 79.* If *Freight* is agreed for the Lading and Unlading of Cattle at such a Port, and some of them die before the Ship arrives there, the whole *Freight* shall be paid for the Living and the Dead; but if the Agreement be for transporting them, *Freight* shall be only paid for the Living: And it is the same of Slaves. *Ibid. 85.* The Lading of a Ship, in Construction of Law, is bound for the *Freight*; the *Freight* being in Point of Payment preferr'd before any other Debts to which the Goods so laden are liable, though such Debts as to Time were precedent to the *Freight*: And Actions touching the same, are construed favourably for the Ship and Owners; for if four Part-Owners of Five, belonging to a Ship, settle their Accounts with the Freighters, and receive their Dues, yet the fifth Man may sue singly by himself without joining with the Rest, by the *Common Law*, and the *Law Marine*. *Hill. 27 Car. 2. B. R.* If Part of the Lading be on Ship-board, and through some Misfortune happening to the Merchant, he has

not his full Lading aboard at the Time agreed, the Master shall have *Freight* by Way of Damage, for the Time those Goods were on Board; and is at his Liberty to contract with another, least he lose his Season and Voyage: And where a Ship is not ready to take in, or the Merchant not ready to lade aboard, the Parties are not only at Liberty, but the Person damnified may bring an Action against the other, and recover his Damages sustained. *Leg. Rhod.* If the *Freighter* of a Ship shall lade on board prohibited Goods, or unlawful Merchandize, whereby the Ship is detained, or the Voyage impeded; he shall answer the *Freight* agreed for. *Style* 220. And when Goods are laden aboard, and the Ship hath broke Ground, the Merchant may not afterwards unlade them; for if he then changes his Mind, and resolves not to venture, but will unlade again, by the Marine Law the *Freight* becomes due. If a Master *freights* out of his Ship, and afterwards secretly takes in Goods unknown to the first Laders, by the Law Marine he forfeits his *Freight*: And if a Master of a Ship shall put into any Port than what the Ship was *freighted* to, he shall answer Damages to the Merchant; unless he is forced in by Storm, Enemies, or Pirates; and in that Case he is obliged to fail to the Port agreed at his own Expence. *Leg. Oleron.* A Ship is *freighted* out, and in, there shall be no *Freight* due 'till the Voyage is perform'd; so that if the Ship be cast away coming home, the *Freight* outwards as well as inwards are both gone. 1 *Brownl.* 21. A Master of a Ship is not bound to answer *Freight* to the Owners for Passengers, where it appears they are not able to pay. See *Charterparty*.

French. King William 1. called the Conqueror, caused the Laws of this Realm, in his Time, to be written and pleaded in the *French Language*. 3 *Rep.* 17. But by the Stat. 37 *Ed.* 3. 15. all Pleas that shall be pleaded in any of the King's Courts, shall be pleaded in the *English Tongue*, and not in *French*; though Appeals are still to be arraigned, and the Plea of the Defendant read in *French*, in the same Manner as antiently. 2 *Hawk.* P. C. 308.

Frenchman, Heretofore a Term for every Stranger or outlandish Man. *Bract.* lib. 3. tract. 2. cap. 15. See *Francigena*.

Friendwite, Comes from the Sax. *Frend*, i. e. Amicus, & *Wite* multa, and is a Multa exacted of him who harbour'd his outlaw'd Friend. *Blount.* But see *Fleta*, lib. 1. cap. 47.

Fresca, Fresh Water or Rain, and Land Floods. *Chart. Antiq.* in *Somner of Gavelkind*, p. 132.

Fresh Disseisin, (*Frisca Disseisina*, from the Fr. *Fraiz*, i. e. Recens, & *Disseisir*, viz. *Possessione ejicere*) Signifies that *Disseisin*, which a Man might seek to defeat of himself, and by his own Power, without resorting to the King, or the Law; as where it is not above fifteen Days old, or of some other short Continuance. *Briton.* cap. 5. Of this *Bracton* writes at large, concluding it to be arbitrary. *Lib.* 4. cap. 5.

Fresh Fine, Is that which was levied within a Year past: It is mentioned in the Statute of *Westm.* 2. 13 *Ed.* 1. cap. 45.

Fresh Force, (*Frisca fortia*) Is a Force newly done in any City, Borough, &c. And if a Person be disseised of any Lands or Tenements within such a City, or Borough, he who hath a Right to the Land, by the Usage and Custom of the said City, &c. may bring his *Affise*, or *Bill of Fresh Force*, within forty Days after the Force com-

mitted, and recover the Lands. *E. N. B.* 7. *Old Nat. Br.* 4. This Remedy may be also had where any Man is deformed of any Lands, after the Death of his Ancestor, to whom he is Heir; or after the Death of Tenant for Life, or in Tail, in Dower, &c. within forty Days after the Title accrued; and in a *Bill of Fresh Force*, the Plaintiff or Demandant shall make Protestation to sue in the Nature of what Writ he will, as *Affise of Mortdancestor*, of *Novel Disseisin*, *Intrusion*, &c. *New Nat. Br.* 15. The *Affise* or *Bill of Fresh Force* is sued out without any Writ from the Chancery; but after the forty Days, there is to be a Writ out of the Chancery, directed to the Mayor, &c. *Ibid.*

Fresh Suit, or *Pursuit*, (*Recens insecutio*) Is such a present and earnest following of an Offender, where a Robbery is committed, as never ceases from the Time of the Offence done or discovered, until he be apprehended: And the Benefit of a Pursuit of a Felon is, that the Party pursuing shall have his Goods restored to him; which otherwise are forfeited to the King. *Staundf. Pl. Cor. lib.* 3. cap. 10, and 12. When an Offender is thus apprehended, and Indictment brought against him, upon which he is convicted of the Felony, the Party robb'd shall have Restitution of his Goods; and though the Party robb'd do not apprehend the Thief presently, but that it be some Time after the Robbery, if the Party did what in him lay to take the Offender, and notwithstanding in such Case he happen to be apprehended by some other Person, it shall be adjudg'd *Fresh Pursuit*. *Terms de Ley* 362, 363. It has been antiently holden, that to make a *Fresh Suit*, the Party ought to make *Hue and Cry* with all convenient Speed, and to have taken the Offender himself, &c. But at this Day, if the Party hath been guilty of no gross Negligence, but hath used all reasonable Care in Inquiring after, pursuing, and apprehending the Felon, he shall be allow'd to have made sufficient *Fresh Suit*. 2 *Hawk.* P. C. 169. Also it is said, that the Judging of *Fresh Suit* is in the Discretion of the Court, tho' it ought to be found by the Jury; and the Justices may, if they think fit, award a Restitution without making any Inquisition concerning the same. *Ibid.* 169, 171. Where a Gaoler immediately pursues a Felon, or other Prisoner, escaping from Prison, it is *Fresh Suit*, to excuse the Gaoler: And if a Lord follows his *Distress* into another's Ground, on it's being driven off the Premises, this is called *Fresh Suit*; so where a Tenant pursues his Cattle, that escape or stray into another Man's Ground, &c. *Fresh Suit* may be either within the View, or without; as to which the Law makes some Difference: And it has been said that *Fresh Suit* may continue for seven Years. 3 *Rep.* S. P. C.

Fretum Britannicum, Is used in our antient Writings for the *Streights* between *Dover* and *Calais*.

Fretum and Fretum, The Freight of a Ship, or Freight-Money. — *Acquietar. facietis Fretum Navium*, &c. *Claus.* 17. *Joh. m.* 16.

Friburgh alias *Fritthburgh*, (*Frideburgum*, from the Sax. *Frid*, i. e. Pax, & *Borge*, *Fidejussor*) Is the same with *Frank-pledge*, the one being in the Time of the Saxons, and the other since the Conquest: Of these *Friburghs*, *Bracton* treats *Lib.* 3. *Tract.* 2. cap. 10. And they are particularly described in the Laws of *K. Edw.* set out by *Lambard*, fol. 143. *Fleta* likewise writes on this Subject,

ject, lib. 1. cap. 47. And *Spelman* makes a Difference between *Friborgh* and *Frithborgh*; saying the First signifies *Libera Securitas*, and the other *Pacis Securitas*. Although *Friburghs* or *Friburghers* were antiently required as principal *Pledges* or *Sureties* for their Neighbours, for the Keeping of the Peace; yet as to great Persons, they were a sufficient Assurance for themselves, and their menial Servants. *Skene*.

Fridmannus, One who is of a Fraternity or Company.

Fridstoll and **Frithstol**, (Sax. *Frid*, Pax, & *Stol*, sedes) A Seat, Chair, or Place of Peace. In the Charter of Immunities granted to the Church of *St. Peter* in *York*, by *Hen. 1.* and confirm'd *Anno 5 H. 7.* *Fridstoll* is expounded *Cathedra pacis & quietudinis*, &c. And there were many such in *England*; but the most famous was at *Beverly*, which had this Inscription; *Hac sedes Lapidea Freedstoll dicitur, i. e. Pacis Cathedra, ad quam reus fugiendo perveniens, omnimodam habet securitatem.* *Camd.*

Friendless Man, Was the old *Saxon* Word for him whom we call an *Outlaw*; and it is for this Reason, because he was upon his Expulsion from the King's Protection, denied all Help of Friends, after certain Days: *Nam forisfecit amicos.* *Bract. lib. 3. Tract. 2. cap. 12.* See *Friendwite*.

Frier, (Lat. *Frater*, Fr. *Frere*) The Name of an Order of Religious Persons, of which there are four principal Branches, viz. 1. *Minors*, *Grey Friars*, or *Franciscans*. 2. *Augustins*. 3. *Dominicans*, or *Black Friars*. 4. *White Friars*, or *Carmentines*, of which the Rest descend. 4 *H. 4. c. 17.* *Lyndeavode de Relig. Domibus, c. 1.*

Frier-observant, (*Frater observans*) Is a Branch of the *Franciscan Friars*, which are *Minors* as well the *Observants* as the *Conventuals*, and *Capuchines*. And they are called *Observants*, because they are not combined together in any Cloister, Convent, or Corporation, as the *Conventuals* are; but tie themselves to observe the Rules of their Order more strictly than the *Conventuals* do, and upon a Singularity of Zeal separate themselves from them, living in certain Places of their own Churhing. *Zach. de Rep. Eccles. de Regular. cap. 12.* And of these you may read *Hospinian de Orig. Monachatus*, &c. cap. 38. They are mentioned in the *Stat. 25 H. 8. c. 12.*

Friling, **Freoling**, (From the Sax. *Freoh*, Liber & *Ling*, progenies) Signifies a Man that is free.

Frinigeloum, The Mulct or Fine of a Freeman. *Blount*.

Fripeter, (Fr. *Fripier*, i. e. Interpolator) One that scours and furbishes up old Clothes to sell again; a Kind of Broker. 1 *Fac. 1. c. 21.*

Friscus, Is taken for uncultivated Land. — *Et de Communia Pastura in Friscis & Dominicis suis.* *Mon. Angl. Tom. 2. pag. 56.*

Friff, A Term among Merchants for selling Goods upon Credit.

Frith, (Sax.) A Wood, from *Frid*, i. e. Pax, for the English Saxons held Woods to be sacred, and therefore made them Sanctuaries. *Sir Edward Coke* expounds it a Plain between two Woods, or a Lawnd. *Co. Litt. 5.* *Camden* in his *Britan.* useth it for an Arm of the Sea, or a Streight, between two Lands, from the Word *Fretum*.

Frithbrech, (*Pacis Violatio*) The Breaking of the Peace. *LL. Ethelred. c. 6.*

Frithgear, (From the Sax. *Frith* or *Frid*, Pax, & *Gear*, Annus) The Year of Jubilee, or of Meeting for Peace and Friendship. *Somn.*

Frithgild, Is the same which we now call a *Guild-Hall*; or a Company or Fraternity.

Frithman, Belonging to a Company. See *Fridmannus*.

Frithmote, Is mentioned in the Records of the County Palatine of *Chester*: *Per Frithmote J. Stanley Ar. clamat capere annuatim de Villa de Olton, quæ est infra feodum & Manerium de, &c. 10. sol. quos Comites Cestria ante confectionem Chartæ præd. solebant capere.* *Pl. in Itin. apud Cestriam, 14 Hen. 7.*

Frithstoke, **Frithstoken**, Signifies Surety of Defence; or, according to *Fleta*, *Libertas habendi Franci plegii; seu Immunitatis locus.*

Frodmortel, rectius **Freomortel**, (From the Sax. *Freeo*, free, and *Morthdel*, Homicidium) An Immunity for committing Manslaughter. — *Et concedo eis Curiam suam de omnibus Querelis, Et Judicium suum pro Frodmortel, &c. Mon. Angl. Tom. 1. pag. 173.*

Frumgild, (Sax.) Is the first Payment made to the Kindred of a Person slain, towards the Recompence of his Murder. — *Prima Capitis estimationis Pensio vel solutio.* *LL. Edmund.*

Frumstol, The chief Seat or Mansion-house; which is called by some the *Homestol*. *Leg. Inæ, cap. 58.*

Frusca terræ, Waste and Desert Lands. *Mon. Angl. Tom. 2. pag. 327.*

Frußura, (From the Fr. *Fröissure*) A Breaking down; also a Ploughing or Breaking up: *Frußura Domorum* is House-breaking; and *Frußura terræ*, new broke Land. *Mon. Angl. Tom. 2. pag. 394.*

Frustrum terræ, Is a small Piece, or Parcel of Land, *Residuum quiddam præter acras numeratas vel Campum mensuratum.* — *Frustrum terræ accipitur pro ampla Portione seorsum a Campo, Villa, Manerio jacenti.* *Domesday.*

Frutectum, A Place where Shrubs, or tall Herbs do grow. *Mon. Angl. Tom. 3. pag. 92.*

Fuage. In the Reign of King *Edw. 3.* the *Black Prince* having *Aquitain* granted him, laid an Imposition of *Fuage* upon the Subjects of that Dukedom, i. e. 12d. for every Fire. *Rot. Parl. 25 Ed. 3.* And 'tis probable, that the *Heath-Money* impos'd *Anno 16 Car. 2.* took its Original from hence.

Fuer, (Fr. *Fuir*, Lat. *Fugere*) Is used substantively, though it be a Verb; and is two-fold, *Fuer in fact*, or *in facto*, when a Man doth apparently and corporally fly, and *Fuer in Ley*, in *Lege*, when being called in the County-Court he appeareth not, which is *Flight* in the Interpretation of Law. *Staundf. Pl. Cor. Lib. 3. cap. 22.*

Fuga Catallozum, A Drove of Cattle: *Fugatores Carrucarum*, Waggoners who drive Oxen, without beating or goading. *Fleta, lib. 2. cap. 78.*

Fugaria, Signifies a Chase, being all one with *Chasea*; and *Fugatio*, Hunting, or the Privilege to hunt. *Blount.*

Fugam fecit, Is where it is found by Inquisition, that a Person fled for Felony, &c. And if *Flight* and *Felony* be found on an Indictment for Felony, or before the Coroner, where a Murder is committed, the Offender shall forfeit all his Goods, and the Issues of his Lands, 'till he is acquitted or pardoned: And it is held, that when one indicted of any capital Crime, before Justices of Oyer, &c. is acquitted at his Trial, but found to have fled, he shall notwithstanding his Acquittal, forfeit his Goods; but not the Issues of his Lands, because by the Acquittal the Land is discharged, and consequently the Issues. 3 *Inst. 218. H. P. C. 27. 2 Hawk. P. C. 450.* The Par-

ty may in all Cases, except that of the Coroner's Inquest, traverse the Finding of a *Fugam fecit*; and the Particulars of the Goods found to be forfeited, may be always traversed: Also whenever the Indictment against a Man is insufficient, the Finding of a *Fugam fecit* will not hurt him. 2 *Hawk.* 451. Making Default in Appearance on Indictment, &c. whereby Outlawry is awarded, a *Flight in Law.* See *Exigent*.

Fugitives Goods, (*Bona Fugitivorum*) Are the proper Goods of him that flies upon Felony; which, after the Flight lawfully found on Record, do belong to the King or Lord of the Manor. 5 *Rep.* 109.

Fugitio, Pro Fuga. — *Cordonavit omnes Felonias & Fugitiones.* Knighton, anno 1537.

Fullum Aquæ, A Fleam or Stream of Water, such as comes from a Mill.

Fumage, (*Fumagium*) Dung for Soil, or a Manuring of Land with Dung. — *Et sint Quietude Fumagio & Maremio cariendo,* &c. *Chart. R. 2. Pat. 5 Ed. 4.* And this Word has been sometimes used for *Smoke-Money*, a customary Payment for every House that had a Chimney. *Domesday.*

Fumadoes, Are Pilchards garbag'd and salted, then hung in the *Smoke*, and press'd; so called in Spain and Italy, whither they are exported in great Abundance. 14 *Car. 2. cap. 31.*

Funditores, Is used for Pioneers, in *Pat. 10 Ed. 2. m. 1.*

Furca and Fossa, (i. e. the Gallows and the Pit) In ancient Privileges granted by our Kings, it signified a Jurisdiction of punishing Felons; that is, Men by Hanging, and Women with Drowning. And Sir *Edw. Coke* says *Fossa* is taken away, but that *Furca* remains. 3 *Inst.* 58. Skene treating of these Words, saith thus — *Erectio Furcarum est meri Imperii & alta Jusitiae, & significat Dominium aeris, quia suspensi pendent in aere: Et merum Imperium consistit in quatuor, sicut sunt quatuor Elementa; In Aere, ut hi qui suspenduntur; In Igne, quando quis comburitur propter Maleficium; In Aqua, quando quis ponitur in culeo & in Mare projicitur ut parricida, vel in amnem immergitur ut Fœmina furti Damната; In Terra, cum quis decapitatur & in Terram prostermitur.* Skene.

Furcare ad Tassum, To pitch Corn with a Fork in Loading a Waggon, or in making a Rick or Mow. *Tenentes debent falcare, spargere, vertere, cumulare, caviare in Manerium Domini, & ad Tassum furcare unam Acrem Prati.* — Cowel.

Furcam & Flagellum. The meanest of all servile Tenures, when the Bondman was at the Disposal of his Lord for Life and Limb. — *Ipse tenet in Villenagie ad Furcam & Flagellum de Domino suo,* &c. *Placit. Term. Mich. 2. Joh. Rot. 7.*

Furigeldum, A Mulct paid for Theft: And by the Laws of King *Ethelred*, it is allow'd, that they shall be Witnesses *qui nunquam Furigeldum reddiderunt,* i. e. who never were accused of Theft.

Furlong, Is a Quantity of Ground, containing generally forty Poles or Perches in Length, every Pole being sixteen Foot and a Half; eight of which *Furlongs* make a Mile: It is otherwise the eighth Part of an Acre of Land in Quantity. *Stat. 35 Ed. 1. c. 6.* In the former Acceptation, the Romans call it *Stadium*; and in the latter *Fugerum*. Also the Word *Furlong* hath been sometimes used for a Piece of Land of more or less Acres.

Furnage, (*Furnagium*) *Est tributum quod Domino Furni a sectatoribus penditur ob usum Furni; Et multis enim in locis tenentur Vassalli ad coquendum panes*

suos in Furno Domini. Est etiam Lucrum seu Emolumentum quod Pistori conceditur in pistionis sumptus & Mercedem, & tunc potest Pistor de quolibet quartario frumenti lucrare 4. Denar. & fursur, & duos panes ad Furnagium. Assisa Panis & Cervisia. 51 H. 3. See Fornagium.

Furnarius, A Word used for a Baker, who keeps an Oven; and *Furniare* signifies to bake or put any Thing in the Oven. *Matt. Paris. Anno 1258.*

Furr, (*Furrura*, from the Fr. *Fouret*, i. e. *Pelluculare*) Is the Coat or natural Covering of a Beast. The Statute 24 *Hen. 8. c. 13.* mentions divers Kinds of it, viz. *Sables*; which are a rich Furr, of Colour between black and brown, the Skin of a Beast called a *Sable*, of Bigness between a Pole-cat and an ordinary Cat, bred in *Russia* and *Tartary*. *Lucerns*, the Skin of a Beast of that Name, near the Size of a Wolf, in Colour neither red nor brown, but between both, and mingled with black Spots; which are bred in *Muscovy*; and is a very rich Furr. *Genets*, a Beast's Skin so called, in Bigness between a Cat and a Weezele, mailed like a Cat, and of that Nature, and of two Kinds black and grey, the Black most precious which hath black Spots upon it hardly to be seen; this Beast is the Product of Spain. *Foins* are of Fashion like the *Sable*, the Top of the Furr is black, and the Ground whitish; bred for the most Part in France. *Marten* is a Beast very like the *Sable*, the Skin something coarser, produc'd in England and Ireland, and all Countries not too cold; but the best are in Ireland. Besides these, there are the *Fitch* or *Pole-cat*; the *Calaber*, a little Beast, in Bigness near a *Squirrel*; *Miniver*, being the Bellies of *Squirrels*; and *Shanks*, or what is called *Budge*, &c. all of them *Furrs* of Foreign Countries, some whereof make a large Branch of their inland Traffick.

Furst & Fondong, (*Sax.*) Time to advise, or to take Counsel. — *De quibuscunq; Implacitetur aliquis Furst & Fondong habeat.* *Leg. H. 1. cap. 46.*

Furtum, Theft, or Robbery of any Kind. *Litt. Dist.*

Fustick, Wood brought from *Berbadoes*, *Jamaica*, &c. used by Dyers, mentioned in the 12 *Car. 2. cap. 18.*

Fyrderinga, (From the Sax. *Firderung*, i. e. *Expeditionis apparatus*) A going out to War, or a military Expedition at the King's Command; not going upon which, when summon'd, was punished by Fine at the King's Pleasure. *Leg. H. 1. cap. 10.* Blount calls it an Expedition; or a Fault or Trespas for not going upon the same.

Fyrding or Fyrdung, A military Expedition.

G.

Gabble, (*Blatero, Garrio*) To babble, and talk idly to no Purpose, whence comes *Gabbler* or *Babler*. *Plaut.*

Gabel, (*Gabella, Gablum, Gablagium*) In French *Gabelle*, i. e. *Vestigal*, hath the same Signification among our antient Writers, as *Gabelle* hath in France: It is a Tax, and hath been variously used, as for a Rent, Custom, Service, &c. And where it was a Payment of Rent, those who paid it were termed *Gablatores*. *Domesday. Co. Lit. 213.* It is by some Authors distinguished from *Tribute*; *Gabella est Vestigal quod solvitur pro Bonis mobilibus*; &

⁊ Tributum est proprie quod Fisco vel Principi solvitur pro rebus immobilibus. When the Word Gabel was formerly mentioned, without any Addition to it, it signified the Tax on Salt; but afterwards it was applied to all other Taxes.

Gable-End, (*Gabulum*) The Head or extreame Part of a House or Building. — *Qua Domus Sita est inter Gabulum Tenementi mei ⁊ Gabulum Tenementi Laurentii K. Paroch. Antiq. 286.*

Gabulus Denariozum, Rent paid in Money. *Selden of Tithes, p. 321.*

Gafold-gild, (*Sax.*) Is the Payment of Tribute or Custom; also it sometimes denotes Usury.

Gafold-land, or **Gaful-land**, (*Terra censualis*) Land liable to Taxes; and rented, or letten for Rent. *Sax. Dict.*

Gage, (*Fr. Lat. Vadium*) Signifies as much as to pawn or pledge. *Glanvil, lib. 10. cap. 6.* And *Gage Deliverance* is where he that hath taken a Distress, being sued, hath not delivered the Cattle, &c. that were distrained; then he shall not only avow the Distress, but *Gager Deliverance*, i. e. put in Surety or Pledges, that he will deliver them. *F. N. B. 67, 74.* This *Gage Deliverance* is had on suing out *Replevins*, upon the Plaintiff's Praying the same: And it is said the Parties are to be at Issue, or there is to be a Demurrer in Law, before *Gage Deliverance* is allow'd; and if a Man claim any Property in the Goods, or the Beasts are dead in the Pound, the Plaintiff shall not *gage*, &c. *Kitch. 145.*

Gager del Ley, In old Writings. See *Wage* and *Wager of Law*.

Gainage, (*Gainagium*, i. e. *Plausivi apparatus*, *Fr. Gaignage*, viz. *Lucrum*) The Gain or Profit of tilled or planted Land, raised by Cultivating it; and the Draught, Plough, and Furniture for carrying on the Work of Tillage, by the baser Kind of *Soke-men* or *Villains*. *Gainage* was only applied to arable Land, when they that had it in Occupation had nothing thereof but the Profit raised by it from their own Labour, towards their Sustenance, nor any other Title but at the Lord's Will: And *Gainor* is used for a *Sokeman*, that hath such Land in Occupation. *Bract. lib. 1. cap. 9. Old Nat. Br. 117.* The Word *Gain* is mentioned by *West. Syn. 3. par. 2. sect. 3.* Where he says Land in Demesne, but not in *Gain*, &c. And in the Stat. 51 H. 3. there are these Words; no Man shall be distrained by his Beasts, that *gain* the Land. By the Statute of *Magn. Chart. c. 14.* *Gainage* is meant no more than the Plough-Tackle, or Implements of Husbandry, without any Respect to *Gain* or Profit; where it is said of the Knight and Freeholder, he shall be amerced *Salvo contentamento suo*; the Merchant or Trader, *Salvo Merchandisa sua*; and the Villains or Countrymen, *Salvo Gainagio suo*, &c. In which Cases it was that the Merchant and Husbandman should not be hindered, to the Detriment of the Publick, or be undone by arbitrary Fines; and the Villain had his *Wainage*, to the End the Plough might not stand still; for which Reason the Husbandmen at this Day are allowed a like Privilege by Law, that their Beasts of the Plough are not in many Cases liable to Distress. See *Wainage*.

Gainery, (*Fr. Gaignerie*) Tillage, or the Profit arising from it, or of the Beasts employ'd therein. *Stat. Westm. 1. cap. 6 ⁊ 17.*

Galea, A Galley, or swift-sailing Ship. *Hoved. pag. 682, 692.*

Galllea, Is taken for a Gallery or Church-Porch. *Pryn, Lib. Angl. Tom. 3. pag. 668.*

Galleti, According to *Somner* were *Viri Galeati*; but *Knighton* says they were *Welchmen*. — *In quarum prima acie fuit Dominus Galfridus, cum multis Galletis, &c. Knight.*

Galligaskins, Wide Hose or Breeches, having their Name from their Use by the *Gascoigns*.

Gallihalpence, A Kind of Coin, which with *Suskins* and *Doitkins*, were forbidden by the Stat. 3 H. 5. 1. It is said they were brought into this Kingdom by the *Genoese* Merchants, who trading hither in *Galleys*, lived commonly in a Lane near *Tower-street*, and were called *Galley-men*; landing their Goods at *Galley-Key*, and Trading with their own small silver Coin term'd *Galley Half-pence*. *Stow's Survey of Lond. 137.*

Gallimawfry, Signifies a Meal of coarse Victuals, given to *Galley-Slaves*.

Gallibolatum, (From *Gallus*, a Cock) A Cock-shoot or Cock-glade.

Gamba, **Gamberia**, **Gambzia**, (*Fr. Gambiere*) Military Boots or Defence for the Legs.

Gambeyson, (*Gambezonum*) A Horseman's Coat used in War, which covered the Legs: Or rather a quilted Coat, *Cento*, *Vestimentum ex coactili Lana confectum*, to put under the Armour to make it fit easy. *Fleta, lib. 1. cap. 24.*

Game, (*Aucupia*, from *Auceps*, *Aucupis*, i. e. *Avium captio*) Birds or Prey got by Fowling and Hunting: And Destroying the Game is an Offence by Statute. No Person shall take Pheasants or Partridges with Engines in another Man's Ground, without Licence, on Pain of 10*l.* *Stat. 11 H. 7. c. 17.* If any Persons shall take or kill any Pheasants or Partridges, with any Net in the Night-time, they shall forfeit 20*s.* for every Pheasant, and 10*s.* for every Partridge taken; and Hunting with Spaniels in Standing-Corn, incurs a Forfeiture of 40*s.* 23 *Eliz. c. 10.* Those who kill any Pheasant, Partridge, Duck, Heron, Hare, or other Game, are liable to a Forfeiture of 20*s.* for every Fowl and Hare; and Selling, or Buying to sell again, any Hare, Pheasant, &c. the Forfeiture is 10*s.* for each Hare, &c. 1 *Jac. 1. c. 17.* Also Pheasants or Partridges are not to be taken between the First of July and the Last of August, on Pain of Imprisonment for a Month, unless they pay 20*s.* for every Pheasant, &c. killed: And Constables, having a Justice of Peace's Warrant, may search for Game and Ners. 7 *Jac. 1. c. 11.* Constables by Warrant from a Justice of Peace, are to search Houses and suspected Persons for Game, and if any Game be found upon them, and they do not give a good Account how they came by the same, they shall forfeit for every Hare, Pheasant, or Partridge, not under 5*s.* nor exceeding 20*s.* And inferior Tradesmen, Hunting, &c. are subject to the Penalties of the Act, and may be likewise sued for Trespas: If Officers of the Army or Soldiers kill Game, without Leave, they forfeit 5*l.* an Officer, and 10*s.* a Soldier. 4 ⁊ 5 *W. ⁊ M. c. 23.* Higlers, Chapmen, Carriers, Inn-keepers, Victuallers, &c. having in their Custody, Hare, Pheasant, Partridge, Heath-Game, &c. (except sent by some Person qualified to kill Game) shall forfeit for every Hare and Fowl 5*l.* And selling Game, or offering the same to Sale, incurs the like Penalty; wherein Hare, and other Game found in a Shop, &c. is adjudg'd an Exposing to Sale: Killing Hares in the Night is liable to the same

same Penalties : And if any Persons shall drive wild Fowl with Nets, between the first Day of July and the first of September, they shall forfeit 5 s. for every Fowl. 5 Ann. cap. 14. 9 Ann. c. 25. And Penalties for killing and destroying Game, are recoverable not only before Justices of Peace by the several Statutes, but also by Action of Debt, Bill, Plaint or Information, in any of his Majesty's Courts at Westminster; and the Plaintiff if he recovers shall likewise have double Costs. 8 Geo. cap. 19. Any Man may hawk and hunt at his Pleasure in his own Lands; and he need not have the King's Licence for it, or for other Recreations: And Persons qualified to keep Guns, Dogs, &c. to kill Game, are such as have a free Warren, or are Lords of Manors, or have 100 l. per Annum Inheritance or for Life, or Lease for ninety-nine Years of 150 l. per Ann. (and by the Exception of the Act, the eldest Sons and Heirs of Esquires, or other Persons of higher Degree) And if any Person shall keep a Gun not so qualified, he shall forfeit 10 l. And Persons being qualified may take Guns from those as are not, and break them. 22 & 23 Car. 2. c. 25. 33 Hen. 8. c. 6. One Justice of Peace upon Examination and Proof of the Offence, may commit the Offender till he hath paid the Forfeiture of 100 l. And Persons not qualified by Law, keeping Dogs, Nets, or other Engines to kill Game, being convicted thereof before a Justice of Peace, shall forfeit 5 l. or be sent to the House of Correction for three Months, and the Dogs, Game, &c. shall be taken from them, by the Stat. 5 Ann. No Certiorari shall be allowed to remove any Conviction or other Proceedings on the Stat. 5 Ann. &c. into any Court at Westminster, unless the Party convicted shall become bound to the Party prosecuting with sufficient Sureties, in the Sum of 50 l. to pay the Prosecutor his Costs and Charges, &c. after the Conviction confirmed, or a Proceudo granted. Ibid. In Convictions for keeping of Guns, the Peace is not concerned, but only the Qualification of the Persons that use them; so that it hath been adjudged the Justices of Peace have no general Power to punish the Offenders, for Want of Jurisdiction. 4 Mod. 49. But where a Person was brought before a Justice of Peace for shooting with Hail-shot in a Hand-gun, the Justice committed him to Prison until he should pay 10 l. &c. and having made a Record of his Conviction, it was certified upon the Return of an Habeas Corpus; and it was held, that if the Justice of Peace had pursued the Statute, no Court could discharge the Defendant. W. Jones 170. On a Certiorari to remove a Conviction before a Justice, &c. for carrying a Gun, not being qualified; it appeared upon the Return to be taken before a certain Justice of Peace, without adding, *Necnon ad diversas felonias Transgressiones, audiend. assign. &c.* and it was ruled that this was a good Exception upon a Certiorari to remove an Indictment taken at the Sessions; but not upon a Conviction of this Nature, because the Court can take Notice that the Statutes give the Justices Authority in these Cases. 1 Ventr. 33 Sid. 419. A Person was convicted before a Justice of Peace upon the Statute, for keeping a Gun, not having 100 l. per Annum; and the Conviction being removed into B. R. was quashed, for not saying when the Defendant had not 100 l. a Year; for it might be he had such Estate at the Time when he kept the Gun, though not at

the Conviction, and the Offence and Time ought to be certainly alledged. 3 Mod. 280. The Defendant not having 100 l. per Annum, did shoot in a Gun in February, and was brought before a Justice of Peace in March following, and then by him convicted; and it was held, that as by the Statute no Time was limited when the Offender should be carried before a Justice to be examined, it therefore ought to be *Instantur*; which not being done, the Conviction was quashed. 4 Mod. 147. A Man was indicted for shooting of Game, but it was omitted shewing that he was not worth 100 l. a Year; and it was ordered by the Court, that the Party should shew he was worth so much to discharge him. 2 Keb. 582. If a Person hunt upon the Ground of another, such other Person cannot justify the Killing of his Dogs, as appears by 2 Roll. Abr. 567. But it was otherwise adjudged, Mich. 33 Car. 2. in C. B. 2 Cro. 44. and see 3 Lev. 28. Tho' the Common Law allows the Hunting of Foxes, and other ravenous Beasts of Prey, in the Ground of another Person; yet a Man may not dig and break the Ground to unearthen them, without Licence, which is unlawful; and the Owner of the Ground may maintain an Action of Trespass for it. 2 Roll. 538. Cro. Jac. 321. An Action was brought against a Person for entering another Man's Warren; the Defendant pleaded that there was a Pheasant on his Land, and his Hawk pursued it into the Plaintiff's Ground; it was resolved that this doth not amount to a sufficient justification, for in this Case he can only follow his Hawk, and not take the Game. Poph. 162. though it is said to be otherwise where the Soil of the Plaintiff is not a Warren. 2 Roll. Abr. 567. If a Man in Hunting starts a Hare upon his own Ground, and follows and kills it on the Ground of another, yet still the Hare is his own, because of the fresh Suit; but if a Man starts a Hare upon another Person's Ground, and hunts and kills it there, he is subject to an Action; tho' it is seldom brought, being frivolous. Cro. Car. 553.

Game-keepers, Are those who have the Care of keeping and preserving of the Game, being appointed thereto by Lords of Manors, &c. Lords of Manors or other Royalties, not under the Degree of an Esquire, may by Writing under Hand and Seal, authorize one or more Game-keepers; who may seize Guns, Dogs, Nets, and other Engines, made Use of to kill the Game by such Persons as are prohibited, for the Use of the Lord of the Manor, or otherwise destroy them. 22 & 23 Car. 2. c. 25. Any Lord or Lady of a Manor or Lordship, may empower his or her Game-keeper, within their respective Royalties, to kill Hare, Pheasant, Partridges, &c. But if the said Game-keeper shall under Colour of the said Power, kill and afterwards sell or dispose thereof to any Person whatsoever, without the Consent of the Lord or Lady of such Manor, upon Conviction thereof, he shall be committed to the House of Correction for three Months, there to be kept to hard Labour. 5 Ann. cap. 14. By the Stat. 9 Ann. no Lord or Lady of a Manor shall make, constitute or appoint, above one Person to be Game-keeper within any one Manor, with Power to kill Game; the Name of which Game-keeper so appointed, is to be entered with the Clerk of the Peace of the County wherein the Manor lies: And if any other Game-keeper shall presume to kill any Hare, Pheasant, Partridge, &c. Or if any Game-keeper shall sell any Hare,

Hare, Pheasant, &c. he shall for every Offence incur such Forfeitures, as are inflicted by the Act 5 Ann. And by 3 Geo. c. 11. no Lord of a Manor is to make or appoint any Person to be a Game-keeper, with Power to take and kill Hare, Pheasant, Partridge, or other Game, unless such Person be qualified by Law so to do, or be truly and properly a Servant to the said Lord, or immediately employed to take and kill the Game for the sole Use or Benefit of the said Lord: And any Person not qualified, or not employed as aforesaid, who under Pretence of any Qualification from any Lord of a Manor, shall take or kill any Hare, &c. or shall keep or use any Dogs, to kill and destroy the Game, shall for every such Offence incur such Forfeitures, Pains and Penalties, as are inflicted by the Acts. 5 & 9 Ann. By this last Statute, no Game-keeper can qualify any Person to kill Game, or to keep Guns, Dogs, &c. Vide the Statutes.

Appointment of a Game-keeper by a Lord of a Manor.

TO all People to whom these Presents shall come, J. T. Lord A. Lord of the Manor of B. in the County of, &c. have (by Virtue of several Acts of Parliament lately made for the Preservation of the Game) nominated, authorized and appointed, and by these Presents do nominate, authorize and appoint E. D. of, &c. to be my Game-keeper of and within my Manor of, &c. in the County of, &c. aforesaid, with full Power and Authority, according to the Direction of the Statutes in that Case made, to kill Game for my Use; and to take and seize all such Guns, Greyhounds, Setting-dogs, and other Dogs, Ferrets, Trammels, Hays, or other Nets, Snares or Engines, for the Taking, Killing or Destroying of Hares, Pheasants, Partridges or other Game, as within the said Manor of, &c. and the Precincts thereof, shall be kept or used by any Person or Persons not legally qualified to do the same: And further to act and do all and every Thing and Things which belong to the Office of a Game-keeper, pursuant to the Direction of the said Acts of Parliament, during my Will and Pleasure, for which this shall be his sufficient Warrant. Given under my Hand and Seal, &c.

Gaming, Or Game: unlawful, (Ludos vanos) The Playing at Tables, Dice, Cards, &c. King Ed. 3. in the 39th Year of his Reign, enjoined the Exercise of Shooting and of Artillery, and forbade the Casting of the Bar, the Hand and Foot-balls, Cock-fighting, &c. *alias Ludos vanos*; but no Effect did follow from it, till they were some of them forbidden by Act of Parliament. 11 Rep. 87. Anno 28 Hen. 8. Proclamation was made against all unlawful Games, and Commissions awarded into all the Counties of England for the Execution thereof; so that in all Places, Tables, Dice, Cards and Bowls, were taken and burnt. Stow's Annals 527. And by the Stat. 33 Hen. 8. cap. 9. Justices of Peace, and head Officers in Corporations, are empowered to enter Houses suspected of unlawful Games; and to arrest and imprison the Gamesters, till they give Security not to play for the Future: Also the Persons keeping unlawful Gaming Houses, may be committed by a Justice, until they find Sureties not to keep such Houses; who shall forfeit 40 s. and the Gamesters 6 s. 8 d. No Artificer, Apprentice, Labourer or Servant, shall play at Tables, Tennis, Dice, Cards, Bowls, &c. out of Christmas

Time, on Pain of 20 s. for every Offence; and at Christmas, they are to play in their Master's House, or Presence: But any Nobleman, or Gentleman, having 100 l. per Ann. Estate, may licence his Servants or Family to play within the Precincts of his House, or Garden, at Cards, Dice, Tables, or other Games, as well among themselves, as others repairing thither. Stat. Ibid. This Act is to be proclaimed once a Quarter, in every Market-Town, by the respective Mayors, &c. and at every Assises and Sessions. A Person was convicted of keeping a Cock-Pit; and the Court resolved it to be an unlawful Game, within the Stat. 33 H. 8. and fined him 40 s. a Day. Keb. 510. But to play at Dice, &c. is not unlawful in it self; though prohibited by Statutes to certain Persons, and to be used in certain Places. 2 Ventr. 175. If any Person of what Degree soever, shall by Fraud, Deceit, or unlawful Device, in playing at Cards, Dice, Tables, Bowls, Cock-fighting, Horse-races, Foot-races, or other Games or Pastimes, or bearing a Share in the Stakes, Betting, &c. win any Money, or valuable Thing, he shall forfeit treble the Value, one Moiety to the Crown, and the other to the Party grieved, Prosecution being in six Months; in Default whereof, the last mentioned Moiety is to go to such other Person as will prosecute within one Year, &c. 16 Car. 2. c. 7. And by this Statute, if any Person shall play at any of the said Games, upon Tick, and not for ready Money; and shall lose above 100 l. upon Tick or Credit, at any one Meeting, if the Money be not paid down, his Security taken for it shall be void; and the Winner shall forfeit treble the Value of the Money won; one Moiety to the Crown, and the other Moiety to him that will sue for the same, by Action of Debt, Bill, Plaint or Information, &c. A Watch may be lost at Gaming, which is convertible to, or may be taken for ready Money; and it is not within the Statute. 1 Lev. 244. It has been adjudged, that if A. B. lose 100 l. to one, and afterwards 100 l. to another, upon Tick or Credit, it is not within the Meaning of the Statute, because it is a several Contract; but it would be otherwise on a joint Contract: And if a Person lost 200 l. in ready Money; and 100 l. more, for which he gave his Note, the Note would be good, but all beyond it be void. 1 Salk. 345. A Person brought an Action for 40 l. the Defendant pleaded it was for Money won at Play, and that at the same Time he also lost 66 l. to another; but on Demurrer the Plaintiff had Judgment, for it was held that Losing 106 l. to several Persons at one Time, is not within the Statute 16 Car. 2. unless they are Partners in the Stakes; for then as to the Chance of the Game, they are as one Person. Mich. 13 W. 3. 1 Salk. 345. Where Security is given for Money won at Gaming to a third Person, not being privy to it, or not knowing it was won at Play, it is not within the Statute; as where the Winner being indebted to another, brought the Loser to his Creditor, who entered into Bond to him, &c. 2 Mod. 297. If a Person lose Money at Play, and the Loser give the Winner a Bill for it drawn upon a third Person, who accepts the Bill; though the Acceptance of the Bill is in Nature of a new Contract, yet all is founded on the illegal Winning, and it is for the Security of the Payment of the Money lost; and therefore 'tis within the Statute: But if the Bill be assigned for a valuable Consideration to

a Stran-

a Stranger, such Assignee not being privy to the first Wrong, as was the Winner, it shall not be within the Statute. 1 *Salk.* 344. By the Statute of 9 *Ann. cap.* 14. all Notes, Bills, Bonds, Judgments, Mortgages, or other Securities, given for Money won by playing at Cards, Dice, Tables, Tennis, Bowls, or other Games; or by Betting on the Sides of such as play at any of those Games, or for Repayment of any Money knowingly lent for such Gaming or Betting, shall be void: And where Lands are granted by such Mortgages or Securities, they shall go to the next Person, who ought to have the same as if the Grantor were actually dead, and the Grants had been made to the Person so entitled after the Death of the Person so incumbering the same. If any Person playing at Cards, Dice, or other Game, or Betting, shall lose the Value of 10*l.* at one Time, to one or more Persons, and shall pay the Money, he may recover the Money lost by Action of Debt, within three Months afterwards; and if the Loser do not sue, any other Person may do it and recover the same, and treble the Value with Costs, one Moiety to the Prosecutor, and the other to the Poor: And the Person prosecuted shall answer upon Oath, on preferring a Bill to discover what Sums he hath won. Persons by Fraud, or ill Practice, in playing at Cards, Dice, or by bearing a Share in the Stakes, &c. or by Betting, winning any Sum above 10*l.* shall forfeit five Times the Value of the Thing won, and suffer such Infamy and corporal Punishment, as in Cases of wilful Perjury, being convicted thereof on Indictment or Information; and the Penalty shall be recovered by Action, by such Person as will sue for the same. And if any one shall assault and beat, or challenge to fight any other Person, on Account of Money won by Gaming, upon Conviction thereof, he shall forfeit all his Goods, and suffer Imprisonment for two Years. *Stat. 9 Ann.* Also by this Statute, any two or more Justices of Peace, may cause such Persons to be brought before them, as they suspect to have no visible Estates, &c. to maintain them; and if they do not make it appear, that the principal Part of their Expenses is got by other Means than Gaming, the Justices shall require Securities for their good Behaviour for a Twelve-month; and in Default of such Security, commit them to Prison until they find it: And Playing or Betting during the Time, to the Value of 20*s.* shall be deemed a Breach of Behaviour, and a Forfeiture of their Recognizances. *Ibid.* It was formerly held that *Indebitatus Assumpsit* would lie for Money won at Play; though some Judges were of Opinion it would not, but special Action upon the Case. 2 *Lev.* 118. 2 *Ventr.* 175. But it hath been since adjudged, that it will not lie, for there must be some Work done to maintain Action of Debt: And although a Cast of the Dice, alters the Property of the Money, if it is staked down, it being then a Gift on a Condition precedent, and an *Indebitatus Assumpsit* lies against him who holds the Wager, because it is a Promise in Law to deliver it if won; yet in other Cases, there is no Consideration. 5 *Mod.* 13. *Mod. Caf.* 128. Common Gaming Houses are a common Nuisance in the Eye of the Law; not only because they are great Temptations to Idleness, but as they draw together great Numbers of disorderly Persons, to the Disturbance of the Neighbourhood. 1 *Hawk. P. C.* 198.

Gang-days, (*Dies Lustrationis*) And **Gang-weeks** are mentioned in the Laws of King *Athelstan*. See *Rogation Week*.

Gaol, (*Gaola*, Fr. *Geole*, i. e. *Gaveola*, a Cage for Birds) Is used metaphorically for a Prison. It is a Place wherein a Man is restrained of his Liberty, to answer an Offence done against the Laws: And every County hath two *Gaols*, one for Debtors, which may be any House where the Sheriff pleases; the other for the Peace and Matters of the Crown, which is the *County-Gaol*. *Mod. Inst.* 230. And Justices of Peace may not commit Felons, and other Criminals, to the *Counters* in London, or other Prisons but the common *Gaols*; for they can legally imprison no where but in the common *Gaol*. *Co. Lit.* 9. 119. But the House of Correction, and the *Counters* of the *Sheriffs* of London, are the common Prisons for Offenders for the Breach of the Peace, &c. Sheriffs of Counties are to have the Keeping of the common *Gaols*; except such as are held by Inheritance. 19 *Hen.* 7. 10. And for the Relief of Prisoners in *Gaols*, Justices of Peace in Sessions have Power to tax every Parish in the County, not exceeding 8*d.* per Week, leviable by Constables, and distributed by Collectors, &c. 14 *Eliz. cap.* 5. Offenders committed to Prison, are to bear the Charges of their Conveying to *Gaol*; or on Refusal, their Goods shall be sold for that Purpose, by Virtue of a Justice of Peace's Warrant; and if they have no Goods, a Tax is to be made by Constables, &c. on the Inhabitants of the Parish where the Offenders were apprehended. 3 *Fac.* 1. c. 10. If a *Gaol* be out of Repair, insufficient, &c. the Justices of Peace in the Quarter-Sessions may agree with Workmen for Rebuilding or Repairing it; and by Warrant under their Hands and Seals, order the Sum agreed upon to be levied upon the several Hundreds and Divisions in the County, by a proportionate Rate. 11 & 12 *W.* 3. c. 19.

Gaoler, Is the Master of a Prison; and Sheriffs must make such *Gaolers* for which they will answer: But if there is a Default in the *Gaoler*, Action lies against him for an Escape, &c. 2 *Inst.* 592. In common Cases, the Sheriff, or *Gaoler*, are chargeable at the Discretion of the Party; though the Sheriff is most usually charged. *Wood's Inst.* 76. He who hath the Custody of the *Gaol* wrongfully or of Right, shall be charged with the Escape of Prisoners; and if he that hath the actual Possession be not sufficient, *Respondeat Superior*. *Ibid.* A *Gaoler* kills an unruly Prisoner, it is no Felony; but if it be by hard Usage, it is Murder. 3 *Inst.* 52. And if a *Gaoler* barbarously misuse Prisoners, he may be fined and discharged. *Raym.* 216. If any Person assault a *Gaoler*, for keeping a Prisoner in safe Custody, he may be fined and imprisoned. 1 *Hawk.* 58, 59. Where a *Gaol* is broken by Thieves, the *Gaoler* is answerable; not if it be broken by Enemies. 3 *Inst.* 52. See *Escape, Prisoners*.

Gaol-delivery, The Administration of Justice being originally in the Crown, in former Times our Kings in Person rode through the Realm once in seven Years, to judge of and determine Crimes and Offences: Afterwards *Justices in Eyre* were appointed; and since *Justices of Assize* and *Gaol-delivery*, &c. A Commission of *Gaol-delivery* is a Patent in Nature of a Letter from the King to certain Persons, appointing them his Justices, or two or three of them, and authorizing them to deliver his *Gaol*, at such a Place, of the Prisoners

soners in it; for which Purpose, it commands them to meet at such Place, at the Time they themselves shall appoint; and informs them, that for the same Purpose the King hath commanded his Sheriff of the same County to bring all the Prisoners of the Gaol, and their Attachments before them, at the Day appointed. *Crompt. Jurif.* 125. 4 *Inst.* 168. Justices of Gaol delivery are empowered by the Common Law to proceed upon Indictments of Felony, Trespass, &c. and to order Execution or Reprieve: And they have not only Power to discharge such Prisoners, as upon their Trials shall be acquitted, but also all such against whom, upon Proclamation made, no Evidence appears to indict them; which Justices of Oyer and Terminer, &c. may not do. 2 *Hawk.* 24, 25. But these Justices have nothing to do with any Person not in Custody of the Prison, except in some special Cases; as if some of the Accomplices to a Felony be in such Prison, and some of them out of it, the Justices may receive an Appeal against those who are out of the Prison, as well as those who are in it; which Appeal after the Trial of such Prisoners, shall be removed into B. R. and Process issue from thence against the Rest; but if those out of Prison be omitted in the Appeal, they can never be put into any other, because there can be but one Appeal for one Felony. *Fitz. Coron.* 77. *S. P. C.* 64. Such Justices have no more to do with one let to Mainprise, than if he were at large; for such Person cannot be said to be a Prisoner, since it is not in the Power of his Sureties to detain him in their Custody: And where a Person is bailed, that he is in the Custody of his Sureties, they may detain him where they please. 2 *Hawk. P. C.* 25. Justices of Gaol delivery may punish those who unduly bail Prisoners; as being guilty of a negligent Escape. *S. P. C.* 77. 25 *Ed.* 3. 39. They are also to punish Sheriffs and Gaolers, refusing to take Felons into their Custody from Constables, &c. 4 *Ed.* 3. 10. and have Authority to punish many particular Offences by Statute.

Garb, (Garba, from the Fr. Garbe, alias Gerbe, i. e. fascis) Signifies a Bundle or Sheaf of Corn. *Chart. Forest.* cap. 7. It is sometimes used for all Manner of Corn and Grain, that is usually bound in Sheafs, as *Decima Garbarum*: And in some Places it is taken for an Handful, viz. Garba acervis fit ex triginta peciis. *Fleta*, lib. 2. c. 12. Garba Sagittarum is a Sheaf of Arrows containing twenty-four. *Skene*.

Garble, Is to sever the Dross and Dust from Spice, Drugs, &c. Garbling is the Purifying and Cleansing the Good from the Bad; and may come from the Italian Garbo, i. e. Finery or Neatness; and thence probably we say, when we see a Man in a neat Habit, that he is in a handsome Garb. *Cowel*.

Garbler of Spices, Is an Officer of Antiquity in the City of London, who may enter into any Shop, Warehouse, &c. to view and search Drugs and Spices, and garble, and make clean the same, or see that it be done. 21 *Fac.* 1. c. 19. And all Drugs, &c. are to be cleansed and garbled before sold, on Pain of Forfeiture or the Value. *Stat. Ibid.*

Gartir, (Fr. Garçon) A Groom or Servant. *Pla. Cor.* 21. *Ed.* 1. *Garcio stola*, Groom of the Stole to the King: And in the Irish Language, (according to Toland) Garson is an Appellative for any menial Servant. *Kennet's Gloss.*

Garciones, Are those Servants which follow the Camp. — *Habeat Garcionem suo servitio semper attendantem. Ingulph.* 886. And *Garciones* and *Garcine* is applied to the Baggage of an Army; so called à *Garcionibus seu militum famulis*. *Walling.* 242.

Gard, **Gardian**, &c. See *Guard* and *Guardian*.

Gardebrache, (Fr. Gardebrace) An Armour or Vambrace for the Arm. *Chart. K. Hen.* 5.

Garderobe, (*Garderoba*) A Closet or small Apartment, for hanging up Clothes. See *Wardrobe*.

Gardia, Is a Word used by the Feudists for *Custodia*. *Lib. Feud.* 1.

Gare, A coarse Wool full of staring Hares, such as grows about the Shanks of Sheep. 31 *Ed.* 3. cap. 8.

Garlanda, A Chaplet, Coroner, or Garland.

Garneitura, Viſuals, Arms, and other Implements of War, necessary for the Defence of a Town or Castle. *Matt. Paris. Anno* 1250.

Garnitamentum, Trimming or other Ornaments for Clothes. *Mon. Ang. Tom.* 2. p. 321.

Garnish. To garnish the Heir, signifies in Law to warn the Heir. *Stat.* 27 *Eliz.* c. 3.

Garnishment, (Fr. Garnement, from *Garnir*, i. e. instruire) In a legal Sense intends a Warning given to one for his Appearance, for the better Furnishing of the Cause and Court. For Example; One is sued for the *Detinue* of certain Writings delivered; and the Defendant alledging that they were delivered to him by the Plaintiff, and another Person upon Condition, prays that the other Person may be warned to plead with the Plaintiff, whether the Conditions be performed or not; in this Petition he is said to pray *Garnishment*; which may be interpreted either a Warning of that other, or a Furnishing the Court with all Parties to the Action, whereby it may thoroughly determine the Cause; and until he appears and joins, the Defendant is as it were out of the Court. *Crompt. Jurif.* 211. *F. N. B.* 106. A Writ of *Scire facias* is to go forth against the other Person to appear and plead with the Plaintiff; and when he comes and thus pleads, it is called *Enterpleader*: If the *Garnishee* be returned *Scire feci*, and make Default, Judgment will be had to recover the Writings, and for their Delivery against the Defendant; and if the *Garnishee* appears and pleads, if the Plaintiff recovers, he shall have Damages. *Rast.* 213. 1 *Brown.* 147. *Garnishment* is generally used for a Warning; as *Garnisher le Court* is to warn the Court; and *Reasonable Garnishment* is where a Person hath reasonable Warning. *Kitch.* 6. In the *Stat.* 27 *Eliz.* c. 3. we read, upon a *Garnishment*, or two *Nichils* returned, &c. And further, some Contracts are naked, *sans Garnement*, and some furnished, &c.

Garnishee, Is a third Person or Party in whose Hands Money is attached within the Liberties of the City of London, by Process out of the Sheriff's Court; so called, because he hath had *Garnishment* or Warning, not to pay the Money to the Defendant, but to appear and answer to the Plaintiff Creditor's Suit. Vide *Attachment*.

Garniture, A Furnishing or Providing. *Pat.* 17 *Ed.* 3. Vide *Garneitura*.

Garsumunc, *Gersuma* or *Gersoma*, A Fine or Amerciament. *Domesday*, *Spelm.* Gloss.

Garter, (*Garterium*, Fr. *Fartier*, i. e. *Periscelis*, *Fascia poplitaria*) Signifies in divers Statutes and elsewhere, a special Garter, being the Ensign of

a Noble Order of Knights, instituted by King Ed. 3. called *Knights of the Garter*: It is also taken for the Principal *King at Arms*, among our *English Heralds*; attending upon the Knights thereof, created by King Hen. 5. and mentioned in the Stat. 14 Car. 2. c. 33.

Garth, A little Backside or Clofe in the North of England; being an ancient British Word, as *Gardd* in that Language is *Garden*, and pronounced and writ *Garth*; also a *Dam* or *Wear*, &c.

Garthman. As there are *Fishgarths* or *Wears*, for catching of Fish, so there are *Garthmen*; for by Statute it is ordained, that no Fisher nor *Garthman* shall use any Nets or Engines to destroy the Fry of Fish, &c. 17 R. 2. c. 9. And this Word is supposed to be derived from the Scottish *Gart*, which signifieth enforced or compelled; and Fish are forced by the *Wear* to pass in a Loop, where they are taken.

Gassaldus, A Governor of a Country, whose Office was only temporary, and who had Jurisdiction over the common People. *Blount*.

Gate, At the End of the Names of Places, is taken for a Way or Path, from the *Geat*, i. e. *Porta*, and sometimes for a *Gate*.

Gabel, (Sax. *Gafel*) Tribute, Toll, Custom or yearly Revenue; of which we had in old Times several Kinds. See *Gabel*.

Gavelet, (*Gaveletum*) Is an ancient and special Kind of *Cessavit* used in *Kent*, where the Custom of *Gavelkind* continues, whereby a Tenant if he with-holds his Rents and Services due to the Lord, shall forfeit his Land: It was intended where no Distress could be found on the Premises, so that the Lord might seize the Land it self in the Name of a Distress, and keep it a Year and a Day; within which Time, if the Tenant came and paid his Rent, he was admitted to his Tenement to hold it as before; but if not, the Lord might enter and enjoy the same. 10 H. 3. 10 Ed. 2. The Lord was to seek by the Award of his Court, from three Weeks to three Weeks, to find some Distress upon the Land or Tenement, until the fourth Court; and if in that Time he could find none, at the fourth Court it was awarded that the Tenement should be seized as a Distress, and kept a Year and a Day without manuring; and if the Tenant did not in that Time redeem it, by paying the Rent, and making Amends to the Lord, the Lord having pronounced the same at the next County-Court, was awarded by his Court to enter and manure the Tenement as his own: And if the Tenement would afterwards have it again, he was to make Agreement with the Lord. *Fitz. Cess. 60. Terms de Ley 373. Gaveletum* is as much as to say to cease, or to let to pay the Rent; and *Consuetudo de Gavelet* was not a Rent or Service, but a Rent or Service with-held, denied or detained, causing the Forfeiture of the Tenement. *Co. Lit.*

Gavelet in London, (*Breve de Gaveleto* in London, *pro redditu ibidem quia Tenementa fuerunt indistricibilia*) Is a Writ used in the *Hustings* of London; and the Statute of *Gavelet*, 10 Ed. 2. gives this Writ to Lords of Rents in the City of London, as well as in *Kent*: Here the Parties, Tenant and Demandant, appear by *Scire facias*, to shew Cause why the one should not have his Tenement again on Payment of his Rent, or the other recover the Lands, on Default thereof. *Practif. Solic. 419.*

Gabelgeld, Is applied to the Payment of Tribute or Toll. *Mon. Ang. Tom. 3.*

Gavelkind, Is said by *Lambert* to be compounded of three Saxon Words, *Gyfe*, *Eal*, *Kyn*, *omnibus cognatione proximis data. Verstegan* calls it *Gavelkind*, *quasi Give all kind*, that is to each Child his Part: And *Taylor* in his History of *Gavelkind*, derives it from the British *Gavel*, i. e. a Hold or Tenure; and *Cenned*, *Generatio aut familia*; and so *Gavel cenedb* might signify *Tenuva Generationis*. But whatever is the Etymology, it signifies 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; or the Land of the Brother among all the Brethren, if he have no Issue of his own. *Litt. 210.* In the Time of our Saxon Ancestors, the Inheritance of Lands did not descend to the eldest Son as now, but to all alike; from whence came the Custom of *Gavelkind*: And the Reason why this Custom was retained in *Kent*, is because the *Kentishmen* were not conquered by the Normans in the Time of *Will. 1.* For *Stigand*, then Archbishop of *Canterbury*, who commanded the Forces in that Country, ordered every Man to march with Boughs in their Hands, and meeting *William*, they acquainted him with their Resolution of standing and falling in Defence of the Laws of their Country; and he imagining himself to be encompassed in a Wood, granted that they and their Posterity should enjoy their Rights, Liberties and Laws; some of which, particularly this of *Gavelkind* continues to this Day. *Blount*. All the Lands of England were of the Nature of *Gavelkind* before the Conquest, and descended to all the Issue equally; but after the Conquest, (as it is called) when *Knights-Service* was introduced, the Descent was restrained to the eldest Son, for the Preservation of the Tenure. *Lamb. 167. 3 Salk. 129.* In the Reign of *H. 6.* there were not above thirty or forty Persons in all *Kent* that held by any other Tenure than this of *Gavelkind*; which was afterwards altered upon the Petition of divers *Kentish* Gentlemen, in much of the Land of that County, so as to be descendible to the eldest Son, according to the Course of the Common Law, by the Stat. 31 H. 8. cap. 3. But the Custom to devise *Gavelkind* Land, and the other Qualities and Customs remain. 1 *Inst. 140.* By the Statute 34 & 35 H. 8. cap. 26. all *Gavelkind* Lands in *Wales* were made descendible to the Heir, according to the Common Law; whereby it appears, that the Tenure of *Gavelkind* was likewise in that Principality. By the customary Tenure called *Gavelkind*, which is an ancient *Socage* Tenure, the Lands are dividable between the Heirs Male, who shall inherit as Sisters do at the Common Law; and when one Brother dies without Issue, all the other Brothers are to inherit. 1 *Inst. 140.* But a Father having *Gavelkind* Lands, had three Sons, one of them died in the Life-time of his Father, leaving Issue a Daughter; and it was held that the Daughter shall inherit the Part of her Father *jure Representationis*, and yet she is not within the Words of the Custom of dividing the Land between the Heirs Male, for she is the Daughter of a Male, and Heir by Representation. 1 *Salk. 243.* The Heir at the Age of fifteen Years, it is said, may give and sell his Lands in *Gavelkind*, and shall inherit. *Co. Lit. 111.* The Custom of *Gavelkind* is not altered, though a Fine be levied of

of the Lands at Common Law ; because 'tis a Custom that runs with the Land. 6 Ed. 6. Land in *Gavelkind* was devised to the Husband and Wife for Life, Remainder to the next Heir Male of their Bodies, &c. They had three Sons, and it was adjudged that the eldest Son should not have the Whole. *Dyer* 135. A Donee in Tail, of *Gavelkind* Lands, had Issue four Sons ; and it was held, that all should inherit : But if a Lease for Life is made of *Gavelkind*, Remainder to the right Heirs of A. B. who hath Issue four Sons, in this Case the eldest Son shall inherit the Remainder ; because in Case of Purchase, there can be but one right Heir. 1 Rep. 103. If *Gavelkind* Lands come to the Crown, and are regranted to hold in *Capite*, &c. the Land shall descend to all the Heirs Males as *Gavelkind*. 4 & 5 Mar. 2. *Nell. Abr.* 895. A Wife shall be endowed of *Gavelkind* Land, of a Moiety of the Land whereof her Husband died seised, during her Widowhood. 1 Inst. 111. And it has been adjudged, that the Widow cannot have Election to demand her Thirds or Dower at Common Law, so as to avoid the Custom, and marry a second Husband, by which she shall lose her Dower. *Moor* 260. But see 1 Leon. 62. the Husband shall be Tenant by the Curtesy of Half the *Gavelkind* Lands of the Wife, during the Time he continues unmarried, without having any Issue by his Wife ; but if he marry, he shall forfeit his Tenancy by the Curtesy. 1 Inst. 111. If the Husband had Issue by his Wife, and she die, he shall be Tenant by the Curtesy of the whole Land ; and tho' he do marry, he shall not forfeit his Tenancy. *Mich.* 21 Car. B. R. 1 *Lill. Abr.* 649. Although a Father be attainted of Treason or Felony, and hanged, the Heir of *Gavelkind* Lands shall inherit ; for the Custom is the Father to the Bough, and the Son to the Plough. *Doct. & Student*, c. 10. A Rent in Fee granted out of *Gavelkind* Land, shall descend in *Gavelkind* to all the Heirs Male, as the Lands would have done ; it being of the same Nature with the Land it self. 2 Lev. 138. 1 Mod. 97. All Lands in *Kent* shall be taken to be *Gavelkind*, except those which are disgavelled by particular Statutes. 1 Mod. 98. If Lands are alleged to be in *Kent*, it shall be intended that they are *Gavelkind* ; if the contrary doth not appear. 2 Sid. 153. By *Hale* Chief Justice, *Gavelkind* Law is the Law of *Kent*, and is never pleaded, but presumed : And it has been held, that the superior Courts may take Notice of *Gavelkind* generally, without Pleading, though not of the special Custom of devising it, &c. which ought to be pleaded specially : But it appears by some of our Books, that the Court cannot judicially take Notice of the Custom of *Gavelkind*, without pleading the same ; and that it ought to be set forth in the Declaration, &c. 1 Mod. 98. *Cro. Car.* 465. 1 *Lutw.* 236, 754.

Gavelman, Is a Tenant liable to Tribute. — *Villani de*, &c. qui vocantur *Gavelmanni*. *Somn. of Gavelkind*, pag. 33. And *Gavelling Men* were Tenants who paid a reserved Rent, besides some customary Duties to be done by them. *Cartular. Abbat. Glaston. M.S.* fol. 38.

Gavelmed, The Duty or Work of mowing Grass, or cutting of Meadow Land, required by the Lord from his customary Tenants. *Consuetudo falcandi quæ vocatur Gavelmed*. *Somn.*

Gabelrip, Bedreap or Duty of Reaping, at the Command of the Lord. — *De Consuetudine*

metendi 40 acras & dimid. de Gave.rip in Autumno 40. Sol. & sex Denar.

Gabelsefter, (Sax.) *Sextarius Vectigalis*, Is a certain Measure of Rent-Ale : And among the Articles to be charged on the Stewards and Bailiffs of the Manors belonging to the Church of *Canterbury* in *Kent*, according to which they were to be accountable, this of Old was one : *De Gabelsefter cujuslibet Bracini braciati infra Libertatem Maneriorum, viz. unam Lagenam & dimidiam Cervisie*. This Duty elsewhere occurs under the Name of *Tolsefter* ; in Lieu whereof the Abbot of *Abington* was wont of Custom to receive the Penny mentioned by *Selden* in his Dissertation annexed to *Fleta*, cap. 8. Nor doth it differ from what is called *Oakgavel* in the Glossary at the End of *Hen. 1. Laws. Sax. Dist.*

Gabelswerk, (Sax.) Was either *Manu-opera*, by the Hands and Person of the Tenant, or *Carropera* by his Carts or Carriages. *Philips of Purvey*.

Gaugeum, A Gauge or Gauging, done by the Gauger ; and the true *English Gauge* is mentioned *Rot. Parl.* 35 Ed. 1.

Gauger, (*Gaugeator*, Fr. *Gauchir*, i. e. in *gyrum torquere*) Signifies an Officer appointed by the King, to examine all Tuns, Pipes, Hogsheds, Barrels and Tercians of Wine, Oil, Honey, &c. and to give them a Mark of Allowance, as containing lawful Measure, before they are sold in any Place : And because his Mark is a Circle made with an Iron Instrument for that Purpose, it seems to have its Name from thence. Of this Officer and his Office, we have many Statutes ; as by 27 Ed. 3. cap. 8. all Wines, &c. imported, are to be gauged by the King's Gaugers, or their Deputies : By 31 Ed. 3. c. 5. Selling Wine before gauged, incurs Forfeiture or the Value. And by 23 H. 6. cap. 16. the *Gauge-Penny* is to be paid Gaugers, on gauging Wines. The 31 El. ordains, that Beer, &c. imported, shall be gauged by the Master and Wardens of the Coopers Company. See 12 Car. 2. c. 4. *Vide Excise*.

Gauge-penny, The Gauger's Fee, allowed by 23 H. 6.

Geasperia. In a Charter of the Privileges of *New-Castle upon Tyne*, renewed Anno 30 Eliz. we find *Sturgiones, Porpecias, (i. e. Porpoises) Delphinus, Geaspecies, (viz. Grampois) &c.*

Geburship, (*Geburscipa*) Neighbourhood, or adjoining District. *Leg. Edw. Confess.* c. 1.

Geburus, A Country Inhabitant of the same *Gebureship* or Village ; from the Sax. *Gebure*, a Carl, Ploughman, or Farmer. *Convel*.

Geld, (*Geldum*) *Multa, Compensatio Delicti & Pretium rei*. Hence in our ancient Laws, *Wergild* was used for the Value or Price of a Man slain ; and *Orgild* of a Beast : Likewise Money or Tribute ; for it is said, *Et sint quieti de Geldis, Danegeldis, Horngeldis, Blodwita, &c.* *Chart. Rich. 2. Priorat. de H. in Devon. Pat. 5. Ed. 4. Angeld* is the single Value of a Thing ; *Twigeld*, double Value, &c.

Geldable, (*Geldabilis*) That is liable to pay Tax or Tribute. *Cambden* dividing *Suffolk* into three Parts, calls the first *Geldable*, because subject to Taxes ; from which the other two Parts were exempt, as being *Ecclesia Donata*. This Word is mentioned in the Stat. 27 H. 8. cap. 26. But in an old *M.S.* it is expounded to be that Land or Lordship, which is *sub districtione Curie vicecom.* 2 Inst. 701. — *Fur. dicunt quod Prior de Sempringham tenet tres Carucatas terra in S. &*

non sunt Geldabiles. Ex Rot. Hundr. in Turr. Lond. Ann. 3 Ed. 1.

Gemote, (Sax. i. e. *Conventus*) *Omnis homo pacem habeat eundo ad Gemotum & rediens de Gemoto, Nisi probatus fur fuerit. Leg. Edw. Conf. c. 35. See Mote.*

Geneath, *Villanus*, as *Regis Geneath* is the King's Villain. *LL. Inq. M.S. c. 19.*

General Issue, Is a Plea to the Fact of Not guilty, in criminal Cases, in Order to Trial, by the Country, or by Peers, &c. *H. P. C. 254.*

Generatio. When an old Abby or religious House had spread it self into many Colonies or depending Cells, that Issue or Off-spring of the Mother Monastery was called *Generatio, quasi proles & soboles Matricis Domus. Annual. Waverl. 1232.*

Generale. The single Commons, or ordinary Provision of the Religious, were termed *Generale*, as their general Allowance, distinguished from their *Pietantie* or *Pittances*; which upon extraordinary Occasions were thrown in as Overcommons. In the Observances of the *Cluniac Monks*, they are described thus: *Generale appellamus quod singulis in singulis datur scutellis: Pietantia quod in uno scutella duobus.* They are also described amongst other Customs. *Cartular. Glaston. M.S. fol. 10.*

Generals of Orders, Chiefs of the several Orders of *Monks, Friars*, and other religious Societies.

Gentleman, (*Generosus*) Is compounded of two Languages, from the Fr. *Gentil*, i. e. *Honestus, vel honesto loco natus*, and the Sax. *Mon*, a Man; as if you would say a Man well born. The *Italians* call those *Gentil homini* whom we stile *Gentlemen*; the *French* likewise distinguish such by the Name of *Gentilhomme*; And the *Spaniards* keep up to the Meaning of the Word, calling him *Hidalgo* or *Hijo d'alga*, who is the Son of a Man of Account; so that *Gentlemen* are such whom their Blood or Race doth make known. Under the Denomination of *Gentleman*, are comprised all above Yeomen; whereby Noblemen are truly called *Gentlemen. Smith de Rep. Ang. lib. 1. cap. 20, 21.* A *Gentleman* is generally defined to be one, who without any Title, bears a *Coat of Arms*, or whose Ancestors have been *Freemen*; and by the *Coat* that a *Gentleman* giveth, he is known to be, or not to be descended from those of his Name, that lived many hundred Years since. *Cicero* in his *Topicks*, speaks thus of this Subject; *Gentiles sunt, qui inter se eodem sunt nomine ab ingenuis oriundi, quorum majorum nemo servitutem servavit, qui capite non sunt diminuti.* There is said to be a *Gentleman* by Office, and in Reputation, as well as those that are born such. *2 Inst. 668.* And we read that *J. Kingston* was made a *Gentleman* by King R. 2. *Pat. 13 R. 2. par. 1. Gentilis Homo* for a *Gentleman*, was adjudged a good Addition. *Hill. 27 Ed. 3.* But the Addition of *Esquire*, or *Gentleman*, was rare before 1 H. 5. though that of *Knight* is ancient. *2 Inst. 595, 667.*

Gentlewoman, (*Generosa*) Is a good Addition for the Estate and Degree of a Woman; as *Generosus* is for that of a Man; and if a *Gentlewoman* be named *Spinster* in any Original Writ, Appeal, &c. it hath been held that she may abate, and quash the same. *2 Inst. 668.*

Gentility, (*Gentilitas*) Is lost by Attainder of Treason, or Felony, by which Persons become base and ignoble, &c.

Genu, Is a Generation. — *Successit Ethelbaldo Offa quinto Genu. Malmsb. lib. 1. c. 4.*

Genus, (*Lat.*) The general Stock, Extraction, &c. as the Word Office in Law is the *Genus*, or general; but the Sheriff, &c. is the *Species* of it, or Particular. *2 Lill. Abr. 528. See Statute.*

George Noble, A Piece of Gold, current at six Shillings and eight Pence, in the Reign of King H. 8. *Lownd's Ess. upon Coins, p. 41.*

Gerfuma, Mentioned in *Mon. Ang. Tom. 2. p. 973. See Garsummune.*

Gessu & Fama, An ancient Writ where a Person's good Behaviour was impeached, now out of Use. *Lamb. Eiren. lib. 4. cap. 14. See Good A-bearing.*

Gewineda, (*Sax.*) Was used for the publick Convention of the People, to decide a Cause: *Et pax quam Aldermannus Regis in quinque Burgorum Gewineda dabit emendatur 12. libris. LL. Ethelred. cap. 1.*

Gewitnissa, The Giving of Evidence. *Leg. Ethel. cap. 1. apud Brompton.*

Gift, (*Donum*) Is a Conveyance, which passeth either Lands or Goods. And a *Gift* is of a larger Extent than a *Grant*, being applied to Things moveable and immoveable; yet as to Things immoveable, when taken strictly, it is applicable only to Lands and Tenements given in Tail; but *Gift* and *Grant* are often confounded. *Wood's Inst. 260.* A *Gift* may be by *Deed*, in *Word* or in *Law*: All Goods and Chattels personal may be given without *Deed*, except in some special Cases; and a *Free Gift* is good without a Consideration. *Perk. 57.* But a general *Gift* of all one's Goods, without any Exception, tho' this be by *Deed*, it is liable to Suspicion as fraudulent, to deceive Creditors; for by giving all a Man's Goods, there seems to be a secret Trust and Confidence implied, that the Donee shall deal favourably with the Donor, in Respect to his Circumstances. *3 Rep. 80.* And therefore whenever any *Gift* shall be made, in Satisfaction of a Debt, it is good to make it in a publick Manner before Neighbours; that the Goods and Chattels be appraised to the full Value, and the *Gift* expressly made in Satisfaction of the Debt; and that on the *Gift*, the Donee take Possession of them, &c. *Hob. 230.* If a Man intending to give a Jewel to another, say to him, *Here I give you my Ring, with the Ruby in it, &c.* and with his own Hand delivers it to the Party; this will be a good *Gift*, notwithstanding the Ring should bear any other Jewel, being delivered by the Party himself to the Person to whom given. *Bac. Max. 87.* And if a Person give a Horse to another, being present, and bid him take the Horse, tho' he call the Man by a wrong Name, it will be a good *Gift*: But it would be otherwise if the Horse was delivered for the Use of another Person, being absent; there a Mistake of the Name would alter the Case. *Ibid.* As to *Gifts in Law*, when a Man is married to a Woman, all her Goods and Chattels by *Gift* in Law become the Husband's; but then he is liable for her Debts: So if a Man is made Executor of a Will, the Law gives him all the Goods and Chattels of the Testator, subject to the Testator's Debts: And if a Person make a Suit of Cloaths for another, and put it upon him to use and wear, this will be a *Gift* or *Grant* in Law of the Apparel made. *1 Inst. 351.* The Words *Give* and *Grant*, in Deeds of *Gift*, &c. of Things which lie in *Grant*, will amount

amount unto a Grant, a Feoffment, a Gift, Release, Confirmation or Surrender, at the Election of the Party, and may be pleaded as a Gift, or Grant, Release, &c. at his Election. 1 Inst. 301. And Words shall be marshalled so in Gifts and Grants, that where they cannot take Effect according to the Letter, the Law will make such Construction as the Gift by Possibility may take Effect: *Benigna sunt Interpretationes Chartarum propter simplicitatem Laicorum, ut res, &c.* Co. Lit. 183. Gifts and Grants are said to be alike in Nature, and equal in Power.

Form of a Deed of Gift of Lands and Tenements.

THIS Indenture, made the Day and Year, &c. Between A. B. of, &c. of the one Part, and T. B. of, &c. Son of the said A. B. of the other Part, Witnesseth, That the said A. B. as well for and in Consideration of the natural Love and Affection which he hath and beareth unto the said T. B. his Son, as also for the better Maintenance and Preferment of the said T. B. Hath given, granted, aliened, enfeoffed and confirmed, and by these Presents doth give, grant, alien, enfeoff and confirm, unto the said T. B. All that Messuage or Tenement, situate, &c. with all and singular its Appurtenances, and all Houses, Outhouses, Lands, &c. And the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises; and all the Estate, Right, Title, Interest, Property, Claim and Demand whatsoever of him the said A. B. of, in, and to the said Messuage or Tenement, Lands and Premises, and of, in, and to every Part and Parcel thereof, with the Appurtenances; and all Deeds, Evidences and Writings concerning the said Premises only, now in the Hands or Custody of the said A. B. or which he may get or come by without Suit in Law, To have and to hold the said Messuage or Tenement, Lands and Premises hereby given and granted, or mentioned or intended to be given and granted unto the said T. B. his Heirs and Assigns, to the only proper Use and Beboof of him the said T. B. his Heirs and Assigns for ever. And the said A. B. for himself, his Heirs, Executors and Administrators, doth Covenant and Grant to and with the said T. B. his Heirs and Assigns by these Presents, that he the said T. B. his Heirs and Assigns, shall and lawfully may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage, Tenement, Lands, Hereditaments and Premises hereby given and granted, or mentioned or intended so to be, with their Appurtenances, free, clear and discharged of and from all former and other Gifts, Grants, Bargains and Sales, Feoffments, Jointures, Dowers, Estates, Entails, Rents, Rent-Charges, Arrerages of Rents, Statutes, Judgments, Recognizances, Statutes Merchant and of the Staple, Extents, and of and from all other Titles, Troubles, Charges and Incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done or suffered, by him the said A. B. his Heirs, Executors or Administrators, or any other Person or Persons lawfully claiming or to claim by, from or under him, them, or any or either of them. In Witness, &c.

A Gift of Goods and Chattels.

TO all People, &c. I A. B. of, &c. send greeting. Know ye, That I the said A. B. for and in Consideration of the natural Love and Affection which I have and bear unto my beloved Brother L. B. of, &c. and for divers other good Causes and

Considerations me hereunto moving, have given and granted, and by these Presents do give and grant unto the said L. B. all and singular my Goods, Chattels, Plate, Jewels, Leases and Personal Estate whatsoever, in whose Hands, Custody or Possession soever they be, within the Kingdom of Great Britain, &c. To have, hold and enjoy all and singular the said Goods, Chattels, and Personal Estate aforesaid, unto the said L. B. his Executors, Administrators and Assigns, to the only proper Use and Beboof of him the said L. B. his Executors, Administrators and Assigns for ever. And I the said A. B. all and singular the aforesaid Goods, Chattels and Premises, to the said L. B. his Executors, Administrators and Assigns, against all Persons whatsoever, shall and will Warrant and for ever Defend by these Presents. In Witness, &c.

A Deed of Gift of Lands or Goods may be made upon Condition; and on a Gift or Sale of Goods, the Delivery of 6 d. or a Spoon, &c. is a good Seisin of the Whole. *Wood's Inst. 239.*

Gifta Aquæ, The Stream of Water to a Mill. — Molendinum & vivarium cum Gifta Aquæ. Mon. Angl. Tom. 3.

Gigmills, A Kind of Fulling Mills for Fulling and Burling of Woollen Cloth, prohibited Anno 5 & 6 Ed. 6: c. 22.

Gild, A Fraternity or Company, &c. See Guild.

Girnelled, Denied, from the Sax. Gwernan, i. c. Denegare.

Gisarms, or Guisarmes, An Halbert or Hand-Axe, from the Lat. Bis Arma, because it wounds on both Sides. Skene — Est Armorum genus longo manubrio & porrecta cuspid. Spelm. It is mentioned in the Stat. 13 Ed. 1. c. 6.

Gladiosum, A little Sword or Dagger; also a Kind of Sedge. Matt. Paris. 1206.

Gladius. Fus Gladii, Is mentioned in our Latin Authors, and the Norman Laws; and it signifies a supream Jurisdiction. Camd. And tis said that from hence, at the Creation of an Earl, he is Gladio succinctus; to signify that he had a Jurisdiction over the County of which he was made Earl. See Pleas of the Sword.

Glaive, (Fr.) A Sword; also a Lance or Horseman's Staff. Gleyre was one of the Weapons allowed the contending Parties in a Trial by Combat. Orig. Jurisd. 79.

Glavea, (Spiculum) A Hand-Dart — Quod cum vidisset quispiam in Castello, &c. agnovisset telo gracili quod Glavea dicitur, &c. Blount.

Glebe, (Gleba) Is Church-land; Dos vel Terræ ad Ecclesiam pertinens. Lynde-wode says, Gleba est terra in qua consistit Dos Ecclesiæ; generaliter tamen sumitur pro solo vel pro terra culta. We most commonly take it for the Land belonging to a Parish-Church, besides the Tithes. If any Parson, Vicar, &c. hath caused any of his Glebe Lands to be manured and sown at his own Costs, with any Corn or Grain, the Incumbents may devise all the Profits and Corn growing upon the said Glebe by Will. Stat. 28 H. 8. c. 11. And if a Parson sows his Glebe and dies, the Executors shall have the Corn sown by the Testator. But if the Glebe be in the Hands of a Tenant, and the Parson dies after Severance of the Corn, and before his Rent due; it is said neither the Parson's Executors, or the Successor, can claim the Rent, but the Tenant may retain it, and also the Crop, unless there be a special Covenant for the Payment to the Parson's Executor proportionably, &c.

Ec. Wood's Inst. 163. There is a Writ grounded upon the Stat. *Articuli Cleri*, cap. 6. where a Parson is distrained in his Glebe Lands by Sheriffs, or other Officers; against whom Attachment shall issue. *New Nat. Br.* 386, 387.

Glebariæ, Turfs digged out of the Ground.—*In Sylvis, Campis, Semitis, Moris, Glebariis, &c.*

Glistrywa, An old Saxon Word for a Fraternity. *Leg. Adelftan.* cap. 12.

Glomerells, Commissaries appointed to determine Differences between Scholars of a School or University, and the Townsmen of the Place: In the Edict of the Bishop of Ely, Anno 1276, there is Mention of the Master of the Glomerels.

Glove-Silver, Money customarily given to Servants to buy them Gloves, as an Encouragement of their Labours.—*Inter antiquas consuetudines Abbatie de Sancto Edmundo, capiunt etiam quidem ex predictis. Servientibus Glove-Silver in Festo Sti. Petri quarum hæc sunt Nomina, Clericus Cellerarii 2. Denar. Armiger Cellerarii 11. Den. Grangiaris 11. Den. Vaccarius 1. Den.*—*Et Cartular. S. Edmundi M.S. 323. Glove-Money* has been also applied to extraordinary Rewards given to Officers of Courts, &c.

Go. This Word is sometimes used in a special Signification, as to go without Day, is to be dismissed the Court; so in old Phrase to go to God. *Broke, Kitch.* 190.

God-bote, (*Sax.*) An Ecclesiastical or Church Fine, for Crimes and Offences against God.

God-gild, That which is offered to God, or his Service. *Sax.*

Golda, A Mine, according to Blount. *Concessionem quam idem Thomas fecit, de Terris suis & Terris tenentium suorum, à Goldis mundandi per se & suos secundum consuetudinem, &c.* *Mon. Angl. Tom.* 2. pag. 610.

Goldsmiths. Gold and Silver Manufactures are to be assayed by the Warden of the Goldsmiths Company in London, and mark'd; and Gold is to be of a certain Touch. 28 E. 1. c. 20. Goldsmiths must have their own Marks on Plate, after the Surveyors have made their Assay; and false Metal shall be seized, and forfeited to the King. 37 E. 3, 7. Work of Silver is to be as fine as Sterling, except what Solder is necessary; and marking other Work, incurs a Forfeiture of double Value. 2 H. 6. c. 14. Goldsmiths shall not take above. 1 s. the Ounce of Gold, besides the Fashion, more than the Buyer may be allowed for it at the King's Exchange: And the Ware of Goldsmiths sold or exchanged is to have eleven Ounces and two-penny Weight of Silver, &c. in the Pound, on Pain of Forfeiture. 5 Eliz. 15. Molten Silver is not to be transported by Goldsmiths before it is mark'd at Goldsmiths Hall, and a Certificate made thereof on Oath; and Officers of the Customs may seize Silver shipp'd otherwise. 6 & 7. W. 3. c. 17. The Cities of York, Exeter, Bristol, Chester, Norwich, and Town of Newcastle, are appointed Places for Assaying and marking wrought Plate of Goldsmiths, &c. 12 W. 3, 4. 1 Ann. c. 9.

Goldwith, or **Goldwich**, Perhaps a golden Mulct; in the Records of the Tower, there is Mention of *Consuetudo vocata Goldwith vel Goldwich*.

Goliardus, Is a Jester or Buffoon, mentioned in *Matt. Paris.* 1229.

Good Abearing, (*Bonus Gestus*) Signifies an exact Carriage or Behaviour of a Subject towards the King and the People; whereunto some Persons

upon their Misbehaviour are bound: And he that is bound to this, is said to be more strictly bound than to the Peace; because where the Peace is not broken, the Surety *de Bono Gestu* may be forfeited by the Number of a Man's Company, or by their Weapons. *Lamb. Eiren. lib. 2. cap. 2. 34 Ed. 3. c. 1.*

Good Behaviour, Surety for the Good Behaviour is Surety for the Peace, and differs very little from Good Abearing. A Justice of Peace may demand it *ex Officio*, according to his Discretion, where he sees Cause; or at the Request of any other under the King's Protection: His Warrant also is to be issued when he is commanded to do it by Writ of *Supplicavit* out of the Chancery or B. R. It may be granted against any Persons whatsoever, under the Degree of Nobility, against whom Complaint is to be made in the Court of Chancery, or in B. R. and they may be bound there to keep the Peace. *Dalt.* 267, 268. The Warrant of the Justice to keep the Peace, is to be granted against Infants, and Feme Coverts, who ought to find Security by their Friends, and not be bound themselves; it may be had against the Husband, at the Request of the Wife, and against the Wife, at the Request of the Husband; against a Lunatick, that hath sometimes lucid Intervals; (but not against a *Non Compos*, against or for one attainted of Felony, &c.) against any Person affronting a Judge, Justice of Peace, &c. and in a Word against all Persons that are suspected to break the Peace, or that do break it by Affrays, Assaults, Battery, Wounding, Fighting, Quarrelling, threatening to beat another, or to burn his House, Rioters, &c. and in all Cases, where there is a future Danger. *Dalt.* 263, 264. 4 *Inst.* 180. Also one may be bound to his Good Behaviour for a scandalous Way of Living, for keeping Bawdy-Houses or haunting them, Gaming-Houses, &c. and so may common Drunkards, Whoremongers, and common Whores, Night-walkers, and those that live idly, Cheats, Libellers, &c. *Dalt.* 292, 293. A Woman who is a common Scold may be bound to the Good Behaviour: But the Stat. 34 Ed. 3. c. 1. only relates to Misbehaviours against the Publick Peace; so that it ought not to be demanded for private Defamation of another, but for Words only, which tend to the Breach of the Peace, or terrifying others, or unto Sedition, &c. 4 *Inst.* 181. 1 *Lill. Abr.* 650, 651. A Justice of Peace may not bind any Person to the Good Behaviour, upon a general Accusation made against the Party. *Pasch.* 23 Car. B. R. He that demands Security for the Peace, must make Oath before the Justice of Blows given, or that he stands in Fear of his Life or some bodily Hurt, or that he fears the Party will burn his House, &c. and that he doth not demand the Peace of him for any Malice or Revenge, but for his own Safety; whereupon the Justice grants his Warrant to bring the Party before him, and then Security is to be given by Recognizance for the Good Behaviour; or on Default thereof, the Party shall be committed to Gaol. 1 *Inst.* 293. 4 *Inst.* 180. and when Security for the Peace is given to the King by Recognizance in a Penal Sum, if the Peace is afterwards broken by any Act of the Party, or by his Procuring another to break it, &c. it is a Forfeiture of the Recognizance, which being brought to the next Sessions of the Peace by the Justice, the Justices in Sessions are to certify the Recognizance, with the Cause of For-

Forfeiture, into the B. R. or the Exchequer, &c. from whence Process shall go out against the Offender. *Dalt.* 277, 296. Justices of Peace, under Colour of their Authority, use to require the Good Behaviour of every one at their Pleasure; and if they refused, then to commit them to Prison: But if they have not good Cause to require Sureties for Good Behaviour, and the Party refusing to give it is committed to Prison, false Imprisonment well lies; for the Statute which gives the Justices that Authority, is principally against Vagabonds. 1 *Lill.* 651. The Surety for the Peace or Good Behaviour may be released by the Justice that took it, and the Party upon whose Complaint it was granted. *Dalt.* 296. But it is said such a Recognizance may not be discharged by Release of the Party himself; because the Cognisor is bound to the King, and to keep the Peace in general; tho' by the Death of the King, or of the Principal Cognisor, (not of the Sureties) it is discharged of Course. *Roll Rep.* 199.

Goods and Chattels, (*Bona & Catalla*) Personal, &c. See *Chattels*.

Goole, (Fr. *Goulet*) A Breach in a Sea Bank or Wall; or a Passage worn by the Flux and Reflux of the Sea. 16 & 17 *Car.* 2. c. 11.

Gorge, Gort, (From the Fr. *Gort*) A Wear: By Stat. 25 *Ed.* 3. c. 4. it is ordained, that all Gorges, Mills, Weirs, &c. levied and set up, whereby the King's Ships and Boats are disturbed and cannot pass in any River, shall be utterly pulled down, without being renewed. Sir Edward Coke derives this Word from *Gurges*, a deep Pit of Water, and calls it a *Gors* or *Gulf*; but this seems to be a Mistake, for in *Domesday* it is called *Gourt* and *Gort*, the French Word for a Wear. *Co. Lit.* 5.

Gore, A narrow Slip of Ground.—*Dua rota terr. jacent juxta viam scilicet le Gores super*, &c. *Paroch. Antiq.* 393.

Gote, (Sax. *Geotan*, i. e. *Fundere*) A Ditch, Sluice or Gutter, mentioned in the 23 *H.* 8. cap. 5.

Government. His Majesty was empowered by Statute, to secure and detain such Persons as he should suspect to be conspiring against his Person and Government, in the Time of the late Rebellion; and all Actions, Suits and Prosecutions, by Reason of any Thing done to suppress the same, and for the Service of the Government, were made void. Stat. 1 *Geo.* c. 8, 39. Suspending the *Habeas Corpus*. See *Habeas Corpus*. Preaching against the Government. Vide *Indictment*.

Governors of the Chest at Chatham, Are Officers appointed to take care of and relieve the poor and maimed Seamen belonging to the Navy Royal. 22 & 23 *Car.* 2.

Grace. Acts of Parliament for a general and free Pardon, are called *Acts of Grace*. 7 *Geo.* c. 29, &c.

Graduates, (*Graduati*) Are Scholars as have taken Degrees in a University. 1 *Hen.* 6. c. 3.

Gaffer, (Fr. *Greffier*, i. e. *Scriba*) A Notary or Scrivener, used in the Stat. 5. *H.* 8. c. 1.

Gaffio, Gzabio, A Landgrave or Earl—*Nec Princeps, nec Gaffio, hanc lenitatem mutare audeat.* *Mon. Angl. Tom.* 1. p. 100.

Gzaffium, A Writing Book, Register, or Cartulary of Deeds and Evidences. *Annal. Eccl. Menevensis apud Angl. Sacr. p.* 1. pag. 653.

Gzaille, (*Gradale* or *Graduale*) A Gradual or Book, containing some of the Offices of the

Roman Church.—*Gradale, sic dictum, a gradalibus in tali libro contentis.* *Lyndewod. Provincial. Angl. lib.* 3. It is sometimes taken for a *Masbook*, or Part of it, instituted by Pope Celestine, Anno 430. See Stat. 37. *H.* 6. c. 32.

Grand Assise, A Writ in a real Action, to determine the Right of Property in Lands. See *Magna Assisa*.

Grand Cape, Is a Writ on Plea of Land, where the Tenant makes Default in Appearance at the Day given, for the King to take the Land into his Hands, &c. *Reg. Jud.* 1. Vide *Cape Magnum*.

Grand Days, Are those Days in the Terms which are solemnly kept in the Inns of Court and Chancery, i. e. *Candlemas Day* in *Hillary Term*, *Ascension Day* in *Easter Term*, *St. John the Baptist Day* in *Trinity Term*, and *All Saints Day* in *Michaelmas Term*; which Days are *Dies non Juridici*, or no Days in Court.

Grand Distress, Is a Writ so called not for the Quantity of it, for it is very short, but for its Quality, for the Extent thereof is very great, being to all the Goods and Chattels of the Party distrained within the County: It lies in two Cases, either when the Tenant or Defendant is attach'd, and appears not, but makes Default; or where the Tenant hath once appear'd, and after makes Default, then this Writ is had by the *Common Law* in lieu of a *Petit Cape*. Stat. *Westm.* 1. c. 44. 52 *H.* 3. c. 9.

Grand Serjeanty, An ancient Tenure, by Military Service. See *Chivalry*.

Grange, (*Grangia*) A House or Farm where Corn is laid up in Barns, *Granaries*, &c. and provided with Stables for Horses, Stalls for Oxen, and other Things necessary for Husbandry.

Grangiarus, Is a Person who has the Care of such a Place, for Corn and Husbandry: And there was antiently a *Granger*, or *Grange-Keeper* belonging to Religious Houses, who was to look after their *Granges*, or Farms, in their own Hands. *Fleta lib.* 2. c. 8. *Cartular. St. Edmund. M.S.* 323.

Grant, (*Concessio*) Signifies a Conveyance in Writing of Incorporeal Things not lying in Livery, and which cannot pass by Word only; as of Reversions, Advowsons in Gross, Tithes, Services, Rent, Common in Gross, &c. 1 *Inst.* 172. 3 *Rep.* 63. And *Grants* are made by such Persons as cannot give but by Deed; but this Difference is oftentimes neglected, and then it is taken generally for every Gift whatsoever made of any Thing by any Person: And he that *Granteth* is termed the *Grantor*; and he to whom the *Grant* is made is the *Grantee*. *West. Symb. Sect.* 234. Any natural Person, or corporate Body, (not prohibited by Law, as Infants, Feme Coverts, Monks, &c.) may be a *Grantor*; and an Infant, or Woman Covert may be a *Grantee*. *Perk.* 3, 4, 43, &c. Tho' the Infant at his full Age may disagree to the *Grant*, and the Husband disagree to the *Grant* to his Wife. *Ibid.* *Grants* made by Persons *non sana memoria*, are good against themselves; but they are voidable by their Heirs, &c. A Person attainted of Treason or Felony, may make a Deed of Gift or *Grant*, and be good against all Persons, except the King and the Lord of whom the Lands are held; and for Relief in Prison, they may be good against them likewise. 1 *Inst.* 2. *Perk. Sect.* 26, 31. Regularly to every good *Grant* the following Things are requisite: 1. That there be a Person able to *Grant*. 2. A Person capable of the Thing granted.

granted. 3. That there be a Thing *grantable*. 4. That it be granted in such manner as the Law requires. 5. That there be an Agreement to and Acceptance of the Thing granted, by him to whom made. And 6. There ought to be an Attornment where needful. 1 *Inst.* 73. But *Grants* and Conveyances are good, without Attornment of Tenants, Notice being given them of the *Grants* by Stat. 4 & 5 *Ann.* *Grants* are taken most strongly against the *Grantor* in Favour of the *Grantee*: The *Grantee* himself is to take by the *Grant* immediately, and not a Stranger, or any *in futuro*; and if a *Grant* be made to a Man and his Heirs, he may assign at his Pleasure, tho' the Word Assigns be not expressed. *Litt.* 1. *Saund.* 322. The Use of any Thing being *granted*, all is *granted* necessary to enjoy such Use: And in the *Grant* of a Thing, what is requisite for the Obtaining thereof is included. 1 *Inst.* 56. So that if Timber-Trees are *granted*, the *Grantee* may come upon the *Grantor's* Ground to cut and carry them away. 2 *Inst.* 309. *Plowd.* 15. Where the principal Thing is *granted*, the Incident shall pass; but the Principal will not pass by the *Grant* of the Incident. 1 *Inst.* 152. A Lord of a Manor cannot *grant* the same, and reserve the Court-Baron, it being inseparably incident. *Ibid.* 313. A *Grant* of a Manor, without the Words *cum pertinentiis*, will pass all Things belonging to the Manor: A *Grant* of a Farm will also pass all Lands belonging to it; but a *Grant* of a Messuage passes only the House, Outhouses and Gardens. *Owen's Rep.* 51. *Tot. il. Maner. de A.* may be taken in the singular or plural Number; and Dashes and Abbreviations in *Grants* shall be so taken that the *Grant* be not void. 9 *Rep.* 48. Where Lands are *granted* by Deed, the Houses which stand thereon will pass: Houses and Mills will pass by the *Grant* of all Lands, because that is the most durable Thing on which they are built. 4 *Rep.* 86. 2. *And.* 123. By *Grant* of all the Lands the Woods will pass: And if a Man *grant* all his Trees in a certain Place, this passeth the Soil; tho' an Exception of Wood extends to the Trees only, and not the Soil. 1 *Roll. Rep.* 33. *Dyer* 19. 5 *Rep.* 11. Trees in Boxes will not pass by the *Grant* of the Land, &c. because they are separate from the Freehold. *Mod. cap.* 170. A Man *grants* all his Wood that shall grow in Time to come; it is a void *Grant*, not being *in Esse*. 3 *Leon.* 57. A *Grant de Vespura Terra* passeth not the Freehold, because the Soil itself belongs to another; and the *Grantee* hath no Authority to dig in it by Virtue of such a *Grant*. *Owen* 37. By the *Grant* of all Lands in the Possession of another, it is good if such other be in Possession, let the Possession be by Right or Wrong. 1 *Roll. Rep.* 23. When a *Grant* is general, and the Lands *granted* restrained to a certain Vill, the *Grantee* shall have no Lands out of the Vill. 2 *Rep.* 33. If I *grant* all my Lands in D. which I had by the *Grant* of A. B. this is a good *Grant* of all my Lands in D. whether I had them of A. B. or any other. *Mich.* 2. *Fac.* 2. It has been held, that where a *Grant* is made of Lands and Tenements in D. Copyhold Lands will not pass; because they cannot pass otherwise than by Surrender. *Owen* 37. When Lands are certainly described in a *Grant*, with Recital as *granted* to A. B. &c. tho' they were not thus *granted*, it has been adjudged that the *Grant* was good. 10 *Rep.* 110. A first Description of Lands in a *Grant* is false, notwithstanding the second be

true, nothing will pass by it; tho' if the first be true, and the second false, the *Grant* may be good. 3 *Rep.* 10. The Word *Grant*, where it is placed among other Words of Demise, &c. shall not enure to pass a Property in the Thing demised; but the *Grantee* shall have it by Way of Demise. *Dyer* 56. This Word imports a general Warranty against all Men in *Grants*, and shall not be qualified by a subsequent Clause of Warranty against the Makers own Acts only. 2 *Cro.* 233. But a Man cannot *grant* that which he hath not, or more than he hath: Tho' he may covenant to purchase an Estate, and levy a Fine to Uses, which will be good. *Bac. Max.* 58. A Man may *grant* a Reversion as well as a Possession; but the Law will not allow of *Grants* of Titles only, or imperfect Interests, or of such Interests as are merely future. *Ibid.* A bare Possibility of an Interest, which is uncertain; a Right of Entry or Thing in Action, Cause of Suit, &c. may not be granted over to a Stranger. *Perk. Sect.* 65. 1 *Inst.* 214. 4 *Rep.* 66. It was formerly held, that by a *Grant* of all a Man's Goods and Chattels, Bonds would pass; now 'tis held the contrary, that the Words *Goods and Chattels* do not extend to Bonds, Deeds or Specialties, being Things in Action, unless in some special Cases. 8 *Rep.* 33. 1 *Inst.* 152. In *Grants* there must be a Foundation of Interest, or they will not be binding: If a Person *grants* a Rent-Charge out of Lands, when he hath nothing in the same Land, tho' he afterwards purchase the same, the *Grant* will be void. *Perk.* 15. Tho' it is said, if a Man *grant* an annual Rent out of Land, wherein he hath no Kind of Interest, yet it may be good to charge the Person of the *Grantor*. *Owen Rep.* 3. A Man may *grant* an Annuity for him and his Heirs, to commence after his Death, and it shall charge the Heir. *Bac. Max.* 58. And after the *Grant* of an Annuity, &c. is determined, Debt lies for the Arrears; and the Person of the Tenant will be charged. 7 *Rep.* 39. If a common Person *grants* a Rent, or other Thing that lies in *Grant*, without Limitation of any Estate, by the Delivery of the Deed, a Freehold passes: But if the King make such a *Grant* of a Rent, &c. it is void for Uncertainty. *Dav. Rep.* 45. A *Grant* to a Man, with a Blank for his Christian Name, is void, except to an Officer known by his Office, when it must be averred: And it is the same where the *Grantee's* Christian Name is mistaken. *Cro. El.* 328. And *Grants* may be void by Incertainty, Impossibility; being against Law, on a wrong Title, to defraud Creditors, &c. 1 *Inst.* 183. *Grants* are usually made by these Words, *viz.* *Have Given, Granted and Confirmed*, &c. And Words in *Grants* shall be construed according to a reasonable Sense, and not strained to what is unlikely. *Hob.* 304. Also it hath been adjudged, that *Grants* shall be expounded according to the Substance of the Deed, not the strict Grammatical Sense; and agreeable to the Intention of the Parties. 1 *Inst.* 146, 313.

Form of a Grant of an Annuity out of Lands.

THIS Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witneseth, That the said A. B. for and in Consideration of the Sum of, &c. to him in hand paid by the said C. D. the Receipt whereof is hereby acknowledged, he the said A. B. hath Given, Granted and Confirmed, and by these Presents doth Give,

Give, Grant and Confirm unto the said C. D. and his Assigns, one Annuity of, &c. to be received, taken, had, and to be issuing out of All that Messuage or Tenement situate, &c. with all and singular the Hereditaments and Appurtenances thereunto belonging, and every Part and Parcel thereof, To have and to hold the said Annuity or yearly Rent-Charge of, &c. above mentioned, and every Part and Parcel thereof, unto the said C. D. and his Assigns, for and during the Natural Life of him the said C. D. Payable and to be paid in and upon, &c. Yearly and every Year, by even and equal Portions. And if it shall happen the said Annuity or yearly Rent-Charge of, &c. or any Part thereof, shall be behind and unpaid, in part or in all, by the space of 21 Days next after either of the said Days or Times of Payment thereof, whereon the same should or of Right ought to be paid, as aforesaid, That then and so often, and at any Time thence after, it shall and may be lawful to and for the said C. D. and his Assigns, into the said Premises abovementioned, or into any Part thereof, to Enter and Distrain, and the Distress and Distresses then and there found, to take, lead, drive, carry away and impound, and the same in Pound to detain and keep until the said Annuity, and the Arrears thereof (if any be) together with all Costs and Charges thereabout, shall be fully paid and satisfied. And the said A. B. for himself, his Heirs and Assigns, doth Covenant and Grant to and with the said C. D. his Executors, Administrators and Assigns, that he the said A. B. his Heirs and Assigns, shall and will well and truly pay, or cause to be paid, unto the said C. D. or his Assigns, the said Annuity or yearly Rent-Charge of, &c. above-mentioned, at the Days and Times, and in Manner and Form above expressed, according to the true Intent and Meaning of these Presents. And also, That the said Messuage, &c. and Hereditaments above-mentioned to be charged or chargeable with the said Annuity hereby granted, shall from Time to Time be and continue overt and sufficient for the Payment of the said Annuity or Rent-Charge of, &c. yearly, during the Life of the said C. D. In Witness, &c.

Grants of the King. The King's Grant is good for himself and Successors, tho' his Successors are not named. *Yelv. 13.* Before the Statute *de prerogativa Regis*, Dowers, Advowsons, and other Things, have passed by the general Grant of the King; but by that Statute they are to be granted in express Words. *1 Rep. 50.* The King may not grant away an Estate-tail in the Crown, &c. And the Law takes care to preserve the Inheritance of the King for the Benefit of the Successor. *2 And. 154. Style 263.* A Grant may not be made by the King which tends to a Monopoly against the Interest and Liberty of the Subject: Nor can the King make a Grant *non obstante* any Statute made or to be made; if he doth, any subsequent Statute prohibiting what is granted, will be a Revocation of the Grant. *11 Rep. 87. Dyer 52.* Where the King is restrained by the Common Law to make a Grant, if he makes a Grant *Non obstante* the Common Law, it will not make the Grant good; but when he may lawfully make a Grant, and the Law requires he should be fully apprised of what he grants, and not be deceived, a *Non obstante* supplies it, and makes the Grant good: If the Words are not sufficient to pass the Thing granted, a *Non obstante* will not help. *4 Rep. 35. Nels. Abr. 904.* If a Grant is made by the King, and a former Grant is in Being of the same Thing, if it be not recited, the Grant will be void: And Reciting a void Grant, when there is another good, may make the

King's Grant void. *Dyer 77. Cro. Car. 143.* But there may be a *Non obstante* to a former Grant. If the King is deceived in his Grant, as where it contains more than was intended to be granted; or if there be any Deceit in the Consideration, &c. such Grant of the King is void. *5 Rep. 94. Moor 293.* And the King's Grants may be void by Reason of Incertainty; as if Debts and Duties are granted, without saying in particular what Duties, &c. *12 Rep. 46.* But where there is a particular Certainty preceding, they shall not be destroyed by any Incertainty or Mistake which follows: And there is a Distinction where a Mistake of Title is prejudicial to the King, and when it is in some Description of the Thing which is supplemental only and not material or issuable. *1 Mod. 195.*

Grantz, Is used for *Grandeos* or great Men, in the *Parl. Roll. 6 Ed. 3. n. 5, 6.* — *Et les ditz Countz, Barons, & autre Grantz, &c.*

Grass-hearth, Grasing or Turning up the Earth with a Plough; whence the customary Service for the inferiour Tenants of the Manor of *Amerfsden* in *Oxfordshire*, to bring their Ploughs and do one Day's Work for their Lord, was called *Grass-hearth* or *Grass-hurt*: And we still say the Skin is *grased* or slightly hurt, and a Bullet *grases* on any Place, when it gently turns up the Surface of what it strikes upon. *Paroch. Antiq. 496, 497.*

Graba, A little Wood or Grove: — *Unam Carucatam terra cum Gravis & Pasturis eidem pertinent.* *Mon. Angl. Tom. 2. pag. 198. Co. Lit. 4.*

Grabare & Grabatio, An Accusation or Impeachment. *Leg. Etheld. c. 19.*

Grave. The Names of Places ending with *Grave*, come from the *Sax. Graf*, a Wood, Thicket, Den or Cave.

Great Seal of England. See *Keeper of the Great Seal*, and *Treason*.

Gree, (*Fr. Gre*, i. e. good Liking or Allowance) Signifies in Law Satisfaction; as to make *Gree* to the Parties, is to Agree with and satisfy them for an Offence done. And where it is said in our Statutes, that Judgment shall be put in Suspence till *Gree* be made to the King of his Debt; it is taken for Satisfaction. *1 Rich. 2. cap. 15. 25 Ed. 3. c. 19.*

Green Cloth, Of the King's Household, so term'd from the *Green Cloth* on the Table, is a Court of Justice compos'd of the Lord Steward, Treasurer of the Household, Comptroller, and other Officers, to which is committed the Government and Oversight of the King's Court, and the Keeping of the Peace within the Verge, &c. See *Counting-House*.

Greenhew or Green-hue, Is all one with *Vert* in Forests, &c. *Manwood, Par. 2. cap. 6. num. 5.*

Green-Silber. There is an ancient Custom within the Manor of *Writtel* in the County of *Essex*, that every Tenant whose Fore-door opens to *Greenbury*, shall pay a Half-penny yearly to the Lord, by the Name of *Green-Silver*.

Green Wax, Is where *Estreats* are delivered to the Sheriffs out of the *Exchequer*, under the Seal of that Court, made in *Green Wax*, to be levied in the several Counties: This Word is mentioned in the Stat. *43 Ed. 3. cap. 9.* and *7 H. 4. c. 3.*

Greve, (*Sax. Gerefa*). A Word of Power and Authority, signifying as much as *Comes* or *Vicecomes*; and hence comes our *Shireve*, *Portreve*, &c. which by the Saxons were written *Sciregerefa*, *Portgerefa*. *Lambert* in his Exposition of Saxon Words,

Words, *Verbo Praefatus*, makes it the same with *Reve*. And *Hovedon Part. poster. Annal. fol. 346.* *saith, Greve dicitur, ideo quod Jure debeat Grith,* i. e. *Pacem ex illis facere, &c.*

Grithbreche, (Sax. *Grithbryce*, i. e. *Pacis fractio*) Breach of the Peace—*In causis Regiis Grithbreche* 100 *Sol. emendabit. Leg. Hen. 1. c. 36.*

Grithstole, (Sax. *Sedes Pacis*) A Place of Sanctuary. See *Fridstol*.

Grocers, were formerly those that engrossed Merchandize. *Stat. 37 Ed. 3. c. 5.* It is now a particular and well known Trade.

Gronna, A deep Pit, or bituminous Place, where Turfs are dug to burn. *Hoved. 438. Mon. Angl. Tom. 1. pag. 243.*

Groom, Is the Name of a Servant in some inferior Place. *33 H. 8. c. 10.* and is generally applied to Servants in Stables: But it hath a special Signification, extending to *Groom of the Chamber*, *Groom of the Stole*, &c. which last is a great Officer of the King's Household, whose Precinct is properly the King's Bed-Chamber, where the Lord Chamberlain hath nothing to do; and *Stole* signifies a Robe of Honour, and not a Close-stool, as vulgarly apprehended. *Lex Constitut. p. 182. Vide Garcio.*

Groom-Porter, An Officer or Superintendant over the Royal Gaming Tables; and in Latin is writ *Aule Regie janitor Primarius*.

Gross, (*Grossus*) In *Gross*, absolute, entire, not depending on another; as anciently a Villain in *Gross* was such a servile Person as was not appendant or annexed to the Land or Manor, and to go along with the Tenure as appurtenant to it; but was like the other personal Goods and Chattels of his Lord, at his Lord's Pleasure and Disposal: So also *Advowson in Gross* differs from *Advowson Appendant*, being distinct from the Manor. *Co. Lit. 120.*

Grosse bois, (Fr. *Gros bois*, i. e. great Wood) Signifies such Wood as by the Common Law or Custom is reputed Timber. *2 Inst. 642.*

Gross-weight, The whole Weight of Goods or Merchandize, Dust and Drofs mix'd with them, and of the Chest, Bag, &c. out of which *Tare* and *Tret* are allow'd. *Merchant's Dict.*

Groundage, A Custom or Tribute paid for the standing of a Ship in a Port.

Groume, An Engine to stretch Woollen Cloth after it is woven; mentioned *43 Ed. 3. c. 10.*

Groat-halfpenny, Is a Rate so called, and paid in some Places for the Tithe of every fat Beast, Ox, or other unfruitful Cattle. *Clayton's Rep. 92.*

Guarii, (From the Fr. *Gruyer*) Signifies the principal Officers of the Forest in general.

Guard, (Fr. *Garde*, Lat. *Custodia*) A Custody or Care of Defence; and sometimes it is used for those that attend upon the Safety of the Prince, called the *Life-Guard*, &c. sometimes such as have the Education and Guardianship of Infants; and sometimes for a Writ touching Wardship, as *Droit de Gard*, *Ejectment de Gard*, and *Ravishment de Gard*. *F. N. B. 139.*

Guardian, (Fr. *Gardein*, Lat. *Custos*, *Gardianus*) Signifies him that hath the Charge or Custody of any Person or Thing; but most commonly he who hath the Custody and Education of such Persons as are not of sufficient Discretion to guide themselves and their own Affairs, as Children and Idiots, (usually the former) being as largely extended in the Common Law as Tutor and Curator among the Civilians. *Blount. And a Guardian*

is either *Legitimus*, *Testamentarius*, *Datus* or *Custumarius*: He that is a legitimate or lawful Guardian is so *Jure Communi* or *Jure Naturali*; the first as Guardian in Chivalry, who is so either in Fact or in Right; the other *de Jure Naturali*, as Father or Mother: A Testamentary Guardian was by the Common Law; for the Body of the Minor was to remain with him who was appointed, till the Age of Fourteen. And as for his Goods it might be longer, or as long as the Testator appointed; but as to this Matter there are several Statutes: *Guardianus Datus* was by the Father in his Life-time, or by the Lord Chancellor after the Death of the Father; and where there is a Guardianship by the Common Law, the Lord Chancellor can order and intermeddle, but where by Statute he cannot remove either the Child or the Guardian: Guardianship by Custom is of Orphans by the Custom of London, and other Cities and Boroughs; and in Copyhold Manors, by the Custom it may belong to the Lord of the Manor to be Guardian himself, or to appoint one. *3 Salk. Rep. 176, 177.* The Guardianships, by the Common Law, are Guardians in Chivalry; (taken away by Statute) Guardians by Nature, such as the Father or Mother; Guardians in Socage, who are the next of Blood, to whom the Inheritance cannot descend, if the Father does not order it otherwise; and Guardian because of Nurture, when the Father by Will appoints one to be Guardian of his Child. *1 Inst. 88. 2 Inst. 305. 3 Rep. 37.* The eldest Son of the Half-blood shall be Guardian in Socage to a Son by a second Venter: And the Guardianship in Socage continues till the Minor accomplishes the Age of Fourteen Years, and then he may chuse his Guardian before a Judge at his Chamber, or in Court, or in the Chancery: Also after the Minor is come to the Age of Fourteen, he may sue his Guardian in Socage to account as Bailiff, &c. *Cro. Jac. 219.* Tho' a Father is Guardian by Nature, yet a Man may be Guardian to an Infant against his Father, for Prevention of Waste; which is a Forfeiture of Guardianship. *Hardr. 96.* Guardian in Socage shall make no Waste nor Sale of the Inheritance, but keep it safely for the Heir: And where there hath been some Doubt of the Sufficiency of Guardian in Socage, the Chancery hath obliged him to give Security. *2 Mod. 177.* Also a Guardian may be ordered to enter into Security by Recognizance not to suffer a Female Infant to marry whilst in his Custody; and to permit other Relations to visit her, &c. *2 Lev. 128.* And the Court of Chancery will make such Guardian give Security not to marry the Infant, without the Court is first acquainted with it. *2 Chanc. Rep. 237.* Before the Act of 12 Car. 2. Tenant in Socage might have disposed of his Land in Trust for the Benefit of the Heir; but it is said he could not devise or dispose of the Guardianship or Custody of the Heir from the next of Kin to whom the Land could not descend, because the Law gave the Guardianship to such next of Kin. *Keilw. 186.* But now Tenant in Socage may nominate whom he pleases to have the Custody of the Heir, and the Land shall follow the Guardianship, as an Incident given by Law to attend the Custody; and such special Guardian cannot assign the Custody by any Act, the Trust being Personal; nor shall it go to the Executor or Administrator of the Guardian, but determines by his Death. *Vaugh. 180. Dyer 189.* Guardianship by Statute is by the 12 Car. 2. c. 24. by which it is enacted,

enacted, That a Father by Deed in his Life-time, or by Will, may dispose of the Custody of his Child under twenty-one Years of Age, and not married at the Time of his Death, and whether then born, or *in Ventre sa Mere*, during the Minority, to any Persons not Popish Recusants, who may maintain Action of Trespass, &c. against unlawful Takers away of such Children, and take into Custody their Lands, &c. And by this Statute the Father may appoint a *Guardian* to his Heir for any Time till he is twenty-one Years old; and such *Guardian* shall have the like Remedy for his Ward as the *Guardian* in Socage had at Common Law. 2 *Nelf. Abr.* 911. But if the Father appoint no *Guardian* to his Child, the Ordinary or Spiritual Court may appoint one for the Personal Estate until the Age of Fourteen. And as to his Lands, there shall be a *Guardian* in Socage, &c. as heretofore. 2 *Lev.* 262. If a Bishop appoints a *Guardian* of Goods and Lands, it will be void; for it may be only of Goods and Chattels: And *Guardianship* is a Thing cognizable by the Temporal Courts, where a Devise is made of it, which Courts are to judge whether the Devise be pursuant to the Statute. 1 *Ventr.* 207. A Copyhold Tenant is not within the Statute 12 *Car.* 2. to dispose of the Custody of his Children; for it belongs to the Lord or others, according to the Custom of the Manor: But the Lord of a Manor hath no Power by the Common Law, without some particular Custom, to grant the *Guardianship* of an Infant Copyholder. 3 *Lev.* 395. *Lutw.* 1190. *Guardianships* are not only by the Common Law, by Statute Law, and by particular Custom, but are also distinguished into *Guardian* in Socage, *Guardian* appointed by the Father, and *Guardian* assign'd by the Court. 1 *Lill. Abr.* 655. and a Father or Mother, without Assignment, are *Guardians* of Women Children, &c. Stat. 4 & 5. *Ph. & M.* 1. 8. A Female Infant may be brought into Court, and ask'd whether she be willing to stay with her *Guardian*. 2 *Lev.* The Husband of a Woman under Age cannot disavow a *Guardian* made by the Court for his Wife. 1 *Ventr.* 185. An Infant 'tis said cannot revoke the Authority of the *Guardian*: But the Court may discharge one *Guardian*, at their Discretion, and assign another: And the Justices of *Nisi Prius*, &c. may assign a new *Guardian*. *Palm.* 252. *Stile* 456. *Noy* 49. 1. *Danc.* *Abr.* 604. The Court will assign a *Guardian* to an Infant to sue or defend Actions, if the Infant comes into Court and desires it; or a Judge at his Chamber, at the Desire of the Infant, may assign a Person named by him to be his *Guardian*; but this last is no Record until entered and filed with the Clerk of the Rules: The Heir must be in Person in Court, for the Appointment of a *Guardian* for his Appearance. 1 *Lill.* 656. 2 *Leon.* 238. *Guardians* to Infants, appointed by the Court to sue, may acknowledge Satisfaction upon Record, for a Debt recovered at Law for the Infant. *Trin* 23 *Car. B. R.* A *Guardian* in Socage may keep Courts in the Infant's Manors in his own Name, grant Copies, &c. He is *Dominus pro Tempore*, and hath an Interest in the Lands. *Cro. Jac.* 91. Such a *Guardian* may let the Land for Years, and avow in his own Name and Right, and his Lessee for Years may maintain Ejectment: But he cannot present to an Advowson, for which he may not lawfully account; and the Infant must present of whatsoever Age. *Cro. Jac.* 98, 99. A *Guardian* for Nurture of the

Minor appointed by Will, hath Power to make Leases at Will only. *Cro. El.* 678, 734. *Guardians* are to take the Profits of the Minors Lands, &c. to the Use of the Minor, and account for the same: They ought to sell all Moveables in a reasonable Time, and turn them into Land or Money, except the Minor is near of Age, and may want such Goods himself: And they shall pay Interest for Money in their Hands, which might have been put out at Interest; in which Case, it shall be presumed the *Guardians* made use of it themselves. 3 *Salk.* 177. A *Guardian* shall answer for what is lost by his Fraud, Negligence or Omision, but not for any casual Events, as where the Thing had been well but for such an Accident. *Litt.* 123. On accounting of *Guardians*, they shall have Allowance of Costs and Expences; and if they are robbed, &c. without any Default or Negligence, they shall be discharged thereof. 1 *Inst.* 89. In *Guardianships* of great Estates, the *Guardians* generally pass their Accounts yearly in the Chancery, for their better Justification when the Minor calls them to a general Account at his full Age. Action of Account may be brought against the Executors or Administrators of a *Guardian*, &c. Stat. 4 & 5 *Ann.* A *Guardianship* of a Minor is an Interest in the Body and Lands, &c. of one within Age.

An Election of a Guardian by a Minor.

K NOW all Men by these Presents, That I A. B. Son and Heir of, &c. deceased, being now about the Age of eighteen Years, have elected and chosen, and by these Presents do elect and chuse C. D. of, &c. to be *Guardian* of my Person and Estate, until I shall attain the Age of twenty-one Years, and I do hereby Promise to be Ruled and Governed by him in all Things touching my Welfare; and I do authorize and empower the said C. D. to enter upon and take Possession of all and every my Messuages, Lands, Tenements, Hereditaments and Premises whatsoever, situate, lying and being in, &c. in the County of, &c. or elsewhere, whereunto I have or may have any Right or Title, and to let and set the same, and receive and take the Rents, Issues and Profits thereof, for my Use and Benefit, during the Term aforesaid; giving and hereby granting unto the said C. D. my full Power in the said Premises; and whatsoever he shall lawfully do or cause to be done in the Premises, by Virtue hereof, I do hereby promise to ratify and confirm. In Witnesses, &c.

Guardian de l'essumary, Is the *Guardian* or Warden of the *Stanneries*, or Mines in the County of Cornwall, &c. 17 *Car.* 1. c. 15.

Guardian de l'Eglise, Churchwardens, who are Officers chosen in every Parish to have the Care and Custody of the Church Goods; and they may have an Action for such Goods, and have divers Powers for the Benefit of the Church. Stat. 43 *Eliz.* c. 2.

Guardians of the Peace, Are those that have the Keeping of the Peace; *Wardens* or *Conservators* thereof. *Lamb. Eiren. lib.* 1. cap. 3.

Guardian of the Cinque Ports, Is a Magistrate that hath the Jurisdiction of the Ports or Havens, which are commonly called the *Cinque Ports*, who has there all the Authority and Jurisdiction the Admiral of England has in Places not exempt: And Camden believes this Warden of the *Cinque Ports* was first erected among us in Imitation of the Roman Policy, to strengthen the

Sea Coasts against Enemies, &c. *Camd. Britan.* 238.

Guardian of the Spiritualities. The Person to whom the *Spiritual Jurisdiction* of any Diocese is committed, during the *Vacancy* of the See, is called by this Name, 25 H. 8. c. 21. The Archbishop is *Guardian of the Spiritualities* on the Vacancy of any See within his Province; but when an *Archiepiscopal See* is vacant, the Dean and Chapter of the Archbishop's Diocese are *Guardians of the Spiritualities*, viz. the *Spiritual Jurisdiction* of his Province and Diocese is committed to them. 2 *Roll. Abr.* 223. 25 H. 8. The *Guardian of the Spiritualities* it is said may be either *Guardian in Law*, *Jure Magistratus*, as the Archbishop is of any Diocese in his Province, or *Guardian by Delegation*, being he whom the Archbishop or *Vicar-General* doth for the Time appoint. 13 *Eliz. c.* 12. And the *Guardian of the Spiritualities* hath all Manner of Ecclesiastical Jurisdiction of the Courts, Power of granting Licenses and Dispensations, Probate of Wills, &c. during the Vacancy, and of admitting and instituting Clerks presented; but such *Guardians* cannot as such consecrate or Ordain, or present to any Benefices. *Wood's Inst.* 25, 27.

Guest, (Sax. *Gest*, Fr. *Gift*, a Stage of Rest in a Journey) A Lodger or Stranger in an Inn, &c. A *Guest* who hath a Piece of Plate set before him in an Inn, may be guilty of Felony in fraudulently taking away the same, he having only a bare Charge of it. 1 *Hawk. P. C.* 90. And a *Guest* having taken off the Sheets from his Bed, with Intent to steal them, carried them into another Room, and was apprehended before he could get away, this was adjudged Larceny. *Ibid.* 92. Action lies against an Inn-keeper, refusing a *Guest* Lodging, &c. See *Inn*.

Guidage, (*Guidagium*) Is an old legal Word, signifying that which is given for safe Conduct through a strange Land, or unknown Country. *Est Guidagium quod datur alicui, ut tuto conducatur per terram alterius.* *Consuetud. Burgund.* p. 119. 2 *Inst.* 526.

Guild, (From the Sax. *Gildan*, to pay) Signifies a Fraternity or Company, because every one was *Gildare*, i. e. to pay something towards the Charge and Support of the Company. The Original of these *Guilds* and Fraternities, is said to be from the Old Saxon Law; by which Neighbours entered into an Association, and became bound for each other, to bring forth him who committed any Crime, or make Satisfaction to the Party injured, for which Purpose they raised a Sum of Money among themselves, and put it into a common Stock, whereout a *pecuniary* Compensation was made according to the Quality of the Offence committed. From hence came our Fraternities and *Guilds*; and they were in Use in this Kingdom long before any formal Licences were granted for them: Tho' at this Day they are a Company combined together, with Orders and Laws made by themselves, by the Prince's Licence. *Camd. Gildam Mercatoriam*, or the *Merchants Guild*, is a Liberty or Privilege granted to Merchants, whereby they are enabled to hold certain Pleas of Land within their own Precinct. 37 *Ed. 3.* 15 R. 2. And *Guildhalls* are the Halls of those Societies, where they meet and make Laws, &c. for their better Government. King *Ed. 3.* in the 14th Year of his Reign, granted Licence to the Men of *Coventry* to erect a *Merchants Guild*, and also a Fraternity of Bre-

thren and Sisters, with a Master or Warden, and that they might make Chantries, bestow Alms, do other Works of Piety, and constitute Ordinances touching the same, &c. And K. *Hen. 4.* in the 4th Year of his Reign, gave Licence to found a *Guild* of the Holy Cross at *Stratford upon Avon.* *Antiq. Warwicksh.* 119, 522. *Guild*, or *Gild*, likewise is used for a Tribute or Tax, an Amercement, &c. 27 *Ed. 3.* 11 H. 7. 15 *Car. 2.* See *Geld*.

Guild-hall, Or the Chief Hall of the City of London, for the Meeting of the Lord Mayor and Commonalty of the City, making Laws and Ordinances, holding of Courts, &c. — *Gildarum nomine continentur non solum minores Fraternitates, sed ipsæ etiam Civitatum Communitates.* *Spelm.*

Guildhalda Teutonicorum, The Fraternity of *Easterling Merchants* in London, called the *Still-yard*, 22 *Hen. 8.* c. 8.

Guild-Rents, Are Rents payable to the Crown, by any *Guild* or Fraternity; or such Rents as formerly belong'd to *Religious Guilds*, and came to the Crown at the general Dissolution of Monasteries, being ordered to be sold by the Stat. 22 *Car. 2.* c. 6.

Guilder, Foreign Coin: The German *Guilder* is 3 s. 8 d. and the golden one in some Parts of Germany 4 s. 9 d. in Portugal it passes for 5 s. but the Poland and Holland *Gelder* is but 2 s. In Holland Merchants keep their Accounts in *Guilders*, &c.

Gule of August, (*Gula Augusti*, alias *Goule de August*) Is the Day of St. Peter ad Vincula, which is celebrated on the 1st of August, and called the *Gule of August*, from the Lat. *Gula*, a Throat, from this Reason, that one *Quirinus* a Tribune, having a Daughter that had a Disease in her Throat, went to Pope Alexander, the Sixth from St. Peter, and desired of him to see the Chains that St. Peter was chained with under Nero, which Request being granted, she the said Daughter kissing the Chains, was cured of her Disease: Whereupon the Pope instituted this Feast in Honour of St. Peter; and, as before, this Day was termed only the *Calends of August*, it was on this Occasion called indifferently either St. Peter's Day ad Vincula, from what wrought the Miracle, or the *Gule of August*, from that Part of the Virgins whereon it was wrought. *Durand's Rationale Divinorum, lib. 7. cap. 19.* It is mentioned F. N. B. 62. *Plowden* 316. Stat. *Westm. 2. cap. 30.* 27 *Ed. 3.*

Gunpowder. It is lawful for all Persons, as well Strangers as natural-born Subjects, to import any Quantities of Gunpowder, or Salt-Petre, Brimstone, and other Materials, for the making thereof, and to make and sell Gunpowder, &c. Stat. 16 *Car. 1. c. 21.* but no Person shall keep more than 600 lb. weight of Gunpowder, in any Place in the Cities of London and Westminster, or the Suburbs, &c. And Persons keeping more, not removing it, on Order of Justices of Peace, shall forfeit 20 s. for every hundred Weight: Gunpowder is to be carried in covered Carriages, the Barrels close jointed, or in Cases, Bags of Leather, &c. 5 *Geo. c. 26.*

Gurgites, Is used as a Latin Word for Wears: *Tres Gurgites in Aqua de Monew attachantur per Homines de Grossomonte.* Black Book Hereford, f. 20. See *Gorce*.

Guti and Gotti, Engl. *Goths*, called sometimes *Futa*, and by the Romans *Gete*, is derived from the old Word *Fet*, which signifies a Giant: The wer-

were one of those three Nations or People who left Germany, and came to inhabit this Island. *Leg. Edw. Confess. c. 35.*

Guttera; A Gutter or Spout to convey the Water from the Leads and Roofs of Houses: And there are *Gutter Tiles*, especially to be laid in such Gutters, &c. mentioned in the Statute 17 Ed. 4. c. 4.

Swabymerched, Is a British Word signifying a Payment or Fine, made to the Lords of some Manors, upon the Marriage of their Tenants Daughters; or otherwise on their Committing Incontinency. See *Marchet*.

Gwalstow, (*Sax.*) A Place of Execution: *Omnia Gwalstowa, i. e. Occidendorum loca, totaliter Regis sunt in foca sua.* *Leg. Hen. 1. c. 11.*

Gylput, The Name of a Court held every three Weeks, in the Liberty or Hundred of *Pathbew*, in the County of *Warwick*. *Inquisic. ad quod Damn. 13 Ed. 3.*

Gyltwite, A Compensation or Amends for Trespas, &c. *Multa pro Transgressione.* *LL. Edgar. Regis, Anno 964.*

Gyzovagi, Wandering Monks, who pretending Piety, left their own Cloisters, and visited others. *Matt. Paris. pag. 490.*

H.

Habeas Corpus, Is a Writ for the Bringing in a Jury, or so many of them as refuse to appear upon the *Venire facias*, for the Trial of a Cause brought to Issue, *Old Nat. Br. 157.* And the *Habeas Corpora Juratorum* in the Court of C. B. serves for the same Purpose as the *Disfringas Jurator.* in B. R. It commands the Sheriff to have the Jurors before the Judges at such a Day, to pass on the Trial of certain Parties, in such a Cause, &c. *Practif. Solic. 308, 309.*

Habeas Corpus, The great Writ of *English Liberty*, lies where one is indicted for any Crime or Trespas before Justices of Peace, or in a Court of any Franchise, and being imprisoned for the same, hath offer'd sufficient Bail, but it is refus'd where bailable; he may then have this Writ out of the King's Bench to remove himself thither, and answer the Cause there. *F. N. B. 250.* And the Course in this Case is first to procure a *Certiorari* out of the Chancery, directed to the Justices for removing the Indictment into B. R. And upon that to procure this Writ to the Sheriff, for the Causing his Body to be brought at a Day. *Reg. Jud. 81.* This Writ is also used to bring the Body of a Person into Court, who is committed to any Gaol, either in Criminal or Civil Causes; and a *Habeas Corpus* removes a Person and Cause from one Court and Prison to another. The Writ of *Habeas Corpus* was originally ordained by the *Common Law* of the Land, as a Remedy for such as were unjustly imprisoned, to procure their Liberty; and it is a mistaken Notion that this Writ is of a modern Date, and introduced with the Reign of King *Charles 2.* But before the Statute 31 Car. 2. 'tis true, it was difficult to be obtained, because the Judges who had Authority to issue it, pretended to have Power either to grant or deny it; and the Sheriffs and Gaolers to whom the Writ was directed; frequently put poor Prisoners to the Charges of a second, and third *Habeas Corpus*, before they would yield Obedience to the First; which being grievous to the People, the Stat. 31 Car. 2.

was enacted to prevent Abuses of this Nature, and further our Laws for the Benefit of the Liberty of the Subject. *Laws of Liberty, p. 44, 45.* By the Statute 31 Car. 2. c. 2. a Person in Prison may have an *Habeas Corpus* from any Judge, on Complaint made and View of the Copy of the Warrant of Commitment; (unless he be committed for Treason or Felony especially expressed in the Warrant, or other Offences or Matters not bailable) which *Habeas Corpus* shall be returnable immediately; and upon Certificate of the Cause of Commitment, the Prisoner shall be discharged on Bail to appear in the Court of B. R. the next Term, or at the next Assizes, &c. where the Offence is cognisable: And Persons committed for Treason or Felony, (specially expressed in the Warrant) on Prayer in open Court the first Week of the Term, or Day of Sessions, &c. are to be brought to Trial; and if not indicted the next Term, or Sessions after Commitment, upon Motion the last Day of the Term, &c. they shall be let out upon Bail; except it appears upon Oath, that the King's Witnesses are not ready; and if on Prayer they are not indicted or tried the second Term after Commitment, they shall be discharged. No Person which shall be delivered upon his *Habeas Corpus*, shall be committed again for the same Offence, other than by legal Order and Process of such Court where they shall be bound to appear, or other Court having Jurisdiction of the Cause; on Pain to forfeit 500 *l.* And if any Person be in Prison, or any Officer's Custody, for any Criminal Matter, he shall not be removed into the Custody of any other Officer but by *Habeas Corpus*, upon Pain of incurring the Penalty of 100 *l.* for the first Offence, and 200 *l.* for the second Offence, and being disabled to execute his Office. No Person shall be sent Prisoner to *Ireland, Scotland*, or any Place beyond the Seas in the King's Dominions; which will be False Imprisonment, on which the Prisoner may recover treble Costs, and not less than 500 *l.* Damages, &c. and the Party committing or detaining him also shall incur the Penalty of a *Premunure*. Judges denying a *Habeas Corpus* shall forfeit 500 *l.* And the Officer refusing to obey it, or to deliver a true Copy of the Commitment-warrant, is liable to a Forfeiture of 100 *l.* for the first Offence, &c. *Stat. Ibid.* This is the Substance of the *Habeas Corpus Act*; which hath been suspended several Times in late Reigns, on Rebellions, &c. No Writ of *Habeas Corpus*, or other Writ to remove a Cause out of an inferior Court, shall be allowed, except delivered to the Judge of the Court, before the Jury to try the Cause have appeared, and before any of them are sworn. 43 Eliz. c. 5. And Writs to remove Suits commenced in an inferior Court of Record shall not be obey'd, unless delivered to the Steward of the Court before Issue or Demurrer joined, &c. And a Suit shall never be removed again, after a *Procedendo* is allow'd. 21 Jac. 1. 23. Nor shall any Suit be removed where the Thing in Demand doth not exceed 5 *l.* or where the Freehold, Inheritance, Title of Land, &c. are concern'd. And Judges are to proceed in Suits in inferior Courts laid not to exceed the Sum of 5 *l.* altho' there may be other Actions against the Defendant, wherein the Plaintiff's Demand may exceed 5 *l.* by Stat. 12 Geo. If the Steward of an inferior Court proceeds after an *Habeas Corpus* delivered and allowed, the Proceedings are void; and the Court of B. R. will award a *Superfedeas*; and

and grant an Attachment against the Steward for the Contempt. *Cro. Car.* 79, 296. A *Habeas Corpus* suspends the Power of the Court below, so that if they proceed, it is void, and *coram non judice*. On a *Habeas Corpus*, if the Record be filed, no *Procedendo* can go to the Court below; but where a Record below is not filed, or not returned, it may be granted. 1 *Salk.* 352. A *Habeas Corpus cum causa* removes the Body of the Party for whom granted, and all the Causes depending against him; and if upon the Return thereof the Officer doth not return all the Causes, &c. it is an Escape in him. 2 *Lill. Abr.* 2. A Judge will not grant a *Habeas Corpus* in the Vacation, for a Prisoner to follow his Suits; but the Court may grant a special *Habeas Corpus* for a Prisoner to be at his Trial in the Vacation-time. *Ibid.* 3. And the Court may grant a *Habeas Corpus* to bring a Prisoner, not in Prison on Execution, out of Prison, to be a Witness at a Trial; tho' it is at the Peril of the Party suing out the Writ, that the Prisoner do not escape. *Style* 119. *Trin.* 1640. But no Person ought to take out a *Habeas Corpus* for any one in Prison, without his Consent; except it be to turn him over to B. R. or charge him with an Action in Court. 2 *Lill.* A Man brought into B. R. by *Habeas Corpus*, shall not be removed thence till he has answered there; he shall be detained until then, and after he may be removed. 1 *Salk.* 350. If there be Judgment against a Defendant in the Court of B. R. and another in C. B. on which he is in Execution in the Fleet, he may have a *Habeas Corpus* to remove himself into B. R. where he shall be in Custody of the Marshal for both Debts. *Dyer* 132. Where the Chief Justice of the Court of King's Bench commits a Person to the Marshal of the Court by his Warrant, he ought not to be brought to the Bar by Rule, but by *Habeas Corpus*. 1 *Salk.* 349. In extrajudicial Commitments, the Warrant of Commitment ought to be returned *in hac verba* on a *Habeas Corpus*; but when a Man is committed by a Court of Record, 'tis in the Nature of an Execution for a Contempt, and in such Case the Warrant is never returned. 5 *Mod.* 156. The Cause of the Imprisonment must be particularly set forth in the Return of the *Habeas Corpus*, or it will not be good; for by this the Court may judge of it, and with a *Paratum habeo*, that they may either discharge, bail, or remand the Prisoner. 2 *Nelf. Abr.* 915. 2 *Cro.* 543. Where a Commitment is without Cause, or no Cause is shewn, a Prisoner may be delivered by *Habeas Corpus*. 1 *Salk.* 348. But on a *Habeas Corpus* granted by the Court of B. R. a Difference was made as to a Return; that where a Prisoner is committed by one of the Privy Council, there the Cause of his Commitment is to be returned particularly; but when he is committed by the whole Council, no Cause need be alledged. 1 *Leon.* 70, 71. And it has been adjudged, that on a Commitment by the House of Commons, of Persons for Contempt and Breach of Privilege, no Court can deliver on a *Habeas Corpus*: But *Holt Ch.* Just. was of a contrary Opinion. 2 *Salk.* 503, 504. A Writ of Error may be allowed by the King in such a Case, &c. and it is not to be denied *ex debito Jusfitie*; though it has been a Doubt, whether any Writ of Error lay upon a Judgment given on a *Habeas Corpus*. *Ibid.* A Man may not be delivered from the Commitment of a Court of Oyer and Terminer by *Habeas Corpus*, without Writ of Er-

ror: And where there appears to be good Cause, and a Defect only in the Form of the Commitment, he ought not to be discharged. 1 *Salk.* 348. If a Person be committed by the Admiralty in Execution, he is not removable by *Habeas Corpus* into B. R. to answer an Action brought against him there; but it might be otherwise if an Action were depending. *Ibid.* 351. Where there is a precedent Action in B. R. to the King's Suit, on which the Party is out on Bail, *Habeas Corpus* may be brought by the Bail, &c. and the Prisoner turned over; tho' this was greatly opposed in Favour of the King's Execution. *Ibid.* 353. A *Hab. Corpus* is a prerogative Writ, which concerns the Liberty of the Subject, and must be obey'd in *Counties Palatine*, &c. If it is not, an *alias Hab. Corp.* will issue with a great Penalty. 2 *Cro.* 543. And on the Insufficiency of the Return of a *Habeas Corpus*, an *Alias Habeas Corpus* shall be granted. 12 *W.* 3. B. R. Before a *Habeas Corpus* is returned and filed, it may be amended; but not afterwards. 2 *Lill. Abr.* 2. A *Habeas Corpus* is grantable, without Motion, to remove a Person upon an Arrest; but not where committed for a Crime. 1 *Lev.* 1. In the Suing out these Writs in B. R. to remove a Cause, &c. they are first to be carried to the other Court to be allowed; and some few Days after the Delivery, the Return must be called for, and special Bail put in at a Judge's Chamber; which being done, within four Days in Term, and six Days in the Vacation, the Cause is removed to the superior Court. *Practif. Solic.* 262. And if the Defendant be actually a Prisoner, he shall not be delivered from Prison till the Bail on the *Habeas Corpus* be accepted, or justified in Court. *Ibid.* If a Defendant arrested cannot find Bail, and would be removed to the King's Bench or Fleet Prison, a *Habeas Corpus* is to be delivered there; and they will make out a Return, and send an Officer with the Defendant to a Judge's Chamber, and there a *Committitur* is made; whereupon the Judge's Tipstaff takes the Prisoner into Custody, and charges him in Prison; and he may agree with the Marshal or Warden, for the Liberty of the Rules, &c. *Practif. Attorn. Edit.* 1. p. 124. When the Defendant is in Custody either of a Bailiff or in any other Prison, and would be turned over to the King's Bench, the Practice is the same; the *Habeas Corpus* directed to the Sheriff of London and Middlesex is to be delivered, and he after Search in his Office for what Writs he hath against the Defendant, will make Return of them, and then the Bailiff or Keeper of the other Prisoner, who hath the Defendant in Custody, is to carry him to a Judge's Chamber, where he will be turned over, *ut supra*. *Ibid.*

Form of a Habeas Corpus returnable immediate.

G Eorgius, &c. Majori Alderman. &c. Salutem. Precipimus vobis quod Corpus A. B. in Prisona nostra sub Custod. vestra ut dicitur detent. salvo &c. secur. Conduct. unacum die & causa captionis & detentionis sue quocunque nomine idem A. B. censeatur in eadem habeatis coram Dilecto & Fidel. nostro Roberto Raymond Mil. Capital. Jusfic. nostro ad Placita in Cur. nostra coram nobis tenend. assign. apud Cameram suam situat. &c. immediate post Reception. hujus Brevis ad faciend. & recipiend. ea omnia & singula quae idem Jusfic. nostr. de eo adtunc & ibidem Conf. in hac parte, &c. Et habeatis, &c.

Habeas

Habeas Corpus ad ad Respondendum, Is to remove a Man in Order to Prosecution and Trial in the proper County, &c.

Habeas Corpus ad Respondendum, Lies where a Person is imprison'd upon Process at the Suit of another, in any Prison, except the King's Bench Prison; and a third Person would sue the Prisoner in B. R. this Writ removes the Prisoner from the Prison where he was into the King's Bench, to answer the Action in that Court; and for that Reason it is called *Habeas Corpus ad Respondendum*. 2 Lill. Abr. 4. And where a Person is in Custody in an inferior Jurisdiction, the Plaintiff may bring his Writ returnable in B. R. and then the Defendant cannot nonsuit the Plaintiff, nor be bailed but by the Court of B. R. &c. *Ibid*. A Writ of *Habeas Corpus* is either *ad Respondendum* granted on the Plea Side, to answer the Party; or *ad subjiciendum*, issued on the Crown-Side, to submit to the Order of the Court in Criminal Matters.

Habeas Corpus ad Satisfaciendum, Is had against a Man in the Fleet Prison, &c. to charge him in Execution; which being delivered to the Warden will be sufficient. *Practif. Attorn. Edit. 1. p. 173*.

Habendum. In every Deed or Conveyance there are two principal Parts, the *Premises*, and the *Habendum*; the Office of the First is to express the Name of the Grantor and Grantee, and the Thing granted: And the *Habendum* is to limit the Estate, by which the general Implication in the *Premises* may be qualified: As in a Lease or Grant to two Persons, if the *Habendum* be to one for Life, and the Remainder to the other for Life, this alters the general Implication of the Jointenancy, which would pass by the *Premises*, if the *Habendum* were not. 2 Rep. 55. And where Things which lie in Grant are conveyed to take Effect barely on Delivery of the Deed of Grant, without other Ceremony; in such Case, if the *Habendum* be for a less Estate than in the *Premises*, or be repugnant to it, the *Habendum* is void: But when a Ceremony is requisite to the Perfection of an Estate limited in the *Premises*, and not a bare Delivery only of the Deed, there tho' the *Habendum* is of a less Estate than the *Premises*, the *Habendum* shall stand good, and qualify the Estate granted in the *Premises*. 2 Rep. 23. 2 Nels. 920. An *Habendum* may not only qualify what is granted in the *Premises*; but it may also enlarge what is thus granted, or explain the *Premises*: Though the *Habendum* shall never introduce one who is a Stranger to the *Premises*. 1 Jones 4. 3 Leon 60. If a Bargain and Sale be made, without expressing to whom; although it were *Habendum* to A. B. who is a Party to the Deed, it is not good; because the *Habendum* is only to limit an Estate, and not give any Thing. Cro. El. 585, 903. 2 Lill. 8. See Deed.

Habentia, Signifies Riches: In some ancient Charters, *Habentes Homines* is taken for rich Men; and we read, *Nec Rex suum pastum requirat, vel Habentes Homines quos nos dicimus Feasting Men*. Mon. Angl. Tom. 1. pag. 100.

Habere facias Possessionem, Is a judicial Writ that lies where one hath recovered a Term for Years in Action of *Ejectione firme*, to put him into Possession. F. N. B. 167. And one may have a new Writ, if a former be not well executed; but where Execution is made, and the Writ returned, the Court will never grant a new *Habere*

facias, &c. Mich. 22 Car. 1. B. R. A Sheriff delivered Possession in the Morning, by Virtue of an *Habere facias Possessionem*, and some Time in the same Day after he was gone, the Defendant turn'd the Plaintiff out of Possession; and it was held, that if he had been turn'd out immediately, or whilst the Sheriff or his Officers were there, an Attachment might be granted against the Defendant; for this had been a Disturbance in Contempt of the Execution; but it being several Hours after the Plaintiff was in Possession, the Court doubted, but agreed to grant a new *Habere facias*, &c. 1 Salk. 321. 2 Nels. Abr. 779. If the Sheriff delivers Possession of more than is contained in the Writ of *Habere facias Possessionem*, an Action of the Case will lie against him; or an Assize for the Lands. Style 238. The Sheriff cannot return upon this Writ, that another is Tenant of the Land by Right, because that will not come in Issue between the Demandant and him; therefore he must execute the Writ, and leave the Right to be determined by Law. 6 Rep. 52.

Habere facias Seisinam, Is a Writ directed to the Sheriff to give *Seisin* of a Freehold Estate recovered in the King's Courts by *Ejectione firme*, or other Action. Old Nat. Br. 154. The Sheriff may raise the *Posse Comitatus* in his Assistance, to execute these Writs: And where a House is recovered in a real Action, or by Ejectment, the Sheriff may break open the Doors to deliver Possession and *Seisin* thereof; but he ought to signify the Cause of his Coming, and Request that the Doors may be opened. 5 Rep. 91. This Writ also issues sometimes out of the Records of a Fine, to give the Cognisee *Seisin* of the Land whereof the Fine is levied. West. Symb. par. 2. And there is a Writ called *Habere facias Seisinam, ubi Rex habuit Annum, Diem & Vastum*; for the Delivery of Lands to the Lord of the Fee, after the King hath had the Year, Day and Waste in the Lands of a Person convict of Felony. Reg. Orig. 165.

Habere facias Viſum, A Writ that lies in divers Cases, in Real Actions, as in *Formedon*, &c. where a *View* is required to be taken of the Lands in Controversy. Reg. Jud. 26, 28, &c. F. N. B.

Haberjects, (*Haubergette*) A Sort of Cloths of a mix'd Colour, mentioned in the Stat. of Magn. Chart. c. 26.

Habiliments of War, Armour, Utensils, or Provisions for the Maintaining of War. 3 Eliz. cap. 4.

Hable, (Fr.) Signifies a Sea-port Town; this Word is used in 27 H. 6. c. 3.

Hachia, A Hack, Pick, or Instrument for Digging. Placit. 2 Edw. 3.

Hadbote, (Sax.) A Recompence or Amends for Violence offered to Persons in Holy Orders. Sax. Dist.

Hade of Land, (*Hada terra*) Is a small Quantity of Land, thus express'd: — *Sursum reddidit in Manus Domini duas acras terra, continentes decem seliones & duas Hadas*, Angl. Ten Ridges, and Two Hades, *jacent inter Terr. &c. Rotl. Cur. Mæner. de Orleton, Anno 16 Jac.*

Haderunga, Respect or Distinction of Persons; from the Sax. *Had*, *Persona* and *Arung*, honour'd and admired. Leg. Ethelred.

Haduonel, (Sax.) Seems to be a Tax or Mulct. — *Item quando aliquis delegabit terram Burgagii, &c. quæta Hadgonel & maxime Celerario*, Mon. Angl. par. 1. fol. 302.

Hærede abducto, Is a Writ that antiently lay for the Lord, who having by Right the Wardship of his Tenant under Age, could not come by his Body, being carried away by another Person. *Old Nat. Br. 93.*

Hærede deliberando alii, qui habet Custodiam terræ, A Writ directed to the Sheriff to require one that had the Body of him who was Ward to another to deliver him to the Person whose Ward he was, by Reason of his Land. *Reg. Orig. 161.*

Hærede Rapto, Also a Writ; see *Ravishment of Guard. Reg. Orig. 163.*

Hæredipeta, The next Heir to Lands. — *Et nullus Hæredipeta suo propinquo vel extraneo periculo- sa sane Custodia committatur. Leg. Hen. 1. c. 70.*

Hæretico comburendo, Is a Writ that lay against an Heretick, who having been convicted of Heresy by the Bishop, and abjured it, afterwards fell into the same again, or some other, and was thereupon delivered over to the Secular Power. *F. N. B. 69.* By this Writ, grantable out of Chancery, upon a Certificate of such Conviction, Hereticks were burnt; and so were likewise Witches, Sorcerers, &c. But the Writ *De Heretico comburendo* lies not at this Day. *12 Rep. 93. Stat. 29 Car. 2.*

Hafne, Is a Danish Word for Haven or Port; and *Hafne Courts* are granted *inter alia* by Letters Patent of *Rich. Duke of Glouc. Admiral of England. 14 Aug. Anno 5 Edw. 4.*

Haga, (Sax. *Mansio*) A House in a City or Borough. *Domesday.* An antient Anonymous Author expounds *Haga* to be a House and Shop, *Domus cum Shopa*: And in a Book which belong'd to the Abbey of *St. Austin in Canterbury*, Mention is made of *Hagam Monachis*, &c. See *Co. Litt. 56.*

Hagabium, The same with *Gablum*, or *Gabel*. See *Gabel*.

Hagia, A Hedge, (Sax. *Hæg*, melted into *Hay*, whence *Haia*) *Mon. Angl. Tom. 2. p. 273.*

Hæia, Also an Hedge: Sometimes taken for a Park, &c. *enclos'd. Bract. lib. 2. c. 40.* And *Haieinent* is used for a Hedge-Fence. *Rot. Inq. 36 Edw. 3.* See *Hay*.

Hake, A Sort of Fish dried and salted; hence the Proverb obtains in *Kent*, *as dry as a Hake*. *Paroch. Antiq. 575. Spelm.*

Haketon, A military Coat of Defence. *Walf. in Ed. 3.*

Half-blood, Is no Impediment to Descents of Fee-simple Lands of the Crown, or to Dignities; or in Descent of Estates-tail: But in other Cases it is an Impediment. Administration is grantable to the *Half-blood* of the Deceas'd, as well as the Whole Blood; and *Half-blood* shall come in for a Share of an Intestate's Estate, equally with the Whole Blood, they being next of Kin in equal Degree. *Style 74. 1 Ventr. 307. 22 Car. 2. 10.* See *Demy Sanguine*.

Halfendal, Signifies the Moiety, or one Half of a Thing; as *Fardingdeal* is a Quarter, or fourth Part of an Acre of Land, &c.

Half-mark, (*Dimidia Merka*) Is a Noble, or six Shillings and eight Pence in Money. If a Writ of Right is brought, and the Seisin of the Plaintiff, or his Ancestor, be alledged, the Seisin is not traversable by the Defendant, but he must render the *Half-mark* for the Inquiry of the Seisin; which is as much as to say, that though the Defendant shall not be admitted to deny, that the Plaintiff or his Ancestors were seised of the Land in Question, and to prove his Denial; yet he may be allowed to tender *Half a Mark* in

Money, to have an Inquiry made whether the Plaintiff, &c. were so seised, or not. *F. N. B. 5. Old Nat. Br. 26.* But in a Writ of Advowson brought by the King, the Defendant may be permitted to traverse the Seisin, by Licence obtained from the King's Serjeant; so that the Defendant shall not be obliged to proffer the *Half-mark*, &c. *F. N. B. 31.*

Half Seal, Is what is used in the Chancery for Sealing of Commissions to Delegates, upon any Appeal to the Court of Delegates, either in Ecclesiastical or Marine Causes. *Stat. 8 Eliz. c. 5.*

Half Tongue, See *Medietas Lingua*, as to Pleas and Trials of Foreigners.

Halke, (From the Sax. *Heale*, i. e. *Angulus*) An Hole; seeking in *Halke*, &c.

Hall, (Lat. *Halla*, Sax. *Heall*) Was antiently taken for a Mansion-house or Habitation, being mentioned as such in *Domesday*, and other Records; and this Word is retained in many Counties of England, especially in the County Palatine of *Chester*, where almost every Gentleman of Quality's Seat is called a *Hall*.

Hallage, Is Toll paid for Goods or Merchandise vendid in a *Hall*; and particularly applied to a Fee or Toll due for Cloth, brought for Sale to *Blackwell-Hall* in *London*: Lords of Fairs or Markets are entitled to this Fee. *6 Rep. 62.*

Hallamass, The Day of *All-Hallows*, or *All-Saints*, viz. *Novemb. 1.* and one of the cross Quarters of the Year, was computed in antient Writings from *Hallamass* to *Candlemas*. *Cowel.*

Hallamshire, Is a Part of the County of *York*, in which the Town of *Sheffield* stands. *21 Jac. 1. cap. 23.*

Hallmote or Halimote, (Sax. *Heall*, i. e. *Anla*, & *Gemote*, *Conventus*) Was that Court among the Saxons, which we now call a Court-Baron; and the Etymology is from the Meeting of the Tenants of one *Hall* or Manor. The Name is still kept up in several Places in *Herefordshire*; and in the Records of *Hereford* this Court is entered as follows, viz. *Hereford Palatium, ad Halimot ibidem tent. 11. die Octob. Anno Regni Regis Hen. 6. &c.* It hath been sometimes taken for a Convention of Citizens in their publick *Hall*, where they held their Courts; which was also called *Folkmote*, and *Halmote*: But the Word *Halimote* is rather the Lord's Court, held for the Manor, in which the Differences between the Tenants were determined. — *Omnis Causa terminetur vel Hundredo, vel Comitatu, vel Halmote socam habentium, vel Dominorum Curia. Leg. Hen. 1. cap. 10.*

Halymote, Is properly a *Holy* or Ecclesiastical Court; but there is a Court in *London*, formerly held on the *Sunday* next before *St. Thomas's Day*, called the *Halymote* or *Holy Court*, (*Curia Sancti-motus*) for regulating the Bakers of the City, &c.

Halpwerfolk, *Holyworkfolk*, or People who enjoyed Lands by the Service of Repairing or Defending a Church or Sepulchre; for which pious Labours they were exempt from all Feodal and Military Services. It did signify such of the Province of *Durham* in particular, as held their Lands to defend the Corpse of *St. Cuthbert*; and who claimed the Privilege not to be forced to go out of the Bishoprick, either by the King or Bishop. *Hist. Dunelm. apud Warton Ang. Sac. par. 1. pag. 749.*

Ham, Is a Saxon Word, used for a Place of Dwelling; a Village or Town: And hence is the Termination of some of our Towns, as *Nottingham*,

ham, Buckingham, &c. Likewise a Home-Close, or little narrow Meadow is called Ham.

Hambling, or Hameling of Dogs, Is the ancient Term used by Foresters for expeditating Manwood.

Hamlet, and Hamel or Hampfel, (From the Sax. Ham, i. e. Domus, and Germ. Let, Membrum) Signify a little Village, or Part of a Village or Parish; of which three Words, Hamlet is now only used, tho' Kitchen mentions the other Two, Hamel and Hampfel. By Spelman there is a Difference between Villam integram, Villam dimidiam, and Hamletam; and Stow expounds it to be the Seat of a Frecholder. Several Country Towns have Hamlets, as there may be several Hamlets in a Parish; and some particular Places may be out of a Town or Hamlet, though not out of the County. Wood 3.

Hamfarr, Breach of the Peace in a House. Brompton in Legibus Hen. 1. c. 80.

Hamfoken, (Sax. Hamfocen) Is the Liberty or Privilege of a Man's own House; also a Franchise granted to Lords of Manors, whereby they hold Pleas, and take Cognisance of the Breach and Violation of that Immunity. And likewise significat quietantiam Misericordie intrationis in alienam Domum Vi & Injuste. Fleta, lib. cap. 47. In Scotland Violations of this Kind are equally punishable with Ravishing a Woman. Skene. And our old Records express Burglary under the Word Hamfocne.

Handborow, A Surety or manual Pledge, i. e. an inferior Undertaker; for Headborow is the Superior or Chief. Spelm.

Hand-habend, A Thief caught in the very Fact, having the Goods stolen in his Hand. Leg. Hen. 1. cap. 59. Fleta, lib. 1. cap. 38.

Hand in and out, Is the Name of an unlawful Game, now disused and prohibited by the Statute 17 Ed. 4. c. 2.

Handful, In Measuring is four Inches by the Standard. Anno 33 H. 8. c. 5.

Handgrith, (From the Sax. Hond, manus, and Grith, Pax) Peace or Protection given by the King, with his own Hand. — Hac mittunt hominem in Misericordia Regis, infractio seu violatio pacis quam per Manum suam dabit alicui. Leg. H. 1.

Handy-warpe, A Kind of Cloth: Stat. 4 & 5 Ph. & Mar. c. 5.

Hanig, A Term for customary Labour to be performed. Mon. Angl. Tom. 2. pag. 264.

Hankwit alias Hangwite, (From the Sax. Hangan, i. e. suspendere, & Wite, Multa) Is a Liberty granted to a Person, whereby he is quit of a Felon or Thief, hanged without Judgment; or escaped out of Custody. Rastal. We read it interpreted to be quit de Laron pendu sans Serjeants le Roy, i. e. without legal Trial: And elsewhere, Multa pro Latrone præter juris exigentiam suspenso vel elapso. It may likewise signify a Liberty, whereby a Lord challenges the Forfeiture for him who hangs himself within the Lord's Fee. Domesday.

Hanper or Hanaper, (Haniperium) The Hanaper of the Chancery; it seems to be the same as Fiscus originally in the Latin. 10 R. 2. c. 1.

Hanse, (An old Gothish Word) Signifies a Society of Merchants for the good Usage and safe Passage of Merchandize from one Kingdom to another. The Hanse, or Mercatorum Societas, was and in Part yet is endowed with many large Privileges by Princes within their Territories: And

had four principal Seats or Staples, where the Almain, or German and Dutch Merchants, being the Founders of this Society, had an especial House; one of which was here in London, called the Steel-yard. Ortelius's Index ad Theatr. verbo Asiatici.

Hans Towns, In Germany, &c. so named, either because they lay near the Sea, or from the Gothick Anse, which is taken for those who were the Richest of the People; and from thence it is infer'd, that these Towns were the chiefest for Trade or Riches: Or it may come from the Germ. Hansa, i. e. Societas; a Company of Merchants excelling others in Trade. There were at first but seven Towns distinguish'd by this Name; but afterwards they were Seventy in Number.

Hantelode, An Arrest, from the Germ. Hant, an Hand, and Load, i. e. laid; Manus immissio: As Arrests are made by laying hold on the Debtor, &c. Du Cange.

Hap, (Fr. Happer, i. e. to catch) Is of the same Signification with us as in the French; as to hap the Rent, is where the Partition being made between two Parceners, and more Land allowed to one than the other, she that has most of the Land charges it to the other, and she haps the Rent whereon Assise is brought, &c. This Word is used by Littleton, where a Person happeth the Possession of a Deed-Poll. Litt. f. 8.

Haque, A little Hand-gun, prohibited to be used for Destruction of Game, &c. by Statute 33 H. 8. c. 6. and 2 & 3 Ed. 6. c. 14. There is also the Half-Haque, or Demy-haque, within the said Acts.

Haquebut, A bigger Sort of Hand-Gun than the Haque, from the Teuton. Hæck-Buyse; it is otherwise called an Harquebuss, and vulgarly a Hagbut. 2 & 3 Ed. 6. c. 14. and 4 & 5 Ph. & Mar. c. 2.

Haratium, (From the Fr. Haras) A Race of Horses and Mares kept for Breed; in some Parts of England termed a Stud of Mares, &c. Spelm. Gloss.

Harbours and Havens. There are many Acts of Parliament for Repairing and Improving the Harbours and Havens of this Kingdom; such as 13 & 14 Car. 2. and 4 Geo. c. 13, &c. for the Reparation of Dover Harbour, &c. And Duties are granted by these Statutes towards Effecting thereof. Vide the Statutes.

Hardwic, Mentioned in Domesday, and by Spelman. See Herdewick.

Harnes, (Fr. Harnisch) Signifies all War-like Instruments. Hoed. pag. 725. Matt. Paris. And the Tackle or Furniture of a Ship, was called Harnes or Hernefium. Pl. Parl. 22 Edw. 1.

Haro, Harron. An Outcry after Felons and Malefactors; and the Original of this Clameur de Haro comes from the Normans. Custom. de Normand. Vol. 1. p. 104.

Harping-Irons, Are Iron Instruments for the Striking and Taking of Whales: And those that Strike the Fish with them are called Harpiniers. Merch. Dict.

Harriers, (Harrecti canes) Small Hounds, for Hunting the Hare: Antiently several Persons held Lands of the King, by the Tenure and Service of keeping Packs of Beagles and Harriers. Cart. 12 Ed. 1.

Hart, Is a Stag or male Deer of the Forest five Years old compleat; and if the King or Queen

Queen do hunt any such, and he escape alive, then he is called an *Hart Royal*: And where by the Hunting he is chased out of the Forest, Proclamation is usually made in the adjacent Places, that in Regard of the Diversion the Beast has afforded the King or Queen, none shall hurt or hinder him from returning to the Forest; and then he is called a *Hart Royal proclaimed*. Manwood's Forest Laws, par. 2. cap. 4.

Hart-peny and *Hart-silver*. See *Chimney Money*, &c.

Hasta Porci, A Shield of Brawn.—Johannes de Musgrave tenet Terras in B. de Domino Rege per servitium deferendi Domino Regi unam Hastam Porci, &c. Paroch. Antiq. 450.

Hatches, Arc certain Dams made of Clay and Earth, to prevent the Water issuing from the Works and Tin Washes in Cornwall, from running into the fresh Rivers: And the Tenants of several Manors there are bound to do certain Days Work *ad le Hatches*, or *Hacches*. Stat. 27 H. 8. c. 23. And from a *Hatch*, Gate, or Door, some Houses situate on the Highway, near a common Gate, are called *Hatches*.

Haubergettum, The same with *Halsberga* and *Habergeon*, a Coat of Mail. *Fleta*, lib. 1. cap. 24.

Haur, (From the Fr. *Hair*) Is used for Hatred. *Leg. W.* 1. c. 16.

Hauthoner, (*Homo Loricatus*) A Man armed with a Coat of Mail.—*Et faciendo servitium de Hauthoner, quantum pertinet ad Villam*, &c. Charta Galfridi de Dutton, temp. H. 3.

Hain, A small Parcel of Land, so called in Kent; as a *Hemphaw* or *Beanhaw*, lying near the House, and enclosed for those Uses. *Sax. Dist.* But Sir Edw. Coke, in an antient Plea concerning *Feversham* in Kent, says *Hawes* are Houses. *Co. Litt.* 5. See *Haga*.

Haugh or *Wough*, Signifies a green Plot in a Valley, as they use it in the North of England. *Camd.*

Hauberk alias *Haubert*, (Fr. i. e. *Lorica*) He that holds Land in France by Finding a Coat or Shirt of Mail, and to be ready with it when he shall be called, is said to have *Hauberticum feudum*, *Fief de Haubert*: And *Hawberk*, with our Ancestors, had the same Signification, and so it seems to be used in the Statute 13 Ed. 1. cap. 6.

Hawks. Stealing of an *Hawk*, or concealing it, after Proclamation made by the Sheriff, is Felony with Clergy. 37 E. 3. c. 19. But this extends only to long-winged *Hawks*, of the Kind of *Falcons*; and not to *Goshawks* or *Sparrow-hawks*. 3 Inst. 97. A *Hawk* taken up must be delivered to the Sheriff, if taken by a mean Person, to be proclaimed in the Towns of the County, &c. And Action of Trover and Conversion lies for an *Hawk reclaimed*, and which may be known by her Vervels, Bells, &c. *Hawking* for Game, see *Game*.

Hawkers. Those deceitful Fellows who went from Place to Place, buying and selling Brass, Pewter, and other Goods and Merchandize, which ought to be utter'd in open Market, were of old so called; and the Appellation seems to grow from their uncertain Wandering, like Persons that with *Hawks* seek their Game where they can find it. They are mentioned Statute 25 H. 8. c. 6. and 33 H. 8. c. 4. *Hawkers*, *Pedlars*, &c. going from Town to Town, are now to pay a Fine and Duty to the King, and to be licensed by Commissioners appointed for that Purpose, or be liable to certain Penalties; and any Person

may seize a *Hawker*, &c. till he produce a Licence. 8 & 9 W. 3. 25. But Traders in the Linnen and Woollen Manufactures, sending their Goods to Markets and Fairs, and selling them by Wholesale; Makers of Goods, selling those of their own Making; and Makers and Sellers of *English Bone-lace*, going from House to House, &c. are excepted out of the Acts, and not to be taken as *Hawkers*. 3 & 4 Ann. 4. 4 Geo. We now call those Persons *Hawkers*, who go up and down the Streets of London, crying *News-Books* and *Papers*, and selling them by Retail; and the Women and others who sell them by Wholesale from the Press, are called *Mercuries*.

Hay, *Haya*, Fr. *Haye*, A Hedge or Inclosure; also a Net to take Game. See *Haina*.

Hay-bote, Is a Liberty to take Thorns and other Wood, to make and repair Hedges, Gates, Fences, &c. either by Tenant for Life, or Years.

Hay-market. Carts of *Hay*, which stand to be sold in the *Hay-market*, are to pay so much *per Load* towards the Paving and Amending the Streets; and shall not stand loaden with *Hay* after Three a-Clock in the Afternoon, &c. 8 & 9 W. 3. 17.

Hayward, (From the Fr. *Haye*, i. e. *sepes*, & *Garde*, *Custodia*) Is one that keeps the common Herd of Cattle of a Town; and the Reason of his being called *Hayward* may be, because one Part of his Office is to see that they neither break nor crop the Hedges of inclos'd Grounds, or for that he keeps the Grass from Hurt and Destruction. He is an Officer appointed in the *Lord's Court*, and sworn for the due Execution of his Office. *Kitch.* 46.

Hazard, Is an unlawful Game at Dice; and those that play at it are called *Hazardors*: And we read, *Hazardor communis ludens ad falsos talos adjudicatur, quod per sex Dies in diversis locis ponatur super Colistrigium*. Int. Plac. Trin. 2 Hen. 4. Suffex 10.

Headborough. (From the Sax. *Head*, caput, & *Borge*, fidejussor) Signifies him that is Head of the *Frank-pledge* in *Boroughs*; and had the principal Government within his own Pledge: And as he was called *Headborow*, so he was also stiled *Borowhead*, *Bursholder*, *Thirdborow*, *Tithingman*, &c. according to the Usage and Diversity of Speech in several Places. *Lamb.* These *Headborows* were the Chief of the ten Pledges; the other Nine being denominated *Handborows*, or inferior Pledges: *Headborows* are now a Kind of *Constables*.

Headland, Is the upper Part of Ground left for the Turning of the Plough; whence the *Head-way*. *Paroch. Antiq.* 587.

Head-pence, Was an Exaction of a certain Sum heretofore collected by the Sheriff of *Northumberland* of the Inhabitants of that County, without any Account therefore to be made to the King; which was abolished by the Statute 23 H. 6. c. 7.

Head Silver, Paid to Lords of Leets. See *Common Fine*.

Healfang or *Halsfang*, Is compounded of two Saxon Words *Hals*, i. e. *Collum*, and *Fang*, capere, and signifies that Punishment, *qua alicui collum fringatur*, (*Colistrigium*). Sometimes it is taken for a pecuniary Mulct, to commute for standing in the Pillory; payable to the King or Chief Lord. *Leg. H.* 1. c. 11.

Hebber-men, Fishermen, or Pochers below *London-Bridge*, who fish for Whittings, Smelts, &c. commonly at *Ebbing Water*; mentioned in

one of the Articles of the *Thames* Jury, at the Court of the Conservator of the River of *Thames*. printed Anno 1632. And these Persons are punishable by Statute. 4 H. 7. 15.

Ebbing-wears, Arc Wears or Engines made or laid at *Ebbing Water*. 23 H. 8. 5.

Ebdomadius, The Week's Man, Canon or Prebendary in a Cathedral Church, who hath the Care of the Choir, and the Officers belonging to it for his own Week. *Registr. Episcop. Hereford. M.S.* See *Ebdomary*.

Eck, Is the Name of an Engine to take Fish in the River *Ouse*. 23 H. 8. c. 18.

Eccagium, Is suppos'd to be Rent paid to the Lord of the Fee, for Liberty to use the Engines called *Hecks*.

Eeda, A small Haven, Wharf, or landing Place. *Domesday*. See *Hith*.

Eedagium, Toll or Customary Duties paid at the *Hith* or Wharf, for Landing of Goods, &c. from which Exemption was granted by the King to some particular Persons and Societies. *Cartular. Abbat. de Radinges, M.S. f. 7.*

Hedge-breakers. By the Statute 43 Eliz. c. 7. *Hedge breakers*, &c. shall pay such Damages as a Justice of Peace shall think fit; and if not able to pay the Damages, shall be committed to the Constable to be whipp'd. And Constables, and others, may apprehend Persons suspected of *Hedge-stealing*, and carry them before a Justice; where not giving a good Account how they came by Wood, &c. they are not only to make such Recompence as the Justice of Peace shall adjudge, but pay a Sum not exceeding 10 s. for the Use of the Poor; or be sent to the House of Correction for a Month, by 15 Car. 2. 2. Persons convicted of Buying stolen Wood, shall forfeit treble Value to him from whom taken. *Ibid.*

Heir, (*Hæres, ab hereditate*) Is he that succeeds by Descent to Lands, Tenements and Hereditaments, being an Estate of Inheritance. The Estate must be Fee, because nothing passeth *Jure Hereditatis* but Fee; and by the Common Law a Man cannot be *Heir* to Goods and Chattels: But the Civilians call him *Hæredem, qui ex Testamento succedit in Universum jus Testatoris*. Some Writers have made a Distinction of *Hæres sanguinis* & *Hæreditatis*; a Man may be *Hæres sanguinis* to a Father or Ancestor, and yet may upon Displeasure be defeated of his Inheritance: And there is an *Ultimus Hæres*, being he to whom Lands come by *Escheat*, for Want of lawful *Heirs*, viz. The Lord of whom the Lands are held, or the King. *Bract. lib. 7. c. 17.* *Hæres*, according to Sir *Edw. Coke*, is he *qui ex justis Nuptiis procreatus est*, to whom Lands and Tenements by the Act of God, and Right of Blood, do descend. *Co. Litt. 7.* There are some Persons who may not be *Heirs*; as a Bastard, born out of lawful Wedlock; an Alien, born out of the King's Allegiance, though in Wedlock; a Man attainted of Treason or Felony, whose Blood is corrupted; these last may not be *Heirs*, *propter Delictum*; and an Alien cannot be *Heir*, *propter Defectum subjectionis*; nor may one made Denizen by Letters Patent, though 'tis otherwise of a Person naturaliz'd by Act of Parliament. *Co. Litt. 8. 2 Danv. Abr. 552.* A Bastard, by Continuance, may be *Heir* against a Stranger: And an Hermaphrodite may be *Heir*, and take according to that Sex which is most prevalent; but a Monster, that hath not human Shape cannot be *Heir*, altho' a Person deformed may. *Co. Litt. 7. 2 Danv. 553.* Idiots and Lunatics, Per-

sons excommunicate, attainted in *Premunise*, Out-laws in Debt, &c. may be *Heirs*. *Ibid.* There is a *Lineal Heir*, as the Son of a Person; and a *Collateral Heir*, as Brother, &c. Yet a Man can have no right *Heir*, to take Lands during his Life. *Dyer 99.* The Word *Heir* is not a good Description of a Person in the Life-time of the Ancestor; and an eldest Son shall not take by the Name of *Heir* in the Life-time of his Father. 2 Leon. 70. A Man cannot raise a Fee-simple Estate to his right *Heirs*, by the Name of *Heirs*, as a Purchase, by Conveyance or otherwise; but in such Case the *Heir* shall be in by Descent: *Fortior & Potentior est Dispositio Legis, quam Hominis.* *Hob. 30. 2 Lill. Abr. 11.* By the Law of England, no Person can take to himself an Inheritance in Fee-simple by Deed, without the Word *Heirs*; but he may by Devise: Though in Cases where the Word *Heirs* is wanting, it has been adjudged that if there are other Words equivalent, and the Interest in the Thing granted passeth by the Consideration only, without any further Ceremony in the Law, an Estate in Fee may pass. 2 Nelf. Abr. 928. The Word *Heir* is *nomen collectivum*, and extends unto all *Heirs*: And under *Heirs*, the *Heirs* of *Heirs* are comprehended in *Infinitum*; if Lands are given to a Man and his *Heirs*, all his *Heirs* are so totally in him, that he may give his Lands to whom he will. *Trin. 23 Jac. 1. Noy 56.* The *Heir* is favoured by the Common Law; and the Ancestor could not give away his Lands by Will from his *Heir* at Law, without the Consent of the *Heir*, till the Statute 32 H. 8. 2 Lill. 11. *Hill. 23 Car. B. R.* Dubious Words in a Will shall be construed for the Benefit of the *Heir*; and not to disinherit him: And the *Heir* at Law is preferred in Chancery in a doubtful Case. *Noy 185. Chanc. Rep. 7.* Not only Land, but Rent not due at the Death of the Ancestor Lessor, shall go to the *Heir*; so Corn sown by Tenant for Years, where his Term expires before the Corn is ripe; every Thing fastened to the Freehold, Timber-Trees, Deeds belonging to the Inheritance; Deer, Conies, Pigeons, Fish, &c. 2 Nelf. Abr. 927. An *Heir* shall enforce the Administrator to pay Debts with Personal Estate, to preserve the Inheritance to the *Heir*. *Chanc. Rep. 280, 293.* If an Executor hath Assets, he is compellable in Equity to redeem a Mortgage, for the Benefit of the *Heir*; and it is the same where the *Heir* is charged in Debt. *Hardr. 511.* And when the *Heir* is sued for the Debt of his Ancestor, and pays it, he shall be re-imburfed by the Executor of the Obligor, who hath personal Assets. 1 Chanc. Rep. 74. But in Action of Debt brought upon a Bond against an *Heir*, 'tis no good Plea for the *Heir* to say, that the Executors have Assets in their Hands. *Dyer 204.* For a Creditor may sue either *Heir* or Executor; and *Heirs* and Executors are both chargeable upon Specialties. If an *Heir* hath Assets, and the Executor also, it is at the Election of the Obligee to have Action of Debt against the One, or the other; but he shall not charge them doubly. 2 Plowd. 433. If an *Heir* has made over Lands fallen to him by Descent, Execution shall be had against him to the Value of the Land, &c. if it be not sold *bona fide* before the Action brought, in which Case there is a Saving by the Statute 3 & 4 W. & M. c. 14. And whether the *Heir* hath Lands by Descent, shall be tried and enquired of, with the Value, by a Jury, to make the *Heir* answerable. 5 Mod. 122. It has been

held, that the *Heir* is never chargeable without an express *Lien* and *Assets*; and even then no longer than he hath *Assets*, for he is not obliged to keep them 'till he is charged: But if he hath *Assets*, he ought to plead truly, and to confess them; otherwise Judgment shall be given against him *de Terris propriis*, for 'tis then his Debt. *Jones* 88. 3 *Salk.* 179. When a Man recovers against an *Heir*, by Default or Verdict, on Pleading *Riens per Descend*, a Special Judgment *de Terris Descendens* may be entered against the *Heir*, and the Plaintiff shall have all the Lands by Descend in Execution: Though if the Judgment be general against the *Heir*, he can have only a Moiety by *Elegit.* *Davis* 439. 2 *Leon.* 16. And the Judgment and Execution shall be general, where the *Heir* acknowledges the Action, and shews that he hath so much by Descend; but if he will not shew what he hath by Descend, he loses the Benefit of the Law. *Mich.* 1 *W. & M. B. R. Cro. Eliz.* 692. Where an *Heir* is sued for the Debt of his Ancestor, his Body ought not to be taken in Execution, or any other Lands which he had not by Descend; yet if the *Heir* do not shew what Lands he had by Descend, it shall be intended that he had *Assets* to pay the Debt. *Moor* 522. A collateral *Heir* is chargeable for the Debt of his Ancestor; but the Declaration must be special, and he is to be charged as collateral *Heir*, not as immediate *Heir*; and if a Son happens between, who dies, he must be said Uncle and *Heir* of the Son, who was *Heir* of the Debtor, &c. *Cro. Car.* 151. And a Child born, though he lives but an Hour, has the Fee of Lands vested in him as *Heir.* *Heth.* 134. In a Writ a Man need not shew how he is *Heir*; but he must in a Declaration, &c. though it is only for Form to set forth how a Person is *Heir*, because it is not traversable; and *Heir*, or no *Heir*, is issuable. *Moor* 885. If an *Heir* ought to confess the Debt on Action brought against him, and the Debt be not denied, it must be admitted. 1 *Lutw.* 442. Debt against the *Heir*, upon the Bond of his Ancestor, is to be brought in the *Debet* and *Detinet*, because the *Heir* himself is bound; and not in the *Detinet* only, though that is cured by a Verdict. *Sid.* 342. 1 *Lev.* 224. The *Heir* is not bound by the Bond of the Ancestor, unless he is expressly bound: And if in a Bond a Man binds his *Heirs*, but not himself, the Bond is void. 2 *Saund.* 136. *Cro. Jac.* 570. Also a Man shall never bind his *Heir* to Warranty, where himself was not bound: If he makes a Feoffment in Fee, and binds his *Heirs* only to Warranty, the Feoffment is void; for the *Heir* shall be bound to Warranty in such Cases only, where the Ancestor was bound, without which it cannot descend upon him. 1 *Inst.* 386. And a Grant of an Annuity must be for a Man and his *Heirs*, to bind the *Heir*, although there be *Assets*; and when he is named, the *Heir* shall not be bound, except there be *Assets*. 1 *Inst.* 144. A Person covenants with another to perform any Act, if his *Heir* be not named, he is not bound by it: But in Covenants of others, that concern the Inheritance, and run with the Land, the *Heir* shall have the Benefit of them, though not named. 5 *Rep.* 8. 1 *Roll. Abr.* 520. An *Heir* may enter for a Condition broken, when the Condition is annex'd to Lands, and take Advantage of it; because if there had been no Condition, the Land would have descended to him: And an *Heir* may perform a Condition, to save

the Land. 2 *Nelf. Abr.* 929. The *Heir* shall not have Money due on Mortgages in Fee, if he be not particularly named, but the Executor; and if the Day be past, although the *Heir* be named, the Executor shall have it. 1 *Inst.* 210. 2 *Ventr.* 348. If a Person makes a Lease for Years of Lands of Inheritance, rendering Rent to his Executors and Assigns, the *Heir* shall have the Rent; because by the Reservation it is to continue after the Lessor's Death, and is incident to the Reversion; though it was formerly held otherwise, the *Heir* not being named: And where it is reserved to the Lessor, and his Assigns, it is otherwise. 2 *Lev.* 13, 14. 12 *Rep.* 36. *Heirs* includes Assigns in Grants, &c. If a Woman keeps Land from the *Heir*, on Pretence of being with Child by the *Heir's* Ancestor, her deceased Husband, the Writ *Ventre Inspeciendo* is to be granted to search her, &c. that the *Heir* be not defrauded. *F. N. B.* 227. The next *Heir* Male is to bring Appeal for the Death of his Ancestor, &c. And *Heirs* may have divers Writs, as Writ of Mortdancestor, *Entre ad communem Legem*, *In casu Proviso*, and *Consimili casu*, *Quod permittat*, &c. See *Discent*, &c.

Heir apparent, Is one during the Life-time of his Ancestor; 'till the Ancestor's Death he is only *Heir apparent*, or at Law. 1 *Inst.* 8.

Heiress, Is a Female *Heir* to a Man, having an Estate of Inheritance in Lands; and where there are several joint *Heirs*, they are called *Co-heirs* or *Co-heiresses*. Stealing an *Heiress*, and marrying her against her Will, where Felony. See *Forcible Marriage*.

Heir-loome, (From the Sax. *Heier*, i. e. *Hæres*, & *Leome*, *Membrum*) Comprehends divers Implements of Household, which by the Custom of some Countries have belonged to a House certain Descents, are never inventoried after the Decease of the Owner as Chattels, but accrue to the *Heir* with the House it self by Custom, and not by the Common Law: And these are not devisable by Testament; for the Law prefers the Custom before a Devise, which takes not Effect 'till after the Death of the Testator, and then they are vested in the *Heir* by the Custom. *Co. Litt.* 18, 28. But Sale in a Man's Life-time might make it otherwise. The antient Jewels of the Crown are *Heir-looms*, and shall descend to the next Successor; and are not devisable by Will. *Ibid.* 185. And *Heir-looms* in general are said to extend to all Household Implements; of which *Spelman* says thus: *Omne Utensile robustius quod ab adibus non facile revellitur, ideoque ex more quorundam locorum ad hæredem transit, tanquam membrum hereditatis.* And Sir Edw. Coke says, *Consuetudo Hundredi de Stretford in Com. Oxon. est, quod Hæredes Teneamentorum post Mortem antecessorum suorum habebunt, &c. Principalium, Anglice, an Heirloom, viz. de quodam genere Catallorum, Utensilium, &c. Optimum Plaustrum, optimam Carucam, optimum Cippum, &c.* *Co. Litt.* 18.

Hegira, The Mahometan *Æra*, or Computation of Time, Beginning from the Flight of Mahomet from Rome, 16. July, Anno 622.

Hetting, A brass Coin among the Saxons, equivalent to our Half-penny.

Hellen-wall, Is an End Wall, that defends the Rest of the Building; from the Sax. *Helan* to cover; hence a Thatcher, Slater or Tiler, who covers the Roof of a House, is in the western Parts of England called a *Hellier*. *Paroch. Antiq.* 573. *Henchman*,

Henchman, Henrman, A German Word, signifying *Domesticum*; it is used for a Man that runs on Foot, attending upon a Person of Honour. 3 E. 4. 5. 24 H. 8. 13.

Henedpeny, A customary Payment of Money, instead of *Hens* at Christmas; mentioned in a Charter of King Edward 3. Mon. Angl. Tom. 2. pag. 327. Du Fresne is of Opinion, it may be *Hen-peny*, *Gallinagium*, or a Composition for Eggs: But Cowel thinks it is misprinted *Hened peny*, for *Heved-peny* or *Head-peny*.

Henghen, (Sax.) A Gaol, Prison, or House of Correction. Leg. H. 1. c. 65.

Heordofeste, (Sax. *Heorthfast*, i. e. Fix'd to the House or Harth) Is the same with *Husfthane*, the Master of a Family. LL. Canuti, cap. 40.

Heordpenny, (From the Sax. *Heorth*, focus, & *Penning*, Denarius) Olim *Romescot*, & postea *Peter-pence*. Leg. Edgar. apud Brompt. c. 5.

Herald, Heralt, or Harold, (Ital. *Heraldo*, Fr. *Herault*; quasi *Herus altus*) Signifies an Officer at Arms. *Vesfegan* thinks it may be derived from two Dutch Words, viz. Here, *exercitus*, & Healt, *pugil Magnanimus*; as if he should be called the *Champion of the Army*: And the Romans called *Heralds*, *Feciales*. Polydore, lib. 19. describes them thus: *Habent insuper Apparitores Ministros, quos Heraldos dicunt, quorum praefectus Armorum Rex vocitatur; hii Belli & pacis Nuncii; Ducibus, Comitibusque a Rege factis insignia aptant, ac eorum funera curant.* The Function of these Officers, as now exercised with us, is to denounce War, proclaim Peace, and to be employed by the King in Martial Messages: They are Examiners and Judges of Gentlemen's Coats of Arms, and Conservers of Genealogies; and they marshal the Solemnities at the Coronations, and Funerals of Princes, and other great Men. The three Chief of these *Heralds*, are called *Kings at Arms*; of which *Gar*ter is the Principal, instituted by King Henry 5. whose Office is to attend the *Knights of the Garter* at their Solemnities, and to marshal the Funerals of the Nobility: And King Edw. 4. granted the Office of *King of Herald*s to one *Gar*ter, cum *Feudis & Proficiis ab antiquo*, &c. The next is *Clarenceux* or *Clarentius*, ordained by Edward 4. who attaining the Dukedom of *Clarence* by the Death of George his Brother, whom he beheaded for aspiring to the Crown, made the *Herald* which belong'd to that Dukedom a King at Arms, and called him *Clarenceux*; his proper Office is to marshal and dispose the Funerals of all the lesser Nobility, Knights and Esquires, through the Realm, on the South-Side of *Trent*. The Third is *Norroy*, quasi *North-Roy*, whose Office and Business is the same on the North-Side of *Trent*, as *Clarentius* on the South, which is intimated by his Name, signifying the *Northern King*, or *King at Arms* of the North Parts. These Three Officers are distinguished as follows, viz. *Gar*ter, *Rex Armorum Anglicorum indefinite*; *Clarenceux*, *Rex Armorum partium Australium*; *Norroy*, *Rex Armorum partium Borealium*. Besides the *Kings at Arms*, there are Six inferior *Heralds*, according to their Original, as they were created to attend Dukes and Great Lords, in Martial Expeditions, i. e. *York*, *Lancaster*, *Chester*, *Windsor*, *Richmond*, and *Somerset*; the Four former instituted by King Edward 3. and the Two latter by Edward 4. and Henry 8. To these, upon the Coming of King George to the Crown, on Account of his *Hanoverian* Dominions, a new *Herald* was made called *Hanover Herald*; and another stiled

Gloucester, King at Arms. Anno 11 Geo. And lastly, to the superior and inferior *Heralds*, are added Four others called *Marshals*, or *Pursuivants at Arms*, who commonly succeed in the Places of such *Heralds* as die, or are preferred; and they are *Blue Mantle*, *Rouge-Cross*, *Rouge-Dragon*, and *Portcullis*; all equipp'd with proper Ensigns, Badges, and Distinctions. The ancient *Heralds* have been made a Corporation or College, under the *Earl Marshal of England*, with certain Privileges by the Kings of this Realm: *Concesserunt, &c. Heraldum Armorum, & omnes alii Heraldum, Prosecutores sive Pursuivandi Armorum, qui pro tempore fuerint, imperpetuum, sint unum Corpus Corporatum, in re, facto, & nomine; habeantque successiorem perpetuam, nec non quoddam sigillum commune, &c. Dat. &c. Spelm. Gloss. Herald's Court of Honour. See Honor-Courts.*

Herbage, (*Herbagium*) Is the green Pasture and Fruit of the Earth, provided by Nature for the Bit or Food of Cattle: And it is used for a Liberty that a Person hath to feed his Cattle in the Ground of another Person; or in the Forest, &c. *Crompt. Jurisd.* 197.

Herbagium anterius, The first Crop of Grass or Hay, in Opposition to the second Cutting, or *After-Math*. *Paroch. Antiq.* 459.

Herbinger or Harbinger, (From the Fr. *Herberger*, i. e. *Hospitio accipere*) Signifies an Officer of the King's Household, who goes before and allots the Noblemen, and those of the King's Retinue their Lodgings: It has been also taken for an Inn-keeper, who has the Care of Lodging and Harboursing his Guests. *Kitch.* 176.

Herberg, (Sax.) A House of Entertainment; whence *Herbigere*, to harbour and entertain.

Herbury, Is a Saxon Word used for Inn; and *Herburgeis*, an Inn-keeper. *Blount.*

Herce, (Lat. *Hercia*) A Harrow. — *Carucas & Hercias reparare.* *Fleta*, lib. 2. cap. 77.

Hercia, The same as *Herce*; and signifies likewise a Candlestick set up in Churches, made in the Form of an Harrow, in which many Candles were plac'd; these Candlesticks were used on the Sepulture of Persons, and set ad caput *Cenotaphii*.

Herciebant, (From the Fr. *Hercer*, to harrow, and *Arabant*) *Arabant & Herciebant ad Curiam Domini*, i. e. They did plough and harrow at the Lord's Manor. 4 *Inst.* 270.

Herdewic, (*Herdeuycha*) A Grange, or Place for Cattle and Husbandry. *Mon. Angl. Tom.* 3.

Herdwerc, Herdsman's Labour, or customary Work done by Shepherds, Herdsmen, and inferior Tenants. *Regist. Eccles. Christi Cant. M.S.*

Herebannum, (Sax. *Hera*, *exercitus*, & *Ban*, *Editum*, *Multa*) A Mult for not going armed into the Field, when called forth. *Spelm.*

Herebote, (From the Sax. *Here*, and *Bode*, a Messenger) The King's Edict commanding his Subjects into the Field.

Hereditaments, (*Hereditamenta*) Signify all such immoveable Things, whether Corporeal or Incorporeal, which a Man may have to him and his Heirs by way of Inheritance; and which, if they are not otherwise devised, descend to him that is next Heir, and fall not to the Executor as Chattels do. 32 *Hen.* 8. c. 2. It is a Word of very great Extent, comprehending whatever may be inherited or come to the Heir; be it Real, Personal or Mix'd, and though it is not holden, or lieth not in Tenure. *Co. Lit.* 6. 16. And by the Grant of *Hereditaments* in Conveyances, Ma-

nors, Houses, and Lands of all Sorts, Rents, Services, Advowsons, &c. will pass. *Ibid.* *Hereditamentum est omne quod jure hereditario ad Heredem transeat.* Coke.

Herefare, (Sax.) Is a going in a military Expedition, or to a Warfare.

Heregeld, A Tribute or Tax levied for the Maintenance of an Army. See *Subsidy*.

Heremitozium, A solitary place of Retirement for Hermits. — *Radulphus Heremita locum Heremitorium de M. edificavit.* Mon. Angl. Tom. 3. pag. 18

Herenach, An ancient Word signifying Archdeacon.

Heressita, A Soldier hired for the Wars, departing without Licence; from the Sax. *Here*, and *Sliten* to depart, or *Slitan*, *scindere*, *dissolvere*.

4 *Inst.* 128. This Word is also writ *Hereſſa*; and *Hereſſiz*.

Hereſy, (*Hereſis*) Is an Opinion contrary to sound Principles of Religion; among Protestants it is taken for a false Opinion repugnant to some essential Point of Doctrine of the Christian Faith, revealed in Scripture, and obstinately maintained and persisted in, by such as profess the Name of Christ. There is no express Law or Statute that determines what shall be called *Hereſy*, it being impossible to set down all the particular Errors which may be said to be *Heretical*, concerning which there have been so many Disputes: Yet as the Stat. 1 *Eliz. ca. 1.* directed the *High Commission Court*, (since abolished) to restrain the same to what had been adjudged so by the Authority of the Scriptures; or by the first four General Councils, or any other General Council wherein it was declared *Hereſy* by express Words of Scripture; or as should be determined to be such by Parliament, the Convocation assenting: These Rules may be a good Direction to the Judges of the Ecclesiastical Courts in Relation to *Hereſy*. 3 *Inst.* 40. *H. P. C.* 3, 4. The Archbishop, or Bishop of every Diocese, have Power to convict any for *Hereſy*; this is by the *Common Law*. And by the 23 *Hen. 8. cap. 9.* the Archbishop of either Province, may cite any Person before him for *Hereſy*, if the immediate Ordinary or Bishop consent thereto; or do not his Duty in punishing the same: The Convocation may declare what Tenets are heretical; and some say that an Heretick may be convicted before an Archbishop and Bishops, &c. at a general Convocation; but it is said to be a Question of late, whether they have Power to convene and convict the Heretick. 2 *Roll. Abr.* 226. 1 *Hawk. P. C.* 4. The Temporal Courts cannot take Cognizance of any Person for *Hereſy*, by Indictment, or otherwise; but they may incidentally adjudge whether any Tenet be *Hereſy* or not, as in a *Quare Impedit*, where the Bishop pleads, that he refused the Clerk for *Hereſy*, &c. 5 *Rep.* 58. And if a Person in Maintenance of his Errors sets up *Conventicles*, and raises Factions, to the Disturbance of the publick Peace; he may be fined and imprisoned, upon an Indictment at the *Common Law*. 2 *Hawk.* 4. *Hereſy* was anciently *Treason* according to Lord *Finch*; and the Punishment for *Hereſy* was Burning, by Force of the Writ *de Hæretico Comburendo*; but the Heretick forfeited neither Lands nor Goods, because the Proceedings against him were only *pro salute Animæ*. *H. P. C.* 5. 3 *Inst.* 43. *Raym.* 407. By the Stat. 29 *Car. 2. cap. 9.* the Proceedings on the Writ *de Hæretico Comburendo*, and all Punishments by

Death in Pursuance of any Ecclesiastical Censures, are taken away: And all the old Statutes which gave Power to arrest or imprison Persons for *Hereſy*, &c. are repealed: But by the *Common Law*, an obstinate Heretick being excommunicate, is still liable to be imprisoned by Virtue of the Writ *de Excommunicato capiendo*, till he make Satisfaction to the Church: And denying the Truth of the Christian Religion, or the Divine Authority of the Holy Scriptures, &c. is liable, for the second Offence, to three Years Imprisonment, and divers Disabilities, by Stat. 9 & 10 *W. 3. cap. 32.*

Heretick, (*Hæreticus*) Is one that is convicted of *Hereſy*, or that maintains any Opinions or Principles contrary to the Christian Religion. See *Hæretico Comburendo*.

Heretoche, (From the Sax. *Here*, *exercitus*, and *togen*, *ducere*) The General of an Army; a Leader or Commander of military Forces. *LL. Ed. Conf. cap. 35.* But *Du Cange* says, the *Heretochii* were the Barons of the Realm. — *Intersunt Episcopi, Comites, Vicecomites, Heretochii, &c.* Leg. H. 1.

Heretum, A Court or Yard for drawing up the Guards or military Retinue, which usually attended our Nobility. *Hist. Dunelm.*

Hergripa, (Sax. *Her*, *capillus*, and *grypan*, *capere*) Signifies the Pulling any one by the Hair; which was punishable by the Laws of *Hen. 1. cap. 94.*

Herigaldis, A Sort of Garment called by that Name. *Blount.*

Heriot, (*Heriotum*) Is in the Sax. *Heregate*, derived from *Here*, i. e. *Exercitus*, an Army, and *Gate*, a Beast; and signified originally a Tribute given to the Lord of a Manor for his better Preparation for War: By the Laws of *Canutus*, at the Death of the great Men of this Realm, so many Horses and Arms were to be paid as they were in their respective Life-times obliged to keep for the King's Service. *Spelm.* Sir *Edw. Coke* makes *Heriot*, or *Heregat*, the Lord's Beasts, from *Here*, Lord: And it is now taken with us for the best Beast, whether it be Horse, Ox, or Cow, that the Tenant dies possessed of, due and payable to the Lord of the Manor; and in some Manors, the best Goods, Piece of Plate, &c. *Kitch. 133.* There is *Heriot-Service*, or *Heriot-Custom*: *Heriot-Service* is payable on the Death of Tenant in Fee-simple; and *Heriot-Custom* upon the Death of Tenant for Life: When a Tenant holds by Service to pay a *Heriot* at the Time of his Death, which Service is expressed, and especially reserved in the Deed of Feoffment, this is *Heriot-Service*; and where *Heriots* have been paid Time out of Mind, by particular Custom, after the Death of Tenant for Life, this is *Heriot-Custom*. *Co. Lit.* 185. *Heriots* by Custom are commonly paid for Copyhold Estates; and if an *Heriot* is reserved upon a Lease, it is *Heriot-Service*, and incident to the Reversion. *Lutw.* 1366, 1367. For a *Heriot* goes with the Reversion, as well as Rent; and the Grantee of the Reversion shall have it. 2 *Saund.* 166. Altho' a *Heriot* reserved upon a Lease is called an *Heriot-Service*, yet it is not like the Case where a Man holds Lands by the Service of paying an *Heriot*, &c. because where a *Heriot* is reserved on Lease, the proper Remedy is either a Distress, or Action of Covenant grounded on the Contract; for the Lessor cannot seize, as the Lord of a Manor may do, the Beast of his Tenant who holds of him by *Heriot-Service*. *Keilw.* 82, 84. There may be a Covenant in Leases for Lives,

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Lives, &c. to render the best Beast, or so much in Money for an *Heriot*, at the Election of the Lessor; in which Case the Lessor must give Notice which he will accept, before Action may be brought for it, or a Distress taken, &c. 2 *Litt. Abr.* 19. For *Heriot-Service*, the Lord may distrain any Beast belonging to the Tenant on the Land: Also it has been held, that the Lord may distrain any Man's Beasts which are upon the Land, and retain them till a *Heriot* is satisfied. 1 *Inst.* 185. *Litt. Rep.* 33. And if the Tenant devise away all his Goods, &c. yet the Lord shall have his *Heriot* on the Death of the Tenant. *Stat.* 13 *Eliz.* c. 3. For *Heriot-Custom*, the Lord is to seise, not distrain; and he may seise the best Beast, &c. though out of the Manor, or in the King's Highway, because he claims it as his proper Goods, by the Death of the Tenant, which he may seise in any Place where he finds it: But for *Heriot-Service*, it is said he ought to distrain, and not to seise. *Kitch.* 267. 2 *Inst.* 132. 2 *Nelf. Abr.* 931. The Lord may properly seise for *Heriot-Custom*, and take a Distress for *Heriot-Service*: And for *Heriot-Custom*, he may seise any where; but for *Heriot-Service*, on the Land only: Though it has been adjudged, that a *Heriot-Custom* or *Service*, may be seised any where; but one cannot distrain for them out of the Manor. *Plowd.* 96. *Keilw.* 84. 1 *Salk.* 356. Where a Woman Life marries and dies, the Lord shall have no *Heriot-Custom*, because a Feme Covert can have no Goods to pay as a *Heriot*. 4 *Leon.* 239. And when a *Heriot* is to be paid by a certain Life of his own Goods, an Assignee is not liable to pay the *Heriot*; his Goods not being the Goods of such Life. *Cro. Car.* 313. 2 *Nelf.* 932. If the Lord purchase Part of the Tenancy, *Heriot-Service* is extinguished; but it is not so of *Heriot-Custom*. 8 *Rep.* 105. There is this Difference between *Heriot* and *Relief*; *Heriot* has been generally a *Personal*, and *Relief* always a *predial* Service.

Herischild, (From the Sax. *Here*, and *Scyld*, i. e. *Scutum*) Military Service, or Knight's Fee. *Herishit*, Signifies Laying down of Arms. Sax. *Heristall*, (Sax. *Here*, an Army; and *Stall*, Station) A Castle. *Blount*.

Hermer, Among the Saxons was a great Lord; from the Sax. *Hera*, i. e. *Major*, and *Mare*, *Dominus*.

Hermitage, (*Hermitagium*) The Habitation of a Hermit: The *Hermitory* is said to be the same; but in an old Charter Mention is made of *Capella*, *sive* *Hermitorium*, where it should signify a Place of Prayer belonging to an *Hermitage*. See *Heremitorium*.

Herring-Silver, Seems to be a Composition in Money, for the Custom of paying such a Number of *Herrings*, for the Provision of a religious House, &c. *Placit. Term. St. Trin.* 18 *Ed.* 1.

Hestia, An Easement. — *Usque ad quandam Hestiam ante Messuagium*, &c. *Chart. Antiq.*

Hesta, Is a Corruption of the Lat. *Hesta*, signifying a little Loaf of Bread.

Hestcorn. King *Athelstane* in his Return from the North, after a Victory, went to *Beverley*, where he gave to God, &c. *Quasdam arenas, vulgariter dictas Hestcorne, precipiendas de Dominis & Ecclesiis in illis partibus, quas*, &c. *Mon. Angl. Tom.* 2. p. 367.

Hestha, A Capon, or young Cockerill. —

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Quando Rex ibi veniebat, reddebat ei unaqueque Carruata 200 Hesthas. *Domesday.*

Heavelhoth, (From the Sax. *Healf*, i. e. *Dimidium*, & *Borgh*, *Debitor vel Fidejussor*) A Surety for Debt, *Quia qui fide jabet, Debitorem se quodammodo constituit.* *Du Fresne.*

Hexam and *Hexamshire*, Anciently *Hagufeld*, was a Country of it self, and likewise a Bishoprick, endowed with great Privileges: But by the *Stat.* 14 *Eliz.* cap. 14. it is enacted, that *Hexam* and *Hexamshire*, shall be within and accounted Part of the County of *Northumberland*. 4 *Inst.* 22.

Hymmetus, A Net for catching of Conies; a *Hay-Net*. *Placit. Temp. Ed.* 3.

Hidage, (*Hydagium*) Was an extraordinary Tax, payable to the King for every *Hide* of Land. *Bracton* writes of it thus: *Sunt etiam quedam communes Prestationes, que servitia non dicuntur, nec de Consuetudine veniunt, nisi cum necessitas intervenerit, vel cum Rex venerit; sicut sunt Hidagia, Coragia, & Carvagia, ex consensu communi totius Regni introducta*, &c. *Bract. lib.* 2. cap. 6. This Taxation was levied not only in Money, but Provision of Armour, &c. And when the Danes landed at *Sandwich*, in the Year 994. King *Ethelred* taxed all his Land by *Hides*, so that every 310 *Hides*, found one Ship flourished; and every 8 *Hides*, found one Jack and one Saddle, to arm for the Defence of the Kingdom, &c. Sometimes the Word *Hidage* was used for the being quit of that Tax; which was also called *Hidegild*, and interpreted from the Saxon, a Price or Ransom paid to save one's Skin or Hide from Beating. *Sax. Dict.* See *Danegeld*.

Hide of Land, (*Hida Terra*, Sax. *Hydeland*, from *Hyden*, *tegere*) Is such a Quantity of Land as might be plowed with one Plough in a Year; or as much as would maintain a Family. *Terms de Ley.* *Crompton* in his *Jurisd.* says, it contains an hundred Acres; and Others hold it to be four Yard-Lands: But Sir *Edw. Coke* said, that a *Hide*, or *Plough-Land*, *Yard-land*, &c. contain no certain Number of Acres. *Co. Lit.* 69. The Distribution of England by *Hides* of Land is very ancient; Mention being made thereof in the Laws of King *Ina*, c. 14.

Hide and Gain, Signified arable Land; to gain the Land, being as much as to till it. *Co. Lit.* 85.

Hidel, A Place of Protection or Sanctuary. *Stat.* 1 *Hen.* 7. c. 6.

High Treason, (*Lesa Majestas*). See *Treason*.

Highway, (*Via Regia*) Is a Passage for the King's People, for which Reason it is called the *King's Highway*; but the Freehold of the Soil is in the Lord of the Manor, or in the Owner of the Land on each Side; and if there are Trees and other Profits there, they belong to him. *Dalt.* 76. Our Books mention three Kinds of Ways, 1st, A *Foot-way*, which is called *Iter*, *quod est jus eundi vel ambulandi hominis*. 2d, A *Foot-way* and *Horse-way*, which is termed *Adus ab agendo*, and this is called a pack and prime Way, because it is both a *Foot-way*, which was the first or prime Way, and a pack or drift Way also. 3d, *Via*, *Aditus*, which contains the other two, and likewise a *Cart-way*, &c. And this is either the *King's Highway* for all Men, or *Communis strata*, belonging to a City or Town, &c. and is called by our ancient Writers *Chimin*, being a French Word for a Way. *Co. Lit.* 56. Any one of the

the aforementioned Ways; may properly be called the *Highway*, if common to all the King's People; and so may a private Way, that leads from Town to Town, and is a Thorough fare: If a Way leads to a Market-Town, is a Way for Travellers, and has a Communication with a great Road, &c. it is a *Highway*; but if it leads only to a Church, a Village, or the Fields, &c. there it is a *private Way*. *Co. Lit.* 56. *Ventr. Rep.* 189. A Foot way common to all People, is a *Highway*, although it do not lead to a Market-Town: A common Street is a *Highway*; and so may a River be said to be, that is common to all Men. *Ibid.* *Highways* which lead from one Town to another; and those *Highways* that are Drift ways, or Cart-ways, leading from Market to Market, that are Ways for all Travellers, and great Roads, or do communicate with them, are only under the Care of Surveyors, as to Reparation, &c. 2 *Inst.* 38. 1 *Ventr.* 189. A *Highway* lying within a Parish, the whole Parish is of common Right bound to repair it; except it appear that it ought to be repaired by some particular Person either *ratione Tenure*, or by Prescription. 1 *Ventr.* 183. *Style* 163. The King by the Common Law may award his Commission for amending the Highways and Bridges throughout the Realm. *Dalt.* 77. And all the Country ought to make good the Reparations of a *Highway*, where no particular Persons are bound to do it; by Reason the whole Country have their Ease and Passage by the said Way. *Co. Rep.* 13. A Hamlet within a Parish is not obliged to repair a *Highway*, except it be by Prescription, or for some other special Reason; because of common Right the whole Parish is charged with it: But though a Hamlet be not bound to the Repairs of common Right, yet a Vill may. *Style* 163. Private Ways are to be repaired by the Village or Hamlet; and sometimes by particular Persons. 1 *Ventr.* 789. Where a Parish is indicted for not repairing a *Highway*, they cannot plead Not guilty, and give in Evidence that such a one is bound to repair it, either by Tenure, or Prescription; for the Parish is chargeable *de Comuni jure*, and they must plead the Prescription, &c. if they would discharge themselves. 1 *Ventr.* 256. 1 *Mod.* 112. The general Issue Not guilty, goes only to the being in Repair, or not; and a special Justification ought not to be given in Evidence upon the general Issue. 1 *Salk.* 287. On Indictment against a Parish, they can give nothing in Evidence upon Not guilty, but that the Way is in Repair: Though where a private Person is indicted for not repairing a *Highway*, he may give in Evidence that another is to repair, because he is not bound of common Right as a Parish is. *Mich.* 8 *W.* 3. 3 *Salk.* 183. Tho' a *Highway* be not set forth in the Indictment to lead to any Market-Town, it has been adjudged no Objection; for every *Highway* leads to some Market-Town, or Vill, &c. Nor is it necessary to shew that the Prosecutors are Surveyors, &c. 2 *Roll. Rep.* 412. But the Indictment must shew with Certainty, in what Place a Nuisance was done, the Extent of it, &c. And the Fact is to be set forth in proper Terms, that the Court may judge of it. 1 *Hawk. P. C.* 220. An Indictment concerning the *Highways* ought to set forth that it is the King's *Highway*, and for all the King's People; or it may be quashed. *Co. Lit.* 56. *Cro. Eliz.* 63. Upon an Indictment for not repairing a *Highway*, if the Defendant produce a

Certificate before Trial, that the Way is repaired, he shall be admitted to a Fine: But after Verdict, the Certificate is too late, for then he must have a *Constat* to the Sheriff, who ought to return that the Way is repaired, because the Verdict which is a Record, must be answered by a Record. *Rym.* 215. And where the Defendants, indicted for not repairing a common Foot-way, confessed the Indictment, and submitted to a Fine; it was held that the Matter was not ended by their being fined, but that Writs of *Disfringas* shall be awarded *in infinitum*, till the Court of B. R. is certified that the Way is repaired, as it was when it was at best; but the Defendants are not bound to put it in better Repair than it has been Time out of Mind. 1 *Salk.* 358. Where a Defendant hath made a *Highway*, as good as it is capable of being made, it is said this shall not discharge him, on an Information against him; though it may be a Mitigation of his Fine. 3 *Salk.* 183. Also it is no Excuse for the Inhabitants of a Parish indicted at Common Law, for not repairing the *Highways*, that they have done the Work required by Statute; for the Statutes are made in Aid of the Common Law: And when the Statute-Work is not sufficient, Rates and Assessments are to be made. *Dalt. cap.* 26. The Presentment of a Justice of Peace upon his own Knowledge of a *Highway* out of Repair, is of the same Effect as the Presentment of twelve Men; but the Authority of Justices of Peace is limited only to common *Highways*, and not to private Ways; and the Presentment of the Justices may be traversed by the Defendants, &c. On a Presentment of a *Highway* out of Repair, and that the Inhabitants of such a Parish ought to repair it; upon a Traverse to this Presentment, the Jury found it was not a common *Highway*: And it was adjudged that the Inhabitants ought to have pleaded *Reparare non debent*, and that such a Person, naming him, ought to repair; but by taking the Traverse, the Presentment is admitted to be good. 4 *Mod.* 38. A Presentment before Justices of Peace of a Way out of Repair, &c. may be removed into B. R. And an Indictment for not repairing of *Highways*, may be thus removed by *Certiorari*: But by the Stat. 3 & 4 *W. & M.* no Presentment, Indictment, &c. shall be removed by *Certiorari* to be tried out of the County; tho' if the Right to repair such Ways come in Question, a *Certiorari* may be had to remove the Indictment into B. R. 5 & 6 *W. & M.* In Cases of Trials on Indictments, relating to the *Highways*, those Persons in the Parish no way liable to the Reparations will be good Evidence; but Persons chargeable to the same will not. *Hill.* 14 & 15 *Car.* 2. A Person may be indicted for not repairing a House standing upon a *Highway*, which is ruinous, and like to fall down, to the Danger of Travellers, whatever be his Tenure, which in such Case is not material. 1 *Salk.* 357. And in Respect of Inclosure of Land, wherein a Way lies, particular Persons may be liable to the general Charge of repairing a *Highway*. *H. P. C.* 144. 8 *H.* 7. 5. If any Person enclose any Part of a *Highway*, or Waste adjoining, he thereby takes upon him to keep the Way in Repair; but if afterwards he lays it open again, he shall be discharged from the Reparation, and the Parish is to repair it. 1 *Sid.* 464. *Cro. Car.* 306. Where a Man encloses his Land on both Sides of a *Highway*, tho' he makes the Way better than

it was before, by the Enclosure, he is bound to keep it in Repair at his own Charges; and the Country is freed from the Charges of it, which before was bound to do it: And if a Person enclose Land of one Side of the Way only, and it was anciently enclosed of the other Side; he that makes the new Inclosure, is to repair the whole Way; though if there hath not been any Inclosure of the other Side, then but Half of the Way is to be repaired by him. *Cro. Car.* 366. 2 *Saund.* 160. 1 *Danv. Abr.* 783. When any Person turns a Highway, or encloses a Field to his own Benefit, leaving a Way, he is to repair the Way at his own Charge, and make it passable, although it were foundrous before. *Cro. Car.* 306. If a Highway leading through a Field is foundrous, Travellers may go out of the Track-way, notwithstanding there be Corn sown: And where it hath been used Time out of Mind for the King's Subjects to go by Outlets on the Lands next the Highway, when the Way is foundrous; the Outlets are a Part of the Way, for the good Passage is the Way. *Yelv.* 141. *Trin.* 18 *Car. B. R.* 1 *Danv.* 782. If there be a common Foot-way through a Close by Prescription, and the Owner of the Close ploughs up the Way, and sows it, and lays Thorns at the Side of it, Passengers may go over another Foot-way in the same Close, without being Trespassers. *Yelv.* 142. And if a Highway is not sufficient, any Passenger may break down the Inclosure of it, and go over the Land, and justify it till a sufficient Way is made. 3 *Salk.* 182. One Highway cannot lawfully be estopped, and another laid out, without the King's Licence upon a Writ of *Ad quod Damnum*, after Return of the Inquisition. *Cro. Car.* 266. *Vaugh.* 341. But this in some Measure is altered by the Stat. 8 & 9 *W.* 3. To change an ancient Highway, there must be this Writ; or the Subjects cannot justify going there, nor are they liable to repair it, or the Hundred answerable for Robberies, &c. *Vaugh. Ibid.* Erecting a Gate cross a Highway, though not locked, but opening and shutting at Pleasure, is esteemed a Nuisance; for it is not so free and easy a Passage, as if there had been no Gate: And the usual Way of redressing Nuisances of this Kind, is by Indictment; but every Person may remove the Nuisance, by cutting or throwing it down, if there be Occasion so to do; and it hath been held, that although there are many Gates cross Highways, they must be anciently set up, and it shall be intended by Licence from the King upon the Writ *Ad quod Damnum*. *Cro. Car.* 184. All Manner of Injuries to Highways which render them less commodious to Travellers, are adjudged Nuisances; as Laying Logs of Timber in Ways, Erecting Gates, or making Hedges overthwart them, Permitting Boughs of Trees to hang over the Road; Digging Ditches, &c. 2 *Roll. Abr.* 157. Where a Carrier carries an excessive Weight, as more than twenty Hundred, and thereby spoils the Way; this is a Nuisance. *Mich.* 17 *Car.* And Drawing with more Horses than allowed by Law, to the Injury of the Highways; or with Wheels under such Breadth, &c. is punishable, and liable to certain Forfeitures of Horses, by Statute 1 *Geo. cap.* 11. 5 *Geo. cap.* 12. A Nuisance in a Highway is punishable by Indictment, Information, &c. And if in a common or private Way, by Action on the Case; and if a private Way in a Vill, &c. be ruinous and out of Repair, every Inhabitant has a Right to bring an Action.

1 *Ventr.* 208. An Indictment against particular Persons, must especially charge them every one. 1 *Hawk.* 220. For avoiding Multiplicity of Suits, Indictments, &c. are to be had for Nuisances in Highways, and not Actions; but for any particular Damage, not common to others, a Man shall have Action on the Case. 1 *Inst.* 56.

For repairing Highways, by Statute 2 & 3 *P. & M. cap.* 8. it is enacted, That Constables and Church-wardens of Parishes, calling together the Parishioners, shall yearly elect two honest Persons to be Surveyors of the Highways, who are authorized to order and direct the Persons and Carriages that shall be employed in the Works for the Amendment of the Highways; and the Persons chosen shall take upon them the Execution of the Office, on Pain of forfeiting 20 s. Also Days are to be appointed for Working on the Repairs of Highways; on which every Person having a Plough-land, (formerly 100 Acres, now 50 l. per Annum) or keeping a Draught or Plough, shall send out one Wain or Cart, furnished with Horses, Oxen, Tools, &c. and two able Men with the same, on Pain of 10 s. for every Default; and every Householder, Cottager and Labourer, shall work on the said Days for the Amendment of the Highways, under the Penalty of 1 s. per Day. Stewards of Leets are empowered to enquire of all Offences against this Statute, and to assess Fines and Amerciaments; in Default thereof, the Justices of Peace in their Sessions are to enquire of the said Offences: And the Fines, which are leviable by Distrels, and all Forfeitures, shall go towards the Repairing of the Highways. By the 18 *Eliz. c.* 10. Persons having a Plough-land in several Parishes, shall be chargeable with a Team only where they reside; but every Person occupying and keeping in his Hands several Plough-lands, in several Towns, or Parishes, shall be chargeable to find in each Town where the Lands lie one Wain, &c. And it has been adjudged, that he who occupies several Plough-lands, ought to send a Team for each, whether he keep any Draught or not; that he who keeps a Draught and but two Horses, is obliged to give his Attendance with it for repairing of the Highways; and a Clergyman keeping a Coach and Horses, not a Team, is bound to send out a Wain towards the Repairs of the Highways; a Coach and Horses doing as much Damage to the Ways as a Cart and Horses; and Clergymen are not exempted from the publick Duties of the Nation. *Raym.* 186. *Dalt.* 105. 1 *Lev.* 139. If a Man hath Plough-lands, though he hath no Draughts; or if he hath Draughts, and no Lands, he must send out Teams: But in such Places where there is no Use of Carts and Teams for the Amendment of the Highways, the Inhabitants shall send Horses or other Carriages with able Persons to work, under certain Penalties, by Stat. 22 *Car. 2. cap.* 12. And this Statute gives Power to Justices of Peace in their Sessions, to enquire into the Value of Lands given for the Maintenance of Highways, &c. and to see that they are let at the full Value, and the Rents and Profits duly applied: And likewise the Justices, at their general Quarter-Sessions, on their being satisfied that the common Highways cannot be repaired by Force of the Laws in Being, may cause one or more Assessments to be made and levied upon the Inhabitants, Owners and Occupiers of Lands, Tenements and Hereditaments, or any personal

Estate, usually rated to the Poor, towards the Repairing such *Highways*; and such Assessments shall be levied by Distress and Sale of Goods of the Persons assessed, not paying the same within ten Days, &c. *Stat. Ibid.* And it has been resolved, that it is the Occupier, and not the Owner of Land, who is chargeable with the Repairs of *Highways*: But it is otherwise where there is no Occupier, and the Owner suffers the Lands to lie fresh, &c. For in such Case he shall be charged as if he had occupied them. 2 *Roll. Rep.* 412. *Palm.* 389. By 5 *Eliz.* c. 13. Surveyors of the *Highways* may take and carry away the small broken Stones of any Quarry, being already dug, without the Licence of the Owners, for the Amendment of the *Highways*; and they may dig for Gravel in the Ground of any Person adjoining to the *Highway*, not being a Garden, Meadow, &c. provided they make not above one Pit of ten Yards Square in one Ground, and such Pits be filled up in one Month; and may gather Stones upon any Lands in the Parish, to be employed in the Amendment of the Ways: And the Surveyors are also empowered to turn any Water-course or Spring, being in any *Highways*, into the Ditches of the Grounds adjoining. The Hedges, Fences and Ditches adjoining to the *Highways*, shall from Time to Time be scoured, repaired and kept low; and all Trees and Bushes growing in the *Highway* shall be cut down, that the Ways may lie open: There shall be six Days yearly appointed to be employed in the Reparation and Amendment of the *Highways*; of which Notice shall be given in the Church the next *Sunday* after *Easter*: And Surveyors of the *Highways* are to present Defaults within one Month, to the next Justice of Peace, on Pain of forfeiting 40 s. and the said Justice shall certify the said Presentment to the next General Sessions of the Peace; at which Sessions the Offenders shall be fined, &c. and this Statute is made perpetual by 29 *Eliz.* c. 5. Justices of Peace, &c. are to appoint particularly the six Days for working on the *Highways* by Statute, and not generally between such a Time and such a Time; which Appointment is ill, and Persons are not bound to come thereon. 1 *Salk.* 357. The Stat. 3 & 4 *W. & M.* cap. 12. ordains, That all the Laws and Statutes concerning the Repairing of the *Highways*, not thereby repealed or altered, shall be put in Execution: And on the 26th of *December* yearly, the Parish-Officers and Inhabitants of every Parish are to assemble and make a List of the Names of Persons having 10 l. *per Annum*, or personal Estate of 100 l. or who rent 30 l. *per Ann.* or if there be none such, of the most sufficient Inhabitants, and shall return the said List to two Justices of Peace at a special Sessions to be held on the 3d of *January*, or within fifteen Days after; who are by Warrant to appoint two or more to be Surveyors of the *Highways* in every Parish, &c. for the ensuing Year: And if any Surveyor being served with the Warrant of Appointment of the Justices, shall neglect or refuse to take upon him the Office, he shall forfeit 5 l. and the Justices shall nominate another, &c. And every Surveyor shall within fourteen Days after the Acceptance of his Office, and afterwards every four Months, view the *Highways* and Roads, and make a Presentment of the Condition thereof, on Oath, to some Justice; and give Notice of such Defects and Annoyances, as they find, the next *Sunday* after Ser-

mon; and if they are not removed or amended within thirty Days after, then the Surveyor shall do the same, and be reimbursed his Charges by the Party who should have done it: The Justices of Peace in their respective Divisions, are to hold a special Sessions once in four Months for the *Highways*, and summon Surveyors, at which they shall make Presentments, and account for Money coming to their Hands, which ought to be employed in amending the *Highways*: And on Oath made by Surveyors of Sums expended for Materials, &c. to mend the Ways, the Justices in their special Sessions may cause a Rate to be made to reimburse the same; also they may make a Rate for reimbursing any Inhabitant of a Parish on whom a Fine shall be levied: And in their General Quarter-Sessions, by Force of this Act, they may order Assessments to be made on Lands, Tenements, &c. not exceeding 6 d. in the Pound, &c. Every Cart-way leading to a Market-Town must be eight Foot wide, and as near as may be level; and no Causey shall be under three Foot wide. Laying in any *Highway* not twenty Foot broad, any Stone, Timber, Dung, or other Matter to obstruct it, incurs a Penalty of 5 s. and the Occupier of Lands adjoining may remove and convert the same to his own Use; and no Tree or Bush shall be permitted to grow in, or spread or hang over such Way, under the like Penalty. Surveyors neglecting their Duty, required by this Statute, shall forfeit 40 s. and Justices of Peace 5 l. and Offences against this Act are to be prosecuted in six Months, &c. By 8 & 9 *W.* 3. c. 16. Justices of Peace at their Quarter-Sessions have Power to order the Enlarging of any *Highways*; so as the Ground taken in do not exceed eight Yards in Breadth, and they do not pull down any House, or take away the Ground of any Garden, &c. And a Jury shall be empanelled to enquire of the Value of the Ground taken into *Highways*, and assess Damages as a Recompence for Injuries; on the Payment of which, the Interest of such Ground shall be devolved out of the Owners, and the Ground be taken to be a publick Way: The Justices may also cause Assessments to be made upon the Occupiers of Lands, &c. for the Purchase of the said Ground, to enlarge the said *Highways*. And Persons aggrieved by the Order of Justices in their Quarter-Sessions for enlarging *Highways*, may appeal to the Judges of Assize at the next Assizes, &c. Surveyors of the *Highways*, by Precept from the Justices in their special Sessions, are to fix a Stone or Post with Inscriptions in large Letters, where two or more Cross-ways meet; as a Direction to Travellers to the next Market-Town, to which each of the Ways lead, on Pain of forfeiting 10 s. to be employed in erecting such Post: And if any Person shall pull up, cut down, or remove any Post, Block, or great Stone, or other Security set up for securing Horse and Foot-Causeys, he shall forfeit 20 s. leviable by Distress, &c. 7 & 8 *W.* 3. cap. 29. The 1 *Geo.* cap. 48. enacts, that the Laws for Repairing of *Highways* shall be put in Force; and Surveyors of the *Highways* are every four Months, or oftner if required by two Justices of Peace, to view all *Highways*, &c. and give an Account of their State and Condition to the Justices at the next special Sessions, under the Penalty of 5 l. And the Justices in their special Sessions may order the Reparation of such great Roads as most

want

want Repairing to be first amended, and in what Manner. The Surveyors shall take the first and most convenient Time of the Year for repairing the Highways, and perfect the same before Harvest; and Fines, &c. are to be rightly applied for the Repairs of the Highways. Justices of Peace at their General Quarter-Sessions may make Assessments for Reparation of Highways, according to the Proportion limited by the Stat. 3 & 4 W. & M. Although the Statute-Work hath not been performed; but Money raised shall not excuse the Working on the Ways. Persons neglecting to scour Ditches, thirty Days after Notice given thereof by the Surveyors, shall forfeit 2 s. 6 d. for every eight Yards not scoured: And permitting Soil to lie in the Highways, incurs a Forfeiture not exceeding 5 l. nor under 20 s. And the Surveyors are to scour and keep open such Ditches; or may make new ones through the adjoining Lands, and to remove all Annoyances out of the Highways. Justices of Peace in Cities and Corporations, are empowered to execute the Laws relating to the Highways: Appeal lies from the Special Sessions, to the Quarter-Sessions; and Persons sued for what they do in Pursuance of the Statutes, may plead the General Issue, and give the Act and the special Matter in Evidence, &c. Stat. Ibid. See Waggon.

Form of an Indictment for not Repairing of a Highway.

JUR. &c. quod communis alta Via Regia in Parochia de, &c. in Com. prad. die & Anno, &c. fuit & adhuc est in magno Decasu pro defectu Reparationis & Emendationis ejusdem, ita quod Ligeti dict. Dom. Reg. per & trans viam illam transeuntes absque Magno Periculo non possunt transire, ad grave Damnum & commune nocumentum omnium Ligeorum subditorum dict. Dom. Regis per viam illam transeuntium: Et quod Inhabitantes villa de, &c. de Jure & ex antiqua consuetudine viam prad. reparare debent & soliti sunt, &c.

Highwaymen. A Reward of 40 l. is given for the Apprehending and Taking of a Highwayman, to be paid within a Month after Conviction, by the Sheriff of the County, &c. Stat. 4 & 5 W. & M. See Robbery.

His testibus, Words antiently added in Deeds, after the *In cujus rei Testimonium*; which Witnesses were first called, then the Deed read, and their Names entered down: But this Clause of *His Testibus* in the Deeds of Subjects has been disused since the Reign of K. Hen. 8. Co. Litt. 6.

Hindem Homines, (From the Sax. Hindene, i. e. Societas) A Society of Men: And in the Time of the Saxons, all Men were rank'd into three Classes, and valued, as to Satisfaction for Injuries, &c. according to the Class they were in; the highest Class were valued at Twelve hundred Shillings, and were called *Twelfhindmen*: the middle Class valued at Six hundred Shillings, and called *Sexhindmen*; and the Lowest, at Ten Pounds, or Two hundred Shillings, called *Twyhindmen*: And their Wives were term'd *Hinda's*. Brompt. Leg. Alfred. cap. 12, 30, 31.

Hine, (Sax.) A Servant, or one of the Family; but it is properly a Term for a Servant in Husbandry, and he that oversees the Rest is called the *Master-hine*. Stat. 12 R. 2. c. 4.

Hinefare, (Sax. Hine, a Servant, and Fare, a Going or Passage) Signifies the Loss or Departure of a Servant from his Master. — *Si quis occidit hominem Regis & facit Hinefaram, dat Regi 20 s.* &c. Domesday.

Hinegeld, Significat quietantiam Transgressionis illata in servum transgredientem. M.S. Arth. Trevor, Ar.

Hiriscunda, Is the Division of an Inheritance among Heirs.

Hireman, A Subject, from the Sax. Hiran, i. e. Obedire, to obey; or it may be rather one who serves in the King's Hall, to guard him, from *Hird, Aula,* and *Man, Homo.* Du Cange.

Hithe or Hyth, (Sax.) A Port, Wharf, and little Haven, to embark or land Wares at; as *Queen-bith,* &c. Mon. Ang. Tom. 2. p. 142.

Blasocner, (From the Sax. Laga, Lex and Socn, Libertas) The Benefit of the Law.

Hloth, An unlawful Assembly, from the Number of Seven to Thirty-five; and where one was accused of being in a Rout or Riot, he was to clear himself by a Mulct called *Hlothbota* or *Hlothbote*. Sax.

Hossmen, Are an ancient Fraternity, who deal in Sea-Coal, at *Newcastle upon Tyne*. Stat. 21 Jac. 1. c. 3.

Hoblers or Hobilers, (*Hobelarii*) Were Light Horsemen; or certain Tenants bound by their Tenure to maintain a little light Horse for certifying and giving Notice of any Invasion made by Enemies, or such like Peril towards the Seaside; of which Mention is made in the Statute 18 Ed. 3. c. 7. 25 Ed. 3. c. 8. Camb. Britan. 272. They were to be *Ad omnem motum agiles,* &c. And we read, *Duravit vocabulum usque ad etatem Hen. 8. Gentzarmes and Hobelours.* Spelm.

Hock-Tuesday-Money, Was a Duty paid to the Landlord, for giving his Tenants Leave to celebrate that Day, on which the English Conquered and expelled the Danes; being the second Tuesday after Easter Week.

Hockettor or Hocketeur, Is an old French Word for a Knight of the Post; also a decayed Man. 3 Inst. 175.

Hoga, Hogium, Hock, A Mountain or Hill, from the Germ. Hoogh, altus; or from the Sax. Hou — *Edwinus invenit quendam Hogam,* &c. & ibi edificavit quendam villam quam vocavit Stanhogiam, postea Stanhow. Du Cange.

Hogaster, (*Hogastrum*) A little Hog; it also signifies a young Sheep: *Tertium ovile pro Hogastris annatis & juvenibus.* Fleta, lib. 2. c. 79.

Hogenhine, (Sax.) Is he that comes Guest-wise to an Inn or House, and lies there the third Night, after which he is accounted of that Family. Bract. lib. 3. See *Third Night awn bind*.

Hogthead, A Vessel of Wine, or Oil, &c. containing in Measure 63 Gallons; Half a Pipe, and the fourth Part of a Ton. 1 R. 3. c. 13.

Hokeday, Called otherwise *Hock-Tuesday,* (*Dies Martis, quam Quindenam Paschæ vocant*) Was a Day so remarkable in ancient Times, that Rents were reserved payable thereon: And in the Accounts of *Magdalen College* in Oxford, there is an yearly Allowance *pro Mulieribus Hockantibus*, in some Manors of theirs in Hampshire, where the Men hock the Women on Monday, & contra on Tuesday; the Meaning of it is, that on that Day the Women in Merriment stop the Ways with Ropes, and pull Passengers to them, desiring something to be laid out in pious Uses. See *Hock-Tuesday-Money*.

Holde, (Sax. *Hold*, i. e. *Summus Præpositus*) A Bailiff of a Town, or City; Others are of Opinion that it signifies a General; for *Hold* in Saxon is also *summus Imperator*.

Holidays, Appointed by Statute. See 5 & 6 Ed. 6. &c.

Holm, (Sax.) *Hulmus, insula amnica*, an Isle or Fenny Ground, according to *Bede*; or a River Island. And where any Place is called by that Name, or this Syllable is joined with any other in the Names of Places, it signifies a Place surrounded with Water; as the *Flatholmes* and *Stepholmes*, in the *Severn* near *Bristol*: But if the Situation of the Place is not near the Water, it may then signify a hilly Place; *Holm* in Saxon being also a Hill or Cliff. — *Cum duobus Holmis in Campis de Wedone. Mon. Angl. Tom. 2. pag. 262.*

Holt, (Sax.) A Wood: Wherefore the Names of Towns beginning or ending with *Holt*, as *Buckholt*, &c. denote that formerly there was great Plenty of Wood at those Places.

Homage, (*Homagium*) Is a French Word derived from *Homo*, because when the Tenant does his Service to the Lord, he says, *I become your Man. Co. Lit. 64.* In the Original Grants of Lands and Tenements by way of *Fee*, the Lord did not only oblige his Tenants to certain Services, but also took a Submission, with Promise and Oath to be true to him, as their Lord and Benefactor: And this Submission, which is the most honourable Being from a Freehold Tenant, is called *Homage. Stat. 17 Ed. 2.* The Lord of the *Fee* for which *Homage* is due, takes *Homage* of every Tenant, as he comes to the Land or *Fee*: But Women perform not *Homage*, but by their Husbands, as *Homage* especially relates to Service in War; and a Corporation cannot do *Homage*, which is Personal, and they cannot appear but by Attorney: Also a Bishop, or religious Man, may not do *Homage*, only Fealty; but the Archbishop of *Canterbury* does *Homage* on his Knees to our Kings at their Coronation; and it is said the Bishop of the *Isle of Man* doth *Homage* to the Earl of *Derby*; though *Fulbes* reconciles this, when he says that a religious Man may do *Homage*, but may not say to his Lord, *Ego devenio homo vester, I become your Man*, because he has professed himself to be *God's Man*; but he may say, *I do unto you Homage, and to you shall be faithful and loyal. Briton, c. 68.* There is *Homage by Ligeance*, *Homage by Reason of Tenure*, and *Homage Ancestrel*: *Homage by Ligeance* is inherent and inseparable to every Subject; *Homage by Tenure*, is a Service made by Tenants to their Lords according to the Statute; and *Homage Ancestrel*, is where a Man and his Ancestors have Time out of Mind held their Land of the Lord by *Homage*, and such Service draws to it Warranty from the Lord, and Acquittal of all other Services to other Lords, &c. *Bract. lib. 3. F. N. B. 269. Litt. Sect. 85.* But according to *Sir Edw. Coke*, there must be a double Prescription for *Homage Ancestrel*, both in the Blood of the Lord, and of the Tenant; so that the same Tenant and his Ancestors, whose Heir he is, is to hold the same Land of the same Lord and his Ancestors, whose Heir the Lord is, Time out of Memory, by *Homage*, &c. and therefore there is but little Land holden by *Homage Ancestrel*; though in the Manor of *Whitney* in *Herefordshire*, there is one *West* who holds Lands by this Tenure. *Co. Lit. Homage Tenure* is incident to a

Freehold, and none shall do or receive *Homage*, but such as have Estates in Fee-simple, or Fee-tail, in their own Right or Right of another. *Kitch. 131.* Seisin of *Homage* is Seisin of Fealty, and inferior Services, &c. And the Lord only shall take *Homage*, and not the Steward, whose Power extends but to Fealty. *4 Rep. 8.* When a Tenant makes his *Homage* to the Lord, he is to be ungirt, and his Head uncovered, and his Lord shall sit, and he shall kneel, and hold his Hands together between his Lord's Hands, and say; *I become your Man from this Day forward, for Life, for Member, and for worldly Honour, and unto you shall be true and faithful, and bear you Faith for the Lands that I hold of you, (saying the Faith that I owe to our Sovereign Lord the King):* And the Lord so sitting shall kiss the Tenant, &c. *17 Ed. 3. Litt. Sect. 85.*

Homage Jury, Is a Jury in a Court-Baron, consisting of Tenants that do *Homage* to the Lord of the Fee; and these by the Feudists are called *Pares Curie*: They enquire and make Presentment of Defaults and Deaths of Tenants, Admittances and Surrenders, in the Lord's Court, &c. *Kitch.*

Homager, Is one that does or is bound to do *Homage* to another.

Homagio respectuando, Was a Writ to the Excheator, commanding him to deliver Seisin of Lands to the Heir of full Age, notwithstanding his *Homage* not done. *F. N. B. 269.* And the Heir at full Age was to do *Homage to the King*, or agree with him for respiting the same. *New. Nat. Br. 563.*

Homagium reddere, to renounce *Homage*; Was when the Tenant or Vassal made a solemn Declaration of disowning his Lord, for which there was a set Form and Method prescribed by the Feudatory Laws. *Bract. lib. 2. c. 35.*

Homesoken, A Freedom which a Man hath in his House or Home; which as commonly said, should be his Castle, and not be invaded. See *Hamsoken*.

Homesfall, Is taken for a Mansion-house. Vide *Frumstol*.

Homicide, (*Homicidium*) Signifies the Slaying of a Man; and is divided into *Voluntary* and *Casual*: *Voluntary Homicide* is that which is done with Deliberation, and a set Purpose to kill; and *Casual Homicide* is where the Death of a Man happens by Chance, without any Intention to kill: The Former done out of Malice is Murder, and the Latter may be *Manslaughter*, *Chancemedley*, &c. *Glanvil, lib. 14. cap. 3. West's Symb. Sect. 37. Co. Lit. lib. 3. c. 8.* See *Murder*, &c.

Hominatio, *Idem quod Homagium. Domesday.* And is the Mustering of Men; according to *Mr. Tate* in M.S.

Homine Eligendo ad custodiendam peciam sigilli pro mercatoribus editi, Is a Writ directed to a Corporation, for the Choice of a new Person to keep one Part of the Seal appointed for *Statutes-Merchant*, when a Former is dead, according to the Statute of *Aston Burnel*. *Reg. Orig. 178.*

Homine capto in Withernamium, Is a Writ for the Apprehending of one who has taken any Man or Woman, and conveyed him or her out of the County, so that they cannot be replevied by Law. *Reg. Orig. 79.*

Homine Replegiando, Is an ancient Writ for bailing a Man out of Prison: It lies where a Person is in Prison, not by special Commandment of the King, or his Judges, or for any Crime

Crime or Cause irrepleviable, directed to the Sheriff to cause him to be *replevied*: And if the Sheriff return on a *Homine Replegiando*, that the Defendant hath *esloined* the Plaintiff's Body, so that he cannot deliver him; then the Plaintiff shall have a *Capias in Withernam* to take the Defendant's Body, and keep it *quousque*, &c. And if the Sheriff return *Non est Inventus* on that Writ against the Body, the Plaintiff shall have a *Capias* against the Defendant's Goods, &c. F. N. B. 66. New Nat. Br. 151, 152. Where one Man takes away secretly, or keeps in his Custody another Man against his Will, upon Oath made thereof, and a Petition to the Lord Chancellor, he will grant a Writ of *Replegiari facias*, with an *Alias* and *Pluries*, upon which the Sheriff returns an *Elongatus*, and thereupon issues out a *Capias in Withernam*: And when the Party is taken, the Sheriff cannot take bail for him; but the Court where the Writ is returnable may, if they think fit, grant a *Habeas Corpus* to the Sheriff to bring him into Court and bail him, or remand him. 2 Lill. 23. In a *Homine Replegiando* it hath been adjudg'd, that it doth not differ from a common *Replevin*, on which the Sheriff must return a *Deliberati feci*, or an Excuse why he doth not: That where he cannot make Deliverance, if he return an *Elongatus*, the Defendant is not concluded by that Return to plead *Non cepit*; and after the Return of an *Elongatus*, and a *Capias in Withernam*, if the Defendant plead this Plea, he shall be bailed, for the *Withernam* is no Execution: And after a Defendant is bailed upon the *Capias in Withernam*, there may be a new *Withernam* against him. 2 Salk. 581. And it was held, that in a *Homine Replegiando* after an *Elongatus* returned, if the Defendant comes in *gratis*, and calls for a Declaration, and pleads *Non cepit*, he shall not be obliged to give Bail; but if he come in upon the Return of the *Capias*, he must give Bail, and shall not be admitted to it till he call for a Declaration, and plead *Non cepit*. *Ibid.* The Sheriff returned an *Elongavit* in a *Homine Replegiando*, and then a *Capias in Withernam* went forth; afterwards the Defendant having entered an Appearance, moved for a *Superfedeas* to the *Withernam*, and offer'd to plead *Non cepit*; which was opposed, unless he would give Bail to deliver the Person, in case the Issue was found against him: Tho' it was Ruled, that if any Property had been pleaded in the Party, then the Defendant ought to give Bail to deliver him; but he says he hath not the Person, and therefore *Non cepit* is a proper Plea, and he shall put in Bail to appear *de die in diem*. 4 Mod. 183. In this Case the Defendant shall not be compelled to *Gage Deliverance*; and a *Superfedeas* was granted to the *Withernam*. 5 W. & M.

Homines, Were a Sort of *Feudatary* Tenants, who claimed a Privilege of having their Causes and Persons try'd only in the Court of their Lord: And when Gerrard de Camvil. Anno 5. R. 1. was charged with Treason and other Misdemeanors, he pleaded that he was *Homo Comitum Johannis*, &c. and would stand to the Law and Justice of his Court. *Paroch. Antiq.* 152.

Homo, This *Latin* Word includes both Man and Woman, in a large or general Understanding. 2 Inst. 45.

Hondhabend, (Sax. *Hond*, i. e. *Hand*, and *habens*) See *Handhabend*.

Honour, (Lat. *Honor*) Is especially used for a more noble *Seignior* or *Lordship*, on which

other inferior *Lordships* and *Manors* do depend, by Performance of Customs and Services. Originally no *Lordships* were *Honours* but such as belonged to the King; tho' afterwards they were given in Fee to Noblemen: And it appears, that *Honours* have been created by Act of Parliament; for by the Stat. 33 H. 8. c. 37, 38. *Amptbill*, *Grafton* and *Hampton-Court*, are made *Honours*; and by 37 H. 8. c. 18. the King is empowered by Letters Patent to erect four several *Honours*, viz. *Westminster*, *Kingston upon Hull*, *St. Osithe* and *Donnington*. There are divers *Honours* in England besides these; as *Lancaster*, *Clare*, *Wallingford*, *Nottingham*, *West* and *East Greenwich*, *Bedford*, *Windsor*, *Montgomery*, *Gloucester*, *Arundel*, *Leicester*, *Hertford*, *Chester*, *Warwick*, and a great many others, mentioned by Authors, and in ancient Records. 4 Inst. 224. This Word is taken in the same Signification in other Nations as with us; (but anciently *Honor* and *Baronia* signified the same Thing). *Uti Mancium plurimis gaudet (interdum Feodis, sed plerumque) Tenementis, consuetudinibus, servitiis, &c.* Ita Honor plurima complectitur *Maneria*, plurima *Feoda Militaria*, plurima *Regalia*, &c. dictus etiam olim est *Feodum Regale*, tentusque Semper a Rege in Capite. *Spelm.* A Name of Dignity or Honour may be entailed upon one and the Heir Males of his Body; also it may be forfeited at the Common Law, and by the Stat. 26 H. 8. c. 13. as an Hereditament. 2 Nelf. Abr. 934.

Honour-Courts, Are Courts held within such *Honours*, mentioned in the Stat. 33 H. 8. c. 37. And there is a Court of Honour of the Earl Marshal of England, &c. which determines Disputes concerning Precedency and Points of Honour. 2 Hawk. P. C. 11. This Court of Honour, which is also exercised to do Justice to *Heralds*, is a Court by Prescription, and has a Prison belonging to it called the *White Lyon* in *Southwark*. 2 Nelf. 935.

Honorary Services, Are those as are incident to the Tenure of *Grand Serjeanty*, and commonly annexed to some Honour. Stat. 12 Car. 2. c. 29.

Hora Aurora, The Morning Bell, or what we now call the Four a-Clock Bell, was called anciently *Hora Aurora*; as our eight a-Clock Bell, or the Bell in the Evening, was called *Ignitegium* or *Coverfeu*. *Cowel*.

Hordera, (From the Sax. *Hord*, *Thesaurus*) And hence we have the Word *Hord*, as used for Treasuring or laying up a Thing. *Leg. Adelftan. cap. 2.*

Hordeum Palmale and **Hordeum Quadragesimale**, Beer-Barley of a large spreading Ear, which in Norfolk is term'd *Sprat-Barley* and *Battle-dore*, and in the Marches of Wales, *Cymridge*. *Chart. Dat. 43 Ed. 4.*

Horn with Horn, (*Cornutum cum Cornuto*) Is when there is Common per Cause de Vicinage, or an Intercommoning of horned Beasts. The promiscuous Feeding of Bulls and Cows, &c. that are allowed to run together upon the same Common, is called *Horn with Horn*, or *Horn under Horn*: And in the Constitutions of Robert Bishop of Durham, Anno 1276. where the Inhabitants of several Parishes let their common Herds run *Horn with Horn* upon the same open large Common; that there might be no Dispute about the Right of Tithes, the Bishop ordain'd, that the Cows should pay Tithe to the Minister of the Parish where the Owner lived. *Spelm.*

Hornagium, Is supposed to be the same with *Horngeld*.

Horngeld, (From the Sax. *Horn*, *Cornu* and *Geld*, i. e. *Solutio*) Signifies a Tax within the Forest, to be

be paid for *horned Beasts*. Crompt. Jurisd. 197. And to be Free of it is a Privilege granted by the King—*Quietum esse de omni Collectione in Foresta de Bestiis Cornutis, &c.* 4 Inst. 306. *Et sint Quieti de omnibus Geldis, Danegeldis, Wodgeldis, Horn-geldis, &c.* Chart. H. 3.

Hors de son ffer, (Fr. i. e. out of his Fee) Is an Exception to avoid an Action brought for Rent or Services, &c. issuing out of Land, by him that pretends to be the Lord; for if the Defendant can prove that the Land is *without the Compass* of his Fee, the Action falls. Broke. In an *Avowry*, a Stranger may plead generally *Hors de son Fee*; and so may Tenant for Years. 2 Mod. 104. A Tenant in Fee-Simple ought either to disclaim, or plead *Hors de son Fee*. 1 Danv. Abr. 655.

Horfes, Were not to be conveyed out of the Realm on Pain of Forfeiture, by an ancient Statute, 11 H. 7. c. 13. Persons having Lands of Inheritance in Parks, &c. are to keep a certain Number of Mares apt to bear Foals thirteen Hands high, for the Increase of the Breed of *Horfes*, and not suffer them to be leaped by stolen *Horfes* under fourteen Hands, on certain Penalties. 27 H. 8. c. 6. And for the Preservation of a strong Breed of *Horfes*, Stone *Horfes* above two Years old are to be fifteen Hands high, or they shall not be put into Forests or Commons, where Mares are kept, upon Pain of Forfeiture; and scabbed or infected *Horfes* shall not be put into common Fields, under the Penalty of 10 s. leviable by the Lord of the Leet. 38 H. 8. c. 13. Stealing of any *Horse*, Gelding or Mare, is Felony without Benefit of Clergy: But Accessories to this Offence are not excluded Clergy. 1 Ed. 6. c. 12. 2 & 3 Ed. 6. c. 23. And if any *Horse* that is stolen be not sold according to the Statute 2 & 3 P. & M. c. 7. the Owner may take the *Horse* again where ever he finds him, or have Action of Detinue, &c. To prevent *Horfes* being stolen and sold in private Places, the 2 & 3 P. & M. provides, that Owners of Fairs and Markets shall appoint Toll-takers or Book-keepers, who are to enter the Names of Buyers and Sellers of *Horfes*, &c. And to alter the Property, the *Horfes* must be rid or stand in the open Fair one Hour; and all the Parties to the Contract must be present with the *Horse*. And by 31 Eliz. c. 12. Sellers of *Horfes* are to procure Vouchers of the Sale to them; and the Names of the Buyer, Seller and Voucher, and Price of the *Horse*, are to be entered in the Toll-taker's Book, and a Note thereof delivered to the Buyer: And if any Person shall sell a *Horse* without being known to the Book-keeper, or bringing a Voucher; or if any one shall vouch without knowing the Seller; or the Book-keeper shall make an Entry without knowing either; in either of these Cases the Sale is void, and a Forfeiture is incurred of 5 l. A *Horse* stolen, tho' sold according to the Direction of the Act, may be redeemed and taken by the Owner within six Months, repaying the Buyer what he shall swear he gave for the same. Stat. *Ibid.*

Horfifiers, (Fr. *Hofeliers*) Is used for Inn-keepers: And in some old Books the Word *Horfers* is taken in the same Sense. 31 Ed. 3. c. 2.

Horfes generalis, A Great Chamberlain. — *Volumus, quantum ad Hospitia pertinet, omnes indifferenter nostro Hospiti generali obediant, &c.* Du Cange.

Hospitalers, (*Hospitalarii*) Were a certain Order of Religious Knights in this Kingdom, so cal-

led because they built an *Hospital* at *Jerusalem* wherein Pilgrims were received. The Institution of their Order was first allowed by the Pope in the Year 1118. and confirmed by Parliament with many Privileges and Immunities; and Pope Clement the 5th transferred the *Templers* to them. Which Order, by a Council held at *Vienna*, he afterwards suppressed. These *Hospitalers* were otherwise stiled *Knights of St. John of Jerusalem*; they are mentioned in the Stat. 13 Ed. 1. c. 42. and 9 H. 3. c. 37. And all the Lands and Goods of these Knights here in *England* were given to the King, by the Stat. 32 H. 8. cap. 34.

Hospitals. Any Person seized of an Estate in Fee-Simple, may by Deed inrolled in *Chancery*, erect and found an *Hospital* for the Sustainance and Relief of the Poor, to continue for ever; and place such Heads, &c. therein as he shall think fit: And such *Hospital* shall be incorporated, and subject to such Visitors, &c. as the Founder shall nominate; also such Corporations have Power to take and purchase Lands not exceeding 200 l. per Annum, so as the same be not holden of the King, &c. and to make Leases for twenty-one Years, reserving the accustomed yearly Rent: But no such *Hospital* is to be erected, unless upon the Foundation it be endowed with Lands or Hereditaments of the clear yearly Value of 10 l. per Ann. Stat. 39 Eliz. c. 5. It has been adjudged upon this Statute, that if Lands given to an *Hospital* be at the Time of the Foundation or Endowment of the yearly Value of 200 l. or under, and afterwards they become of greater Value, by good Husbandry, Accidents, &c. they shall continue good to be enjoy'd by the *Hospital*, altho' they be above the yearly Value of 200 l. And Goods and Chattels, (Real or Personal) may be taken of what Value soever. 2 Inst. 722. And if one give his Land then worth 10 l. a Year to maintain Poor, &c. and the Land after comes to be worth 100 l. a Year, it must all of it be employ'd to increase their Maintenance, and none of it may be converted to private Use. 8 Rep. 130. Also if one devise the Rent of his Land for such Uses, it shall be taken largely for a Devise of the Rent then reserved, or afterwards to be reserved upon an improv'd Value. 9 Jac. Such only are to be Founders of *Hospitals* within the Act 39 Eliz. as are seized of any Estate in Fee, and who give the same at the first Foundation of the *Hospital* to the Incorporation of the *Hospital*, &c. But if a Man, as a Citizen of *London*, by Will devises that his Executors shall lay out 1000 l. in the Purchase of Lands, &c. and that an *Hospital* shall thereupon be built and incorporated for the Sustainance and Relief of poor impotent People, and dieth, whereupon the Executors purchase Lands of such a Value, and cause the Estate to be conveyed to certain Persons and their Heirs, and build an *Hospital*; in this and the like Cases, the Persons that have the Estate in the Lands are by the Purview of this Statute to be Founders, and to do all Things that the Founder is appointed to do. 2 Inst. 724. If one devise so much a Year for the Poor, &c. leaving Lands and Assets in Goods; this is good, and the Executors will be forced to buy as much Land, and to assure it to that Use, Trin. 15 Car. And if a Devise be to the poor People maintained in the *Hospital* of St. Laurence in *Reading*, &c. (where the Mayor and Burgeffes, capable to take in Mortmain, do govern the *Hospital*) albeit the Poor not being a Corporation are not capable by

that Name to take; yet the Devise is good, and Commissioners appointed to enquire into Lands given to Hospitals, &c. may order him that hath the Land to assure it to the Mayor and Burgeses for the Maintenance of the Hospital. 43 Eliz. A Deed of Gift to a Parish generally, to maintain Poor, or other charitable Use, is not good: But a Devise by Will is good, and the Churchwardens and Overseers shall take it in Succession; and in London the Mayor and Commonalty. 40 Ass. 26. A Gift must be to the Poor, and not to the Aged or Impotent of such a Parish, without expressing their Poverty; for Poverty is the principal Circumstance to bring the Gift within the Stat. 43 Eliz. Altho' at common Law a Corporation may be of an Hospital, that is in potestate of certain Persons to be Governors of the Hospital, and not of the Persons placed therein; the safest Way upon the Act 39 Eliz. is first to prepare the Hospital, and to place the Poor therein, and to incorporate the Persons therein placed; and after the Incorporation, to convey the Lands, Tenements, &c. to the said Corporation, by Bargain and Sale, or otherwise, between the Founder of the one Part, and the Master and Brethren, &c. of the other Part, in Consideration of 5 s. in Hand paid by the Master of the said Hospital, &c. 2 Inst. 724, 725. And the Founder cannot erect an Hospital for Years, Lives, or any other limited Time, but it must be for ever, according to the Stat. 39 Eliz. which Statute for erecting of Hospitals is made perpetual by 21 Jac. 1. c. 1.

Form of a Deed for erecting and Founding an Hospital.

THIS Indenture, made, &c. Between A. B. of, &c. Esq; of the one Part, and C. D. E. F. G. H. &c. of, &c. of the other Part, Witneseth, That whereas the said A. B. being seised in Fee-Simple of and in a certain Messuage and Lands of the yearly Value of, &c. situate, lying, and being in, &c. and now in the Possession of him the said A. B. of his charitable Affection and Disposition, Hath erected and founded several Buildings and Edifices upon the said Land adjoining to the aforesaid Messuage, together with the same, to be an Hospital for the Sustentation and Relief of Twenty poor and impotent Persons, to have Continuance for ever. And the said A. B. doth by these Presents found, erect and establish the same for an Hospital of poor and impotent People for ever; and according to the Power given to the said A. B. by the Statute in that Case provided, the said A. B. doth by these Presents Covenant and Grant to and with the said C. D. E. F. and G. H. &c. and hereby limit and appoint, that the said Hospital, and the poor and impotent Persons therein now placed by the said A. B. viz. I. K. L. M. N. O. P. R. S. T. &c. together with the said C. D. E. F. and G. H. &c. and their Successors, shall for ever hereafter be incorporated by the Name of the Master and Brethren of the Hospital of, &c. in the County aforesaid. And further, the said A. B. doth by these Presents name and appoint the said C. D. to be the present Master of the said Hospital, and the said E. F. G. H. I. K. L. M. N. O. P. R. S. T. &c. to be the present Brethren of the said Hospital, and by the Name of Master and Brethren of the said Hospital, they shall have full Power and lawful Capacity and Ability to purchase, take, hold, receive and enjoy, and to have to them and their Successors for ever, as well Goods and Chattels, as Lands, Tenements and Hereditaments, being Freehold, of any Person or Persons whatsoever, according to the Form and Effect of the Statutes

in that Case made: And that the same Hospital, and the Persons so being Incorporated, Founded and Named, shall have full Power, and lawful Authority, by the said Name of Master and Brethren, &c. to sue and be sued, implead and be impleaded, to answer and be answered unto, in all Manner of Courts and Places, as well Temporal as Spiritual, in all Manner of Suits whatsoever, and of what Kind or Nature soever such Suits or Actions may or shall be. And the said A. B. doth by these Presents covenant and grant, and hereby appoint, that the said Master and Brethren, and their Successors for ever hereafter, shall have a common Seal with, &c. engraven thereon, whereby the said Master and Brethren, and their Successors, shall or may seal any Instrument or Writing touching the same Corporation, and the Lands, Tenements and Hereditaments, Goods, or other Things thereto belonging, or in any wise touching or concerning the same: And that it shall be lawful for the said A. B. during his Life, upon the Death or Removal of the said Master, or any of the said Brethren, to place one other in the Room of him that dieth or is removed; and after the Death of the said A. B. it shall be lawful for the Rector or Parson of the Parish of, &c. aforesaid, and the Churchwardens of the same for the Time being, for ever, after the Decease of the said A. B. upon the Death or Removal of the Master, or any of the Brethren of the said Hospital, to place one other in the Room of him that dies, or is removed, successively for ever. And the said A. B. doth further hereby declare and appoint, that it shall be lawful for him the said A. B. during his Life, and for the Rector or Parson of the Parish of, &c. aforesaid, for the Time being, after the Decease of the said A. B. to visit the said Hospital and inspect into the Government and State thereof: And lastly, that the Rents and Profits of the said Messuage and Lands above-mentioned, shall be yearly, &c. paid to the Master of the said Hospital, and his Successors, and be applied for the Maintenance of the Twenty Brethren and poor impotent Persons aforesaid, and their Successors, and to and for no other Purpose whatsoever. In Witness, &c. See 10 Rep. 17. & 34. for a Form of a Deed of Bargain and Sale.

By 39 Eliz. c. 6. and 43 Eliz. c. 4. Commissions may be awarded to certain Persons to enquire of Lands or Goods given to Hospitals; and the Lord Chancellor is empowered to issue Commissions to Commissioners for enquiring by a Jury, of all Grants, Abuses, Breaches of Trust, &c. of Lands given to charitable Uses, who may make Orders and Decrees concerning the same, and the due Application thereof; and the Commissioners are to decree, that Recompence be made for Frauds and Breaches of Trust, &c. so as their Orders and Decrees be certified into the Chancery, and the Lord Chancellor shall take Order for the Execution of the said Judgments and Decrees, and after Certificate may examine into, annul, or alter them agreeable to Equity, on just Complaint: But this does not extend to Lands given to any College or Hall in the Universities, &c. nor to any Hospital, over which special Governors are appointed by the Founders; and it shall not be prejudicial to the Jurisdiction of the Bishop or Ordinary, as to his Power of Inquiry into and reforming Abuses of Hospitals, by Virtue of the Stat. 2 H. 5, &c. These Commissioners may order Houses to be repaired, by those who receive the Rents; see that the Lands be let at the utmost Rent; and on any Tenant's Committing Waste, by cutting down and Sale of Timber, they may decree Satisfaction, and that the Lease shall

shall be void. *Hill. 11 Car.* Where Money is kept back, and not paid, or paid where it should not, they have Power to order the Payment of it to the right Use: And if Money is detained in the Hands of Executors, &c. any great Length of Time, they may decree the Money to be paid with Damages [for detaining it. *Duke Read. 123. Sec 4 Rep. 104.*

Hospitium, Is the same with *Procuracion* Money. *Brompt. 1193.*

Hospitalagium, A Right to receive Lodging and Entertainment; reserved by Lords in the Houses of their Tenants. *Cartular. Radiges. M.S. 157.*

Hosterium, A Hoe, being an Instrument well known: — *Et quieti de Aratro & Hosterio, & se-gibus secundis, & Homagio faciendo, de Averiis, & de pannagio, & omnibus aliis consuetudinibus, &c. Chart. Hamon. Masly.*

Hostia, Host-Bread, or consecrated Wafers in the Holy Eucharist: And from this Word *Hestia*, Mr. Somner derives the Sax. *Husel*, used for the Lord's Supper, and *Huslian* to administer that Sacrament; which were kept long in our old English, under *Houfel*, and to *Housal*. *Paroch. Antiq. 270.*

Hospitalaria, Was a Place or Room in Religious Houses, allotted to the Use of receiving Strangers. *Cartular. Ecclef. Elien. M.S. 34.*

Hospitalarius, An Officer appointed for the Care of the *Hospitalaria*. *Cowel.*

Hotchpot, (*In partem portio*) Is a Word brought from the Fr. *Hochepot*, used for a confused Mingling of divers Things together, and among the Dutch it signifies Fleih cut into Pieces, and scedden with Herbs or Roots; but by a Metaphor it is a Blending or Mixing of Lands given in Marriage, with other Lands in Fee falling by Descent: As if a Man seised of thirty Acres of Land in Fee, hath Issue only two Daughters, and he gives with one of them ten Acres in Marriage to the Man that marries her, and dies seised of the other twenty Acres: Now she that is thus married, to gain her Share of the rest of the Land, must put her Part given in Marriage in *Hotchpot*, i. e. she must refuse to take the sole Profits thereof, and cause her Land to be mingled with the other, so that an equal Division may be made of the whole between her and her Sister, as if none had been given to her; and thus for her ten Acres she shall have fifteen, otherwise her Sister will have the twenty Acres of which her Father died seised. *Litt. 55. Co. Lit. lib. 3. c. 12.* This seems to be a Right of waving a Provision, made for a Child in a Man's Life-time at his Death; but as it depends on *Frank-Marriage*, and Gifts therein, which now seldom happen, it is almost out of Use.

Hour, (*Hora*) Is a certain Space of Time of sixty Minutes, twenty-four of which make the Natural Day. It is not material at what Hour of the Day one is born. *1 Inst. 135. Vide Fraction.*

House, (*Domus*) A Place of Dwelling or Habitation; also a Family or Household. Every Man has a Right to Air, and Light, in his own House; and therefore if any Thing of infectious Smell be laid near the House of another, or his Lights be stopped up and darkened, by Buildings, &c. they are Nufances punishable by our Laws. *3 Inst. 201. 1 Danv. Abr. 173.* A Man ought to use his own House, so as not to damnify his Neighbour: And one may compel another to repair his House, in several Cases, by the Writ *de Domo Reparanda*. *1 Salk. Rep. 360.* Doors of a House

may not be broke open on Arrests, unless it be Treason or Felony, &c. *H. P. C. 137. Plowd. 5. 5 Rep. 91.* Riotously pulling down a House is Felony. *Stat. 1 Geo. c. 6. House-burning.* See *Arson.*

House of Correction. Justices of Peace in their Quarter-Sessions, are to make Orders for erecting Houses of Correction, and the Maintenance and Government of the same; and for the Punishment of Offenders committed thither. *39 Eliz. c. 4.* In every County of England there shall be a House of Correction built at the Charge of the County, with all Conveniencies for the setting of People to work, or every Justice of Peace shall forfeit 5 l. And the Justices in Sessions are to appoint Governors or Masters of such Houses of Correction, and their Salaries, &c. which are to be paid Quarterly by the Treasurer out of the County Stock: These Governors are to set the Persons sent on Work, and moderately to correct them, by Whipping, &c. and to yield a true Account every Quarter-Sessions of Persons committed to their Custodies; and if they suffer any to escape, the Justices may fine them, *7 Jac. 1. c. 4.* The House of Correction is for the punishing of idle and disorderly Persons; Parents of Bastard-Child, Beggars, Servants running away; Trespassers, Rogues, Vagabonds, &c. Poor Persons refusing to Work are to be there whipp'd, and set to Work and Labour: And any Person who lives extravagantly, having no visible Estate to support himself, may be sent to the House of Correction, and set at Work there, and may be continued there until he gives the Justices Satisfaction in Respect to his Living; but not be whipped. *2 Bulstr. 351. Sid. 281.* A Person ought to be convicted of Vagrancy, &c. before he is ordered to be whipped. *Ibid.* Bridewell is a Prison for Correction in London, and one may be sent thither. *Style 27.*

Housebote, Signifies *Estovers*, or an Allowance of Timber, out of the Lord's Woods, &c. for the repairing and upholding of a House or Tenement: And this *Housebote* is said to be twofold, viz. *Estoverium adificandi*, and *Ardendi*. *Co. Lit. 41.* See *Common of Estovers.*

Householder, (*Pater familias*) Is the Occupier of a House; a House-keeper or Master of a Family.

Huedige, (Sax. *Hredinge*, i. e. *Brevi*, in a short Time) Readily or quickly. *Leg. Adelstan. c. 16.*

Hue and Cry, (*Hutesum & Clamor*) From the Fr. *Huer & Crier*, both signifying to cry out aloud, is a Pursuit of one who hath committed Felony by the Highway; for if the Party robb'd, or any in the Company of one murdered or robbed, come to the Constable of the next Town, and require him to raise Hue and Cry, or to pursue the Offender, describing him and shewing (as near as he can) which Way he is gone, the Constable ought forthwith to call upon the Parish for Aid in seeking the Felon; and if he be not found there, then to give the next Constable Warning, and he the next, until the Offender be apprehended, or at least thus pursued to the Seaside. *Bract. lib. 3. Stat. 13 Ed. 1. of Winton. c. 3. 28 E. 3. c. 11. 27 Eliz. c. 13. 3 Inst. 117.* The Scotch make Hue and Cry where a Robbery is done by Horsemen, by blowing a Horn, and making an Outcry; after which, if the Offender will not yield himself to the King's Bailiff, he may be lawfully slain, &c. And no Hue and Cry by our Law shall be a good and lawful Hue and Cry,

Cry, unless made by Horsemen and Footmen, &c. *Hue and Cry* is the Pursuit of an Offender from Town to Town, till he is taken; which all Persons who are present where a Felony is committed, or a dangerous Wound given, are by the Common Law bound to raise against the Offenders who escape; also a Man may raise *Hue and Cry* against one who sets upon him in the Highway to rob him; and *Hue and Cry* shall be levied upon any Stranger who will not obey the Arrest of the Watch in the Night; and in Forests, &c. against Offenders: But if a Man take upon him to levy *Hue and Cry*, without sufficient Cause, he shall be punished for the same. 2 Hawk P. C. 75. And there are two Kinds of *Hues and Cries*; by Common Law, and by Statute; one for the King, and the other for the Party: And refusing to make *Hue and Cry* is punishable by Fine and Imprisonment, &c. 2 Inst. 172. By Statute of Westm. 1. 3 Ed. 1. c. 9. All Persons are to be ready at the Summons of the Sheriff, and Cry of the County, to pursue and arrest Felons and Robbers, &c. or be fined to the King: And if Default be in the Lord of a Franchise, the King shall seize his Franchise; but if in the Bailiff, he shall be imprisoned for a Year, and fined, &c. If the Inhabitants of any Hundred, after the *Hue and Cry* is made, neglect to pursue it, they shall answer one Moiety of the Damages recoverable against the Hundred where a Robbery is committed. 27 Eliz. c. 13. And if the Country will not produce the Bodies of the Offenders, the whole Hundred shall be answerable for Robberies there committed, &c. 13 Ed. 1. Where a Robbery is done on the Highway, in the Day-time, of any Day except Sunday, the Hundred where committed is answerable for it: But Notice is to be given of it, with convenient speed, to some of the Inhabitants of the Village near the Place, to the Intent that they may make *Hue and Cry* for the apprehending of the Robbers, or no Action will lie against the Hundred: And in the making of *Hue and Cry*, diligent Search is to be made in all suspected Houses and Places, and not only Officers but all others who shall pursue the *Hue and Cry*, may arrest all such Persons as in their Search and Pursuit they shall find suspicious, and carry them before some Justice of the Peace of the County where taken, to be examined where they were at the Time of the Robbery, &c. for in this Case the Arrest of a Person not guilty is lawful. 13 Ed. 1. 27 Eliz. And if any of the Robbers are taken within forty Days, and convicted, the Hundred shall be excused; if not, after the forty Days past, the Party robb'd is to make Oath before a Justice of Peace of the County where the Robbery was done, of the Time and Place of the Robbery, and of what Sum he was robb'd, and that he knew none of the Robbers; and then in twenty Days he may bring his Action against the Hundred by Original Writ, &c. which must be sued out within a Year after the Robbery: If a Recovery is had against the Hundred, the Sheriff may levy his Execution, which is a Charge upon the Lands, on any one or more in the Hundred; but Justices of Peace at their Sessions, may make a Rate or Tax upon the whole Hundred, to pay and reimburse it; and Constables, &c. of every Town and Parish are to levy it proportionably on all the Inhabitants; also the like Taxation may be made for a Moiety of Damages leviable where any Default shall be of fresh Pursuit after *Hue and Cry*

made 27 Eliz. 3 Lev. 320. 7 Rep. 7. If he that is robbed, after *Hue and Cry*, makes no further Pursuit after the Robbers, Action lies against the Hundred, 4 Leon. 180. The Party robbed is not bound to pursue the Robbers himself, or to lend his Horse for that Purpose; but still has his Remedy against the Hundred, if they are not taken: Tho' if any of them are taken either within forty Days after the Robbery, or before the Plaintiff recovers, the Hundred is discharged. Sid. 11. It has been held, that an Action lies against the Hundred for a Robbery in the Day-time, altho' not in the King's Highway. Hill. 1. Ann. 1. Mod. 221. but not for a Robbery in the Morning before it is light; and yet where it is before Sun-rising, or after Sun-set, if it be Light, so that a Man's Face may be known, it well lies. 7 Rep. 6. Cro. Jac. 106. If a Party be robbed in the Night-time, when Persons are at Rest, the Hundred is not chargeable: And where a Person is seized by Day-light, but robbed in the Night, he is without Remedy. 3 Leon. 350. Though where Robbers forced a Coach out of the Way, in the Day-time, and afterwards robbed it in the Night, this was held a Robbery in the Day, and that Action lay against the Hundred. 1 Sid. 263. When a Man is robbed on a Sunday, on which Day Persons are supposed to be at Church, and none ought to travel, the Hundred is not liable. 27 Eliz. But where a Robbery is done of a Sunday, though the Hundred is not chargeable, *Hue and Cry* shall be made. Stat. 29 Car. 2. c. 7. And if a Person be robbed going to Church in a Country Town or Village, of a Sunday, which is a religious Duty required by Law, it has been lately held an Action lies against the Hundred; but not if one be robbed on that Day in other travelling for Pleasure, &c. which is prohibited by Statute, 6 Geo. C. B. per King, Ch. Justice. And there is something like this in a Case in our Books, where Mention is made that Physicians, &c. are necessitated to travel on this Day. 2 Cro. 496. Godb. 280. See 2 Nelf. Abr. 937, 938. If a Person be robbed in a House, where he is presumed to be at Safety by his own Care, the Hundred is not chargeable: A Robbery must be an open Robbery, that the Country may take Notice of it, to make the Hundred answerable. 7 Rep. 6. A Man is set upon and assaulted by Robbers in one Hundred, and carried into a Wood, &c. in another Hundred, near the Highway, and there robbed, the Action shall be brought against the Hundred where the Robbery was committed, as particularly expressed in the Statute, and not the Hundred where the Man was taken or assaulted, because the Assault is not the efficient Cause of the Robbery, as a Stroke is in Case of Murder. Hill. 1 Ann. B. R. 2 Salk. 614. But where Goods are taken from a Man in one Hundred, and opened in another, where they are first taken or seized they are stolen, and the Robbery is committed. 2 Litt. Abr. 27. If a Servant is robbed of his Master's Money, he may sue the Hundred on the Statute of Winton of *Hue and Cry*; or the Master may bring the Action, and the Man making Oath of the Robbery, and that he knew none of the Robbers, is sufficient without the Oath of the Master. Goldf. 24. Cro. Car. 26, 37, 336. Where a Servant is robbed, he must be examined and sworn; but if the Master be present, it is a Robbery of him. Show. 241. 1 Leon. 323. If a Quaker is robbed, or a Man's Servant being a Quaker is robbed, and either

refuse to take the Oath of the Robbery, and that he did not know any of the Robbers, the Hundred is not answerable; for the Statute of *Eliz.* was made to prevent Combination between Persons robbed and the Robbers. 2 *Salk.* 613. When a Carrier is robb'd of another Man's Goods, he or the Owner may sue the Hundred; but the Carrier is to give Notice, and make Oath, &c. though the Owner of the Goods brings the Action. 2 *Saund.* 380. Receivers General of Taxes, &c. being robb'd, there must be Three in Company at least to make Oath of the Robbery to maintain an Action against the Hundred. *Stat.* 6 *Geo.* If an Action against the Hundred be discontinued, on a new Action brought there must be a new Oath taken within forty Days before the last Action brought. *Sid.* 139. In Action upon the Statute of *Hue and Cry*, the Declaration is good, tho' the Plaintiff doth not say, that the Justice of Peace who took the Oath lived *prope locum* where the Robbery was committed. *Mich.* 6 *W.* And where Oath was made before a Justice of Peace of the County where the Robbery was done, in a Place of another neighbouring County, it has been held good. *Cro. Car.* 211. If a Justice of Peace refuses to examine a Person robb'd, and to take his Oath, Action on the Statute lies against the Justice. 1 *Leon.* 323. It is safe to say the Plaintiff gave Notice at such a Place, near the Place where the Robbery was done; and though that Place where Notice is given be in another Hundred or County, yet it is good enough; for a Stranger may not know the Confines of the Hundred or County. *Cro. Car.* 41, 379. 3 *Salk.* 184. Where a Robbery is committed in divers Hundreds, Notice to the Inhabitants of either of them is sufficient. *Cro. Jac.* 675. If there be a Mistake of the Parish in the Declaration where the Robbery was, if it be laid in the right Hundred, it is well enough. 2 *Leon.* 212. And though the Party puts more in his Declaration than he can prove, for so much as he can prove it shall be good. *Cro. Jac.* 348. Action against the Hundred must be brought by Writ, and not Bill, &c. being against many Inhabitants, who cannot in *B. R.* be supposed to be in *Custodia Mareschalli*, as a single Person may be. *Goldsb.* 148. Upon a Trial in these Cases, the Party must file his Original, and be sure to have a true Copy thereof, and Witnesses to prove it; and he must also have the Affidavit or Oath, and a Witness to prove the Taking it. 2 *Lill. Abr.* 25. In these Actions, poor Persons in a Hundred, and Servants, are good Witnesses for the Hundred; but not those Housholders as are worth any Thing. 1 *Mod.* 73. And as Proof cannot be otherwise for the Plaintiff, he is allow'd to make Proof in his own Cause.

Huissier, An Usher of a Court, or in the King's Palace, &c. See *Usher*.

Huissierium, Ships to transport Horses; derived, as some will have it, from the *Fr. Huis*, i. e. A Door; because when the Horses are put on Shipboard, the Doors or Hatches are shut upon them, to keep out the Water. *Bromington, Anno* 1190, calls them *Uffers*.

Hullus, Signifies an Hill. — *Habendum & Tenendum dictam Pasturam in Hullis & Holmis*, &c. *Mon. Angl. Tom.* 2. pag. 292.

Humagium, A moist Place. *Mon. Angl. Tom.* 1. pag. 628.

Hundred, (*Hundredum, Centuria*) Is a Part of a County, so called, because it contained ten Ti-

things, and a Hundred Families; or for that it found the King One hundred able Men for his Wars. These Hundreds were first ordained by King *Alfred*, the 29th King of the *West-Saxons*; who took the Form of dividing Counties into Hundreds for better Government, from the Constitution of *Germany*, where *Centa* or *Centena* is a Jurisdiction over an Hundred Towns; and has the Punishment of Capital Crimes. After the Division of *England* into Counties by the afore-mentioned King, and the Government of each County given to a Sheriff; those Counties were subdivided into Hundreds, of which the Constable was the Chief Officer: And the Grants of Hundreds at first proceeded from the King to particular Persons. 9 *Co.* 25. The Jurisdiction of the County remained to the Sheriff, until *K. Ed.* 2. granted some Hundreds in Fee; and all Hundreds which were not before that Time granted by the Crown in Fee, were by Statute joined to the Office of Sheriff. By the Statute 14 *Ed.* 3. c. 9. Hundreds which were severed from the Counties, were re-joined to the same; but neither of these Statutes extend to a Grant of the King of an Hundred in Fee, with *Retorna Brevium*. 1 *Vent.* 399. 2 *Nelf. Abr.* 942. Hundreds, 'tis said, are Parcel of the Crown; and by the Grant of an Hundred a Lect passes, and an implied Power of Making a Bailiff to execute Process, &c. But a Hundred cannot at this Day be separated from the County, except such as were granted by King *Edward* 3. or his Ancestors; it may not now be by Grant or Prescription, though formerly derivative out of the County. 3 *Mod.* 199. Our Hundreds keep the Name, and remain in some Sort the same, as originally used; but their Jurisdiction is devolved to the County Court, some few excepted, which have been by Privilege annex'd to the Crown, or granted to some great Subjects, and remain still in the Nature of a Franchise: This hath been ever since the Statute 14 *Ed.* 3. whereby the Hundred Courts, antiently farmed out by the Sheriff to other Men, were reduced all or the most Part to the County Court, and so continue at present; so that where there are now any Hundred Courts they are several Franchises, wherein the Sheriff hath nothing to do by his ordinary Authority, unless they of the Hundred refuse to do their Duty. *West. Symb. lib.* 2. sect. 288. There were formerly Justices of Hundreds: And the Word *Hundredum* is sometimes taken for an Immunity or Privilege, whereby a Man is quit of Money or Customs due to the Hundreds. See *Turn.* Hundred chargeable for Robberies. Vide *Hue and Cry*.

Hundredors, (*Hundredarii*) Are Persons serving on *Juries*, or fit to be impanelled thereon for Trials, dwelling within the Hundred where the Land in Question lies. *Stat.* 35 *H.* 8. c. 6. Default of Hundredors was a Challenge or Exception to Panels of Sheriffs, by our Law; 'till the Stat. 4 & 5 *Ann.* c. 16. ordain'd, that to prevent Delays by Reason of Challenges to Panels of Jurors for Default of Hundredors, &c. Writs of *Venire facias* for Trial of any Action in the Courts at *Westminster*, shall be awarded of the Body of the proper County where the Issue is triable. *Hundredor* also signifies him that hath the Jurisdiction of the Hundred, and holds the Hundred Court; and is in some Places applied to the Bailiff of an Hundred. 13 *Ed.* 1. c. 38. 9 *Ed.* 2. 2 *Ed.* 3. *Horn's Mirror*, lib. 1.

Hundredslagh, (From the *Sax. Laga, Lex*) Is in *Saxon* the Hundred Court. *Adamwood, par.* 1. pag. 2.

Hundred

Hundred-peny, Was collected by the Sheriff or Lord of the Hundred, in *Oneris sui subsidium*. Cambd. 223. — *Est autem Pecunia quam Subsidii causa Vicecomes olim exigebat ex singulis Decuriis sui Comitatus, quas Tithingas Saxones appellabant; sic ex Hundredis, Hundred-peny.* Spelm. Gloss. Pence of the Hundred is mentioned in *Domesday*; and we read, *Quietantia pro Denariis dandis, &c. Prepositis Hundredorum.* M.S. in Bibl. Cotton. It is elsewhere called *Hundredfeh*. Chart. K. Joh. Egidio Episc. Heref.

Hundred-setena, Signifies Dwellers or Inhabitants of a Hundred. Charta Edgar. Reg. Mon. Angl. Tom. 1. pag. 16.

Hunting of Game and Prey, see *Game and Deer-stealers*.

Hurrers. The Cappers and Hat-makers of London were formerly one Company of the *Haberdashers* called by this Name. *Stow's Surv. Lond.* 312.

Hurst, Hyrst, (Sax.) A Wood or Grove of Trees: And as the great Wood called *Andreswald* extended through *Kent*, *Suffex*, and *Hampshire*, there are many Places in those Counties which begin and end with this Syllable.

Hurst-Castle, Is so called, because situated near the Woods: So *Hurslega* is a woody Place; from whence probably is *Hursley* a Village, where *Oliver Cromwel* had a Seat near *Winchester*.

Hus and Hant, Words used in antient Pleadings. — *Henricus P. captus per querimoniam Mercatorum Flandria & Imprisonatus, offert Domino Regi Hus & Hant in Plegio ad Standum recto, & ad respondendum predictis Mercatoribus & omnibus aliis, qui versus eum loqui voluerint: Et diversi veniunt qui manucapiunt quod dictus Hen. P. per Hus & Hant veniet ad summationem Regis vel Concilii sui in Curia Regis apud Shepway, & quod stabit ibi Recto, &c. Placit. coram Concilio Dom. Reg. Anno 27 H. 3. Rot. 9. See commune Plegium, sicut Johannes Doe & Richardus Roe. 4 Inst. 72.*

Husband and Wife, Are made so by Marriage, and being thus joined, are accounted but one Person in Law. *Litt.* 168. See *Baron and Feme*.

Husgece, (From the Sax. *Hus*, a House, and *Brice*, a Breaking) Was that Offence formerly which we now call *Burglary*. *Blount*.

Huscarle, A menial Servant: It signifies properly a stout Man, or a Domestick. *Du Cange*. The Word is often found in *Domesday*, where 'tis said the Town of *Dorchester* paid to the Use of *Huscarles* or *Houfecarles*, one Mark of Silver. *Domesd.* The Gatherers of the *Danes* Tributes on Houses were called *Huscarles*.

Huseans, (Fr. *Houfeu*) A Sort of Boot, or Buskin made of coarse Cloth, and worn over the Stockings, mentioned in the Stat. 4 Ed. 4. c. 7.

Husfastne, (Sax. *Hus*, i. e. Domus, & *Fest*, fixus) Is he that holdeth House and Land. — *Et in Franco Plegio esse debet omnis qui Terram & Domum tenent qui dicuntur Husfastne, &c. Bract. Lib. 3. Tract. 2. cap. 10. See Heordsefte.*

Husgable, (*Husgabulum*) House Rent, or some Tax or Tribute laid upon Houses. *Mon. Angl. Tom. 3. pag. 254.*

Hustling People, Communicants, from the Sax. *Hustel*, which signifies the Holy Sacrament: And in a Petition from the Borough of *Leominster* to King *Edward* the Sixth, the Petitioners set forth, that in their Town there were to the Number of 2000 *Hustling People*, &c.

Hustings, (*Hustingum*, from the Sax. *Hustinge*, i. e. Concilium, or Curia) Is a Court held before

the Lord Mayor and Aldermen of London, and is the principal and supreme Court of the City: And of the great Antiquity of this Court, we find this honourable Mention in the Laws of King *Edward* the Confessor: *Debet etiam in London, qua est caput Regni & Legum, semper Curia Domini Regis singulis septimanis Die Luna Hustingis sedere & teneri; Fundata enim erat olim & edificata ad instar, & ad modum & in memoriam Veteris Magnae Trojae, & usque in hodiernum diem, Leges & Fura & Dignitates, & Libertates regiasque consuetudines antiquae Magnae Trojae in se continet; & Consuetudines suas una semper inviolabilitate conservat, &c.* Other Cities and Towns have also had a Court of the same Name; as *Winchester*, *York*, *Lincoln*, &c. *Fleta*, lib. 2. c. 55. 4 Inst. 247. Stat. 10 Ed. 2. c. 1. See *Court of Hustings*.

Hutilan. *Terras quietas ab omni Hutilan & omni alia Exactione.* *Mon. Angl. Tom. 1. pag. 586.*

Hybernagium, The Season for sowing Winter Corn, between *Michaelmas* and *Christmas*; as *Tremagium* is the Season for sowing the Summer Corn in the Spring of the Year: These Words were taken sometimes for the different Seasons; other Times for the different Lands on which the several Grains were sowed; and sometimes for the different Corn; as *Hybernagium* was applied to Wheat and Rye, which we still call *Winter Corn*; and *Tremagium* to Barley, Oats, &c. which we term *Summer Corn*: This Word is likewise writ *Ibernagium* and *Thornagium*. *Fleta*, lib. 2. cap. 73. sect. 18.

Hyde of Land, and *Hydegild*. See *Hide and Hidage*.

Hypothecate a Ship, Is to pawn the same for Necessaries; and in whose Hands soever a Ship or Goods *hypothecated* come, they are liable. 2 *Lill. Abr.* 195.

Hyth, A Wharf, &c. See *Hith*.

J.

Jacens hereditas dicitur, antequam adita sit; An Estate in Abeyance. *Dig.*

Jack, (*Olim Wambasium*) A Kind of defensive Coat-Armor worn by Horsemen in War, not made of solid Iron, but of many Plates fastened together; which some Persons by Tenure were bound to find upon any Invasion. *Walsingham*.

Jactibus and Jlectibus, (Lat.) Signifies he that loseth by Default: *Placitum suum neglexerit & Jactivus exinde remansit.* *Formul. Solen.* 159.

Jambeaux, Leg-Armour, from *Jambe*, Tibia. *Blount*.

Jamprum, Furze or Gorse, and gorsy Ground; a Word used in *Fines* of Lands, &c. and which seems to be taken from the Fr. *Faune*, i. e. yellow, because the Blossoms of Furze or Gorse are of that Colour. 1 *Crok.* 179.

Jannum or Jaun, Heath, Whins, or Furze. *Placita* 23 H. 3. No Man can cut down Furze, or Whins in the Forest, without Licence. *Manwood*, cap. 25. num. 3.

Jagues, Small Money, formerly used here. *Staundf. P. C. c. 30.*

Jar, (Span. *Farro*, i. e. a Pot made of Earth) With us is a large earthen Vessel of Oil, containing twenty Gallons; or from eighteen to twenty-six Gallons, of Oil, Olives, &c.

Jch Dien, (From the German) Is the Motto belonging to the Arms of the Prince of Wales, signifying *I serve*: It was formerly the Motto of

John, King of *Bohemia*, slain in the Battle of *Cressy*, by *Edward the Black Prince*; and taken up by him to shew his Subjection to his Father King *Edward 3.*

Iconia, (*Iconia*) A Figure or Representation of a Thing. *Matt. Paris.* 146. *Hoveden* 670.

Ulcus durius, A Maim, Bruise, or Swelling; any Hurt without Breaking the Skin and Shedding of Blood, which was called *Plaga*: It is mentioned in *Bracton*, lib. 2. tract. 2. cap. 5 & 24. And in the Laws of *Hen. 1. c. 34.*

Identitate nominis, Is a Writ that lies for him who is taken and arrested in any Personal Action, and committed to Prison, for another Man of the same Name: In such Case he may have this Writ directed to the Sheriff, which is in Nature of a Commission to inquire, whether he be the same Person against whom the Action was brought; and if not, then to discharge him. *Reg. Orig.* 194. *F. N. B.* 267. *Mich.* 25 *H.* 8. But when there are two Men of one Name, and one of them is sued without any Name of Place, or Addition, to distinguish him, this Writ will not lie; and where there is Father and Son, &c. of the same Name, if there is no Addition of *Junior*, the Person sued is always taken for *Senior*, and if the Younger be taken for him, he may have False Imprisonment. *Hob.* 330. A Writ *de Identitate Nominis*, 'tis said, hath been allow'd after Verdict and Judgment; and may be maintained by Executors, &c. by Stat. 9 *H.* 6. c. 4. *Cro. Jac.* 623. It lies also for seising wrongfully of another Person's Lands or Goods. 37 *Ed.* 3. c. 2. 2 *Lill. Abr.* 29.

Idiot, (*Lat. Idiota, Indotus*) Is used in our Law, for one who is a natural Fool, from his Birth. By the Statute 17 *Ed.* 2. c. 9. The King shall have the Custody of the Lands of an *Idiot* or natural Fool, taking the Profits during his Life, without committing Waste, and finding him and his Family necessaries; and after his Death, shall render the Lands to the right Heir: And the King shall also have the Custody of the Body, Goods and Chattels of an *Idiot*, after Office found, &c. The Custody of the Body and Goods of the *Idiot* are given to the King by the Common Law; as the Custody of his Lands is by the Statute *de Prærogativa Regis*, and the Use of them is in the King; but the Freehold is in the *Idiot*: If he alien his Land, the King shall have a *Scire facias* against the Alience, and re-seise the same into his Hands, and the Inheritance shall be vested in the *Idiot*; but this must be after he is found by Inquisition to be an *Idiot*. 13 *Eliz.* *Dyer* 302. 5 *Rep.* 125. It has been adjudg'd, that the King shall have the Profits of an *Idiot's* Lands only from the Time of the Inquisition; but to prevent Incumbrances made by the *Idiot*, it shall have Relation to the Time of his Birth. 8 *Rep.* 170. By his Prerogative, and *Jure Protectionis sue Regiæ*, the King hath the Lands, and 'tis said the sole Interest in granting the Estate of an *Idiot*, but not of a *Lunatick*. If a Person had once Understanding, and became a Fool by Chance or Misfortune; the King shall not have the Custody of him. *Staundf. Prærog.* c. 9. 4 *Rep.* 124. And if one have so much Knowledge as to measure a Yard of Cloth, number twenty Pence, or rightly name the Days of the Week, &c. he shall not be accounted an *Idiot* by the Laws of the Realm. 4 *Rep.* Though where there was a general Finding of an *Idiot*, and afterwards said for so many Years, and not from his Nativity;

it was held good, and that what follow'd was Surplussage. 3 *Mod.* 43. *Idiots* not having Understanding, are incapable to make a Will or Testament; and their Deeds, Grants and Conveyances are voidable, or may be made void: But what they do concerning Lands, &c. in a Court of Record, shall bind themselves, and all others claiming under them. 1 *Inst.* 247. 2 *Inst.* 483. 5 *Rep.* 111, 124. If an *Idiot* contracts Matrimony, it shall bind him: And *Idiots* shall be bound to pay for Necessaries. 1 *Roll. Abr.* 357. 2 *Sid.* 112. A Descent may take away an Entry of an *Idiot*, &c. 4 *Rep.* But where an Heir is an *Idiot*, though of any Age, any Person may make a Tender for him. 1 *Inst.* 206. *Idiots* cannot appear by Attorney, but when they sue or defend any Action they must appear in Person; and the Suit be in their Names, but followed by others. 2 *Sid.* 112, 335. *Idiots*, &c. ought not to be prosecuted for any Crime; because they want Knowledge to distinguish Good and Evil. 1 *Inst.* 247. 3 *Inst.* 4, 108.

Idiotæ Inquirendo vel Examinando, Is a Writ to examine whether the Person be an *Idiot*. The King having the Protection of his Subjects, and the Government of their Lands who are naturally defective in their Understanding; for this Purpose the Writ *de Idiota Inquirendo*, &c. is issued, directed to the Sheriff to call before him the Party suspected of *Idiocy*, and to examine him and inquire by a Jury of twelve Men, who are to be on their Oaths, whether the Party is an *Idiot*, or not, viz. If he be of sufficient Understanding and Discretion to manage his Estate; and when the Inquisition is taken, the Sheriff is to certify it into the Chancery: Also the Party may be afterwards examined by the Lord Chancellor, &c. *F. N. B.* 232. *Reg. Orig.* 267. 9 *Rep.* 31.

Ides, (*Idus*) Are eight Days in every Month, so called; being the eight Days immediately after the *Nones*. In the Months of *March*, *May*, *July*, and *October*, these eight Days begin at the eighth Day of the Month, and continue to the fifteenth Day: In other Months they begin at the sixth Day, and last to the Thirteenth. But it is observable, that only the last Day is called *Ides*; the First of these Days is the *Eighth Ides*, the second Day the *Seventh*, the Third the *Sixth*, i. e. the Eighth, Seventh, or Sixth Day before the *Ides*; and so it is of the Rest of the Days: Wherefore when we speak of the *Ides* of any Month in general, it is to be taken for the Fifteenth or Thirteenth of the Month mentioned. See *Calends*.

Idoneum se facere, (*Idoneus*, used for *Innocens*) Is to purge himself by Oath of a Crime whereof he is accused. *Leg. H.* 1. c. 75.

Iejunium, (*Purgatio per Jejunium*) We read of in the Laws of *Canutus*, cap. 7.

Ieofoile, Is compounded of the Fr. *Fay faillé*, i. e. *Ego lapsus sum*, and signifies an Oversight in Pleading, or other Law-Proceedings. It is when the Parties to any Suit have gone so far that they have join'd Issue, which shall be tried, or is tried by a Jury or Inquest, and this Pleading or Issue is so badly pleaded or join'd, that it will be Error if they proceed; then some of the Parties may by their Counsel shew it to the Court, as well after Verdict given and before Judgment, as before the Jury are charged; the Shewing of which Defects by the Counsel was often, when the Jury came into Court to try the Issue, by saying,

saying, *This Inquest ye ought not to take*; and if after Verdict, by saying, *To Judgment you ought not to go, &c.* Therefore for avoiding the frequent Delays in Suits by such Suggestions, several Statutes have been made. *Terms de Ley* 401. If the Plaintiff in an Action declares upon a Promise to find the Plaintiff, his Wife, and two Servants with Meat and Drink for three Years, upon Request; and the Defendant pleads that he promis'd to find the Plaintiff and his Wife with Meat, &c. *absque hoc*, that he promis'd to find for two Servants, and the Plaintiff replies, that he did promise to find, &c. for three Years next following; *Et hoc petit, &c.* and thereupon a Verdict is found for the Plaintiff; yet he shall not have Judgment, for the Promise in the Replication is not the same with that in the Declaration, which was traversed by the Defendant, and so there is no Issue join'd, and therefore 'tis not help'd by Statute, *Mich.* 19 & 20 *Eliz.* 3 *Leon.* 66. In an *Assumpsit*, the Defendant pleads Not guilty, and thereupon Issue is join'd, and found for the Plaintiff; he shall have Judgment, though this is an improper Issue in this Action, for as there is a Deceit alledged, Not guilty is an Answer thereto, and it is but an Issue misjoin'd, which is aided by Statute. *Cro. Eliz.* 470. If in Debt upon a single Bill, the Defendant pleads Payment, without an Acquittance, and Issue is join'd and found for the Plaintiff; though the Payment without Acquittance is no Plea to a single Bill, he shall have Judgment, because the Issue was joined upon an Affirmative and a Negative, and a Verdict for the Plaintiff. *Mich.* 37 & 38 *Eliz.* 5 *Rep.* 43. An immaterial Issue, no Way arising from the Matter, is not within the Statutes of *Jeofails*. 1 *Danv. Abr.* 357. An ill Plea and Issue may be aided by the Statute of *Jeofails*, after a Verdict: And if an Issue join'd be uncertain and confus'd, a Verdict will help it. *Cro. Car.* 316. *Hob.* 115. The Statutes likewise help when there is no Original; and where there is no Bill upon the File, it is aided after Verdict by Statute: But when there is an Original, which is ill, that is not aided. *Cro. Jac.* 185, 480. *Cro. Car.* 282. The Statute of *Jeofails* 16 & 17 *Car.* 2. helps a Mistrial in a proper County; but not where the County is mistaken. 1 *Mod.* 24. And these are the Statutes of *Jeofails*, which help Errors and Defects by Mispleading in Records, Process, Misprisions of Clerks, &c. By 32 *H.* 8. c. 30. it is enacted, that if the Jury have once passed upon the Issue, though afterwards there be found a *Jeofail* in the Proceedings, yet Judgment shall be given according to the Verdict. The 18 *Eliz.* c. 14. ordains, that after Verdict given in any Court of Record, there shall be no Stay of Judgment, or Reversal for Want of Form in a Writ, Count, Plaint, &c. or for Want of any Writ original or judicial; or by Reason of insufficient Returns of Sheriffs, &c. But this is not to extend to Appeals of Felony, Indictments, &c. By the 21 *Jac.* 1. c. 13. if a Verdict shall be given in any Court of Record, the Judgment shall not be stayed or reversed for Variance in Form between the original Writ or Bill and the Declaration, &c. or for Want of Averment of the Party's being living, so as the Person is prov'd to be in Life; or for that the *Venire facias* is in Part misawarded; for Misnomer of Jurors, if prov'd to be the Persons return'd; Want of Return of Writs, so as a Panel of Jurors be return'd and

annex'd to the Writs; or for that the Return Officer's Name is not set to the Return, if Proof can be made that the Writ was return'd by such Officer, &c. The Statute 16 & 17 *Car.* 2. c. 8. enacts, that Judgment shall not be stayed or reversed after Verdict in the Courts of Record at *Westminster*, &c. for Default in Form; or for that there are not Pledges to prosecute upon the Return of the original Writ, or because the Name of the Sheriff is not returned upon it; for Default of alledging the Bringing into Court of any Bond, Bill, or Deed, or of alledging or bringing in Letters Testamentary, or of Administration; or for the Omission of *Vi & Armis*, or *contra pacem*; mistaking the Christian Name or Surname of either Party, or the Sum of Money, Day, Month, or Year, &c. in any Declaration or Pleading, being rightly named in any Record, &c. preceding; nor for Want of the Averment of *hoc paratus est verificare*, or for not alledging *prout patet per Recordum*; for that there is no right *Venire*, if the Cause was try'd by a Jury of the proper County or Place; nor any Judgment after Verdict, by Confession *Cognovit actionem*, &c. shall be reversed for Want of *Miseriordia* or *Capiatur*, or by Reason that either of them are entered, the one for the other, &c. But all such Defects, not being against the Right of the Matter of the Suit, or whereby the Issue or Trial are altered, shall be amended by the Judges: Though not in Suits of Appeal of Felony, Indictments, Informations on Penal Statutes, &c. which are excepted out of the Act. The 22 & 23 *Car.* c. 4. made this Act perpetual. By 4 & 5 *Ann.* c. 16. all the Statutes of *Jeofails* shall extend to Judgments entered by Confession, *Nil dicit*, or *Non sum Informatus* in any Court of Record; and no such Judgment shall be reversed, nor any Judgment or Writ of Inquiry of Damages thereon shall be stayed for any Defect which would have been aided by those Statutes, if a Verdict had been given; so as there be an original Writ filed, &c. The 5 *Geo.* c. 13. ordains, that after Verdict Judgment shall not be stayed or reversed for Defect in Form or Substance, in any Bill or Writ, or for Variance therein, from the Declaration or any other Proceedings. See *Error*.

Ferlesy and Guernsey Islands, Laws relating to See *Ile*.

Fesse, A large brass *Candlestick*, with many *Sconces* hanging down in the Middle of a Church or Choir; which Invention was first called *Fesse* from the Similitude of the Branches to those of the *Arbor Fesse*: And this useful Ornament of Churches was first brought over into this Kingdom by *Hugh de Flory*, Abbot of *St. Austins* in *Canterbury* about the Year 1100. *Chron. Will. Thorn.* 1796.

Fetsen, *Fetson*, or *Fetsam*, (From the Fr. *Fetter*, i. e. *egi ere*) Is any Thing thrown out of a Ship, being in Danger of Wreck, and by the Waves driven to Shore. 5 *Rep.* 106. See *Flotsam*.

Fesuits, &c. Born in the King's Dominions, and ordained by the pretended Jurisdiction of *Rome*, remaining in *England*, or coming from beyond Sea into this Kingdom, and not submitting to some Bishop or Justice of Peace within three Days, and taking the Oaths, are guilty of High Treason; and Receivers, Aiders, and Harbourers of them, are Guilty of Felony. *Stat.* 27 *Eliz.* c. 2. Persons knowing Priests, *Fesuits*, &c. and not discovering them to a Justice of Peace, shall be fined and imprisoned. 22 *Car.* 2.

Fetsm.

Jews, (Judæi) In former Times the *Jews* and all their Goods were at the Disposal of the Chief Lord where they lived; who had an absolute Property in them; and they might not remove to another Lord without his Leave: And we read that *K. Henry 3.* sold the *Jews* for a certain Term of Years to *Earl Richard* his Brother. They were distinguished from the *Christians*, in their Lives-time, and at their Deaths; for they wore a Badge on their outward Garments, in the Shape of a Table, and were fined if they went abroad without such Badges; and they were never buried within the Walls of any City, but without the same, and antiently not permitted to Burial in the Country. *Matt. Paris.* 521, 606, &c. There were particular Judges and Laws by which their Causes and Contracts were decided; and there was a Court of Justice assigned for the *Jews*. 4 *Inst.* 254. A *Jew* may be a Witness by our Laws, being sworn on the Old Testament. 4 *Inst.* 279. But by our antient Books, *Jews*, Hereticks, &c. are adjudged out of the Statutes allowing Benefit of Clergy. 2 *Hawk. P. C.* 338. The 53 *H. 3.* is called *Provisiones de Judaismo*; and by the Statute 18 *Ed. 1.* the King had a Fifteenth granted him *pro expulsione Judæorum*. See *Stat. 1 Ann. c. 30.* concerning *Jewish* Parents refusing Maintenance to a Protestant Child; and 10 *Geo. c. 4.* by which *Jews* may take the Oaths to the Government, &c. Vide *Judaism*.

Ignis Judicium, Purgation by Fire, or the old judicial fiery Trial.

Ignitegium, The Evening Bell to put out the Fire, in the Time of *Will. 1.* called *The Conqueror*. See *Curfew*.

Ignoramus, (i. e. We are ignorant) Is used by the *Grand Jury* empanelled on the Inquisition of Causes criminal, when they reject the Evidence as too weak or defective to make good the Presentment against a Person, so as to put him on his Trial, in which Case they write this Word on the *Bill of Indictment*; the Effect whereof is, that all farther Inquiry and Proceedings against that Party, for that Fault wherewith he is charged, is thereby stopped, and he is deliver'd without further Answer. 3 *Inst.* 30.

Ignorance, (Ignorantia) Which is Want of Knowledge of the Law, shall not excuse any Man from the Penalty of it. Every Person is bound at his Peril to take Notice what the Law of the Realm is; and Ignorance of it, though it be invincible, as where a Man affirms that he hath done all that in him lies to know the Law, shall not excuse him. *Doff. & Stud. 1.* 46. And an Infant of the Age of Discretion shall be punished for Crimes, though he be ignorant of the Law; but Infants of tender Age, have Ignorance by Nature to excuse them; as Persons *Non Compos* have Ignorance by the Hand of God. *Stud. Compan.* 83, 84. Tho' Ignorance of the Law excuseth not; Ignorance of the Fact doth. 2 *Co.* 3.

Illet, By Contraction *Ight*, signifies a little Island. *Blount*.

Illeivable, A Debt or Duty that cannot, or ought not to be levied; as *Nihil* set upon a Debt is a Mark for *illeviable*.

Illiterate. If an *illiterate* Man be to seal a Deed, he is not bound to do it, if none be present to read it, if required; and also to expound it, if written in *Latin*: And Reading a Deed false, will make it void. 2 *Rep.* 3, 11. A Man may plead *Non est factum* to a Deed read false; as where a Release of an Annuity was read to

an *illiterate* Person, as a Release of the Arrears only, &c. agreed to be released. *Moor* 148. If there is a Time limited for a Person to seal a Writing, in such Case *Illiterate* shall be no Excuse, because he might provide a skilful Man to instruct him; but when he is obliged to seal it upon Request, &c. there he shall have convenient Time to be instructed. 2 *Nelf. Abr.* 946.

Illuminare, To illuminate, or draw in Gold and Colours the initial Letters and occasional Pictures in manuscript Books. *Brompt. Anno* 1076.

Imbargo, (*Span.* in *Lat.* *Navium detentio*) Is a Stop, Stay, or Arrest upon Ships or Merchandize, by Publick Authority. *Stat. 15 Car. 2. c. 5.* This Arrest of Shipping is commonly of the Ships of Foreigners, in Time of War and Difference with States to whom they are belonging: But by an antient Statute, foreign Merchants in this Kingdom are to have forty Days Notice to sell their Effects and depart, on any Difference with a foreign Nation. 27 *Ed. 3. c. 17.* Prohibiting Commerce in Time of War, or of Plague, Pestilence, &c. is a Kind of *Imbargo on Shipping*.

Imbezle, To steal, pilfer, or purloin; or where a Person entrusted with Goods, wastes and diminishes them. The Word *Imbezle* is mentioned in several Statutes, particularly relating to Workers of Wool, &c. as the *Stat. 7 Jac. 1. c. 1.* 14 *Car. 2. c. 31.* and 1 *Ann.* By the former of which, *Imbezlers* of Wool, Yarn, or other Materials for making of Cloth, are to make Satisfaction, or be whipp'd and put in the Stocks; and by the latter they are to forfeit double Damages, and be committed to the House of Correction till paid, &c. By a late Statute, if any Servant *imbezils*, purloins, or makes away his Master's Goods, to 40 s. Value, it is made Felony without Benefit of Clergy. 12 *Ann. c. 7.*

Impalare, Is to put in a Pound; by the Laws of *Hen. 1. c. 9.*

Impanel, (*Impanellare Furatis*) Signifies the Writing and Entering into a Parchment Schedule by the Sheriff, of the Names of a Jury summoned to appear for the Performance of such Publick Service as Juries are employ'd in. *Impanulare* was sometimes a Privilege granted, that a Person should not be impanelled or returned upon a Jury. — *Non Ponatur nec Impanuletur in aliquibus Furatis*, &c. *Paroch. Antiq.* 657. See *Panel*.

Imparlance, (*Interlocutio, vel Licentia Interloquendi*) Is derived from the *Fr.* *Parler*, to speak, and in the Common Law is taken for a Petition in Court of a Day to consider, or advise what Answer the Defendant shall make to the Action of the Plaintiff; being a Continuance of the Cause till another Day, or a larger Time given by the Court. And *Imparlance* is either *General* or *Special*; *General*, when it is set down and entered in general Terms, without any special Clause, thus, *Et modo ad hunc diem Fovis prox. post Octab. Sancti Hillarii isto eodem Termino usque quem Diem præd. E. F. Defend. habuit Licentiam ad Billam præd. Interloquend. & tunc ad Respondend. &c.* *Special Imparlance* is where the Party desires a farther Day to answer, adding also these Words, *Salvo omnibus Advantagiis, tam ad Jurisdictionem Curie, quam ad Breve & Narrationem*, &c. *Kitch.* 200. This *Imparlance* is had on the Declaration of the Plaintiff; and *special Imparlance* is of Use where the Defendant is to plead some Matters which cannot be pleaded after a general *Imparlance*. 5 *Rep.* 75. *Imparlance* is generally to the next Term; and if the Plaintiff amend his Declaration after delivered

vered or filed, the Defendant may *imparl* to the next Term afterwards, if the Plaintiff do not pay Costs; but if he pay Costs, which is accepted, the Defendant cannot *imparl*. 2 *Lill. Abr.* 35. Also if the Plaintiff declares against the Defendant, but doth not proceed in three Terms after; the Defendant may *imparl* to the next Term. *Ibid.* The not delivering a Declaration in Time is sometimes the Cause of *Imparlance* of Course: And where the Defendant's Case requires a special Plea, and the Matter which is to be pleaded is difficult; the Court will, upon Motion, grant the Defendant an *Imparlance*, and longer Time to put in his Plea, than otherwise by the Rules of the Court he ought to have: If the Plaintiff keeps any Deed, or other Thing from the Defendant, whereby he is to make his Defence, *Imparlance* may be granted till the Plaintiff delivers it to him, or brings it into Court, and a convenient Time after to plead. *Hill.* 22 *Car.* 1. *B. R.* An *Imparlance* being pray'd on a Defendant's Appearing to answer an Information, it was said *Imparlance* was formerly from Day to Day, but now from one Term to another, on the Crown-Side; and it was ruled, that the Defendant should have the same Time to *imparl* that the Process would have taken up, if he had stood out 'till the Attachment or *Capias*; for when he comes in upon that, he must plead *instantly*. 1 *Salk.* 367. *Mod. Cases* 243. And if Process had been continued, he might have been brought in the same Term upon an Attachment; and then there would be no *Imparlance*, but he ought to plead *instantly*. 2 *Nelf. Abr.* 947. There are many Cases wherein *Imparlances* are not allow'd; no *Imparlance* is granted in an *Homine Replegiando*; or in an *Affise*, unless on good Cause shewn, because 'tis *Festinum Remedium*: Nor shall there be an *Imparlance* in Action of special *Clausum fregit*; tho' it is allow'd in general Actions of *Treipass*. *Hill.* 9 *W.* 3. 3 *Salk.* 186. Where an Attorney, or other privileged Person of the Court, sues another, the Defendant cannot *imparl*, but must plead presently: If the Plaintiff sues out a special Original, wherein the Cause of Action is express'd, and the Defendant is taken on a special *Capias*, he shall not have *Imparlance*, but shall plead as soon as the Rules are out. 2 *Lill.* 35, 36. Every *Imparlance* ousts all Pleas to the Jurisdiction of the Court; so that a Plea to the Jurisdiction is not to be received after an *Imparlance*. *Raym.* 34. After *Imparlance* the Defendant cannot plead in Abatement; if he doth, and the Plaintiff tenders an Issue, whereupon the Defendant demurs, and the Plaintiff joins in Demurrer, such Plea is not peremptory; because the Plaintiff ought not to have joined in Demurrer, but to have moved the Court, that the Defendant might be compelled to plead in Chief. *Allen* 65. Tho' a Defendant may not plead in Abatement after a general *Imparlance*; yet if it appears by the Record that the Plaintiff hath brought his Action before he had any Cause, the Court *ex Officio* will abate the Writ. 2 *Lev.* 197. The Defendant cannot have Oyer of a Deed in a common Case, after *Imparlance*: And a Tender after *Imparlance* is naught. 2 *Lev.* 190. *Lutw.* 258. If it appears upon the Record, that an *Imparlance* was due, and denied, it is Error; but then such Error must appear on the Record. 3 *Salk.* 168. It has been held, that if the Defendant doth not appear on a *Dies Datus*, the Plaintiff shall not have Judgment by Default, as he may on *Imparlance*; because the

Dies Datus is not so strong against him as an *Imparlance*; and therefore the Plaintiff must take out Process against the Defendant for not Appearing at the Time. *Moor* 79. 2 *Nelf.* 497.

Imparlancee, (As *Parson Imparlancee*) Is he that is inducted and in Possession of a Benefice. See *Parson*.

Impeachment, (From the Lat. *Impetere*) Is the Accusation and Prosecution of a Person for Treason, or other Crimes and Misdemeanors. Any Member of the House of Commons may not only impeach any one of their own Body, but also any Lord of Parliament, &c. And thereupon Articles are exhibited on the Behalf of the Commons, and Managers appointed to make good their Charge and Accusation; which being done in the proper Judicature, Sentence is passed, &c. And it is observed, that the same Evidence is required in an *Impeachment* in Parliament, as in the ordinary Courts of Justice: But not in Bills of Attainder. *State Trials*, Vol. 4. 311. Vol. 1. 676. No Pardon under the Great Seal can be pleaded to an *Impeachment* by the Commons in Parliament. 12 *W.* 3. c. 2.

Impeachment of Waste, (*Impetio Vastii*, from the Fr. *Empeschement*, i. e. *Impedimentum*) Signifies a Restraint from committing of Waste upon Lands or Tenements; or a Demand of Recompence for Waste done by a Tenant that hath but a particular Estate in the Land granted: But he that hath a Lease to hold without *Impeachment of Waste*, hath by that such an Interest given him in the Land, &c. that he may make Waste without being impeached for it; that is, without being questioned, or any Demand of Recompence for the Waste done. 11 *Rep.* 82.

Impediments in Law. Persons under *Impediments* are those within Age, under Coverture, *Non Compos mentis*, in Prison, beyond Sea, &c. who, by a Saving in our Laws, have Time to claim and prosecute their Rights, after the *Impediments* removed, in Case of Fines levied, &c. 1 *R.* 3. c. 7. 4 *H.* 7. c. 24. See *Stat. Limitations* 21 *Jac.* 1.

Impetration, (*Impetratio*) Signifies an Obtaining any Thing by Request and Prayer: And in our Statutes it is a Pre-obtaining of Church Benefices in *England* from the Court of *Rome*, which belong to the Gift and Disposition of the King, and other Lay Patrons of this Realm; the Penalty whereof was the same with *Provisors*. 25 *Ed.* 3. 38 *Ed.* 4. c. 1.

Impiermen, Is used for Impairing or Prejudicing; as to the *Impiement* and Diminution of their good Names, &c. 23 *H.* 8. c. 9.

Implead, To sue or prosecute by Course of Law; from the Fr. *Plaider*.

Implements, (From the Lat. *Impleo*, to fill up) Are Things of necessary Use in any Trade or Mystery, without which the Work cannot be perform'd; also it is the Furniture of an House, as all Household Goods, *Implements*, &c. In this Sense we find this Word often in Gifts and Conveyances of Moveables. *Terms de Ley* 403.

Implication. When the Law giveth any Thing to any one, it giveth *Implicitly*; whatsoever is necessary for the Enjoying of the same. And there is an *Implication* in Wills and Devises of Lands, whereby Estates are gained; as if a Husband devises the Goods in his House to his Wife, and that after her Decease his Son shall have them, and his House; though the House be not devised to the Wife by express Words, yet it hath

hath been held that she hath an Estate for Life in it by *Implication*, because no other Person could then have it, and the Son and Heir being excluded, who was to have nothing 'till after her Decease. 1 *Ventr.* 223. But where it may be reasonably intended, that the Devisor meant as well the one as the other, in such Case his Intention shall never be construed in Prejudice to the Heir at Law; for Instance; A Man devised Part of his Lands to his Wife for Life, and that the same and all the Rest of his Lands should remain to his youngest Son, and the Heirs of his Body, after the Death of the Wife; now here was no express Devise of the Rest of the Lands to the Wife, and she shall not have them by *Implication*, because the eldest Son and Heir at Law was not excluded, who shall have them during the Life of the Wife, 'till the Devise to the youngest Son takes Effect, for they shall descend to the Heir in the mean Time. *Moor* 123. Tho' *Croke*, who reports the same Case, says, it was adjudged the Wife should have the Whole. *Cro. Eliz.* 15. Estates for Life, and Estates-tail, may be raised by *Implications* in Wills; a Testator had three Sons, the eldest Son died, leaving his Wife with Child, to whom the Father devised an Annuity in *Ventre sa mere*, and if his middle Son died before he had any Issue of his Body, Remainder over, &c. And it was resolved, that such Son had an Estate-tail by *Implication*. *Moor* 127. It is said, a Fee-simple Estate shall not arise by *Implication* in a Will, though there is a perpetual Charge imposed by the Devisor on the Devisee; as where a Chaplain, &c. is to be maintain'd by the Parson out of the Profits of a House, &c. *Bridgm.* 103. Also it hath been adjudg'd, that where a particular Estate is devised by Will expressly, a contrary Intent shall not be implied by any subsequent Clause: And *Implication* is either necessary or possible; and where-ever an Estate is raised by that Means in a Will, it must be by a necessary *Implication*; for the Devisee must necessarily have the Thing devised, and no other Person whatsoever can have it. 1 *Salk.* 236. 2 *Nelf. Abr.* 949. No *Implication* shall be allowed against an express Estate, limited by express Words, to drown the same. *Salk.* 266. *Implication* will sometimes help Law-Proceedings, and supply Defects: See *Intendment* and *Use*.

Importation, (*Importatio*) Is where Goods and Merchandize are brought into this Kingdom from other Nations. 12 *Car.* 2. c. 4.

Impost, (Fr. from the Lat. *Impono*, i. e. *Injungere*) Is a Tribute or Custom; but more particularly that Tax which the King receives for Merchandizes imported into any Port or Haven: And it may be distinguished from *Customs*, which are rather the Profits arising to the King from Goods exported. 3 *Eliz.* c. 5.

Impossibility. A Thing which is impossible in Law, is all one with a Thing impossible in Nature: And if any Thing in a Bond or Deed be impossible to be done, such Deed, &c. is void. 21 *Car.* 1. B. R.

Imprest-Money, (From the Preposition *In*, and Fr. *Prest*, *paratus*) Is Money paid at the Inlisting of Soldiers.

Impatiabilis, Signifies invaluable, in which Sense it is often mentioned in *Matt. Paris*.

Impprimere, (Fr.) A Print, or Impression; and the Art of Printing, also a Printing-house are called *Imprimery*. Stat. 14 *Car.* 2. c. 33.

Impriſii, Are those who side with, or take the Part of another, either in his Defence, or otherwise. — *Omnes Homines & Impriſii Domini Ludovici*, &c. *Matt. Westm.* — *Nos erimus Impriſii Regis*, &c. *Matt. Paris.* 127.

Imprisonment, (*Imprisonamentum*) Is a Restriction of a Man's Liberty under the Custody of another; and extends not only to a Gaol, but a House, Stocks, or where a Man is held in the Street, &c. for in all these Cases the Party so restrained is said to be a Prisoner, so long as he hath not his Liberty freely to go about his Business as at other Times. 1 *Inst.* 253. *Imprisonment* according to Law, is according to the Common or Statute Law, or the Custom of England; or by Process, and Course of Law. 2 *Inst.* 46, 50, 282. And no Person is to be *imprison'd*, but as the Law directs either by Command and Order of a Court of Record, or by lawful Warrant, or the King's Writ; by which one may be lawfully detained to answer the Law. 2 *Inst.* 46. 3 *Inst.* 209. At Common Law, a Man could not be *imprisoned* in any Case, unless he were guilty of some Force and Violence; for which his Body was subject to *Imprisonment*, as one of the highest Executions of the Law: But *Imprisonment* is inflicted by Statute in many Cases. 3 *Rep.* 11. Though see *Magn. Chart.* 9 H. 3. c. 29. If a Warrant of Commitment be for *Imprisoning* a Man until farther Order, &c. it has been held ill; for it should be 'till the Party is delivered by due Course of Law. 1 *Roll. Rep.* 337. It is the same when a Person is *imprison'd* on a Warrant, without shewing any Cause for which he is committed: And where a Person was committed to Prison by Warrant from a Secretary of State, without assigning any Cause, &c. it was adjudged, that he ought to be discharged for that Reason; but then another Warrant was return'd of the same Secretary, in which the first Warrant was recited, and that upon farther Examination, he commanded the Gaoler to detain him safely, for Suspicion of High Treason; and it was said this was no Cause to detain him, because this second Warrant refer'd to the First, which was no Warrant at all; besides, there was no special Cause of Suspicion alledged, nor for what Species of Treason. *Palm.* 558. 1 *Roll. Rep.* 219. In all Actions *Quare Vi & Armis*, if Judgment be given against the Defendant, he shall be fined and *imprison'd*, because to every Fine *Imprisonment* is incident; and therefore where the Defendant is fined for a Contempt to any Court of Record, he may be *imprisoned* 'till the Fine is paid. 8 *Rep.* 60. In what Cases Persons *imprison'd* may be deliver'd on Bail; or by the *Habeas Corpus* Writ, &c. see *Bail* and *Habeas Corpus*.

Impropriation, Is properly so called when a Benefice Ecclesiastical is in the Hands of a Lay Man; and *Appropriation*, when in the Hands of a Bishop, College, or Religious House, though sometimes they are confounded. There are computed to be in England 3845 *Impropriations*; and on the Dissolution of Monasteries they were granted to Lay Persons by the King's Patents, &c. 31 H. 8. *Vide Appropriation*.

Improvementum, The Improvement of Lands. *Cartular. Abbat. Glaston. M.S. pag.* 50.

In auter Droit, In another's Right; as where Executors or Administrators sue for a Debt or Duty, &c. of the Testator or Intestate.

Inbozh and Outbozh. (Sax.) The *Barony* belonging to Patrick, Earl of Dunbar, says Camden,

was *Inborow* and *Outborow*, between England and Scotland; that is (as he believes) he was to allow and observe the *Ingress* and *Regress* of those Persons that travelled between the two Kingdoms; for *Englishmen*, in ancient Time, called an Entry, or Fore-court of a House, *Inborow*. Camb. Britan.

Inblaura, Profit or Product of Ground. Cowel.

Incastellare, To reduce a Thing to serve instead of a Castle; but it is often applied to Churches.—*Qui post mortem Patris Ecclesiam Incastellatam retinebat*. Gervaf. Dorob. Anno 1144.

In casu Consumili, & *Provisio*. See *Casu Consumili*, &c.

Incertantp, In Law Proceedings, will make them void; for all Proceedings at Law are to be certain and affirmative, that the Defendant may be at a Certainty as to what he should answer, &c. *Plowd.* 84. If the Count and Verdict in an Appeal be incertain, there can be no Judgment given thereon; and it is the same on an Indictment. 3 *Mod.* 121. *Incertainty* in Deeds renders them void; but sometimes a Term for Years granted by Lease, may be made certain by Reference to a Certainty; and *Incertainty* may be reduced to Certainty, by Matter *ex post facto*, Implication, &c. *Plowd.* 6. 273. 6 *Rep.* 20. *Incertainty* in Declarations of Uses of Fines of Lands, &c. is rejected in Law; for otherwise there would be no certain Inheritances. 9 *Rep.*

Inchanter, (*Incantator*) Is he that by Charms conjures the Devil; *Qui Carminibus vel Cantunculis Dæmonem a-jurat*: And they were anciently called *Carmina*, by Reason in those Days their Charms were in Verse. 3 *Inst.* 44.

Inchantress, (*Incantatrix*) A Woman that uses Charms and Incantations. See *Conjuratio*.

Inchartare. Signifies to give or grant any Thing by an Instrument in Writing: *Concessit ipso Comiti Terram ipsam & inchartavit, ut Possessio sua*, &c. *Matt. Paris.* Anno 1252.

Inch of Candle, Is the Manner of selling Goods by Merchants; which is done thus: First, Notice is to be given upon the Exchange, or other publick Place, of the Time of Sale; and in the mean Time, the Goods to be sold are divided into Lots, printed Papers of which, and the Conditions of Sale, are also forthwith published; and when the Goods are exposed to Sale, a small Piece of Wax Candle, about an Inch long, is burning, and the last Bidder when the Candle goes out, is entitled to the Lot or Parcel so exposed. If any Difference happens in adjusting to whom a Lot belongs, where several bid together, the Lot is to be put up again; and the last Bidder is bound to stand to the Bargain, and take the Lot, whether good or bad. In these Cases, the Goods are set up at such a Price; and none shall bid less than a certain Sum, more than another hath before, &c. *Merch. Dict.*

Incident, (*Incidens*) Is a Thing appertaining to, or following another, that is more worthy or principal. A Court-Baron is inseparably incident to a Manor; and a Court of Piepowders to a Fair. *Kitch.* 36. 1 *Inst.* 151. Rent is incident to a Reversion; Timber-Trees are incident to the Freehold, and also Deeds and Charters, and a Way to Lands; Fealty is incident to Tenures; Distress to Rent, &c. 1 *Inst.* 151. Tenant for Life or Years, hath Incident to his Estate, Estovers of Wood. 1 *Inst.* 41. And there are certain Incidents to Estates-tail; as to be dishonourable of

Waste, to suffer a Recovery, &c. 1 *Inst.* 224. 10 *Rep.* 38, 39.

Inclosure. Large Wastes or Commons in the *West-Riding* of the County of York, with the Consent of Lords of Manors, &c. may be inclosed, a sixth Part whereof shall be for the Benefit of poor Clergymen, whose Livings are under 40 l. a Year, to be settled in Trustees, who may grant Leases for 21 Years, &c. *Stat.* 12 *Ann.* c. 4.

Incontinency Of Priests, is punishable by the Ordinary, by Imprisonment, &c. 1 *H.* 7. c. 4.

Incopolitus, Is made Use of for a Proctor, or Vicar. *Leg. Hen.* 1.

Incrementum, Increase or Improvement; to which was opposed *Decrementum* or Abatement. — *Reddendo antiquam firmam & de Incremento xi s.* Paroch. Antiq. 164. *Taxatio Spiritualis una cum Incremento per Relaxationem*. *Ibid.* 316. And we read, *Dedi A. B. quoddam Incrementum terra mee apud*, &c. where it is meant a Parcel of Ground, inclosed out of a Common, or improved.

Incroachment, (*Fr. Accroachment*, i. e. a Grasping of a Thing) Signifies an unlawful Gaining upon the Right or Possession of another Man. As where a Person sets his Hedge or Wall too far into the Ground of his Neighbour, that lies next to him, he is said to make *Incroachment* upon him: And a Rent is said to be incroached, when the Lord by Distress or otherwise compels his Tenant to pay more than he owes; and so of Services, &c. 9 *Rep.* 33. And sometimes this Word is applied to Power; for the *Spencers*, Father and Son, it is said, *incroached* unto them Royal Power and Authority. *Anno 1 Ed.* 3. And the Admirals and their Deputies did *incroach* to themselves divers Jurisdictions, &c. 15 *R.* 2. c. 3.

Incumbent, (*From the Lat. Incumbo*, to mind diligently) Is a Clerk who is resident on his Benefice with Cure; and is so called, because he does or ought to bend all his Study to the Discharge of the Cure of the Church to which he belongs. *Co. Lit.* 119. See *Church*.

Incurramentum, The Incurring or being subject to a Penalty, Fine or Amercement: So *Incurri alicui* is to be liable to another's legal Censure or Punishment. — *Statutum est quod ejusmodi Tenentes capitalibus Dominis vel Regi incurrantur*. *Westm.* 2. cap. 37.

Indebitatus Alumpfit, Is used in Declarations and Law Proceedings, where one is indebted unto another in any certain Sum; and the Law creates it; it is also an Action thereupon. *Practif. Attorn. Edit.* 1. p. 73. See *Action on Case*.

Indecimable, (*Indecimabilis*) That is not Tithable, or by Law ought not to pay Tithe. 2 *Inst.* 490.

Indefeisible, Is what cannot be defeated or made void; as a good and Indefeisible Estate &c.

Indefensus, A Word signifying one that is impleaded, and refuseth to make Answer: *Et predictus J. nihil sciebat dicere contra sectam dicti Richardi, nec voluit ponere se in Inquisitionem aliquam; Consideratum est quod tanquam Indefensus sit in misericordia*, &c. *Mich.* 50 *H.* 3. Rot. 4.

Indemnity. On the Appropriation of a Church to any College, &c. when the Archdeacon loses for ever his Induction Money, the Recompence he receives yearly out of the Church so appropriate, as 12 d. or 11 s. more or less, as a Pension agreed at the Time of the Appropriating, is called an *Indemnity*. *M.S. in Bibl. Cotton.* p. 84.

Indenture, (*Indentura*) Is a Writing containing some Contract, Agreement or Conveyance between

tween two or more Persons, being *indented* in the Top answerable to another Part, which hath the same Contents. *Co. Lit.* 229. If a Deed or Writing begins, *This Indenture*, &c. and is not indented, it is no *Indenture*; but it may work as a Deed-Poll: But if the Deed is actually indented, and there are no Words importing an *Indenture*, it is nevertheless an *Indenture* in Law. *Wood's Inst.* 223. *Cro. Eliz.* 472. A Deed of Bargain and Sale of Freehold Lands, &c. must be by *Indenture*, inrolled, &c. *Stat.* 27 H. 8. *cap.* 16. Words in *Indentures*, though of one Party only, are binding to both Parties. *Cro. Eliz.* 202, 657.

India Company Of Merchants, and their Privileges, &c. See *Merchants*.

Indicavit, Is a Writ or Prohibition that lies for a Patron of a Church, whose Clerk is sued in the Spiritual Court by another Clerk for *Tithes*, which do amount to a fourth Part of the Profits of the Advowson; then the Suit belongs to the King's Courts, by the *Stat. Westm.* 2. c. 5. And the Patron of the Defendant, being like to be prejudiced in his Church and Advowson, if the Plaintiff recovers in the Spiritual Court, hath this Means to remove it to the King's Court. *Reg. Orig.* 35. *Old Nat. Br.* 31. This Writ may be also purchased by the Parson sued; and is directed as well unto the Judge of the Court, as unto the Party Plaintiff, that they do not proceed, &c. But it is not to be had before the Defendant is libelled against in the Spiritual Court, the Copy of which ought to be produced in the Chancery, before the *Indicavit* is granted: And this Writ must be brought before Judgment given in the Spiritual Court; for after Judgment there, the *Indicavit* is void. *New Nat. Br.* 66, 101. The Writ *Indicavit* doth not lie of a less Part of the Tithes, &c. than a fourth Part of the Church; if they are not so much, this being furnished by the other Party, a *Consultation* shall be had. *Ibid.* The Patron of the Clerk who is prohibited by the *Indicavit*, may have his Writ of *Right of the Advowson of Dismes*, &c.

Indiction, (*Indictio*, *ab indicendo*) Was the Space of fifteen Years, by which Computation Charters and publick Writings were dated at Rome; and likewise anciently in England, which we find not only in the Charters of King Edgar, but of King Hen. 3. And by this Account of Time, which began at the Dismission of the *Nicene Council*, every Year still increased till it came to Fifteen; and then returned again, making the First, second *Indiction*, &c. *Dat. apud Chippenham*, 18 Die Aprilis, *Indictione nona*, *Anno Dom.* 1266.

Indictment, (*Indictamentum*, from the Fr. *Enditer*, i. e. *deferre nomen aliquis*) Is a Bill or Declaration of Complaint drawn up in Form of Law, exhibited for some Offence criminal or penal, and preferred to a Grand Jury; upon whose Oaths it is found to be true, before a Judge or others, having Power to punish or certify the Offence. *Terms de Ley* 293. *Lambard* says, an *Indictment* is an Accusation, at the Suit of the King, by the Oaths of Twelve Men of the same County wherein the Offence was committed, returned to enquire of all Offences in general in the County, determinable by the Court into which they are returned, and their Finding a Bill brought before them to be true: But when such Accusation is found by a Grand Jury, without any Bill brought before them, and afterwards reduced to a formed *Indictment*, it is called a *Presentment*; and when it is found by Jurors re-

turned to enquire of that particular Offence only which is indicted, it is properly called an *Inquisition*. *Lamb. lib.* 4. *cap.* 5. And by *Pulton*, an *Indictment* is an Inquisition taken and made by twelve Men, at the least, thereunto sworn, whereby they do find and present, that such a Person, of such a Place, in such a County, and of such a Degree, hath committed such a Treason, Felony, Trespass, or other Offence, against the Peace of the King, his Crown and Dignity, &c. *Pult.* 169. A Bill of *Indictment* is said to be an Accusation for this Reason; because the Jury that enquireth of the Offence, doth not receive it, until the Party that offereth the Bill appearing subscribes his Name, and offers his Oath for the Truth of it: But it differs from an Accusation in this, that the Preferrer of the Bill is not tied to the Proof of it, upon any Penalty, except there appear Conspiracy. *Staundf. P. C. lib.* 2. *cap.* 23. Although a Bill of *Indictment* be preferred to a Grand Jury upon Oath, they are not bound to find the Bill, if they find Cause to the contrary; and on the contrary, tho' a Bill of *Indictment* be brought unto them without Oath made, they may find the Bill if they see Cause: But it is not usual to prefer a Bill unto them before Oath be first made in Court, that the Evidence they are to give unto the Grand Inquest to prove the Bill is true. *Pasch.* 23 *Car. B. R.* 2 *Lill. Abr.* 44. The Grand Jury are to find the Whole in a Bill, or reject it, and not find specially for Part, &c. 2 *Hawk. P. C.* 210. According to the Common Law, every *Indictment* must be found by Twelve Men at the least, every one of whom ought to be of the same County, and returned by the Sheriff, or other proper Officer, without the Nomination of any other, and to be Freemen, not under any Attainder of Felony, nor Outlaws, &c. And any one under Prosecution for a Crime, before he is indicted, may except against or challenge any of the Persons returned on the Grand Jury; as being outlawed, returned at the Instance of the Prosecutor, or not returned by the proper Officer, &c. 2 *Hawk.* 215. By Statute, no *Indictment* shall be made but by Inquest of lawful Men returned by Sheriffs, &c. 11 H. 4. *cap.* 9. And if a Person not returned by the Sheriff on a Grand Jury, procures his Name to be read among those of others who were actually returned; whereupon he is sworn of the Jury, he may be indicted for it and fined, and the *Indictment* found by such a Jury shall be void. *Stat.* 11 Hen. 4. *cap.* 9. 12 Rep. 98. 3 *Inst.* 33. Sheriffs had formerly Power to take *Indictments*; which they did by Roll indented, one Part whereof remained with the Indictors. 13 Ed. 1. and 1 Ed. 3. Justices of Peace have no Power relating to *Indictments*, for Crimes, but what is given them by Act of Parliament: And it is said Justices of Peace in Sessions, cannot on an *Indictment* try and determine the Offence in one and the same Sessions in which the Offenders are indicted. *Hill.* 11 *Car. Cro. Car.* 430, 448. And *Indictments* before Justices of Peace, &c. may be removed into the Court of B. R. by *Certiorari*: But an *Indictment* removed by *Certiorari* into B. R. may be sent back again into the County or Place whence removed, if there be Cause to do it. *Mish.* 22 *Car.* Before the *Stat.* 3 Hen. 7. c. 1. it was the common Practice not to try any Man upon an *Indictment* of Murder, before the Year and Day were passed, to bring an Appeal, lest that Suit should

should be prevented. 2 Hawk. 214. And Appeals are to be generally preferred to *Indictments*. 3 H. 7. As an Appeal is ever the Suit of the Party, so an *Indictment* is always at the Suit of the King. 1 Inst. 126. And till the Stat. 1 Ed. 6. If a Man had been indicted and convicted of Felony, &c. and the King had died before Judgment, no Judgment could be given, because it was at the Suit of the King; and the Authority of the Judges who should give the Judgment was determined by his Death: But by that Statute Judgment may be given in the Time of another King. 7 Rep. 29. An *Indictment* is the King's Suit; for that the Party who prosecutes it, is a good Witness to prove it: And no Damages can be given to the Party grieved upon an *Indictment* or other criminal Prosecution, unless particularly grounded on some Statute; but the Party indicted shall be fined: But the Court of B. R. by the King's Privy Seal may give to the Prosecutor a third Part of the Fine assessed for any Offence; and the Fine to the King may be mitigated, in Regard to the Defendant's making Satisfaction to a Prosecutor for Costs of the Prosecution, and Damages sustained by the Injury received. 2 Hawk. 210. No Man may be put upon his Trial for a capital Offence, except on an Appeal or *Indictment*, or some Thing equivalent thereto. H. P. C. 201. And all *Indictments* ought to be brought for Offences committed against the Common Law, or against some Statute; and not for every slight Misdemeanor. Trin. 23 B. R. 2 Lill. 44. Where a Statute appoints a Penalty to be recovered by Bill, Plaint, or Information, it cannot be by *Indictment*, but as directed to be recovered: An *Indictment* will not lie where another Remedy is provided by Statute. Cro. Jac. 643. 3 Salk. 187. *Indictments* are for the Benefit of the Commonwealth, and the publick Good; and to be preferred for Criminal, not Civil Matters: They may be of High Treason, Petit Treason, Felony, Trespas, and in all Sorts of Pleas of the Crown, but not of Injuries of a private Nature, which do not concern the King, and the Publick. 1 Inst. 126, 303. 4 Rep. 44. An *Indictment* lies against one for assaulting and stopping another on the Highway, being a Breach of the Peace. Hill. 22 Car. *Indictment* will lie for taking away Goods forcibly, whereby there is a Breach of the Peace; though the Goods are the Taker's own Property. Trin. 2 Ann. 3. Salk. 187. It lies for cheating a Person at Play, with false Dice, or any other Cheating: But it is not indictable for one Man to make a Fool of another, in the Case of Cheats getting Money, &c. tho' Action may be brought. 2 Lill. 44. 1 Salk. 479. *Indictment* will not lie for a private Nuisance, wherein Action on the Case only lies; and where a Person is indicted for Trespas, which is not indictable at Law, but for which Action should be had; or if a Man be indicted for scandalous Words, as Calling another Rogue, &c. such *Indictments* are not good; for private Injuries are to be redressed by private Actions. 2 Lill. Abr. 42. But where a Person is beaten, he may proceed for this Trespas by *Indictment*, or Information, as well as Action; but not both Ways. Pasch. 24 Car. B. R. And where in an Action on the Case a Defendant justifies for Words, as Calling the Plaintiff Thief, &c. if on the Trial it be found for the Defendant, *Indictment* may be brought forthwith to try the Plaintiff for the Felony. Mich. 22 Car. B. R. 2 Lill. 44. A Parson may be indicted for Preach-

ing against the Government of the Church, the Civil and Ecclesiastical Government being so incorporated together, that one cannot subsist without the other; and both center in the King; wherefore to speak against the Church, is within the Statute 13 Car. 2. Sid. 69. 2 Nelf. Abr. 959. And a Parson was indicted for pronouncing Absolution to Persons condemned for Treason, at the Place of Execution, without shewing any Repentance. 5 Mod. 363. *Indictments* are to be in *Latin*, or they will not be good; and ought to be more certain than common Pleadings in Law, because they are more penal, and to be more precisely answered unto. Hill. 23 Car. B. R. They must be precise and certain in every Point, and charge some Offence in particular, and not a Person as an Offender in general, or set down Goods, &c. stolen, without expressing what Goods; and it ought to be laid positively, not by Way of Recital, &c. or be supplied by Implication. Cro. Jac. 19. 2 Hawk. P. C. 225, 226. *Indictments* must set forth the Christian Name, Surname, and Addition of the Place of Residence of the Offender; the Certainty of the Time when the Offence was done, as the Day, Year, &c. and the Town or Place where; the Nature of the Offence, whether Treason, Felony, &c. The Value of the Thing by which it is committed, &c. And in *Indictment* of Murder, the Length and Depth of the Wound is to be expressed: The Value of Things stolen is to be specified that it may appear whether Grand or Petit Larceny; and of the Thing that does the Felony, which is forfeited to the King: The Dimensions of a Wound must be expressed, that it may be judged whether mortal. 1 Hen. 5. cap. 5. 2 Inst. 318. H. P. C. 264. West's Symb. Sect. 70. In Treason, the *Indictment* must say *Proditorie*, and conclude *contra Ligeantia sua debitum*; in Murder, it is to say *Murdravit*; and if the Killing was by Shooting, or with the Hand, &c. it must say *Percussit*; in Burglary, *Burglariter*, or *Burgalariter*; in Rape, *Rapuit*; in Felony, *Felonice*; in Larceny, *Felonice cepit*; Maihem, *Mayhemavit*, &c. And in all these Cases, and in Trespas, the *Indictment* ought to be *Vi & Armis*, and conclude *contra pacem*, which are Words to shew an Offence generally; and if the Offence is created by Statute, it must conclude *contra formam Statuti*, &c. 4 Rep. 39. 48. 5 Rep. 121. H. P. C. 206. These Words the Law hath appropriated for the Description of Offences, and none others will supply them: But the Omission of *Vi & Armis & contra pacem*, is helped by Statute, 4 & 5 Ann. False *Latin* will not hurt an *Indictment*, if the Word is *Latin*, or by any Intendment it can be made good; but if a Word be not *Latin*, or allowed by Law as a Word of Art; or if it be insensible in a material Point, it will make the *Indictment* insufficient. 5 Rep. 121. 1 Cro. 108. 3 Cro. 465. An *Indictment* shall not be set aside for a false Concord between the Substantive and Adjective, such as *prafate Regi*, or *prafato Regina*, &c. for tho' the Expressions be incongruous, yet they are *Latin* and significant to make the Sense appear. 5 Rep. 121. But an *Indictment* against two or more, laying the Fact in the singular Number as if against one; as where it finds that A. B. and C. D. *insultum fecit*, &c. is insufficient for the Incertainty. 2 Hawk. 238. The Use of a Word that is not *Latin* at all, or not *Latin* in the Sense in which used, may in many Cases be helped by an *Anglice*; though where there is a proper *Latin*

Word for the Thing intended to be expressed, no *Anglice* will help an improper one, as it will when there is no proper *Latin* Word. *Ibid.* 239, 240. A Misnomer of the Defendant's Surname, will not abate the *Indictment*, as it will in case of the Name of Baptism; and if there be a Mistake in Spelling, if it sounds like the true Name, it is good. 1 *Hen.* 5. A Person may be indicted for Felony against an unknown Person; and when the Name of one killed is unknown, or Goods are stolen from a Person that cannot be known, it is sufficient to say in the *Indictment* that one unknown was killed by the Person indicted, or that he stole the Goods of one unknown. *Wood's Inst.* 624. Where a Person injured is known, his Name ought to be put into the *Indictment*. 2 *Hawk.* 232. If an *Indictment* be generally of Offences at several Times, without laying any one of them on a certain Day, as if it be laid between such a Day and such a Day, it hath been adjudged that the *Indictment* is void: But a Mistake in not laying an Offence on the very same Day, on which it is afterwards proved upon the Trial, is not material upon Evidence. 2 *Hawk.* 236. And it is said the Crown is not bound to set forth the very Day when Treason, &c. was committed: Evidence may be given of a treasonable Conspiracy, &c. at any Time before or after the Time alledged in the *Indictment*; where it is laid on such a Day and divers other Days as well before as after, because the Time is only a Circumstance, and of Form some Day must be alledged; but it is not material. 1 *Salk.* 288. If no Town or Place be named where the Fact was done, the *Indictment* shall be void; though a Mistake of the Place in laying the Offence, is of no Signification on the Evidence, if the Fact is proved at some other Place in the same County. *H. P. C.* 264. 1 *Hen.* 5. *cap.* 5. *Indictments* for Facts committed ought to be laid in the County where done; and the Town or Parish in which committed to be set forth, &c. And if upon Not guilty pleaded to an *Indictment*, it shall appear that the Offence was done in a County different from that in which the *Indictment* was found, the Defendant shall be acquitted. *H. P. C.* 203. *Kel.* 15. At Common Law, if a Man had died in one County of a Wound received in another, he could not regularly be indicted in either County, the Offence not being compleat in either; and no Jury could enquire of what happened out of the Limits of their own County: But by the Stat. 3 *Ed.* 6. *c.* 24. the Offence is to be indicted and tried by Jurors of the County where the Death happens. 2 *Hawk.* 220. It has been held, if a Person steals Goods in one County, and carry them into another, he may be indicted in the other County: And if a Person steals my Goods from another, who had stolen them before, he may be indicted as having stolen them from me; because in Judgment of Law, the Possession as well as Property always continued in me. 1 *Hawk.* 90. If there be an Accessory in one County, to a Felony committed in another, the Accessory may be indicted and tried in the same County wherein he was Accessory. Stat. 2 & 3 *Ed.* 6. Husband and Wife may commit a Trespass, Felony, &c. and be indicted together; so for keeping a Bawdy-house, though the House be the Husband's. *Hob.* 95. 1 *Salk.* 382. If an Offence wholly arises from any joint Act that is criminal of several Defendants,

they may be all charged in one *Indictment* jointly and severally, or jointly only; and some of the Defendants may be convicted, and others acquitted, for the Law looks on the Charge as several against each, though the Words of it purport a joint Charge against all: In other Cases, the Offences of several Persons must be laid several, because the Offence of one cannot be the Offence of another; and every Man ought to answer severally for his own Crime. 2 *Hawk.* 240. On penal Statutes, several Things shall not be joined in an *Indictment*, &c. except it be in Respect of some one Thing, to which all of them have Relation. *Ibid.* 241. When an *Indictment* is drawn upon a Statute, it ought to pursue the Words of it, if a private Act; but it is otherwise on a general Statute: It is best not to recite a publick Statute; the Recital is not necessary, for the Judges are bound *ex officio* to take Notice of all publick Statutes, and Mis-recitals are fatal; so that it is the surest Way only to conclude generally *Contra formam Statuti*, &c. 4 *Rep.* 48. Though there be no Necessity to recite a publick Statute in an *Indictment*, yet if the Prosecutor take upon him to do it, and materially vary from the substantial Part of the Purview of the Statute, and conclude *Contra formam Statuti*, *prædict.* he vitiates the *Indictment*. *Plowd.* 79, 83. *Cro. Eliz.* 236. But many Mis-recitals may be salved by a general Conclusion *Contra formam Statuti*, without adding *prædict.* &c. And Mistakes may be helped by the constant Course of Precedents upon such Statutes. 2 *Hawk.* 247. An *Indictment* is to bring the Fact making an Offence, within all the material Words of the Statute, or the Words *Contra formam Statuti*, &c. will not make it good, if the Statute be not recited. *Ibid.* 249. If a Word of Substance be omitted in the *Indictment*, the whole *Indictment* is naught; but it is otherwise where a Word of Form is omitted, or there is an Omission of a synonymous Word, where the Sense is the same, &c. *Ibid.* 246. Judgment shall not be given by Statute, upon an *Indictment* which doth not conclude *contra formam Statuti*: And Judgment by Statute shall never be given on an *Indictment* at Common Law, as every *Indictment* which doth not thus conclude shall be taken to be. 2 *Hawk.* 251. But where Persons are indicted on the Statute of Stabbing, and the Evidence is not sufficient to bring them within the Statute; they may be found Guilty of general Manslaughter at Common Law, and the Words *contra formam Statuti* be rejected as useless: In some other Cases the same has been also adjudged; though formerly it was held, that an *Indictment* grounded on a Statute, which would not maintain it, could not in any Case be maintained as an *Indictment* at Common Law. *Ibid.* *Indictments* may be amended the same Term wherein brought into Court, and not after: But criminal Prosecutions are not within the Benefit of the Statutes of Amendments; so that no Amendment can be made to an *Indictment*, &c. but such only as is allowed by the Common Law. 2 *Lill.* 45. 2 *Hawk.* 244. The Body of a Bill of *Indictment* removed into B. R. may not be amended, except from London where a Tenor only of the Record is removed; tho' the Caption of an *Indictment* from any Place may, on Motion, be amended by the Clerk of the Assises, &c. so as to make it agree with the original Record. *Ibid.* And Captions of

Indict-

Indictments ought to set forth the Court in which, and the Jurors by whom; and also the Time and Place, at which the *Indictment* was found; and that the Jurors were of the County, City, &c. Also they must shew that the *Indictment* was taken before such a Court as had Jurisdiction over the Offence indicted. 2 *Hawk.* 253. While the Jury who found a Bill of *Indictment* is before the Court, it may be amended by their Consent in Matter of Form, the Name, or Addition of the Party, &c. *Kel.* 37. Clerks of the Assize and of the Peace, &c. drawing defective Bills of *Indictment*, shall draw new Bills without Fee, and take but 2 s. for drawing any *Indictment* against a Felon, &c. on Pain of forfeiting 5 l. *Stat.* 10 & 11 *W.* 3. cap. 23. If one material Part of an *Indictment* is repugnant to or inconsistent with another, the Whole is void; but where the Sense is plain, the Court will dispense with a small Impropriety in the Expression. *Ibid.* 228, 229. And many Objections to *Indictments* are over-ruled. 5 *Rep.* 120. Where an *Indictment* is void for Insufficiency; or if the Trial is in a wrong County, another *Indictment* may be drawn for the same Offence, whereby the Insufficiency may be cured; and the *Indictment* may be laid in another County, 'tis said, though Judgment be given. 4 *Rep.* 40. *H. P. C.* 244. By the Common Law, the Court may quash any *Indictment* for Insufficiency, as will make the Judgment thereon erroneous: But the Court may refuse to quash an *Indictment* preferred for the publick Good, tho' it be not a good *Indictment*, and put the Party to traverse or plead to it. *Mich.* 22 *Car. B. R.* And the Court will grant Time for the King's Counsel to maintain an *Indictment*, if they desire it. Judges are not bound *ex debito Jusitiae* to quash an *Indictment*; but may oblige the Defendant either to plead or demur to it; and where *Indictments* are not good, the Parties indicted may avoid them by Pleading. 2 *Lill.* 42. 2 *Hawk.* 258. The Court doth not usually quash *Indictments* for Forgery, Perjury, or Nulances, notwithstanding the *Indictments* are faulty; and it is against the Course of the Court to quash an *Indictment* for Extortion. 2 *Lill.* 41. 5 *Mod.* 31. If an *Indictment* be good in Part, tho' the other Part of it is naught, the Court will not quash it; for if an Offence sufficient to maintain the *Indictment* be well laid, 'tis good enough, altho' other Facts are ill laid. *Latch.* 173. *Poph.* 208. 1 *Salk.* 384. One that is convicted upon an erroneous *Indictment*, cannot after the Conviction move to have the *Indictment* quashed; but must bring his Writ of Error to reverse the Judgment given against him upon the *Indictment*. *Mich.* 22 *Car. B. R.* An *Indictment* is quashed for the Insufficiency in it; or because no good Judgment can be given upon it: But if Judgment be given upon an erroneous *Indictment*, it is good against the Party till reversed by Writ of Error. 2 *Lill.* 43. If the Party indicted is outlawed upon the *Indictment*, the Court will not quash the *Indictment* though erroneous; but will force the Party outlawed to bring his Writ of Error to reverse the Outlawry. *Mich.* 24 *Car. B. R.* The Stat. 7 *W.* 3. cap. 3. ordains, that no *Indictment* for Treason, &c. or any Process thereon, shall be quashed, on Motion of the Prisoner, or his Counsel, for Mit-writing, false *Latin*, &c. unless Exception be made before Evidence given in Court; nor shall any such Defect, &c. after Conviction, be Cause to arrest Judgment; though any Judgment given

upon such *Indictment* may be reversed on a Writ of Error, &c. By the Statute of *Hen.* 5. *Indictments* shall abate for Omissions, by the Exception of the Party; and if no Advantage be taken by Exception, but he appears and pleads, he loses the Benefit of the Law. 2 *Inst.* 670. A Person indicted of Felony, &c. may plead generally Misnomer, or wrongful Addition; a former Acquittal, or Conviction; a Pardon, or other special Plea; or the general Issue; or may plead any Plea in Abatement of the *Indictment*, &c. 2 *Hawk.* 259. One indicted for Felony may have Counsel assigned him to speak for him in Matter of Law only. 2 *Lill.* 44. And all Persons indicted for High Treason, shall have a Copy of the *Indictment* before Trial, to advise with Counsel, &c. And such *Indictments* are to be found in three Years after the Offence committed; except it be against the King's Person. 7 *W.* 3. Persons indicted of Treason must be by the Oaths of two Witnesses; but in other Cases one Witness is enough. After a Person is indicted for Felony, the Sheriff is commanded to attach his Body by a *Capias*; and on Return of a *Non est Inventus*, a second *Capias* shall be granted, and the Sheriff is to seize the Offender's Chattels, &c. And if on that Writ a *Non est Inventus* is returned, an *Exigent* shall be awarded, and the Chattels be forfeited, &c. *Stat.* 25 *Ed.* 3. If an innocent Person be indicted of Felony, and will not suffer himself to be arrested by the Officer who has a Warrant for it, he may be killed by the Officer, if he cannot be otherwise taken; for there is a Charge against him upon Record, to which at his Peril he is bound to answer. *Fitz. Coron.* 179, 261. A Person may be indicted twice at the same Time, where he hath committed two Felonies; and if he hath his Clergy for one, be hanged for the other. *Kel.* 30. And if there is an *Indictment* and Inquisition against one for the same Offence, one found by the Coroner's Inquest, and another by the Grand Jury; he may be tried on both at the same Time: Or if he be tried and acquitted upon the one, it may be pleaded in Bar on Trial for the other. *Kel.* 108. 1 *Salk.* 382. An *Indictment* being found in the proper County, may be heard and determined in any other County, by special Commission. 3 *Inst.* 27. When a Person is convicted upon an *Indictment* for Trespass or Misdemeanor, he is to appear in Court, on Judgment pronounced; and the Court having set a Fine upon him, will commit him in Execution, &c. 2 *Lill.* Abr. 41.

Indictor, Is he that indicteth another Man for any Offence; and *Indictee* is the Party that is indicted. 1 *Ed.* 3. cap. 11. 21 *Fac.* 1. c. 8.

Indistanter, A Word signifying without Delay. *Matt. Westm. Anno* 1244.

Indivisum, Is used for that which two Persons hold in common without Partition; as where it is said he holds *pro Indiviso*, &c. *Kitch.* 241.

Indolis, A Youth, or studious young Man. —*Ego* Edgar *Indolis Clito consensu*. *Mon. Ang.* Tom. 3. pag. 120.

Indorsement, (*Indorsamentum*) Signifies any Thing written on the Backside of a Deed; and Receipts for Consideration Money, and the Sealing and Delivery, &c. on the Back of Deeds, are called *Indorsements*. *West's Symb. par.* 2. Sect. 157. There is also an *Indorsement* of Bills or Notes, of what Part thereof is paid, and when, &c. And in another Sense it is a Writing a Man's Name only on the Backside of *Bills of Exchange*, which

which passing from one Man to another, all the *Indorsers* are answerable as well as the Drawer. 3 & 4 Ann. c. 9.

Indowment, Of a Church, &c. See *Endowment*.

Inducement, Is what is alledged as a Motive or Incitement to a Thing; and in Law is used specially in several Cases, viz. there is *Inducement* to Actions, to a Traverse in Pleadings, a Fact or Offence committed, &c. *Inducements* to Actions need not have so much Certainty as in other Cases: A general *Indebitatus* is not sufficient, where it is the Ground of the Action; but where it is but the *Inducement* to the Action, as in Consideration of forbearing the Debt till such a Day, (for that the Parties are agreed upon the Debt) this being but a collateral Promise, is good without shewing how due. *Cro. Jac.* 548. 2 *Mod.* 70. A Man ought to induce his Traverse, when he denies the Title of another, because he should not deny it till he shew some colourable Title in himself; for if the Title traversed be found naught, and no Colour of Right appears for him who traversed, there could be no Judgment given: But an *Inducement* cannot be traversed, because that would be a Traverse after a Traverse, and Quitting a Man's own Pre- tence of Title, and Falling upon another. *Cro.* 265, 266. 3 *Salk.* 357. An *Inducement* to a Traverse must be such Matter as is good and justifiable in Law. *Cro. Eliz.* 829. There is an *Inducement* to a Justification, when what is alledged against it is not to the Substance of the Plea, &c. *Cro. Jac.* 138. *Moor* 847. 2 *Nels. Abr.* 986.

Induction, (Inductio, i. e. a Leading into) Is the Giving a Parson Possession of his Church: And after the Bishop hath granted Institution, he issues out his Mandate to the Archdeacon to induct the Clerk, who thereupon either does it personally, or commissions some neighbouring Clergymen for that Purpose; which is compared to Livery and Seisin, as it is a Putting the Minister in actual Possession of the Church, and of the Glebe Lands, which are the Temporalities of it. This *Induction* is done in the following Manner: One of the Clergymen commissioned takes the Person to be inducted by the Hand, lays it on the Key of the Church, and pronounces these Words; *By Virtue of this Commission, I induct you into the real and actual Possession of the Rectory of, &c. with all its Appurtenances.* Then he opens the Church-door, and puts the Parson into Possession thereof, who commonly tolls a Bell, &c. and thereby shews and gives Notice to the People that he hath taken corporal Possession of the said Church: If the Key of the Church-door cannot be had, the Clerk to be inducted may lay his Hand on the Ring of the Door, the Latch of the Church-gate, on the Church-wall, &c. and either of these are sufficient: Also *Induction* may be made by Delivery of a Clod, or Turf of the Glebe, &c. *Countr. Parf. Compan.* 21, 22. Ordinarily the Bishop is to direct his Mandate to the Archdeacon, as being the Person who ought to induct or give Possession unto the Clerks instituted to any Churches within his Archdeaconry; But 'tis said the Bishop may direct his Mandate to any other Clergymen to make *Induction*. 38 *Ed.* 3. cap. 3. And by Prescription, others as well as Archdeacons may make *Inductions*. *Parf. Counsel.* 8. An *Induction* made by the Patron of the Church, is void; but Bishops and Archdeacons may induct a Clerk to their Benefices of

which they are Patrons, by Prescription, &c. 11 *Hen.* 4. The Dean and Chapter of Cathedral Churches are to induct Prebends; though it hath been held, if the Bishop doth induct a Prebend, it may be good at the Common Law. 11 *Hen.* 4. 7. 11 *Hen.* 6. At *Westminster*, where the King makes Collation by his Letters Patent: If the King grants one of his free Chapels, the Grantee shall be put in Possession by the Sheriff of the County, and not by the Bishop: And no *Induction* is necessary to a *Donative*, where the Patron by Donation in Writing puts the Clerk into Possession, without Presentation, &c. 11 *Hen.* 4. If the Authority of the Person, who made the Mandate for *Induction*, determines by Death or Removal, before the Clerk is inducted, the *Induction* afterwards will be void; as where before 'tis executed, a new Bishop is consecrated, &c. But if the Archbishop, during the Vacancy of a See, as Guardian of the Spiritualities, issue a Mandate to induct a Clerk to a Church, it is good though not executed before there is a new Bishop. 2 *Lev.* 199. 1 *Ventr.* 309. *Induction* is a temporal Act; and if the Archdeacon refuse to induct a Parson, or to grant a Commission to others to do it, Action of the Case lies against him, on which Damages shall be recovered; and he may likewise be compelled by Sentence in the Ecclesiastical Court to induct the Clerk, and shall answer the Contempt. 12 *Rep.* 128. It is *Induction* makes the Parson compleat Incumbent, and settles and fixes the Freehold in him; and a Church is full by *Induction*, which cannot be avoided but by *Quare Impedit* at Common Law. 4 *Rep.* 79. 2 *Plowd.* 529. *Hob.* 15. A Bishop sued in the Court of Audience, to repeal an Institution, after *Induction* had, and a *Prohibition* was granted; because an Institution is not examinable in the Spiritual Court after *Induction*, but then a *Quare Impedit* lies. *Moor* 860. 'Tis not the Admission and Institution, but *Induction* to a second Benefice, which makes the first void, in case of Pluralities, &c. *Moor* 12.

In esse, Is any Thing in Being; and the Learned make this Distinction between Things *in esse* and *in posse*; as a Thing that is not, but may be, they say is *in posse* or *in potentia*; but what is apparent and visible, they alledge is *in esse*, viz. that it has a real Being, whereas the other is casual, and but a Possibility. A Child before he is born or conceived, is a Thing *in posse*; after it is born, he is said to be *in esse*, or actual Being. The Words *in esse* are mentioned in the Statute 21 *Jac.* 1. cap. 2. And where there must be Persons *in esse*, to take by Grants, &c. See *Grants* and *Wills*.

Infamatio, Was an ancient Punishment of Felons, by throwing them among the Rocks and Sands, customarily used in Port-Towns: It is the Opinion of some Writers, that *Infamatus* did imply some capital Punishment, by exposing the Malefactor upon the Sands, till the next Tide carried him away, of which Custom 'tis said there is an old Tradition: However the Penalty seems to take Name from the Norman *Falese* or *Falesta*, which signified not only the Sands, but rather the Rocks and Cliffs adjoining, or impending on the Sea-shore. *Mon. Ang. Tom.* 2. pag. 165. — *Commist Feloniam ob quam fuit suspensus, utlagatus, vel alio modo morti Damatus, &c. vel apud Dover Infamatus, apud Southampton submersus, &c.* Hengham parva, cap. 3.

Infamy,

Infamy, Which extends to Forgery, Perjury, Gross Cheats, &c. disables a Man to be a Witness, or Juror; but a Pardon of Crimes restores a Person's Credit to make him a good Evidence. 2 Hawk. P. C. 432, 433. Judgment of the Pillory makes *Infamy* by the Common Law; but by the Civil and Canon Law, if the Cause for which the Person was convicted was not infamous, it infers no *Infamy*. 3 Lev. 426.

Infang or Infeng, *Significat quietantiam prioris Præ ratione convivii*. Fleta, lib. 1. c. 47.

Infangtheof, *Infangenetheof*, (From the Sax. *Fang* or *Fangen*, i. e. *capere*, and *Theof*, *Fur*) Signifies a Privilege or Liberty granted unto Lords of certain Manors, to judge any Thief taken *within* their Fee. Bract. lib. 3. cap. 35. In some ancient Charters, it appears that the Thief should be taken in the Lordship, and with the Goods stolen, otherwise the Lord had not Jurisdiction to try him in his Court; though by the Laws of King Edward the Confessor, he was not restrained to his own People or Tenants, but might try any Man who was thus taken in his Manor: 'Tis true afterwards, the Word *Infangtheof* signified *Latro captus in terra alicujus seistus de ali no Latrocinio, de suis propriis hominibus*. 1 & 2 P. & M. c. 15. The Franchises of *Infangtheof* and *Outfangtheof*, to be heard and determined within Court-Barons, are antiquated, and gone long since. 2 Inst. 31.

Infant, (*Infans*) In our Law is a Person under twenty-one Years of Age, whose Acts are in many Cases either void, or voidable. 1 Inst. 171. All Gifts, Grants, &c. of an Infant, which do not take Effect by Delivery of his Hand, are void; and if made to take Effect by Delivery of his own Hand, are voidably by himself, and his Heirs, and those which shall have his Estate. 8 Rep. 44. Where an *Infant* makes a Deed and delivers it within Age, though he afterwards delivers it again at full Age, this second Delivery and Deed are void; for the Deed must take Effect from the first Delivery. 3 Rep. 35. If an *Infant* bargain and sell Lands by Deed indented and inrolled, he may avoid it. 2 Inst. 673. And if an *Infant* makes a Feoffment, he may enter and avoid it; and if he dies, his Heir may enter, or have a *Dum fuit infra Aetatem*, &c. 1 Inst. 247, 248. An *Infant* seised in Fee makes a Feoffment and dies, his Heir shall enter; and it is the same if seised in Tail Male. 8 Rep. 42. And Privies in Blood, as the Heir general or special, may avoid a Conveyance made by their Ancestor during his Infancy. *Ibid*. But Privies in Estate, such as the Donor of an Estate-tail where the Tenant in Tail dies without Issue; or Privies in Law, as the Lord by Escheat where there is no Heir, shall not avoid a Conveyance made by an *Infant*. 8 Rep. 43, 44. If a Man within Age seised in Right of his Wife, makes a Feoffment and dies, his Heir cannot enter and avoid it, because no Right descends to him; for the Baron if he had lived could have entered only in Right of his Wife. 8 Rep. 43. And no Person shall take Advantage of the Infancy of his Ancestor, but he that hath a Right descending to him from that Ancestor; though the Heir may take the Benefit of a Condition, notwithstanding no Right descended to him from his Ancestors. 8 Rep. 44. If Husband and Wife are both within Age, and they by Indenture join in a Feoffment, and the Husband dies, the Wife may enter and avoid the Deed, or have a *Dum fuit infra Aeta-*

tatem. 1 Inst. 337. Though if there be two Jointenants within Age, and one of them makes a Feoffment in Fee of his Moiety during his Infancy, and dies, the Survivor cannot enter; but the Heir of the Feoffor may enter into the Moiety, &c. 8 Rep. 43. If an *Infant* exchanges Lands with another, and the other enters, the *Infant* may have Affise. 18 Ed. 4. 2. If an *Infant* leases for Years, he may affirm the Lease, or bring Trespals against the Lessee for the Occupation. 18 Ed. 4. Bro. Trespals 338. A Lease made by an *Infant* reserving Rent, is voidable; but if there be no Rendring Rent, it is absolutely void. Latch. 199. If an *Infant* makes a Lease, paying Rent, and after his Coming of Age he accepts the Rent, the voidable Lease is made good; and an *Infant's* Lease in Ejectment is good. 2 Litt. Abr. 55. 3 Salk. 196. A Lease made to an *Infant* may be avoided by waving the Land before the Rent-Day: But if where a Lease for Years is made to an *Infant*, rendring Rent, after the *Infant* coming of full Age he continues the Possession of the Land, this will make him chargeable with the Rent incurred during his Infancy. Cro. Jac. 320. An *Infant* cannot surrender a future Interest, by taking a new Lease; his Surrender by Deed and by Acceptance of a second Lease, are void, except there be an Increase of the Term or Decrease of the Rent; for where there is no Benefit comes to him, his Acts are merely void. Cro. Car. 502. An *Infant* may purchase, being intended for his Benefit; yet at his full Age he may confirm, or avoid it, by Agreement or otherwise; and if he agree not when at Age, his Heirs after him may disagree to the same. 1 Inst. 2. 172. An *Infant's* Feoffment, or other Deed, may be avoided by Plea or Entry, after or before he is of full Age; but his Acts on Record, as his Fine levied, Recovery suffered, or Statute acknowledged, must be avoided by Matter of Record, viz. by Writ of Error, or *Audita Querela*, during his Minority. 3 Salk. 196. 1 Inst. 380. An *Infant* confessed Judgment in an Action of Debt brought against him; and it was held, *Audita Querela* did not lie upon this Judgment, though it would on a Statute or Recognisance; but the Party ought to bring Writ of Error in the Exchequer-Chamber, by Virtue of the Statute 27 Eliz. Moor 460. *Infants* ought not to be received to levy Fines, though if they are admitted, their Fines are good and unavoidable, unless reversed during their Minority. 1 Inst. 233. If an *Infant* levy a Fine before the Justices, and the Cognisees will not have it ingrossed till after he is of Age; on producing a Note of the Caption, his Age may be examined, whereupon he may bring Writ of Error. Moor 189. But where an *Infant* may levy a Fine, he may declare the Uses of it also by Deed: And the *Infant's* Declaration of Uses, shall be good and binding to the *Infant* and his Heirs, so long as the Fine continues unreversed. Hob. 224. 2 Leon. 193. 2 Rep. 58. 10 Rep. 42. It was held formerly that an *Infant* appearing by Guardian, could not suffer a common Recovery. 10 Rep. 43. Though since it hath been allowed in many Cases, and by all the Judges, that an *Infant* may suffer a common Recovery by Guardian, and he shall not avoid it; for by Intendment he shall have Recompence in Value; and if it be not for the Good of the *Infant*, he may have his Recompence over against his Guardian. 2 Danv. Abr. 772. A common Recovery may be had

had against an *Infant*, being examined *sole & secrete*; and he may suffer a Recovery by Guardian in open Court. *Hob.* 169. 2 *Bull.* 255. 2 *Nelf. Abr.* 994. A Recovery was suffered by an *Infant* by his Guardian. 1 *Leon.* It has been agreed, that if an *Infant* appear by Guardian, and suffer a common Recovery, it shall not be reversed for Error: But if he appear by Attorney, and suffer a Recovery, it is otherwise; for in such Case he may reverse it by Error when of full Age, because it may be tried by a Jury whether he was an *Infant* when he made the Letter of Attorney, or not; whereas in the other Case it must appear by Inspection, which cannot be after full Age. *Sid.* 321. 2 *Nelf.* 995. A Recovery or Judgment by Default against an *Infant*, is erroneous; but the *Infant* must reverse it by Writ of Error during his Minority. *Wood's Inst.* 603. And if the Default be after Appearance, the Judgment shall not be reversed. *Dyer* 104. If an *Infant* appears by Attorney, and not by Guardian, it is Error; for which a Judgment may be reversed. 2 *Nelf.* 998. But if an *Infant* appearing *per Guardianum* comes of Age pending the Suit, he may then plead *per Attornatum*. *Moor* 665. An *Infant* is to sue by *Prochein Amy*, or Guardian; but always defend by Guardian. 1 *Inst.* 135. He is not to appear by Attorney in his own Right; but if he be joint Executor with others of Age, they may make an Attorney for him. 2 *Saund.* 212. And yet it hath been held, if an Action be brought against three several Defendants, and one of them is an *Infant*, they may not all appear by Attorney; but he within Age must appear by Guardian, or it will be Error to reverse the Judgment. *Style* 400. 1 *Lev.* 294. If Baron and Feme, where the Feme is an *Infant*, appear by Attorney, it is Error. 5 *Mod.* 209. When the Defendant in an Action is an *Infant*, the Plaintiff shall have six Years to bring his Action in after the Defendant comes of Age: And if the Plaintiff be an *Infant*, he hath six Years likewise after his Age, to sue by the Statute of Limitations. *Lutw.* 243. And *Infants* are not bound by Nonclaim, &c. on Fines levied by others, within five Years, by the Stat. 13 *Ed.* 1. Nonclaim shall not bind an *Infant*, nor any Negligence, &c. be imputed to him; except in some particular Cases, *viz.* in case of a Fine where the Time begins in the Life of the Ancestor; or of an Appeal of Death of his Ancestor, where he brings not his Appeal within a Year and a Day, &c. 1 *Inst.* 246, 380. *Wood's Inst.* 13. Laches shall prejudice an *Infant*, if he presents not to a Church in six Months. *Lit.* 402. All Acts of Necessity bind *Infants*, as Presentations to Benefices, Admittances and Grants of Copyhold Estates, and Assenting to Legacies, &c. 3 *Salk.* 196. Conditions annexed to Lands, whether the Estate come by Grant or Discent, bind *Infants*: And where the Estate of an *Infant* is upon Condition to be performed by the *Infant*, if the Condition is broken during the Minority, the Land is lost for ever. 1 *Inst.* 233, 380. Tho' a Statute is not extendible against an *Infant*, yet Chancery will give Relief against *Infants*. 1 *Lev.* 198. And by Statute 7 *Ann. c.* 19. *Infants* seised of Estates in Fee in Trust, or in Mortgage, on Petition of the Person for whom the *Infant* is seised in Trust, or the Mortgagor, &c. by Order of the Court of Chancery, may make Conveyances of such Estates, as Trustees or Mort-

gagees of full Age. An *Infant* may bind himself Apprentice, and if he serve seven Years, have the Benefit of his Trade: If he be guilty of Misbehaviour, the Master may correct him; or complain to a Justice of Peace, and have him punished. *Cro. Car.* 179. Stat. 5 *Eliz.* And an *Infant* may bind himself to pay for Necessaries, as Meat, Drink, Apparel and Learning; but not by Bond with Penalty; though a Bill for Necessaries without a Penalty for the very Sum due, 'tis said, will bind him. 2 *Inst.* 483. 1 *Roll. Abr.* 729. 1 *Lev.* 86. *Infants* are not obliged to pay for Clothes, unless it be averred for their own Wearing, and that they were convenient and necessary for them to wear, according to their Degree and Estate. *Cro. Jac.* 560. Though upon Promise of an *Infant* to pay a Taylor for making of Clothes, it need not be averred for necessary Clothes, &c. *Noy* 85. Money laid out for Necessaries for an *Infant*, hath been allowed; when Money lent for that Purpose, hath not. 5 *Mod.* 368. The *Infant* may buy, but cannot borrow Money to buy Necessaries; for the Law will not trust him with Money, but at the Peril of the Lender, who must lay it out for him in Necessaries, or see it thus laid out. 1 *Salk.* 386. Where Money is lent to an *Infant*, who employs it in buying Necessaries, yet he is not liable; because the Foundation of the Contract is the Lending. 1 *Salk.* 279. An *Infant* is not bound by an Account concerning Necessaries for his Family, &c. for he may be mistaken in an Account; and no Contract binds him but what concerns his Person. 2 *Roll. Rep.* 271. *Latch.* 189. If an *Infant* makes a Contract *pro Victu & Vestitu*, this shall be binding: And a Promise by an *Infant* to another, that if he will find him Meat, Drink and Washing, and pay for his Schooling, that he will pay him such a reasonable Sum yearly, Action on the Case lies upon this Promise. 2 *Danv.* 768. *Trin.* 3 *Car.* But in other Cases, it is otherwise; though a Promise of a Person when at full Age, for a Consideration during Infancy, shall be binding, and *Assumpsit* lieth. 2 *Lev.* 144. 3 *Leon.* 215. If an *Infant* delivers Money with his own Hand, it is voidable, and to be recovered by Action of Account. *Hob.* 77. The *Infant* sells Goods to another; he may make the Sale void, or have Trespass or Debt for the Money. 13 *Ed.* 4. 2. Though if an *Infant* deliver Goods to his own Use, he shall not have Trespass against the Bailee. 18 *H.* 6. 2. Action will not lie against an *Infant* for Goods sold to him, to sell in his Shop. *Cro. Jac.* 494. And if one deliver Goods to an *Infant*, knowing him to be such, the *Infant* shall not be charged in Trover and Conversion: But it is otherwise if delivered to him, not knowing him to be an *Infant*. 1 *Sid.* 129. Action lies not against an *Infant* Innkeeper, for Goods lost. 2 *Danv.* 769. If an *Infant* accepts a Bill of Exchange, he may plead Infancy upon an Action brought against him. *Trin.* 3 *W.* 3. 3 *Salk.* 197. And if a Trespass be done to an *Infant*, and he submits to an Award, 'tis said the Award shall not bind him. 2 *Danv.* 770. If an *Infant* enters into Bond, pretending to be of full Age, though he may avoid it by pleading his Infancy, he may be indicted for a Cheat. *Wood's Inst.* 585. *Infants* committing a Trespass against the Person or Possession of another, must answer for the Damage in a Civil Action. *Hob.* 134. 2 *Roll. Abr.* 547. And

Infants;

Infants being Tenants for Life or Years, are punishable for Waste: An *Infant* shall be punished for Battery, Slander, Cheating with false Dice, Perjury, not going to Church, &c. 3 *Salk.* 196. *Infants* under fourteen Years of Age are not generally punishable capitally for Crimes committed; but if they are of that Age, or under thote Years, having Maturity of Discretion, they may be punished as Felons: But Execution of these for Felony is oftentimes respited in order to a Pardon; and if an *Infant* apparently wanting Discretion, be found guilty of Felony, the Justices may dismiss him without Pardon. 1 *Inst.* 247. *Doctor and Stud.* c. 26. 1 *Hawk.* 2. An *Infant* is incapable of being a Parson, Juror, Attorney, Steward, Bailiff, &c. But he may be a Mayor, Sheriff, Gaoler, &c. *Co. Lit.* 3. 3 *Salk.* 195. See *Age*.

Infancy of the King. The King cannot be an *Infant* by our Law. 1 *Inst.* 43. And he shall never avoid his Grants, &c. in Respect of Infancy; for he cannot be a Minor, being as King a Body Politick. 2 *Danv. Abr.* 767. The Acts of a Mayor and Commonalty shall not be avoided by Reason of Infancy of the Mayor. *Cro. Car.* 557.

Infidels, (*Infideles*) Heathens; who may not be Witnesses by the Laws of this Kingdom, because they believe neither the Old nor New Testament to be the Word of God, on one of which Oaths must be taken. 1 *Inst.* 6. 2 *Hawk. P. C.* 434.

Infirmariy, (*Infirmarius*) In Monasteries there was an Apartment allotted for *infirm* or sick Persons; and he who had the Care of the *Infirmariy* was called *Infirmarius*. *Matt. Paris.* Anno 1252.

In forma Pauperis, Suing Actions in. See *Forma Pauperis*.

Information, (*Informatio*) For the King, is the same which for a common Person is called Declaration; and it is not always brought directly by the King, or his Attorney General, and the Clerk of the Crown-Office, but frequently by some other Person, who informs as well for the King as for himself, upon the Breach of some Penal Law or Statute, wherein a Penalty is given to the Party that will sue for the same: And it differs from an Indictment, which is found by the Oaths of twelve Men, and this is only the Allegation of the Officer, &c. Also it is different from an Action on a Penal Statute, which is at the Suit of the King only. *Terms de Ley* 406. *Informations* are either at the Suit of the King, or at the Suit of the King and of the Party, which is called an *Information Qui tam*, because the *Informers* prosecute *tam pro Domino Rege quam pro seipso*; but these *Informations* will not lie on any Statute which prohibits a Thing, as being an immediate Offence against the Publick good in general, under a certain Penalty, unless the Whole or Part of such Penalty be expressly given to him who will sue for it, because otherwise it goes to the King, and nothing can be demanded by the Party. 2 *Hawk. P. C.* 265. The King shall put no one to answer for a Wrong done principally to another, without Indictment or Presentment; tho' of common Right *Informations*, or Actions in the Nature thereof, may be brought for Offences against Statutes, whether mentioned or not in such Statutes, where other Methods of Proceeding are not particularly appointed. *Ibid.* 260. There may be an *Information* for the King against a Criminal, as well as Indictment; but it doth not lie for a Capital Crime

except on the Statutes against Bankrupts, who may be convicted of Felony by Indictment or *Information*, by 5 *Geo. c. 4. Wood's Inst.* 630. It has been alledged, that *Informations* began in the Reign of King Henry 7. and are new Things with Respect to Indictments, and carry Hardships with them, &c. But it was adjudged, that the old Statutes enact, that Proceedings shall be by Presentment or Indictment; an *Information* by the Attorney General is no more than a Presentment, and that *Informations* were at Common Law. 5 *Mod.* 459. An *Information* may be brought for Offences and Misdemeanors by the Common Law; as for Batteries, Conspiracies, seducing Persons, Nuisances, Contempts, Libelling, seditious Words, Abusing the King's Commission to the Oppression of the Subject, &c. And in very many Cases by Statute, wherein the Offender is liable to a Fine, or other Penalty. *Finch* 340. *Show.* 109. If the Marshal of B. R. misdemeanors himself in his Office, he who is prejudiced by it may prefer an *Information* against him in that Court, where he shall be fined, and ordered to make Satisfaction. *Hill.* 23 *Car. B. R.* For obtaining a Judgment against a Woman before Marriage, by Cheating and Fraud, whereby her Husband's Lands were afterwards extended, adjudged that *Information* lay, and the Judgment should be set aside, &c. *Sid.* 431. *Information* may be brought against the Inhabitants of any Town for not repairing of Highways; for going armed in Affray of the Peace, &c. and in general for any Offences against the Publick good, or against the Principles of Justice, *Information* lies; tho' not where a Complaint is trifling or vexatious, or wholly of a private Nature. 2 *Hawk.* 260, 262. If a Person exhibits his *Information* only for Vexation, the Defendant may bring *Information* against the *Informers* upon the Statute 18 *Eliz. c. 5.* 2 *Bulst.* 18. An *Information* upon a Penal Statute must be sued in one of the Superior Courts, and cannot be brought in any Inferior Court, because the King's Attorney cannot be there to acknowledge or deny, as he can in a Superior Court. *Cro. Jac.* 538. All *Informations* on Penal Statutes, brought by an *Informers* where a Sum certain is given to the Prosecutor, must be brought in the proper County where the Offence was committed; and within a Year after the same: But a Party grieved, who is not a common *Informers*, is not obliged to bring his *Information* in the proper County, but may *inform* in what County he pleases. *Stat.* 31 *Eliz. c. 5. Cro. Eliz.* 645. And the King may exhibit an *Information* in two or three Years, and be good; though it will be naught in an *Informers*. *Cro. Jac.* 366. Where an *Information* is given by Statute, to be prosecuted at the Assizes, &c. the *Informers* on filing of his *Information*, must make Oath before a Judge, that the Offence laid in the *Information* was not committed in any other County than that mentioned in the *Information*; and that he believes the Offence was committed within a Year next before the Filing of the *Information*. 21 *Jac. I. c. 4.* And when an *Information* is ordered to be filed upon an Affidavit made, the Court will not suffer the Prosecutor to put any more or other Matter into the *Information* than what only is in his Affidavit. *Mish.* 9. *W. 3. B. R.* It has been resolved, that the Stat. 21 *Jac. I.* restrains the Jurisdiction of B. R. in Actions of Debt by common *Informers*, and that they cannot bring Debt upon the Statute in that Court, unless the Cause of Action arise

in the County where the King's Bench sits, but must in other Cases prosecute by *Information* before Justices of Assize, &c. as the Statute directs. 1 *Salk.* 373. All *Informations*, &c. on Penal Statutes, made before the Statute 21 *Jac.* c. 4. must by that Act be laid and prosecuted in the County where the Fact was done: But that Act doth not extend to any Offence created since that Statute, so that Prosecutions on subsequent Penal Statutes, are not restrained thereby, but that Statute is as to them as it were repealed. 1 *Salk.* 372, 373. By the Stat. 18 *Eliz.* c. 5. *Informers* are to exhibit their Suits in proper Person, by Way of *Information*, or Original Action; they are not to compound with the Defendant, without the Consent of the Court, on Pain of 10 *l.* Penalty, Pillory, &c. And if they discontinue or are Nonsuit, the Court shall immediately assign Costs to the Defendant: But this Statute and the 21 *Jac.* 1. c. 4. do not extend to *Informations* of Officers, nor on the Statutes of Maintenance, Champerty, concerning Concealments of Customs, &c. and it extendeth not to Parties grieved, and those to whom any Forfeiture is given in certain. *Ibid.* The 4 & 5 *W. & M.* c. 18. enacts, That *Informations* brought in the Crown-Office for Trespas, Battery, &c. are to be by Order of Court; and Recognizances to be entered into of 20 *l.* Penalty for the *Informers* to prosecute with Effect, &c. And in Case any Person against whom such *Information* shall be exhibited shall appear and plead to Issue, and the Prosecutor do not proceed to Trial within a Year after Issue joined; or if it shall pass for the Defendant, or the *Informers* procure a *Nolle Prosequi*, &c. the Court shall award the Defendant Costs; except it be certified that there was reasonable Cause for the *Information*. An *Informers* upon a popular Statute shall never have Costs, if not given by Statute; but the Party grieved in Action on the Statute shall, where a certain Penalty is given. 2 *Hawk.* 273. *Informations* by the Attorney General remain as they were at Common Law, notwithstanding the Stat. 4 & 5 *W. & M.* And when the Attorney General exhibits an *Information*, he does it *ex Officio*; whereas when the Clerk of the Crown does it, it is generally by Order of Court. 5 *Mod.* 464. Where a Penalty is divided by Statute between the King and the *Informers*, if the King prefers his *Information* before the *Informers*, he shall have the whole Penalty: But if the *Informers* prefer his *Information* first, the King cannot hinder him from his Proportion. 2 *Lill. Abr.* 60. If an *Informers* dies, the Attorney General may proceed in the *Information* for the King: Nonsuit of an *Informers* is no Bar against the King; and if the King's Attorney enter a *Nolle prosequi*, it is not any Bar *quoad* the *Informers*. *Cro. Eliz.* 583. 1 *Leon.* 119. If two *Informations* are had on the very same Day, they mutually abate one another; because there is no Priority to attach the Right of the Suit in one *Informers*, more than in the other. *Hob.* 138. An *Information* hath somewhat of it of an Indictment, *viz.* to alledge the Offence in particular, and also something in Nature of an Action, to demand what is due; and if the *Informers* make no Demand, or demand what appears not to be his due, the *Information* is ill. *Hob.* 242. The same Certainty is requisite in an *Information* as in an Indictment; and all the material Parts of the Crime must be as precisely found in the one as the other. 2 *Hawk.* 261. If an *Information* contain several Offences against a Statute, and

be well laid as to some of them, but defective as to the rest, the *Informers* may have Judgment for so much as is well laid. *Ibid.* 266. After a Plea pleaded to an *Information* for any Crime, the Defendant by Favour of the Court may appear by Attorney; also the Court may dispense with the personal Appearance before Plea pleaded, except in such Cases where a personal Appearance is required by some Statute: And it is the same of Indictments for Crimes under the Degree of Capital. *Ibid.* 273. If a Defendant plead *Nil debet* to an *Information Qui tam*, &c. it is safest to say he owes nothing to the *Informers*, nor the King, which is an Answer to the Whole. On Breach of a Statute alledged from a Matter *in pais*, the Defendant may plead that he owes nothing, or Not guilty, &c. And if there be more than one Defendant, they ought to plead severally and not jointly, Not guilty: But if it be alledged from a Matter of Record, the Record not being triable by the Country but by it self, such Plea is not good. 2 *Hawk.* 276. *Bro. Issues* 23. A Prior Suit depending, a Pardon or Release may be pleaded to an *Information*: And if the Defendant hath Matter to plead in his Discharge, it hath been held that he ought to plead it specially, and cannot give it in Evidence; tho' this seems to be contrary to the Statute 21 *Jac.* 1. A Replication to an *Information* on a special Plea in the Courts at *Westminster*, is to be made by the Attorney General, and before Justices of Assize, by the Clerk of the Assize: Tho' the Replication to a general Issue in an *Information Qui tam* in the Courts at *Westminster*, may be made in the Name of the Attorney General only; and in Actions *Qui tam*, most of the Precedents are that the Replication is to be made by the Plaintiff. 2 *Hawk.* 277. A Demurrer may be to an *Information Qui tam*, without the Attorney General. *Ibid.* *Informations* are not quashed for Insufficiency, like Indictments; but the Defendant must demur to them. *Pasch.* 1650. 2 *Lill.* 59. Fines assessed in Court by Judgment on an *Information*, cannot be afterwards qualified or mitigated. *Cro. Car.* 251. The Stat. 9 *Ann.* c. 20. makes the Proceedings upon *Informations* in the Nature of a *Quo Warranto* more speedy and effectual. *Vide* the Statute, &c.

Informers, (Informator) Is a Person as *informs* against or prosecutes in any of the King's Courts those that offend against any Law or Penal Statute; and no Man may be an *Informers* who is disabled by any Misdemeanor. *Stat.* 31 *Eliz.* c. 5.

Infirmitatem, Is one Part of the Digests of the *Civil Law*; according to *Benedict*, Abbot of the Monastery of *Peterborough*, in the Reign of K. *Hen.* 3.

Infugare, Signifies to put to Flight. *Leg. Canuti*, cap. 32.

Infula, Was anciently the Garment of a Priest, like that which we now call a Cassock; sometimes it is taken for a Coif.

Inge. This Syllable in the Names of Places, denotes Meadow or Pasture; and in the North, Meadows are called the *Inges* from the Sax. *Ing*. i. e. *pratium*.

Ingenium, Is an Instrument used in War, *Arte & Ingenio confectum*; from whence 'tis said we derive the Word *Engine*.

Ingenuitas, Used for Liberty given to a Servant by Manumission. *Leg. H.* 1. c. 89.

Ingenuitas Regni. *Ingenui*, *Liberi* & *Legales Homines*; Freeholders, and the Commonalty of the

the Kingdom : And sometimes this Title was given to the Barons and Lords of the King's Council. *Eadmer. Hist. Nov. fol. 70.*

Ingress, Egress and Regress, Words in Leases of Land, to signify a free Entry into, Going forth of, and Returning from some Part of the Lands let ; as to get in a Crop of Corn, &c. after the Term expired.

Ingressu, Is a *Writ of Entry*, whereby a Man seeks Entry into Lands or Tenements ; and lies in divers Cases, having as many different Forms : This Writ is also called *Præcipe quod reddat*, because those are formal Words inserted in all Writs of Entry. See *Entry*.

In gross. Advowson *in gross*, Villain *in gross*, &c. See *Gross*.

Ingrosser, (Ingrossator) Is one that buys and sells any Thing by Wholesale ; and whoever shall get into his Hands by Buying, Contract or Promise, other than by Demise, Grant or Lease of Lands, any Corn growing, or other Corn or Grain ; Butter, Cheese, Fish, or other dead Victuals whatsoever, within the Realm of England, to the Intent to sell the same again, shall be reputed an unlawful *Ingrosser*, by Stat. 5 & 6 Ed. 6. c. 14. Such Victual only as is necessary for the Food of Man, is within the Purview of the Statute ; and therefore Apples and Fruits are not within the Meaning of it ; and it has been holden, that Hops are not within the Statute. 3 *Inst.* 195. *H. P. C.* 152. *Cro. Car.* 231. The Buying of Corn to make Starch of it, and then to sell it, is not within the Intent of the Statute, because it is not bought to be sold again in the same Nature it was bought, but to be first altered by a Trade or Science ; and by the like Reason the Buying of Corn to make Meal of it, and then to sell it, is said to be not within the Act ; and Buying of Barley, with an Intent to make it into Malt, and after that to sell it, had no Need of the Exception made for it in the said Statute. 1 *Hawk. P. C.* 237. Foreign Corn and Victuals, except Fish and Salt, are exempted, and not within the Penalty of the Statute, 13 *Eliz. c. 25.* And licensed Badgers are excepted ; as are likewise Fishmongers, Butchers, Poulterers, &c. buying any Thing in their own Faculties, otherwise than by Forestalling, and selling the same again at reasonable Prices by Retail. 1 *Hawk.* 240. Any Merchant, whether a Subject or Foreigner, bringing Victuals, or other Merchandize into this Kingdom, may sell the same in Gross ; but he that buys them of him cannot do so, because by such Means the Price will be enhanced, for the more Hands any Merchandize passeth through, the dearer it must grow, as every one will make a Profit of it : And if this were allowable, a rich Man might *ingross* into his Hands a whole Commodity, and then sell it at what Price he should think fit ; which is of such a bad Consequence, that the bare *Ingrossing* of a whole Commodity with Intent to sell it at an unreasonable Price, is an Offence indictable at Common Law, whether any Part thereof be sold by the *Ingrosser*, or not. 3 *Inst.* 196. *Cro. Car.* 231, 232. The Punishment of this Offence by Statute, is Forfeiture of the Goods for the first Offence, and two Months Imprisonment ; double Value and six Months Imprisonment for the second Offence ; and Loss of all Goods and Imprisonment at the King's Pleasure, &c. for the third Offence. See *Forefaller*.

Ingrosser of Deeds, Is a Clerk that writes Records or Instruments of Law in Skins of Parchment.

Ingrossing of a Fine. The making of the Indentures by the *Chirographer*, and Delivery of them to the Party to whom the Fine is levied. *F. N. B.* 147.

Inhabitant, Is a Dweller or Householder in any Place ; as *Inhabitants* in a Vill, are the Householders in the Vill. 2 *Inst.* 702.

Inheritance, (Hæreditas) Is a Perpetuity in Lands or Tenements, to a Man and his Heirs : And the word *Inheritance* is not only intended where a Man hath Lands or Tenements by Descent of *Heritage* ; but also every Fee-Simple, or Fee-Tail, which a Person hath by Purchase, may be said to be an *Inheritance*, because his Heirs may inherit it. *Litt. Sect.* 9. And one may have *Inheritance* by Creation ; as in Case of the King's Grant of Peerage, by Letters Patent, &c. *Inheritances* are Corporeal or Incorporeal ; *Corporeal Inheritances* relate to Houses, Lands, &c. which may be touched or handled ; and *Incorporeal Inheritances* are Rights issuing out of, annexed to, or exercised with Corporeal *Inheritances*, as Advowsons, Tithes, Annuities, Offices, Commons, Franchises, Privileges, Services, &c. 1 *Inst.* 9. 49. There is also *several Inheritance*, which is where two or more hold Lands severally ; if two Men have Land given to them and the Heirs of their two Bodies, these have joint Estate during their Lives ; but their Heirs have several *Inheritances*. *Kitch.* 155. Without Blood none can inherit ; and therefore it is that he who hath the whole and entire Blood, shall have an *Inheritance* before him who hath but Part of the Blood of his Ancestor. 3 *Rep.* 41. The Law of *Inheritance* prefers the first Child before all others ; the Male before the Female ; and of Males the first born, &c. Goods and Chattels cannot be turned into an *Inheritance*. 3 *Inst.* 19, 126. See *Descent* and *Fee-Estate*.

Inhibition, (Inhibitio) Is a Writ to forbid a Judge from farther Proceeding in a Cause depending before him, and is usually issued out of a *Higher Court Christian* to an Inferior, being in Nature of a Prohibition. 9 *Ed. 2. c. 1.* 24 *Hen. 8. c. 12.* 15 *Car. 2. c. 9.* *F. N. B.* 39. 2 *Inst.* 601. *Inhibitions* are used upon Appeals to the higher Ecclesiastical Courts, or on Visitations of Bishops, &c. And this *Inhibition* is either *Hominis* or *Juris* ; 'tis *Ne visitationem facias, vel aliquam Jurisdictionem Ecclesiasticam contentionem vel voluntariam habeas* : Thus when the Archbishop visits, he *inhibits* the Bishop, and when a Bishop visits, he *inhibits* the Archdeacon ; and this is to prevent Confusion, and continues till the last Parish is visited : Now after such *Inhibition* by an Archbishop, if a Lapse happens, the Bishop cannot institute, because his Power is suspended, but the Archbishop is to do it, &c. *Pasch.* 13 *Car. B. R.* 3 *Salk.* 201.

Inhor, or Inhoke, (From *In*, within, and *bokē* a Corner or Nook) Signifies any Corner or Part of a common Field ploughed up and sowed with Oats, &c. and sometimes fenced in with a dry Hedge, in that Year wherein the rest of the same Field lies fallow and common. It is called in the North of England an *Intock*, and in Oxfordshire a *Hitchin* ; and no such *Inhoke* is now made without the joint Consent of all the Commoners, who in most Places have their Share by Lot in the Benefit of it, except in some Manors where

the Lord has a special Privilege of so doing. *Kenner's Paroch. Antiq.* 297, &c. and his *Glossary*.

Injunction, (*Injunctio*) Is a Kind of Prohibition granted in divers Cases; it is generally grounded upon an Interlocutory Order or Decree out of the Court of *Chancery* or *Exchequer*, to stay Proceedings in Courts at Law; and sometimes it is issued to the Spiritual Courts. *West. Symb. Sect.* 25. It is likewise sometimes used to give Possession to a Plaintiff, for Want of the Defendant's Appearance; and may be granted by the *Chancery* or *Exchequer* to quiet Possession of Lands; also where a privileged Person of the *Chancery* is sued elsewhere; and to stay Waste, &c. *Injunction* lies. If a Defendant by his Answer in *Chancery*, swears a certain Sum of Money is due to him, the Court will often not grant an *Injunction*, unless the Money be brought into Court: And an *Injunction* is obtained by Order, either upon Matter confessed, or upon some Matter appearing of Record, or by Deed, Writing or other Evidence shewn in Court, from whence there is a Probability that the Party ought to be discharged in Equity; and sometimes it is granted before Answer, when 'tis usually only until Answer, and further Order, &c. A Delay of Proceedings for a considerable Time, is good Cause for setting aside and dissolving an *Injunction* to stay Proceedings at Law; but an *Injunction* may be revived on Cause shewn, and sometimes the Court will revive it tho' Dissolved, where the Plaintiff's Case is hard, or Equity is evidently on his Side. *Pract. Sol.* 124, 125. If an *Injunction* be for staying of Waste, there must be Affidavit made of Waste committed in Houses, Lands, &c. belonging to the Complainant: And if it be to stay Suits in other Courts, it is granted on suggesting some Matter, by Reason of which the Complainant is not able to make his Defence in the other Court, as for Want of Witnesses, &c. or for that he is prosecuted at Law for what in Equity he ought not to pay; or that the other Court acts erroneously, denies him some rightful Advantage; and that if the Rigour of the Law takes place, it is against Equity and good Conscience, &c. *Ibid.* If an Attorney proceeds at Law, after he is served with an *Injunction* to stay Proceedings, on Affidavit made thereof, Interrogatories are to be exhibited against him, to which he must answer on Oath; and if it appears that he was duly served with the *Injunction*, and hath proceeded afterwards contrary thereto, the Court of *Chancery* will commit the Attorney to the *Fleet-Prison* for the Contempt. 2 *Lill. Abr.* 64. If a Cause at Law be at Issue, the *Injunction* may give Leave to go to Trial, and stay Execution, &c. The Writ of *Injunction* is directed to the Party proceeding, *ac omnibus & singulis Consiliar. Attorn. Solicitat. suis quibuscunque*, &c. and concludes, *Injungen. Precipimus quod ab omni ulteriori prosecutione quacunque ad communem Legem de, pro vel concernen. aliquib. Materijs in querimon. content. &c. desistatis & quilibet vestrum desistat, sub pœn. &c.*

Injury, (*Injuria*) Is a Wrong or Damage to a Man's Person or Goods. The Law punisheth Injuries; and so abhors them, that it grants Writs of Anticipation for their Prevention, in Cases of Combinations and Confederacy, &c. *Stud. Compan.* 93. But the Law will suffer a private Injury rather than a publick Evil; and the Act of God, or of the Law, doth Injury to none. 4 *Rep.* 124. *Co. Lit.* 148.

Inlagation, (*Inlagatio*, from the Sax. *In-lagiam*, i. e. *Inlagare*) Signifies a Restitution of one Outlawed, to the Protection of the Law, and Benefit of a Subject. *Bract. lib.* 3. *tract.* 2. *cap.* 14. *Leg. Canut. par.* 1. *c.* 2.

Inlagh, (*Inlagatus, vel Homo sub Lege*) Is he that is of some Frank-Pledge, and not Outlawed: It seems to be the contrary to *Utlagh*. *Bract. tract.* 2. *lib.* 3. *c.* 11.

Inland, (*Inlandum*) *Terra Dominicalis, pars Manerii Dominica, terra interior vel inclusa*; for that which was let to Tenants was called *Outland*. In an ancient Will there are these Words; To *Wulfee* I give the *Inland* or *Demeans*, and to *Elfey* the *Utlands* or *Tenency*. *Testam. Brithewici*. This Word was in great Use among the Saxons, and often occurs in *Domesday*.

Inland Trade, A Trade wholly managed at Home in one Country. *Merch. Dict.*

Intangled, (From the Fr. *Enlasse*) Intangled or ensnared; it is used in the Champion's Oath. 2 *Inst.* 247.

Inmates, Are those Persons that are admitted to dwell with and in the House of another, and not being able to maintain themselves. *Kitch.* 45. These *Inmates* are generally idle Persons harboured in *Cottages*; wherein it hath been common for several Families to inhabit, by which the Poor of Parishes have been increased; but suffering it is an Offence by Statute, liable to a Forfeiture of 10 s. a Month, inquirable of in the Court-Lect, &c. *Stat.* 31 *Eliz.* *c.* 7. See *Cottage*.

Innamum, A Pledge — *Innama non capiantur, nisi per communem assensum*. *Du Cange*.

Innings, Lands recovered from the Sea in *Romney Marsh*, by Draining: Ancient Records make Mention of the *Innings* of Archbishop *Becket*, *Boniface*, and others; and at this Day there is *Elderton's Innings*, &c.

Innonia, (From the Sax. *Innan*, i. e. *Intus*) An Inclosure. *Spelm. Gloss.*

Innotescimus. This Word and *Vidimus* are all one; it signifies *Letters Patent*, so called, which are always of a Charter of Feoffment, or some other Instrument, not of Record, concluding *Innotescimus per presentes*, &c.

Innovations, Are thought dangerous by our Laws; and the ancient Judges of the Law have ever suppressed them, lest the Quiet and Certainty of the Common Law should be disturbed. *Co. Lit.* 379. In the Reign of King *Ed.* 3. the Judges said we will not change the Law, which always hath been used; and in the Time of *K.* *H.* 4. they declared, it would be better that it should be turned to a Default, than that the Law should be changed, or any Innovation made. *Ibid.* 303.

Innoxiate, To purge one of a Fault, and make him innocent. *Leg. Ethelred.* *c.* 10.

Inns, (*Hospitii*) Were instituted for Lodging and Relief of Travellers; and at Common Law any Man might erect and keep an *Inn* or Alehouse to receive Travellers, but now they are to be licensed and regulated by Statute, by Justices of Peace, who are to take Recognizances for keeping good Orders, &c. 5 & 6 *Ed.* 6. *c.* 25. And if the Keeper of an *Inn* harbours Thieves or Persons of a scandalous Reputation, or suffers frequent Disorders in his House; or sets up a New *Inn* in a Place where there is no Manner of Need of one, to the Hinderance of other antient and well-governed *Inns*; or keep it in a Situation wholly

wholly unfit for such a Purpose, he may by the Common Law be indicted and fined. *H. P. C.* 146. *Dalt.* 33, 34. *Inn-keepers* not selling their Hay, Oats, Beans, &c. and all Kinds of Victuals for Man and Beast, at reasonable Prices, having Respect to the Price sold in the Markets adjoining, without taking any Thing for Litter, they shall be fined for the first Offence, and for the second be imprisoned for a Month; and for the third stand on the Pillory, &c. *Stat.* 21 *Fac.* 1. c. 21. If one who keeps a common *Inn*, refuse to receive a Traveller as a Guest into his House, or to find him Victuals or Lodging, upon his Tendering a reasonable Price for the same; the *Inn-keeper* is liable to render Damages, in an Action at the Suit of the Party grieved, and may also be indicted and fined at the Suit of the King: And it is said, he may be compelled by the Constable of the Town to receive and entertain such a Person as his Guest; and that it is not material whether he have any Sign before his Door or not, if he make it his common Business to entertain Travellers. 1 *Hawk. P. C.* 225. Action of the Case on an implied *Assumpsit* will lie against the Guest, where the *Inn-keeper* is obliged by Law to furnish him with Meat, Drink, &c. And when a Guest calls for any Thing at an *Inn*, the *Inn-keeper* may justify Detaining of a Horse, or other Thing, till he is paid his just Reckoning. *Dyer* 30. If any Theft be committed on a Guest that lodgeth in an *Inn*, by the Servants of the *Inn*, or by any other Persons, (not the Guest's Servant or Companion) the *Inn-keeper* is answerable: But if the Guest be not a Traveller, but one of the same Town, the Master of the *Inn* is not chargeable for his Servant's Theft; and if a Man is robbed in a private Tavern, the Master is not chargeable. 8 *Rep.* 32, 33. In this Action the Writ is, *Hospitandis homines per partes, ubi hujusmodi Hospitia existunt, trans-euntes & in eisdem Hospitantes, &c.* And the *Inn-keeper* shall not answer for any Thing that is out of his *Inn*, but only for such Things as are *infra Hospitium*, the Words being *eorum Bona & Catalla infra Hospitia illa existentia*: But if the *Inn-keeper* put the Guest's Horse to Grass, without Orders for it, and the Horse is stolen, he shall make it good. 8 *Rep.* 34. Any Person found tipling in an *Inn*, is adjudged within the Statutes against Drunkenness, 21 *Fac.* 1. 1 *Car.* 1. And *Inn-keepers* or Alehouse-keepers, permitting Tipling in their Houses, are liable to the Penalty of 10 s. &c. by Statute, 1 *Fac.* 1. c. 9. 1 *Car.* 1. c. 14. See *Action on the Case, and Guest*.

Inns of Court, (*Hospitii Curia*) Are so called, because the *Students* therein do not only study the Laws to enable them to practise in the Courts at *Westminster*, but also pursue such other Studies as may render them more serviceable to the King in his Court. *Fortescue*, cap. 49. Of these, (says Sir Edward Coke) there are four well known, viz. The Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn; which with the two Serjeants Inns, and eight Inns of Chancery, viz. Clifford's Inn, Symond's Inn, Clement's Inn, Lyon's Inn, Furnival's Inn, Staple's Inn, Bernard's Inn, and Thavies's Inn, (to which is since added New Inn) make the most famous University for Profession of the Law, or of any one humane Science in the World. *Co. Lit.* Our Inns of Court, or Societies of the Law, which are very numerous, and fam'd for their Production of Learned Men, are governed by Masters, Principals, Benchers,

Stewards, and other proper Officers; and have the Chief of them Chapels for Divine Service, and all of them publick Halls for Exercises, Readings and Arguments, which the Students are obliged to perform and attend for a competent Number of Years, before admitted to Speak at the Bar, &c.

Innuendo, (From *Innuo*, to nod or beckon with the Head to one) Is a Word used in Declarations and Law Pleadings, to ascertain a Person or Thing which was named before; as to say he, (*Innuendo* the Plaintiff) did so and so, when as there was Mention before of another Person. 4 *Rep.* 17. An *Innuendo* is in Effect no more than a *Predict*, and cannot make that certain which was uncertain before; and the Law will not allow Words to be enlarged by an *Innuendo*, so as to support an Action of the Case for speaking of them. *Hob.* 2, 6, 45, 5. *Mod.* 345. An *Innuendo* may not enlarge the Sense of the Words, nor make a Supply, or alter the Case, where the Words are defective. *Hutt. Rep.* 44. In Slander, both the Person and scandalous Words ought to be certain, and not want an *Innuendo* to make them out: If a Plaintiff declares that the Defendant said these Words, *Thou art a Thief and stolest a Mare, &c.* (*Innuendo* the Plaintiff) without an Averment that the Words were spoke *eidem Querenti*, this is not good; because it doth not certainly appear of whom they were spoken, and the *Innuendo* doth not help it. *Pasch.* 11 *Car.* B. R. 1 *Danv. Abr.* 158. And if the Plaintiff alledge that the Defendant said to him, *Thou art a forsworn Man, and didst make a false Oath against me before Justice Scawen*, (*Innuendo* Scawen, a Justice of Peace) Action doth not lie; for it is not shewn that Scawen was a Justice of Peace, otherwise than by the *Innuendo*, and there may be a Man whose Name is Justice Scawen. *Mich.* 35 *Car.* 2. 3 *Lev.* 166. If one say of another he hath forsworn himself, (*Innuendo* before Justices of Assize, &c.) this *Innuendo* shall not make the Words actionable. 1 *Danv.* 157. A Man shall not be punished for Perjury by the help of an *Innuendo*. 5 *Mod.* 344. Where Action lies for Words without any *Innuendo*, an *Innuendo* shall be repugnant and void. 1 *Danv.* 158.

Inoperatio, Is one of the legal Excuses to exempt a Man from appearing in Court: — *Causa qua ad excusationem, &c. hoc est, vel Infirmittatis, vel Domini Necessitatis, vel contramandationis, vel Regis implacitationis, vel Inoperationis causa, viz.* on the Days in which all Pleadings are to cease, or in diebus non Juridicis. *Leg. H. 1.* cap. 61.

Inordinatu, Was anciently taken for one who died Intestate; 'tis mentioned in *Matt. Westm.* 1246.

Inpeny and *Outpeny*, Money paid by the Custom of some Manors on the Alienation of Tenants, &c. — *Inpeny & Outpeny consuetudo talis est in Villa de East Radham, de omnibus Terris qua infra Burgagium tenentur, viz. Quod ipse, qui vendiderit vel dederit dictam Tenuram alium, dabit pro exitu suo de eadem tenura unum Denarium, & simile pro ingressu alterius; & si predicti Denarii a retro fuerint, Ballivus Domini distringet pro eisdem Denariis in eadem Tenura.* *Regist. Prior. de Cokesford*, p. 25.

Inquest, (*Inquisitio*) Is an Inquisition of Jurors, in Causes Civil and Criminal, on Proof made of the Fact on either Side, when it is referred to their Trial, being impanelled by the Sheriff for that Purpose; and as they bring in their Verdict, Judgment passeth; For the Judge saith, the Jury finds the Fact thus, then is the Law thus

thus, and so we Judge. Staundf. P. C. lib. 3. c. 12. There is an *Inquest of Office*, as well as on the *Mise* of the Party, &c. as in Cases of Appeals of Robbery, the fresh Suit to entitle Restitution of Goods, is to be inquired of by *Inquest of Office*; which *Inquest* is chiefly for the Satisfaction of the Conscience of the Judges. 2 Hawk. P. C. 169. Whether a Criminal be a Lunatick or not, shall be tried by an *Inquest of Office*, returned by the Sheriff of the County; and if it be found by the Jury that he only feigns himself Lunatick, and he refuses to plead, he shall be dealt with as one standing Mute. H. P. C. 226. 1 And. 107. Where a Person stands Mute without making any Answer, the Court may take an *Inquest of Office*, by the Oath of any twelve Persons present, if he do so out of Malice, &c. But after the Issue is joined, when the Jury are in Court, if there be any Need for such Inquiry, it shall be made by them, and not by an *Inquest of Office*. 2 Hawk. P. C. 327. If a Person attainted of Felony escape, and being retaken, denies he is the same Man, *Inquest* is to be made of it by a Jury before he is executed. Ibid. 463. By *Magna Charta*, nothing is to be taken for *Inquest of Life* or Member. 9 H. 3. c. 26.

Inquisition, Is a Manner of Proceeding by Way of Search or Examination, and used in the King's Behalf, in Temporal Causes and Profits, in which Sense it is confounded with *Office*. Staundf. *Prærog.* 51. This *Inquisition* is upon an Outlawry found; in Cases of Treason and Felony committed; upon a *Felo de se*, &c. to entitle the King to Forfeitures of Lands and Goods: And there is no such Nicety required in an *Inquisition* as in Pleading; because an *Inquisition* is only to inform the Court how Process shall issue for the King, whose Title accrues by the Attainder, and not by the *Inquisition*; and yet in the Cases of the King and a common Person, *Inquisitions* have been held void for Incertainty. Lane 39. 2 Nelf. Abr. 1008. It is said there are two Sorts of *Inquisitions*, one to inform the King, the other to vest an Interest in him; the one need not be certain, but the other must; and where an *Inquisition* finds some Parts well, and nothing as to others, it may be helped by *Melius Inquirendum*. 2 Salk. 469. There is a Judicial Writ *Ad Inquirendum*, to inquire by a Jury into any Thing touching a Cause depending in Court; and *Inquisition* is had upon *Extents* of Land, Writs of *Elegit*, where Judgment is had by Default, and Damages and Costs are recovered, &c. Finch 484. 2 Lill. Abr. 65.

Inquisition, or *Ex Officio Mero*, Is one Way of proceeding in Ecclesiastical Courts. Wood's Inst. 596. And formerly the Oath *Ex Officio* was a Sort of *Inquisition*.

Inquisitores, (*Inquisitores*) Are Sheriffs, Coroners *super visum Corporis*, or the like, who have Power to enquire in certain Cases; and by the Stat. of Westm. 1. *Inquirors* or *Inquisitors* are included under the Name of *Ministri*. 2 Inst. 211.

Inrollment, (*Inrolulatio*) The Registering or Entering in the Rolls of the Chancery, King's Bench, Common Pleas or Exchequer, or by the Clerk of the Peace in the Records of the Quarter-Sessions, of any lawful Act; as a Statute or Recognizance acknowledged, a Deed of Bargain and Sale of Lands, &c. An *Inrollment* of a Deed is either an *Inrollment* of it by the Common Law, or according to the Statute: And *Inrollments* of Deeds ought to be made in Parchment, and recorded in Court, for Perpetuity's sake.

Trin. 23 Car. Pasch. 24 Car. 1. B. R. But the *Inrolling* a Deed doth not make it a Record, though it thereby becomes a Deed recorded; for there is a Difference between Matter of Record, and a Thing recorded to be kept in Memory; a Record being the Entry in Parchment of Judicial Matters controverted in a Court of Record, and whereof the Court takes Notice, whereas an *Inrollment* of a Deed is a private Act of the Parties concerned, of which the Court takes no Cognizance at the Time of doing it, altho' the Court gives Way to it. Mich. 21 Car. 1. 2 Lill. Abr. 69. Every Deed before it is *inrolled*, is to be acknowledged to be the Deed of the Party before a Master of the Court of Chancery, or a Judge of the Court wherein *inrolled*; which is the Officer's Warrant for the *Inrolling* of the same: And the *Inrollment* of a Deed, if it be acknowledged by the Grantor, will be good Proof of the Deed it self upon a Trial. Ibid. A Deed may be *inrolled* without the Examination of the Party himself; for 'tis sufficient if Oath is made of the Execution of the Deed: If two are Parties, and the Deed is acknowledged by one, the other is bound by it: And if a Man lives in New York, &c. and would pass Lands in England, a nominal Person may be joined with him in the Deed, who may acknowledge it here, and it will be binding. 1 Salk. 389. If the Party dies before it is *inrolled*, it may be *inrolled* afterwards: And *Inrollment* of Deeds operates by Virtue of the Statute of *Inrollments*; but if Livery and Seisin, &c. be had before the *Inrolling*, it prevents the Operation of the *Inrollment*, and the Party shall be in by that, as the more worthy Ceremony to pass Estates. 1 Leon. 5. 2 Nelf. Abr. 1010. Altho' *Inrollment*, or Matter of Record, shall not be tried *per Pais*, yet the Time when the *Inrollment* of a Deed was made shall be thus tried. 2 Lill. 68. See *Bargain and Sale*.

Inscriptiones, Were written Instruments by which any Thing was granted; as, *Inscriptiones Monasterii*, &c. Blount.

Insecutor, A Prosecutor or Adversary at Law. Paroch. Antiq. 388.

Inseruire, To reduce Persons to servitude: — *Si Ingenuus ancillam uxorem cepit, & si ipsa postea fuerit Inservita.* Du Cange.

Insitena, (*Sax.*) An Inditch. Insitenis, & *Watergangs*, &c. Ordin. Romn. Marisc. p. 73.

Insidiatores Viarum, Are Way-Layers; which Words are not to be put in Indictments, Appeals, &c. by the Stat. 4 Hen. 4. c. 2. for before this Statute, Clergy was denied Felons charged generally as *Insidiatores Viarum*, &c. See 23 Car. 2. c. 1.

Insignia, Ensigns or Arms. See *Arms* and *Gentility*.

Insilium, Evil Advice or Counsel — *Multaque Regis Infilia adversus Anglos dederunt.* Sim. Dunelm. Ann. 1003. *Insiliarius* is an Evil Counsellor: *Filius Regis cum suis Consiliariis*, & *Insiliariis*, &c.

Insimul computassent, Is a Writ or Action of Account, which lies not for Things certain but only of Things uncertain. Broke Acco. 81. The common Declaration upon an *Insimul computassent* is to say, That the Plaintiff and Defendant, such a Day, Year, and Place, *Insimul inter se computaverunt de Diversis Denariis summis per ipsum* (the Defendant) *eidem* (the Plaintiff) *præantea ibidem debiti.* & *insolut. existens.* & *super compoto illo eidem* (the Defendant) *ad tunc* & *ibidem inventus fuit in Arre-ragiis erga eundem* (the Plaintiff in so much) *prædictoque*

dictoque Defendente sic in Arveragiis invent. existens. adtunc & ibidem in Consideratione inde super se assumpsit, &c.

Infimul tenuit, Is one Species of the Writ of Partition, brought against a Stranger by a Coparcener upon the Possession of the Ancestor. See *Formedon*.

Insinuation, (*Insinuatio*) Is a Creeping into a Man's Mind or Favour covertly; mentioned in the Stat. 21 Hen. 8. c. 5. And *Insinuation of a Will* is among the *Civilians*, the first Production of it; or Leaving it in the Hands of the Register, in order to its Probate.

Insolvent Debtors, Unable to pay their Debts, &c. See *Debtors*.

Insperimus, A Word used in *Letters Patent*, being the same with *Exemplification*; and is called *Insperimus*, because it begins *Rex omnibus, &c.* *Insperimus Irrotulamentum quarund. Literar. Patent. &c.* 5 Rep.

Installment, A Settlement, Establishing, or sure Placing in; as *Installment into Dignities, &c.* 20 Car. 2. c. 2.

Instant, (*Lat. Instans, Instanter*) Is defined by the *Logicians* to be, *Unam indivisibile in Tempore, quod non est Tempore, quod non est Tempus, nec pars Temporis, ad quod tamen partes Temporis copulantur*; and though it cannot be actually divided, yet in Intendment of Law it may, and be applied to several Purposes: He who lays violent Hands upon himself commits no Felony 'till he is dead, and when dead he is not in Being so as to be term'd a Felon; but he is so adjudg'd in Law *eo Instante*, at the very *Instant* of this Fact done. And there are many other Cases of the like Nature. *Plowd.*

Instaurum, Is used in antient Deeds for a Stock of Cattle; and we read of *Staurum* and *Instauramentum*, properly young Beasts, Store or Breed. *Mon. Angl. Tom. 1. pag. 548.* *Instaurum* was commonly taken for the whole Stock upon a Farm, as Cattle, Waggon, Ploughs, and all other Implements of Husbandry. *Fleta, lib. 2. cap. 72.* And *Instaurum Ecclesia* is applied to the Books, Vestments, and all other Utensils belonging to a Church. *Synod. Exet. Ann. 1287.* *Instauratio* is taken in the same Sense as *Instaurum*.

Instirpare, To plant or establish. — *Non securum est Gentem externam & turbidam Instirpare.* *Brompt. 935.*

Institution, (*Institutio*) Is when the Bishop says to a Clerk, who is presented to a Church Living, *Instituto te Rectorem talis Ecclesie, cum Cura animarum, & accipe curam tuam & meam*: Or it is a Faculty made by the Ordinary, whereby a Parson is approved to be inducted to a Rectory or Parsonage. If the Bishop upon Examination finds the Clerk presented capable of the Benefice, he admits and *institutes* him; and *Institution* may be granted either by the Bishop under his Episcopal Seal; or it may be done by the Bishop's Vicar General, Chancellor or Commissary; and if granted by the Vicar General, or any other Substitute, their Acts are taken to be the Acts of the Bishop: Also the Instrument or Letters Testimonial of *Institution* may be granted by the Bishop, tho' he is not in his Diocese; to which some Witnesses should subscribe their Names. 1 *Inst.* 344. *Clergym. Law* 109. The Bishop by *Institution* transfers the Cure of Souls to the Clerk; and if he refuseth to grant *Institution*, the Party may have his Remedy in the Court of Audience of the Archbishop, by *Duplex Querela*,

&c. for *Institution* is properly cognisable in the Ecclesiastical Court: Where *Institution* is granted, and suspected to be void for Want of Title in the Patron, &c. a *Superinstitution* hath been sometimes granted to another, to try the Title of the present Incumbent by Ejectment. 2 *Roll. Abr.* 220. 4 *Rep.* 79. Taking a Reward for *Institution* incurs a Forfeiture of double Value of one Year's Profit of the Benefice, and makes the Living void. Stat. 31 Eliz. c. 6. On *Institution* the Clerk hath a Right to enter upon the Parsonage-house and Glebe, and take the Tithes; but he cannot grant, let, or do any Act to charge them 'till he is inducted into the Living: He is compleat Parson as to the Spirituality, by *Institution*; but not as to the Temporality, &c. By the *Institution* he is only admitted *ad Officium*, to pray and preach; and is not intitled *ad Beneficium*, until formal Induction. *Plowd.* 528. The Church is full by *Institution* against all common Persons, so that if another Parson be afterwards inducted, it is void, and he hath but a meer Possession; but a Church is not full against the King 'till Induction. 2 *Inst.* 358. 1 *Roll. Rep.* 151. When a Bishop hath given *Institution* to a Clerk, he issues his Mandate for Induction; and if the Archbishop should inhibit the Archdeacon to induct the Clerk thus *instituted*, he may do it notwithstanding. 4 *Rep.* The first Beginning of *Institutions* to Benefices, was in a national Synod held at *Westminster*, Anno 1124. For Patrons did originally fill all Churches by Collation and Livery; 'till this Power was taken from them by Canons. *Selden's Hist. of Tithes, cap. 6 & 9. pag. 375.* See *Induction*.

Insuper Is used by Auditors in their Accounts in the *Exchequer*; as when so much is charged upon a Parson as due on his Account, they say so much remains *insuper* to such an Accountant. 21 *Fac. 1. c. 2.*

Insurance, Is where a Man for a Sum of Money paid him by a Merchant obliges himself to make good the Loss of a Ship, &c. so far as the Value of the *Premium* extends. *Insurances* are either Publick or Private; the First done at the publick Office of Assurance, and the Latter agreed upon between Merchant and Merchant in private: And all *Insurances*, whether publick or private, must be made upon the Ship, or on the Goods, or upon Ship and Goods: And some *Insurances* are to Places certain; and others General, in trading Voyages, where Ships deliver their Goods at one Port, and take in fresh Cargoes, and then proceed to other Places, &c. which being dangerous, the *Premium* runs higher than that of any other certain Voyage. *Merch. Compan.* 90. Any Man may make a private Policy of *Insurance*; and there is no fix'd Price for the Rates of *Insurances*, which rise and fall according to the State of the Nation in Peace or War, the Season of the Year, and other various Occurrences; in former Wars, the Rates of *Insurance* on a good Ship, from London to any Port or Place in the *East-Indies*, &c. and back, was 16 per Cent. but in the late War in the Reign of K. William, the *Premium* of *Insurance* for the like Voyage was about 22 per Cent. And when a Ship hath been long missing, and no Advice can be had where she is, the *Premium* in Time of War will run very high; sometimes 30 or 40 per Cent. but then these Words are inserted in the *Insurance*, *Lost or not Lost*; and in such Case, if it happens at the Time the Subscription is made, that the Ship is cast away,

away, the *Insurers* must answer: But if the Party that caused the *Insurance* to be made, saw the Ship wreck'd, or had certain Intelligence of it, such Subscription will not be obligatory; so likewise if the *Insured* having a rotten Ship, shall *insure* upon the same more than she is worth, and afterwards going out of the Port she is sunk or wreck'd, this will be adjudg'd fraudulent, and not oblige the *Insurers* to answer. *Mich.* 26 *Car.* 2. B. R. And wilfully Casting away, or making Holes in the Bottom of a Ship, &c. is made Felony by Stat. 1 *Ann.* Subscriptions for *Insurances* are generally for certain Sums; as 100 *l.* or 500 *l.* &c. at the *Premium* current; and if a Man *insures* Goods to the Value of 5000 *l.* and he hath but 2000 *l.* remitted, now he having *insured* a real Adventure, if a Loss happens by the Law Marine, all the *Insurers* are compellable to answer *pro rata*: Though this is more by the Custom of Merchants than by Law; and by some Opinions, only the first Subscribers, who underwrit so much as the real Adventure amounted to, are to be made liable, and the Rest to have their *Premiums* deducted, and be discharged. *Grot. Introd. Fur. Holl.* 212. If a Merchant freights out Wool, &c. which occasions a Forfeiture of Ship and Lading; or if he lades contraband Goods knowingly, and afterwards *insures* the same, and they are seized by the King's Officers; the *Insurers* are not liable to bear the Loss: But if Goods *insured* are not contraband at the Time of the Lading and *Insurance*, and after become such, if they are then seized, the *Insurers* are answerable. 12 *Car.* 2. 32. And if Goods and Merchandize be lawfully *insur'd*, and afterwards the Ship becomes disabled, by Reason of which, with the Consent of the Supercargo or Merchant, they are re-laden into another Vessel; and that Vessel proves the Ship of an Enemy, by Reason of which, on her Arrival, she is subject to Seizure; in this Case 'tis said the *Insurers* are liable, for that it is an Accident within the Intention of the Policy of *Insurance*, which mentions *Dangers of the Seas, Enemies, &c.* Yet where Goods are *insured* in a Ship bound to any foreign Port, and in the Voyage she happens to be leaky or receive other Damage, and another Vessel is freighted for the Preservation of the Goods; and then the second Vessel is lost at Sea, it is said the *Insurers* are discharged without a special Clause to make them liable. *Lex Mercat. or Merch. Compan.* 93. If a Ship be *insured* from the Port of London to any foreign Place, and before the Ship breaks Ground she happens to take Fire and is consumed, the *Insurers* are not obliged to answer, unless the Words of the *Insurance* are, *At and from the Port of London*; for the Adventure did not commence 'till the Ship was gone from thence: Though if the Ship had broke Ground, and afterwards been driven by Storm back to the Port of London, and there had took Fire, the *Insurers* must answer. *Rot. Scaccar.* 15 *Car.* 2. Goods are stolen or imbeziled on Ship-board, the Master, and not the *Insurers* are liable: And when *Insurers* are to answer, and it happens that some Part only of the Effects *insured* are lost, as in the Case of Ejections in a Storm, or other such Accidents; then the *Insurers* make an *Average* of it, and each Man pays so much *per Cent.* in Proportion to the Sum for which he subscribed. If a Ship arrives safe, after the Adventure is born, generally the *Insurers* receive their Money; but if a Loss happens, the *Premium* is deducted with the usual Abate-

ment, and the *Insured* receive about 80 *per Cent.* &c. And when Advice is received of the Loss of the Ship or Goods, Application is to be made to the *Insurers*, and the Vouchers to be produc'd; with which, if they are satisfied, they will pay the Money; but if they have reasonable Ground to scruple it, the *Insured* must wait a convenient Time, 'till the *Insurers* can obtain more satisfactory Advice; or if nothing can be heard of the Ship in any reasonable Time, the *Insurers* are obliged forthwith to pay the Money: Though if after that the Ship shall arrive in Safety, the Money is to be returned them by the *Insured.* *Merch. Compan.* 91, 96, 97. A Merchant having *insured* the greatest Part of the Adventure of a Ship, if Advice is receiv'd of a Loss, but with Hope of Recovery, whereby such Merchant would have the Assistance of the *Insurers*; he has a Privilege to make a Renunciation of the Lading to the *Insurers*, and to come in himself in the Nature of an *Insurer*, for so much as shall appear he hath born the Adventure of, beyond his Part of the Value *insured.* *Insurance* may be made on Men's Heads; as where a Man is in Danger of being taken into Slavery by the *Moors*, whereby a Ransom must be paid for his Redemption, he may advance a *Premium*, in Consideration of which the *Insurer* must answer the Ransom secured, if there be a Caption. *Mich.* 29 *Car.* B. R. Also Men's Lives may be *insured* at Land: And Policies of *Insurance* are used in other Matters, where Damage is fear'd; in Case of Houses or Goods from Loss by Fire, &c.

Form of a Policy of Insurance.

K NOW all Men by these Presents, That A. B. of, &c. Merchant, as well in his own Name, as for and in the Name and Names of all and every other Person and Persons, to whom the same may or shall appertain, doth make Assurance and hereby cause himself and them, and every of them, to be *insured*, lost or not lost, at and from the Port of London to, &c. in the Kingdom of, &c. and at and from thence back to London, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, and other Furniture, of and in the good Ship Elizabeth, Burtben, &c. or thereabouts, whereof, &c. is Master, and also upon all Kinds of Goods and Merchandizes ship'd on board the said Ship; beginning the Adventure upon the said Ship and Goods, from and immediately following the Day of the Date hereof, and so to continue and endure, until the said Ship, with her said Tackle, Apparel, &c. shall be arrived back at London, and hath there moor'd at Anchor twenty-four Hours. And it shall be lawful for the said Ship in this Voyage to proceed and sail to, and touch and stay at, any Ports or Places whatsoever, especially at, &c. without Prejudice to this *Insurance*; and the said Ship and Goods, &c. for so much as concerns the *Insured*, is and shall be rated and valued at, &c. Sterling, without further Account to be given by the *Assureds* for the same. And touching the Adventures and Perils, which are the *Insurers* are content to bear, and do take upon us, they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Letters of Mart, and Reprisals at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and all other Losses and Misfortunes that shall come to the Hurt or Damage of the said Ship, &c. or any Part thereof. And in Case of any Misfortune, it shall be lawful for the *Insured*, their Fac-

tors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Ship, &c. or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we the Insurers will contribute each of us according to the Rate and Quantity of his Sum herein assured. And so we the Insurers are contented, and do hereby Promise, and bind our selves, each for his own Part, our Heirs, Executors, Goods and Chattels, to the Insured, their Executors, Administrators and Assigns, for the true Performance of the Premises, confessing our selves paid the Consideration due to us for this Insurance, by, &c. at and after the Rate of, &c. per Cent. and in Case of Loss, to abate, &c. And to pay without farther Proof, &c. more than this present Policy, any Use or Custom to the contrary notwithstanding. In Witness, &c.

By 43 Eliz. cap. 12. An Office of Insurance was erected for Deciding of Differences arising upon Policies of Insurance in London; and a Court was to be held for that Purpose by Virtue of a Standing Commission issued out by the Lord Chancellor to the Judge of the Court of Admiralty, the Recorder of London, two Doctors of the Civil Law, and two Common Lawyers, and eight Merchants; which Commissioners were to meet Weekly, and to have Power to summon and examine Witnesses, and hear and determine all Causes in a summary Way, subject to appeal to the Lord Chancellor, &c. And by Stat. 14 Car. 2. c. 25. several additional Privileges were granted to this Court, which was a Court of Equity, as well as of Law; but now there is no such Court in Being, and Causes of this Nature are try'd in the ordinary Courts. The 6 Geo. c. 18. empowers his Majesty to grant two Charters for Insurance of Ships and Merchandize, &c. and to incorporate the Adventurers, in Consideration of a large Sum of Money advanc'd; and all other Corporations for Insurance, and their Policies, are declared void.

Intakers, Were a Kind of Thieves in the Northern Parts of England, so called, because they did take in and receive such Booties as their Confederates the Outpartners brought to them from the Borders of Scotland; they are mentioned 9 H. 5. c. 7.

Intendment of Law, (*Intellectus*) The Understanding, Intention, and true Meaning of the Law. Co. Litt. 78. Intendment shall sometimes supply that which is not fully express'd or apparent; and when a Thing is doubtful in some Cases, Intendment may make it out: But Intendment cannot supply the Want of Certainty in a Charge in an Indictment for any Crime, &c. 5 Rep. 121. 2 Hawk. P. C. 227, 441. Sometimes a Thing is necessarily intended by what precedes or follows it; and where an indifferent Construction may have two Intendments, the Rule is to take it most strongly against the Plaintiff. Show. 162. Though if a Plaintiff declares, that the Defendant is bound to him by Obligation, it shall be intended that the Obligation was sealed and delivered: If one is bound in a Bond to another, and in the *Solvend.* of the Bond it is not express'd unto whom the Money shall be paid, or if said to the Obligor; the Law will intend it is to be paid to the Obligee: And where no Time is limited for Payment of the Money, it shall be intended to be presently paid. 2 Lill. Abr. 71. Pasch. 24 Car. B. R. The Intent of Parties in Deeds, Contracts, &c. is much regarded by

the Law; yet Intendment shall not take Place against the direct Rules of Law: The Law doth not in Conveyances of Estates, admit them regularly to pass by Intendment and Implication; in Devises of Lands they are allow'd, with due Restrictions. Vaugh. 261, 262. Where Seisin of an Inheritance is once alledged; it shall be intended to continue till the contrary is shewed. Jones 181. A Court pleaded generally to be held *secund. Consuetud.* shall be intended held according to the Common Law. Com. Law. Com. Plac. 276. Common Intendment is where one Thing or Person may be more strongly intended than another. Mich. 39 Eliz. Goldsb. 111. See Implication.

Intendment of Crimes. In antient Times felonious Attempts, intending the Death of another, were adjudg'd Felony; for the Will was taken for the Fact. Braff. 1 E. 3. But at this Day the Law does not generally punish Intendments to do ill, if the Intent be not executed; except it be in Case of Treason, where Intention prov'd by Circumstances shall be punish'd as if put in Execution. 3 Inst. 108. And if a Person enter a House in the Night, with Intent to commit Burglary, it is Felony: And by Statute maliciously Cutting off or Disabling any Limb or Member, with an Intent to disfigure, &c. is Felony. Plowd. 474. 23 Car. 2. c. 1. Intention of Force and Violence makes Riots criminal. 3 Inst. 9. And if a Man entering a Tavern, &c. commit a Trespass, the Law will judge that he intended it. 8 Rep. 147. Vide Murder.

Intensio, Is a Writ that lies against him that enters into Lands after the Death of Tenant for Life, &c. and holds out him in Reversion or Remainder: And every Entry upon the King's Possession is called *Intensio upon the King*. F. N. B. 203. Staundf. Prærog. 40.

Inter Canem & Lupum, Words used formerly in Appeals, to signify a Crime being done in the Twilight, i. e. *inter Diem & Noctem*, &c. Plac. Trin. 7 E. 1. This hath divers other Denominations; as in Herefordshire they call it the *Mock-shadow*, corruptly the *Muck-shade*; and in the North, *Daylight's Gate*; others, *betwixt Hawk and Buzzard*. Cowel.

Intercommoning, Is where the Commons belonging to two Manors lie contiguous, and the Inhabitants of both have, Time out of Mind, depastured their Cattle in each of them. *Terms de Ley* 411.

Interdict, Is an Ecclesiastical Censure, by which Persons are prohibited to hear Divine Service, or to have the Sacraments administered them, or Burial. The Canon Law, with which the Common Law agrees, defines it thus; *Interdictio est Censura Ecclesiastica prohibens Administrationem Divinorum*: And so it is used 22 H. 8. c. 12. There is an Interdict of Places as well as of Persons; an Interdict of Place is when Divine Service is forbidden to be had in such a Church, and is only with Regard to that Church or Place, so that the Persons may be received into another Church, though not into their own; but an Interdict of Persons follows them where-ever they remove: And by a *mixt Interdict*, both the People and the Church, &c. are subjected to this Censure. Sometimes an Interdict is a general Excommunication of a whole Kingdom or Country; and Knighton tells us, that anno 1208, the Pope excommunicated King John of England, and all his Adherents, *Et totam Terram Anglicanam supposit Interdicto*, which begun the first Sunday after Easter, and continued above six Years; during

ring all which Time nothing was done in the Churches besides Baptism, and Confessions of dying People. The Form of an *Interdict*, as set down by *Du Cange*, is as follows, viz.

IN the Name of Christ, We the Bishop, in Behalf of the Father, Son, and Holy Ghost, and of St. Peter, the Chief of the Apostles, and in our own Behalf, do excommunicate and interdict this Church, and all the Chapels thereunto belonging, that no Man from henceforth may have Leave to sing Mass, or to hear it, or in any wise to administer any Divine Office, nor to receive God's Tithes without our Leave; and whosoever shall presume to sing or hear Mass, or perform any Divine Office, or to receive any Tithes contrary to this Interdict, on the Part of God the Father Almighty, and of the Son, and of the Holy Ghost, and on the Behalf of St. Peter, and all the Saints, let him be accursed and separated from all Christian Society, and from Entering into Holy Mother-Church, where there is Forgiveness of Sins; and let him be Anathema Maranatha for ever with the Devils in Hell. Fiat, Fiat, Amen.

This severe Church Censure hath been of long Time disused.

Interdicted of Water and Fire, Were antiently those Persons who suffer'd Banishment for some Crime; by which Judgment, Order was given, that no Man should receive them into his House, but deny them *Fire and Water*, the Two necessary Elements of Life, which amounted as it were to a Civil Death; and this was called *Legitimum Exilium*, says *Livy*.

Interest, (*Interesse*) Is commonly taken for a Chattel Real, as a Lease for Years, &c. and more particularly for a future Term; in which Case, it is said in Pleading, that one is possessed *De Interesse Termini*. Therefore an Estate in Lands is better than a Right or Interest in them: But in legal Understanding an Interest extends to Estates, Rights and Titles, that a Man hath in or out of Lands, &c. so as by Grant of his whole Interest in such Land, a Reversion therein as well as Possession in Fee-simple shall pass. *Co. Litt.* 345.

Interest of Money, As distinguish'd from the Principal, what lawful, &c. See *Usury*.

Interlocutory Order, (*Ordo Interlocutorius*) Is that which decides not the Cause, but only some incidental Matter, which happens between the Beginning and End of it; as where an Order is made in *Chancery*, for the Plaintiff to have an Injunction, &c. till the Hearing of the Cause: This, or any such Order, not being final, is *Interlocutory*. — *Ordo Interlocutorius non definit Controversiam, sed aliquid obiter, ad Causam pertinens, decernit.* *Lanc. Inst. Juris Canon.* lib. 3.

Interlopers, Persons that intercept the Trade of a Company of Merchants. *Merch. Diff.*

Interpleader In Actions, see *Enterpleader*.

Interrogatories, Are particular Questions demanded of Witnesses brought in to be examined in a Cause, especially in the Court of *Chancery*. And these *Interrogatories* must be exhibited by the Parties in Suit on each Side; which are either direct for the Party that produces them, or counter on Behalf of the adverse Party; and generally both Plaintiff and Defendant may exhibit, direct and counter, or cross *Interrogatories*. They are to be pertinent, and only to the Points necessary, and either drawn or perused by Counsel,

and be signed by them; if they are leading, viz. such as these, *Did you not do or see such a Thing*, &c. the Depositions on them will be suppress'd; for they should be drawn, *Did you see, or did you not see*, &c. without leaning to either Side; and not only where they point more to one Side of the Question than the other, but if they are too particular, they will be likewise suppress'd: The Commissioners, &c. who examine the Witnesses on the *Interrogatories*, must examine to one *Interrogatory* only at a Time; they are to hold the Witnesses to every Point interrogated; and take what comes from them on their Examinations, without asking any idle Questions, or putting down any impertinent Answers not relating to the *Interrogatories*, &c. *Pract. Attorn.* 1st Edit. 225. See *Depositions*.

Interrogate, In the Saxon Laws signified to sequester, or put into a third Hand; as when any Thing was stolen and sold to another, and afterwards demanded by the right Owner of him in whose Possession it was found, it was then usual to sequester the Thing to a third Person, who was allow'd to keep it till the Buyer produced the Seller, and so on to the Thief. *Leg. Ina, cap.* 27, 52. *LL. Ed. Confess.* c. 25.

Intestates, (*Intestati*) Those that die without making any Will or Disposition of their Estates. Formerly he who died *Intestate* was accounted by the Churchmen damn'd, because he was obliged by the *Canons* to leave at least a tenth Part of his Goods to pious Uses, for the Redemption of his Soul; and whoever neglected so to do, was adjudg'd to take no Care of his Salvation; and no Difference was made between a *Suicide* and an *Intestate*; for as the one forfeited his Goods to the King, so by the other they were forfeited to the chief Lord: But because it often happen'd by sudden Diseases, that People died without making any Distribution of their Goods to pious Uses; therefore by subsequent *Canons*, the Bishops had Power to make such a Disposition, as the *Intestate* himself was bound to do; and 'tis said by this Means the Spiritual Court came first to have Jurisdiction in Testamentary Cases. *Matt. Paris. Anno* 1190. By the *Stat. Westm.* 2. Goods of *Intestates* were to be committed to the Ordinary, to answer the Debts of the Deceas'd, &c. And the 22 & 23 *Car. 2. c.* 10. appoints a Distribution of *Intestate's* Estates, after Debts and Funeral Expences are paid, among the Wife and Children of the Deceas'd; or for Want of such, the next of Kin, &c. And the Act of Parliament doth immediately, upon the Death of the *Intestate*, vest an Interest in the Persons intitled; so that if any one dies before the Distribution, though within the Year, his Share shall go to his Executors or Administrators; and not to the Survivors and next of Kin to the *Intestate*. 1 *Lill. Abr.* 487. If a Man makes a Will and Executors, and they refuse the Executorship, in such Case he dies *quasi Intestatus*. 2 *Inst.* 397. See *Administrators*.

Intestate's Estates, Are the Goods and Chattels of Persons dying *Intestate*. 2 *Lill. Abr.* 73.

Intrare Mariscum, Signifies to drain any low Ground, and by Dikes, Walls, &c. take in and reduce it to Herbage or Pasture; whence comes the Word *Innings*. *Will. Thorn.*

Intrusion, (*Intrusio*) Is when the Ancestor dies seized of any Estate of Inheritance, expectant upon an Estate for Life, and then Tenant for Life dies, between whose Death and the Entry of the

the Heir, a Stranger intrudes. *Co. Litt.* 227. — *Intrusio est, ubi quis, cui nullum jus competit in re nec scintilla juris, possessionem vacuum ingreditur, &c. Bract. lib. 4. cap. 2.* By which *Intrusion* signifieth an unlawful Entry into Lands or Tenements void of a Possessor, by him that hath no Right unto the same: And the Difference between an *Intruder* and an *Abator* is this, that an *Abator* entereth into Lands void by the Death of a Tenant in Fee; and an *Intruder* enters into Land void by the Death of Tenant for Life or Years. *F. N. B.* 203. As he that enters and keeps the right Heir from the Possession of his Ancestor is an *Intruder* punishable by the Common Law; so he that enters upon the King's Lands, and takes the Profits, is an *Intruder* against the King. *Co. Litt.* 277. For this *Intrusion* Information may be brought; but before Office found, he who occupies the Land shall not be said to be an *Intruder*, for *Intrusion* cannot be but where the King is actually possessed which is not before Office; though the King is intitled to the mesne Profits after the Tenant's Estate ended. *Moor* 295. By Stat. 21 Jac. 1. cap. 14. the Defendants may plead the General Issue in Informations of *Intrusion*, brought on Behalf of the King, and retain their Possession 'till Trial; where the King hath been out of Possession, and not receiv'd the Profits for twenty Years, &c.

Intrusion de Gard, Was a Writ that lay where the Infant within Age entered into his Lands, and held out his Lord. *Old Nat. Br.* 90.

Intrusione, Is a Writ brought against an *Intruder*; by him that hath Fee-simple, &c. *New Nat. Br.* 453.

Inbadiare, To engage or mortgage Lands; and *Inbadiationes* were Mortgages of Land. — *Confirmamus eis omnes Donationes, venditiones, & Inbadiationes, &c. Mon. Angl. Tom. 1. pag. 478.*

Inbadiatus, Is when a Person accused of any Crime, on it's not being fully proved, was put *sub debita fidejussione*. Blount.

Inbasiones. In the Inquisition of Serjeancies and Knights Fees, Anno 12 & 13 of King John, there are some Titles called *Invasiones*; & *Invasiones super Regem*.

Inventiones, In antient Charters is used for Treasure-trove, Money or Goods found by any Persons, and not challenged by the Owner; which by the Common Law is due to the King, who grants the Privilege to some particular Subjects. — *Quod habeant Inventiones suas in Mari & in Terra.* Chart. K. Ed. 1. to the Barons of the Cinque Ports.

Inventozz, (*Inventorium*) Is a List or Schedule containing a true Description of all the Goods and Chattels of a Person deceased at the Time of his Death, with their Value apprais'd by indifferent Persons; which every Executor or Administrator ought to exhibit to the Bishop or Ordinary at such Time as he shall appoint. *West. Symb. lib. 2. pag. 696.* By 21 H. 8. c. 5. Executors and Administrators are required to make and deliver in upon Oath to the Ordinary, *Inventories* indented, of which one Part shall remain with the Ordinary, and the other Part with the Executor or Administrator: And the Intention of this Statute was for the Benefit of the Creditors and Legatees, that the Executor or Administrator might not conceal any Part of the Personal Estate from them: Though as to the Valuation it is not conclusive, but the real Value found by a Jury; if they are undervalued, the Creditors

may take them as apprais'd, and if over-valued, it shall not be prejudicial to the Executor. 2 *Nels. Abr.* 1015. But tho' generally all the Personal Estate of the Deceased, of what Nature or Quality soever, ought to be put into the *Inventory*; yet Goods given away in the Life-time of the deceased Person, and actually in the Possession of the Person to whom given, and the Goods to which a Husband is intitled as Administrator to his Wife, are not. 3 *Bulst.* 355. And notwithstanding the Law requires that the *Inventory* be exhibited within three Months after the Death of the Person; if it is done afterwards, it is good, for the Ordinary may dispense with the Time, and even whether it shall be exhibited, or not; as where Creditors are paid, and the Will performed, &c. *Raym.* 470. These *Inventories* proceed from the *Civil Law*; and whereas by the old *Roman Law*, the Heir was obliged to answer all the Testator's Debts, *Justinian* ordain'd, that *Inventories* should be made of the Substance of the Deceased, and he should be no further charged. *Justin. Inst.*

In ventre sa mere, (Fr.) In the Mother's Belly, relating to which there is a Writ mentioned in the *Register of Writs*, and in 12 Car. 2. c. 24. A Devise to an Infant in *Ventre sa mere*, may be good by Way of future executory Devise. *Raym.* 164.

Inveritare, To verify or make Proof of a Thing. *Leg. Ine, cap. 16.*

Invest and Investiture, (From the Fr. *Investir*) Signifies to give Possession: Some define it thus, *Investitura est alicujus in suum jus Introductio*; a Giving Livery of Seisin or Possession. The Customs and Ceremonies of *Investiture* or giving Possession, were long practis'd with great Variety: At first *Investitures* were made by a Form of Words; and afterwards by such Things which had most Resemblance to what was to be transferred; as Lands pass'd by the Delivery of a Turf, &c. which was done by the Grantor to the Person to whom the Lands were granted: But in after Ages, the Things by which *Investitures* were made, were not so exactly observ'd. *Ingulph. pag. 901.* In the Church, it was the Custom of old for Princes to promote such as they liked to Ecclesiastical Benefices, and declare their Choice and Promotion by Delivery to the Persons chosen of a Pastoral Staff and Ring; the one a symbolical Representation of their Spiritual Marriage with the Church; and the other of their Pastoral Care and Charge, which was term'd *Investiture*; after which they were consecrated by Ecclesiastical Persons. *Hoveden* tells us, that our King Richard being taken by the Emperor, gave this Kingdom to him, & *Investivit eum inde per Pileum suum*; and that the Emperor immediately afterwards return'd the Gift; *Et Investivit eum per duplicem Crucem de auro.* *Hoved.* 724. And *Walsingham* says, that John Duke of Lancaster was made Duke of *Acquitaine*, *per Virgam & Pileum*, pag. 343.

Invitatoria & Venitarium, Those Hymns and Psalms that were sung in the Church to invite the People to Prayer: They are mentioned in the *Statutes of St. Paul's. M.S.*

Invoice, A particular Account of Merchandize, with its Value, Custom, and Charges, &c. sent by a Merchant to his Factor or Correspondent in another Country. *Stat. 12 Car. 2. c. 34.*

Jobber, Is used for one that buys or sells Cattle for others. 22 & 23 Car. 2. And there are

Stockjobbers, who buy and sell Stocks for other Persons, &c. See *Brokers*.

Focalia, (Fr. *Foyaux*) Jewels; derived from the Lat. *Focus*, *Foculus*, and *Focula*, which comprehends every Thing that delighteth; but in a special and more restrain'd Sense, it signifies those Things which are Ornaments to Women, and which in *France* they call their own; as Diamonds, Ear-Rings, Bracelets, &c. But in this Kingdom, a Wife shall not be intitled to Jewels, Diamonds, &c. on the Death of her Husband, unless they are suitable to her Quality, and the Husband leave Assets to pay Debts, &c. 1 *Roll. Abr.* 911.

Jocatus, A Jester; as in an old Deed we read of *Jocarius Dom. Abbatis*; and *Joculator Regis*, the King's Jester. *Domesd.*

Jocus partitus, Is when two Proposals are made to a Person, and he hath Liberty to chuse which he pleases. — *Nec potest transigere, nec pacisci, nec Jocum partitum facere*, &c. *Bract. lib.* 4. tract. 1. cap. 32.

Joinder, Is the Coupling or Joining of Two in a Suit or Action against another: *Duorum in eadem Actione conjunctio*. *F. N. B.* 118. In all Personal Things, where Two are chargeable to Two, the one may satisfy it, and accept of Satisfaction, and bind his Companion; and yet one cannot have an Action without his Companion, nor both only against one. 2 *Leon.* 77. In joint Personal Actions against two Defendants, if they plead severally, and the Plaintiff is nonsuit by one before he hath Judgment against the other, he is barr'd against both. *Hob.* 180. A Covenant to Two, not to do a Thing without their Consent; one of them may bring an Action for his particular Damage. 2 *Mod.* 82. And three covenanted jointly and severally, with Two severally; and it was held, the Three could not join in Action of Covenant. *March.* 103. But a Person, in Consideration of a Sum of Money paid to him by A. and B. promises to procure their Cattle distrained to be delivered; if they are not delivered, one joint Action lies by the Parties, for the Consideration cannot be divided. *Style* 156, 203. 1 *Danv. Abr.* 5. And if one Jointenant of Goods is robb'd, both may join in an Action: And where two Joint-owners of a Sum of Money are robb'd upon the Highway, they may join in one Action against the Hundred. *Latch.* 127. *Dyer* 370. 'Tis otherwise if they have several Properties. *Ibid.* Upon a joint Grievance all Parties may join; as the Inhabitants of a Hundred, &c. And where an Action against Owners of a Ship, in Case of Goods damaged, &c. is *quasi ex contractu*, it must be brought against all of them. 3 *Lev.* 258. 3 *Mod.* 321. 2 *Salk.* 440. Tho' one Partner acts in Trade, where there are many Partners, Actions are to be brought against all the Partners jointly for his Acts. 1 *Salk.* 292. If two Men are Partners, and one of them sells Goods in Partnership, Action for the Money must be brought in both their Names. *Godb.* 244. But where there are two Partners in Merchandize, and one of them appoints a Factor; they may have several Writs of Account against him, or they may join. *Moor* 188. And if one of the Merchants dies, the Survivor is to bring the Action. 2 *Salk.* 444. If one Man calls two other Men Thieves, they shall not join in an Action against him; and one joint Action will not lie against several Persons for Speaking the same Words: For the Wrong done to one is no Wrong

to the other; and the Words of the one are not the Words of the other. 1 *Danv.* 5. *Palm.* 313. So it is in Assault and Battery. On a joint Trespas the Plaintiff may declare severally; but it remains joint 'till severed by the Declaration. 2 *Salk.* 454. A Man cannot declare in an Action against one Defendant for an Assault and Battery, and against another for Taking away his Goods; because the Trespasses are of several Natures. *Mich.* 24 *Car. Style* 153. But where they are done by two Persons at one Time, they may be both guilty of the Whole. 10 *Rep.* 66. If two Men procure another to be indicted falsely of Barretry, he may have Action against them both jointly; and it is the same if Two conspire to maintain a Suit; though one only gives Money, &c. *Latch.* 262.

As to Actions join'd; in Personal Actions, several Wrongs may be join'd in one Writ; but Actions founded upon a Tort, and on a Contract, cannot be join'd, for they require different Pleas and different Processes. 1 *Keb.* 847. 1 *Ventr.* 366. And where there is a Tort by the Common Law, and a Tort by Statute, they may not be join'd; though where several Torts are by the Common Law, they may be join'd, if Personal. 3 *Salk.* 203. A general Action of Trespas, and special Action on the Case, may be join'd in one Action: Trover and *Assumpsit* may not be join'd; but in an Action against a common Carrier, the Plaintiff may declare in Case upon the Custom of the Realm, and also upon Trover and Conversion, for Not guilty answers to both. 1 *Danv. Abr.* 4. And any Actions may be join'd, where the Plea of Not guilty goes to all. 8 *Rep.* 47. But as to Carriers, see 1 *Ventr.* 365. And Judgment was arrested in *Assumpsit*, in such a Case. 1 *Salk.* 10. Ejectment and Battery cannot be join'd; but after Verdict, where several Damages were found, the Plaintiff was allow'd to release those for the Battery, and had Judgment for the Ejectment. 1 *Danv.* 3. A Person cannot as Administrator, &c. join an Action for the Right of another, with any Action in his own Right; because the Costs will be intire, and it can't be distinguish'd how much he is to have as Administrator, and how much for himself. 1 *Salk.* 10.

Joinder of Counties. There can be no Joinder of Counties for the Finding of an Indictment: Though in Appeal of Death, where a Wound was given in one County, and the Party died in another, the Jury ought to be return'd jointly from each County, before the Statute 2 & 3 *Ed.* 6. c. 24. But by that Statute the Law is alter'd; for now the Whole may be tried either on Indictment or Appeal, in the County wherein the Death is. 2 *Hawk. P. C.* 323, 403. Where several Persons are arraigned upon the same Indictment or Appeal, and severally plead Not guilty, the Prosecutor may either take out *Joint Venire's* or several. *H. P. C.* 256. But after a *Joint Venire*, several ones can't be taken out.

Joint Executors, Are accounted in Law but as one single Person, and Acts done by any of them shall be taken to be the Acts of every one of them; for they all represent the Person of the Testator. 2 *Nelf. Abr.* 1026. If two *Joint Executors* have a Lease for Years, one of them may sell the Term without the other's Joining; because each is possessed of it as one Person in Right of the Testator; and this is the Reason why one of them cannot assign the Term to the other; and for which Cause one *Joint Executor* cannot

cannot compel his Companion to account. *Cro. Eliz.* 347. *Sid.* 33. If one *joint Executor* gives an Acquittance or Release, the other is bound by it; as they are but one *Executor* to the Testator, wherefore each hath an Authority over the whole Estate. 2 *Brownl.* 183. *Kelw.* 23. But if a Release is procured of one *joint Executor* by Fraud, for a less Sum than due; Relief may be had in Equity: And *joint Executors* shall not be charged by the Acts of their Companions, any farther than they are actually possess'd of the Goods of the Testator. *Moor* 620. *Cro. Eliz.* 318. 2 *Leon.* 209. Tho' if *joint Executors* by Agreement among themselves, agree that each shall intermeddle with such a Part of the Testator's Estate; in this Case each of them shall be chargeable for the Whole by the Agreement, as to Receipts, &c. *Hardr.* 314. Also it has been decreed in Chancery, that if Two or more *Executors* join in a Receipt, and one of them only receives the Money; each of them is liable to the Whole as to Creditors at Law, but not as to Legatees, and those who claim Distribution, &c. 1 *Salk.* 318. Two *Joint Executors* cannot plead distinct Pleas, because their Testator, if Living, who was but one Person, on Action brought against him, could have but one Plea. *Raym.* 123. Where two *joint Executors* have commenc'd a Suit, and one of them dies pending the Action, it shall abate, tho' he so dying had been summoned and severed; the Law is the same where they are Defendants: And all the *Executors* are to be named in an Action brought by *joint Executors*, or the Action shall abate; but where one *Executor* is under Age, if it be specially set forth in the Declaration, it may be good, though he be not join'd in the Action. 2 *Nelf.* 1027. See *Executors*.

Joint Fines. Where a whole Vill is to be fined, a *Joint Fine* may be laid, and it will be good for the Necessity of it; but in other Cases, Fines for Offences are to be severally impos'd on each particular Offender, and not jointly upon all of them. 1 *Roll. Rep.* 33. 11 *Rep.* 42. *Dyer* 211.

Joint Indictments, May be sometimes had: If Offences of several Persons arise from a *joint Criminal Act*, without any Regard to any particular Personal Default or Defect of either of the Defendants; as the *joint Keeping* of a Gaming-house; or unlawful Hunting and carrying away Deer; or for Maintenance, Extortion, &c. an *Indictment* or Information may charge the Defendants jointly. 1 *Vent.* 302. 2 *Hawk. P. C.* 240. Where there are more Defendants than one in an Information, they may not exhibit a *Joint Plea* of *Not guilty*; but are to plead severally, that neither they, nor any of them are guilty, &c. 21 *H. 6.* 20. 2 *Roll. Abr.* 707.

Joint Lives. A Bond was made to a Woman *Dum sola*, to pay her so much yearly as long as she and the Obligor should live together, &c. Afterwards the Woman married, and Debt being brought on this Bond by Husband and Wife, the Defendant pleaded, that he and the Plaintiff's Wife did not live together; but it was adjudged that the Money should be paid during their *joint Lives*, so long as they were living at the same Time, &c. 1 *Lutw.* 555. And a Person, in Consideration of Receiving the Profits of the Wife's Lands on Marriage, during their *joint Lives*, was to pay a Sum of Money yearly, in Trust for the Wife; though it was not said every Year, &c. It was held, that the Payment shall

be intended to continue every Year also during their *joint Lives*. 1 *Lutw.* 459. Lease for Years to Husband and Wife, if they or any Issue of their Bodies should so long live, has been adjudg'd so long as either the Husband, Wife, or any of their Issue should live; and not only so long as the Husband and Wife, &c. should *jointly live*. *Moor* 339. The Word *Or* may be taken disjunctively and distributively for either; when the Word *And*, which requires a Joining and Coupling, shall not.

Jointenants, (*Simul Tenentes*, or *Qui conjunctim tenent*) Are those that come to, and hold Lands or Tenements jointly by one Title: And these *Jointenants* must jointly plead, and be jointly sued and impleaded, which Property is common to them and Coparceners; but *Jointenants* have a sole and peculiar Quality of Survivorship, which Coparceners have not; for if there be two or three *Jointenants*, and one has Issue and dies, he, or those *Jointenants* that survive shall have the Whole. *Litt.* 277, 280. 1 *Inst.* 180. They are called *Jointenants*, not only because Lands are conveyed to them jointly by one and the same Title; but for that they take by Purchase only; whereas an Estate in Coparcenary is always by Descent. *Ibid.* Where a Man is seised of Lands and Tenements, and makes a Feoffment to Two or more, and their Heirs; or makes a Lease to them for Life; or where Two or more have a joint Estate in Possession, in a Chattel Real or Personal; or a joint Estate in a Debt, Duty, Covenant, Contract, &c. it is a *Jointenancy*, and the Part of him that dieth goeth not to his Heir or Executor, but the Whole to the Survivors or Survivor: But an Exception is to be made as to joint Merchants, for their Stock or Debts which they have in Partnership, which go to the Executor of him that dies, by the Law Merchant, and not the Survivor. *Litt.* 277, 281. 1 *Inst.* 181. If a Father make a Deed of Bargain and Sale of Lands to his Son, To hold to him and his Heirs, &c. to the Use of the Father and Son, and their Heirs and Assigns for ever, they are *Jointenants*. 2 *Cro.* 83. And if the Father devises Lands to his Eldest and other Sons, they are *Jointenants* and not Tenants in Common. *Goldf.* 28. *Poph.* 52. And a Man having only two Daughters, who were his Heirs, devised his Lands to them and their Heirs; and it was adjudged they were *Jointenants*, because they take in another Manner than what the Law would have given them, which would have been as Coparceners by Descent; but here the Survivor shall have the Whole. *Cro. Eliz.* 431. A Man devised Lands to his Wife for Life, and after her Death to his three Daughters, and the Heirs Males of their Bodies, &c. The Wife and two eldest Daughters died, and it was held that the surviving Daughter shall have the Whole for her Life; the three Sisters being *Jointenants* for Life, and several Tenants in Tail of the Inheritance. *Lez* 47. A Devise to Two jointly and severally is a *Jointenancy*. *Poph.* 52. Where Lands are devised to Two equally, and their Heirs, they are *Jointenants*; but if it had been to Two, equally to be divided between them, it generally makes a Tenancy in Common. 2 *And.* 17. But by *Holt Ch. Just.* the Words *Equally to be divided*, do not make a Tenancy in Common in a Deed, but a *Jointenancy*; tho' they might in a Will. 1 *Salk.* 390. And it is said a Term for Years or Goods devised to Two equally, makes a Tenancy in Common, and not

not *Jointenancy*; but Lands devised to Two equally, makes a *Jointenancy*. 3 Cro. 697. 3 Salk. 205. A Devise to Two equally to be divided, *Habendum* to them and the Heirs of the Survivor is a *Jointenancy*. Style 211, 434. Lands given in the Premises of a Deed to Three, to hold to one for Life, Remainder to the other for Life, Remainder to the Third for Life, they are not *Jointenants*, but shall take successively. Dyer 160. There may be a *Jointenancy*, tho' there is not equal Benefit of Survivorship on both Sides. 1 Inst. 181. When a Fee-simple Estate is limited by a new Conveyance, there one may have the Fee and another an Estate for Life; but when two Persons are Tenants for Life first, and one of them gets the Fee-simple, there the Jointure is severed. 2 Rep. 6. If a Reversion descend upon one *Jointenant*, the Jointure is severed, and by Operation of Law they are then Tenants in Common. 1 Bullf. 113. And a Diversity has been taken, that where the Reversion comes to the Freehold, the Jointure is destroy'd; but where the Freehold comes to him in Reversion, and to another, it is otherwise. Cro. Eliz. 470, 743. If there be two *Jointenants* in Fee, and one makes a Lease for Life to a Stranger, the Freehold and Reversion is severed from the Jointure: But in Case one such *Jointenant* leases for Years, the Jointure of the Inheritance is not severed, but the other *Jointenants* shall have the Reversion by Survivorship. Lutw. 729, 1173. Two *Jointenants* are of a Lease for twenty-one Years, and one lets his Part but for three Years, the Jointure is severed, so that Survivorship shall not take Place. 1 Inst. 188, 192, 199. Where there are several *Jointenants* in Fee-tail, and some of them suffer a Common Recovery of the Whole, the Estate of the others is turn'd to a Right; and contingent Remainders may be destroy'd, and a new Estate gain'd thereby. Sid. 241. And if one *Jointenant* levies a Fine, it severs the *Jointenancy*; but it doth not amount to an actual Turning out of his Companion. 1 Salk. 286. A *Jointenant* in Fee makes a Lease for Years of the Land, to begin presently, or *in futuro*, and dies, it cannot be avoided by the Survivor. Litt. 286. And it has been held, that where a *Jointenant* in Fee or for Life, makes a Lease for Years to commence after his Death, it is good against the Survivor. 2 Cro. 91. 2 Nels. Abr. 1037. But it has been also adjudg'd not good. Moor 776. Noy 157. Where there are two *Jointenants* for Life, it is said each of them hath an Estate for his own Life, and for the Life of his Companion; and for that Reason, if one of them make a Lease, it shall continue not only during the Life of the Lessor, but after his Death during the Life of his Companion, as long as the original Estate out of which it was derived: Though it hath been resolv'd, that such a *Jointenant* hath only an Estate for his own Life, and a Possibility of Surviving his Companion to be entitled to his Part; and therefore if he grants over his Estate, that Possibility is gone, and if he dies, the Estate of the Grantee shall revert to him in Reversion. 1 Roll. 441. Jones 55. 3 Salk. 204, 205. If one *Jointenant* grants a Rent, &c. out of his Part, and dies, the Survivor shall have the whole Land discharged. Litt. 289. And if one *Jointenant* make a Lease for Years, reserving a Rent, and dieth, the Survivor shall have the Reversion but not the Rent, because he claims by Title paramount. 1 Inst. 185. *Jointenants*, as to the Posses-

sion of Lands in Jointure, are seised by Intireties of the Whole, and of every Part equally, (and the Possession of one *Jointenant* is the Possession of both) but as to the Right of the Land, they are seised only of Moieties, and therefore if one grant the Whole, a Moiety only passeth. 1 Bullf. 3. Cro. Eliz. 809. *Jointenants* cannot singly dispose of more than the Part that belongs to them; where they join in a Feoffment, in Judgment of Law each of them gives but his respective Part; and so it is of a Gift in Tail, Lease for Life, &c. And for a Condition broken, they shall only enter on a Moiety of the Lands. 1 Inst. 186. Every *Jointenant* hath a Right as to his own Share, to several Purposes, as to give, lease, forfeit, &c. But a Devise of Land, whereof the Devisor is jointly seised, is void; the Will not taking Effect 'till after Death, and the Title of the Survivor cometh by the Death. 1 Inst. 186. Litt. 287. One *Jointenant* may lease to his Companion, or make him his Bailiff. 3 Leon. 352. But one *Jointenant* cannot make a Feoffment, or grant to another *Jointenant*; though he may release. 1 Ventr. 78. Raym. 187. By whatever Means one *Jointenant* comes to the Estate of his Companion, by Conveyance, &c. from him, it may enure by Way of Release. 2 Cro. 695. Action of Trespass or Trover may not be brought by one *Jointenant* against his Companion, because the Possession of the one is the Possession of the other. 1 Salk. 290. Before the Stat. 3 & 4 Ann. c. 16. one *Jointenant* had no Remedy against his Companion to recover Damages for what he had received more than his Share; and a *Jointenant* might prejudice his Companion in the Personality, by Reason of the Privy and Trust between them, though not in the Reality; but that Statute gives Action of Account to one *Jointenant* or Tenant in Common, his Executors or Administrators, against the other as Bailiff or Receiver, his Executors, &c. One *Jointenant* may distrain for Rent alone; and he may avow in his own Right, and as Bailiff to the others, but he cannot avow solely; and he may not bring Debt alone. 5 Mod. 73, 150. If a *Jointenant* in Fee-simple is indebted to the King, and dieth; the Lands can't be extended in the Hands of the Survivor, who claimeth not from his Companion, but from the Feoffor, &c. 1 Inst. 185. Where there are two *Jointenants*, and one is indebted to the King, and dieth, the other shall hold the Land discharged of the Debt: But if Husband and Wife purchase a Term jointly, and the Husband is indebted to the King, and dieth, in such Case the Term shall be subject to the Debt, because the Husband might have disposed of the whole Estate. Plov. 321. Judgment in Action of Debt is had against one *Jointenant* for Life, who before Execution releases to his Companion; adjudg'd that the Moiety is still liable to the Judgment during the Life of the Releasor; but if he had died before Execution, the Survivor should have had the Land discharged of the Debt and Judgment. 6 Rep. 78. Husband and Wife were *Jointenants*, and Action was brought against the Husband alone, who made Default; thereupon the Wife prayed to be received; but it was not allow'd, because she was not Party to the Writ; but he in Reversion may be received, and plead *Jointenancy* in Abatement of the Writ. Moor 242. If a Feme Sole and A. B. purchase a Term for Years jointly, and afterwards they intermarry, the *Jointenancy* continues. Dyer 318. 2 Nels. Abr. 1035. And where there

there are two Women *Jointenants* of a Lease for Years, and one taketh Husband, and dies, the Term shall survive; if the Husband hath not alienated her Part, and severed the Jointure: But it is otherwise in Case of Personal Goods, vested in the Husband by Marriage. 1 *Inst.* 185. If a *Jointenant* doth not alienate his Part, to bar the Survivorship; *Jointenants* sometimes enter into Covenants not to take Advantage of each other by Survivorship. *Wood's Inst.* 148. When there are two *Jointenants*, and one aliens his Part, the Alienee and the other *Jointenant* are Tenants in Common; for they claim by several Titles. *Litt.* 292, 319, 321. And *Jointenants* and Tenants in Common of Inheritance, by Statute are to make Partition, as Coparceners; also *Jointenants* and Tenants in Common for Life or Years, may be compelled to do the same by Writ of Partition, &c. 31 *H. 8. c. 1.* 32 *H. 8. c. 32.* 8 & 9 *W. 3. c. 31.*

The King cannot be *Jointenant* with any Person, because none can be equal with him. 1 *Inst.* 1. *Finch* 83. And a Corporation cannot be jointly seised of any Estate with another. 2 *Lev.* 12.

Jointures of Lands. A *Jointure* is a Settlement of Lands and Tenements made to a Woman in Consideration of Marriage, for Term of Life: It is so called, either because it is granted *Ratione Junctura in Matrimonio*, or for that Land in Frank-Marriage was given jointly to Husband and Wife, and after to the Heirs of their Bodies, whereby the Husband and Wife were made as it were *Jointenants* during the Coverture. 3 *Rep.* 27. By some a *Jointure* is defined to be a Bargain and Contract of Livelihood, adjoined to the Contract of Marriage; being a competent Livelihood of Freehold Lands or Tenements, &c. for the Wife, to take Effect after the Death of the Husband, if she her self is not the Cause of the Determination or Forfeiture of it. 1 *Inst.* 36. 4 *Rep.* 2, 3. And to the Making of a perfect *Jointure* within the Statute 27 *H. 8. c. 10.* to bar Dower, several Things are to be observ'd: 1. It must be made to take Effect for the Life of the Wife in Possession or Profit, presently after the Decease of her Husband. 2. It is to be for the Term of her own Life, or a greater Estate; but it may be limited to continue no longer than she remains a Widow, &c. 3. It must be made for her self, and to none other in Trust for her. 4. It is to be express'd to be in Satisfaction of her whole Dower, and not a Part of it. 5. It may be made before or after Marriage: If it be made before, the Wife cannot waive it, and claim her Dower at Common Law; but if it be made after Marriage, she may, at the Husband's Death; unless the *Jointure* be made by Act of Parliament. 1 *Inst.* 36. 4 *Rep.* 1. All other Settlements in Lieu of *Jointure*, not made according to the Statute, are *Jointures* at Common Law, and no Bars to Claim of Dower: And a *Jointure* was no Bar of Dower before this Statute; as a Right or Title to a Freehold cannot be barred by Acceptance of a collateral Satisfaction, tho' Dower may be released, &c. 1 *Inst.* 36. A Father made a Settlement to the Use of himself for Life, and afterwards to the Use of his Son and his Wife, for their Lives, for the *Jointure* of the Wife; this was adjudg'd no *Jointure*, to bar the Wife of her Dower, because it might not commence immediately after the Death of the Husband, who might die in the Life-time of the Father. 2 *Cro.* 489. So if a Feoffment be made to the Use of

the Husband for Life, Remainder to another for Years, Remainder to the Wife for Life for her *Jointure.* *Ibid.* But a Feoffment in Fee, upon Condition that the Feoffee should make another Feoffment to the Use of the Son of the Feoffor, and to his the Son's Wife in Tail, Remainder to the right Heirs of the Feoffor, which Feoffment is made accordingly; this is a good *Jointure* within the Statute, and Bar to the Dower of the Wife. *Moor* 28. An Estate settled in *Jointure*, coming from the Ancestors of the Wife, and not of the Purchase of the Husband or his Ancestors, is not within the Statute 11 *H. 7.* as to Discontinuances, Alienations, &c. Where a Father of the intended Wife, in Consideration of Marriage, &c. covenanted to assure Lands to the Husband and Wife, his, the Covenantor's Daughter, and the Heirs of her Body, &c. this was held no *Jointure*, within the Meaning of the Stat. 11 *H. 7. c. 20.* being an Advancement of the Woman by her own Father. 2 *Cro.* 264. 2 *Lill. Abr.* 80. And an Estate in Fee-simple convey'd to a Woman for her *Jointure*, was not any *Jointure* within that Statute; which never extended to Lands granted to Women in Fee: But an Estate in Fee, conveyed to a Woman for her *Jointure*, and in Satisfaction of her Dower, is a *Jointure* within the Statute 27 *H. 8. 4 Rep.* 3. Yet an Estate for Life is the usual *Jointure*: And an Estate for Life upon Condition, may bar the Wife if she accepts it; as a *Jointure* to a Woman on Condition to perform the Husband's Will, was judg'd good, where the Wife enter'd and agreed to the Estate. 3 *Rep.* 1, 2, &c. If no Inheritance is reserv'd to the Husband and his Heirs, but the Estate is limited to the Wife for Life, or in Tail, the Remainder to a Stranger; it is not a *Jointure* within the Stat. 11 *H. 7.* tho' made by the Husband or his Ancestor. *Cro. Eliz.* 2. A Husband covenanted to stand seised of Lands, to the Use of himself and his Heirs, 'till the Marriage should take Effect; and afterwards to himself, his Wife, and their Heirs; and it was adjudg'd a good *Jointure* within the Statute 27 *H. 8. Dyer* 248. A Devise to a Wife for Life, or in Tail, for her *Jointure*, is good within this Statute: But a Devise to a Wife generally, without expressing what Estate, is not good; because it cannot be averred to be for her *Jointure.* 3 *Rep.* 1. Tho' where an Assurance was made to a Woman, and it was not express'd to be made for her *Jointure*; it was held it might be averr'd to be made for that Purpose, which is not traversable. *Owen* 33. If a Master, in Consideration of Service done by his Servant, grants Lands to the Servant and a Woman he intends to marry, and the Heirs of their Bodies, creating an Estate-tail; this is not a *Jointure*, not being a Gift of the Husband, or any of his Ancestors, but of his Master, and in Consideration of Service, which will not make the Husband such a Purchaser as the Law requires. *Moor* 683. But as to Considerations, if an Estate is settled in *Jointure* upon a Woman, in Consideration of Money paid, and also of a Marriage to be had; the Marriage shall be look'd upon to be the Consideration. *Cro. Fac.* 474. A Husband, Tenant in Tail, Remainder to his Wife for Life, makes a Feoffment in Fee to the Use of himself and his Wife for Life, for her *Jointure*; it is no Bar to the Wife's Dower, because it may be avoided by a *Reverter* to her first Estate for Life. *Moor* 872. If Lands are conveyed to a Woman before Marriage, in Part of her *Jointure* only, and after Mar-

Marriage other Lands are granted in full; it is said she may waive and refuse the Lands convey'd to her after Coverture, and retain her first *Jointure* Lands and Dower also. 3 Rep. 1. 5. 2 Nels. Abr. 1039. Where a *Jointure* is made of Lands, according to the Direction of the Statute of H. 8. before Coverture, and after the Husband and Wife alien them by Fine, she shall not have Dower in any other Lands of her Husband; but 'tis otherwise where the *Jointure* is made after Marriage, when the Wife's Estate is waivable, and her Election of choosing comes not 'till the Death of the Husband. 1 Inst. 36. After the Death of the Husband, the Wife may enter into her *Jointure*, and is not driven to a real Action, as she is to recover Dower by the Common Law; and upon a lawful Eviction of her *Jointure*, she shall be endow'd according to the Rate of her Husband's Lands, whereof she was dowable at Common Law. 1 Inst. 37. Stat. 27 H. 8. If she be evicted of Part of her *Jointure*, she shall have Dower *pro tanto*. A Wife's *Jointure* shall not be forfeited by the Treason of the Husband: But Feme Coverts committing Treason or Felony, may incur a Forfeiture of their *Jointures*; and being convict of Recusancy, they forfeit two Parts in Three of their *Jointures* and Dower, by Stat. 3 Jac. 1. c. 4. If a Woman conceals her *Jointure*, and brings Dower and recovers it, and then sets up her *Jointure*, she is barr'd of her *Jointure*; and by bringing Writ of Dower for her Thirds, the Wife waives the Benefit of Entry into Lands, so as to hold them in *Jointure*. Cro. Eliz. 128, 137. 3 Rep. 5. See *Marriage*.

Jointress or *Jointress*, Is she who hath an Estate settled on her by the Husband, to hold during her Life, if she survives him. 27 H. 8. c. 10. 1 Inst. 46. Where Estates settled on a Wife are a *Jointure*, if the *Jointress* makes any Alienation of them by Fine, Feoffment, &c. with another Husband, it is a Forfeiture of the same; but if they are not a *Jointure* by Law, it is otherwise. 2 Nels. 1040. A *Jointress* within the Statute may make a Lease for forty Years, &c. if she so long live; and also for Life, and be no Forfeiture, though she levies a Fine *Sur Cognissance de Droit*, &c. Cro. Fac. 688. 3 Rep. 50. 1 Lill. 81. In other Cases, if she levy a Fine, it is a Forfeiture; and if a *Jointress* within the Stat. 11 H. 7. c. 20. suffer a Recovery covinously to bar the Heir, the Heir may enter presently, &c. 2 Leon. 206. 1 Plowd. 42.

Journal, Is a Day-Book or Diary of Transactions, used in many Cases: As by Merchants and other Trademen in their Accounts; by Mariners in Observations at Sea, &c.

Journals of Parliament, Are not Records, but Remembrances, and have been of no long Continuance. Hob. Rep. 109.

Journchoppers, Were Regrators of Yarn, which formerly perhaps was called *Journ*: They are mentioned in the Stat. 8 H. 6. c. 5.

Journeyman, (From the Fr. *Journée*, i. e. A Day, or Day's Work) Was properly one that wrought with another by the Day; though it is extended by Statute to those also that covenant to work with others in their Trades or Occupations by the Year. 5 Eliz. c. 4.

Journeys Accounts, (*Dieta computata*) Is a Term in the Law thus understood; if a Writ abates by the Death of the Plaintiff or Defendant, or for false Latin, Want of Form, &c. the Plaintiff shall have a new Writ by *Journeys Ac-*

counts, i. e. within as little Time as he possibly can after the Abatement of the first Writ; and this second Writ shall be a Continuance of the Cause, as if the first Writ had not been abated. *Terms de Ley* 414. When the new Writ is purchased, which must be *recenter*, the Plaintiff is to recite in an Entry upon the Roll, that the former Writ was abated, and shew for what: *Super quo per Dietas Computat. recenter tulit quoddam aliud Breve*, &c. 6 Rep. 10. This Writ is to be brought presently; and fifteen Days is held a convenient Time for the Purchase of the new Writ. 2 Lill. Abr. 83. 1 Lutw. 297. Judicial Writs shall never be had by *Journeys Accounts*; because they never abate for Form. 6 Rep. 10. The Abatement of the Writ must be without the Default of the Plaintiff, or a second Writ may not be purchas'd by *Journeys Accounts*: If a Writ abates for the Plaintiff's Default, in his Mistaking the Name of the Vill, &c. he shall not have Writ of *Journeys Accounts*; but where it abates by Default of the Clerk, for False Latin, Variance, or Want of Form, in such Case he may have it. 6 Rep. 10. And when an Outlawry is discharged or reversed, the Plaintiff may have Writ of *Journeys Accounts*; for there is no Default in him. Cro. Fac. 590. The Writ must be brought for the same Thing, and in the same Court as the first Writ.

Ipso facto, Is where the same Person obtains Two or more Preferments in the Church with Cure, not qualified by Dispensation, &c. the first Living is void *ipso facto*, viz. without any declaratory Sentence, and the Patron may present to it. Dyer 275. And there is not only *Deprivation* of Clergymen *ipso facto*; but for Crimes in striking Persons in a Church or Church-yard, the Offenders are to be excommunicated *ipso facto*. Stat. 5 & 6 Ed. 6. c. 4. An Estate or Lease may be *ipso facto* void by Condition, &c. 1 Inst. 45, 215.

Ire ad largum, To go at large, to escape or be set at Liberty. Blount.

Ireland, Is a distinct Kingdom from England, but subordinate to it in Government; and by *Poyning's Law* enacted in Ireland, anno 10 Hen. 7. all the Statutes of England, 'till that Time were declared in Force in Ireland; and by special Words our Statutes still may bind the People of Ireland, notwithstanding they have Parliaments of their own, who make Laws and Statutes, being affirm'd here by the King and his Council. 1 Inst. 141. 2 Inst. 2. 3 Inst. 18. Treason committed in Ireland by an Irish Peer, is not triable in England because he is entitled to a Trial by his Peers, which cannot be in England, but Ireland. Dyer 360. But the King's Bench here may reverse a Judgment given in B. R. in Ireland, by directing a Writ of Error to the Chief Justice there, to summon the Party to appear here, &c. And the House of Lords of England have Power to reverse or affirm the Decrees of the Court of Chancery, &c. of Ireland. By Statute 17 Ed. 1. c. 1. No Pardon for the Death of a Person, or for Felony, shall be granted by the Justices of Ireland, but at the King's Command, and under his Seals. By 34 Ed. 3. c. 18. all Kinds of Merchandizes may be exported and imported from and to Ireland, by Aliens as well as Denizens: But Wool, and Woollen Manufactures, &c. are prohibited to be exported from thence into foreign Parts by a Modern Statute. By the 32 Car. 2. c. 2. Cattle, Butter, Cheese, &c. are not to be imported from Ireland into this Kingdom, on

on Pain of Forfeiture to the Poor. By 3 *W. & M. cap. 2.* Members of Parliament, Officers in the Government, Ecclesiastical Persons, Lawyers, &c. in *Ireland*, are to take the Oaths, or be liable to Forfeitures. The Stat. 1 *Ann. cap. 32.* ordains, that Persons educated in the Popish Religion in *Ireland* of eighteen Years of Age, shall take the Oaths, or be disabled to take Lands by Discent, &c. And by 6 *Geo. cap. 5.* the Jurisdiction of the *House of Lords in Ireland* to reverse Judgments or Decrees given in the Courts of that Kingdom, was wholly taken away.

Irishmen, Coming to live in *England*, by an ancient Statute were to give Security for their good Behaviour. 2 *Hen. 6. c. 8.*

Irony In *Libels*, makes them as properly Libels as what is expressed in direct Terms. *Hob. 215. 1 Hawk. 193, 194.*

Irregularity, (*Irregularitas*) Signifies Disorder, or going out of Rule: And in the *Canon Law*, it is used for an Impediment to the Taking of *Holy Orders*; as where a Man is base born, notoriously defamed of any Crime, where he is maimed, or much deformed in Body, &c.

Irrepleviable or **Irreplevisable**, That neither may nor ought to be replevied, or delivered on Sureties. 13 *Ed. 1. c. 2.* It is against the Nature of a Distress for Rent, to be *Irreplevisable*. 1 *Inst. 145.*

Isle, (*Insula*) Is Land inclosed in and inviron'd with the Sea, or fresh Water. There are several Islands belonging to *England*; as the *Isles of Jersey and Guernsey, Isle of Man, &c.* The *Isles of Jersey and Guernsey* are not bound by our Acts of Parliament, except they are specially named; nor do our original Writs run into those Islands: But the King's Commission under the Great Seal runs there, to redress any Injuries or Wrongs; yet the Commissioners must judge according to the Laws and Customs of those *Isles*: And for Controversies arising in Law, among the King's Subjects in the *Isles of Jersey and Guernsey, &c.* the King and his Privy Council are the proper Judges, without Appeal. 4 *Inst. 286, 287. Wood's Inst. 2. 458.* The *Isle of Man* is a distinct Territory from *England*, and out of the Power of our Chancery, or of Original Writs which issue from thence; it has been granted by Letters Patent under the Great Seal to divers Subjects, and their Heirs, and hath peculiar Laws and Customs: And in the Case of the *Earl of Derby*, it was adjudged, that no Man had any Inheritance in this *Isle*, but the Earl and the Bishop; and that they are governed by Laws of their own, so that no Statute made in *England* did bind there without express Words, in the same Manner as in *Ireland*. 1 *Inst. 9. 4 Inst. 284. 7 Rep. 21. 2 And. 115.* An *Island* in the Sea that has no Owner, by the Law of Nations belongs to him that first finds it. *Fustin. Inst. lib. 2. See Plantations.*

Issue, (*Exitus*, from the Fr. *Issuer*, i. e. *Emanare*) Hath divers Significations in Law, as sometimes it is taken for the Children begotten between a Man and his Wife; sometimes for Profits growing from Amerciaments and Fines; and sometimes for Profits of Land and Tenements: But it generally signifies the Point of Matter, issuing out of the Allegations and Pleas of the Plaintiff and Defendant in a Cause, to be tried by a Jury of twelve Men. 1 *Inst. 126. 11 Rep. 10.* The *Issues* concerning Causes, are of two Kinds; upon Matter of Fact, or Matter of Law: An *Issue* in Fact is where the Plaintiff and Defendant have agreed upon a Point to be tried by

a Jury; and *Issue* in Law is where there is a Demurrer to a Declaration, Plea, &c. and a Joinder in Demurrer, which is an *Issue* at Law to be determined by the Judges. 1 *Inst. 71, 72.* As to *Issues* of Fact, viz. whether the Fact is true or false, which are triable by the Jury, they are either General or Special; *General*, when it is left to the Jury to try whether the Defendant hath done any such Thing as the Plaintiff lays to his Charge; as when he pleads *Not guilty* to a Trespass, &c. *Special* is when some special Matter, or material Point alledged by the Defendant in his Defence, is to be tried; as in Assault and Battery, where the Defendant pleads that the Plaintiff struck first, &c. 1 *Inst. 126.* And when special Matter is alledged by the Defendant, both Parties join thereupon, and so go to a Trial by the Jury, if it be *Quæstio facti*; or to a Demurrer, if it be *Quæstio juris*. There is also a General *Issue*, wherein the Defendant may give the special Matter in Evidence, for Excuse or Justification, by Virtue of several Statutes, made for avoiding Prolixity and Captiousness of Pleading; and upon the General *Issue* in such Cases, the Defendant may give any Thing in Evidence, which proves the Plaintiff hath no Cause of Action. 1 *Inst. 283.* Matter amounting to the General *Issue*, and special Matter of Justification, have been joined in one entire Plea, and held good. 3 *Lev. 41.* And where there is an *Issue* upon *Not guilty*, and there are other *Issues* upon Justifications, the Trial of the General *Issue* of *Not guilty* is but Matter of Form, and the Substance is upon the special Matter. *Cro. Jac. 599.* In real Actions, Causes grown to *Issue* are tried by a Jury of Twelve Men of the County where the Cause of Action arises; and in criminal Cases, *Issues* ought to be tried in the County where the Offence was committed; but this hath admitted of some Alteration by Statute. 3 *Inst. 80, 135. 2 Rep. 93.* The Place ought not to be made Part of the *Issue*, in a transitory Action; it is not material as it is in Real and Mixt Actions. *Trin. 24 Car. B. R.* If the Place is material, and made a Part of the *Issue*, there the Jury cannot find the Fact in another Place, because by the special Pleading, the Point in *Issue* is restrained to a certain Place; but upon the General *Issue* pleaded, the Jury may find all local Things in another County; and where the Substance of the *Issue* is found it is good, and the Finding more may be Surplusage. 6 *Rep. 46.* If an *Issue* is of two Matters in two Counties, Trial may be in one County by the Stat. 21 *Jac.* for that Statute extends to Cases where the Matter in *Issue* arises in two Counties, and the Trial is by one only, as well as where the Matter in *Issue* arises in two Places in one County, and the Trial is by one. 2 *Lev. 121. 2 Nelf. Abr. 1050.* Every *Issue* is to be joined in such a Court that hath Power to try it, otherwise the *Issue* is not well joined; for if the Cause cannot be tried, the *Issue* is fruitless; and if it be tried, the Trial is *coram non Judice*. 21 *Car. B. R. 2 Lill. Abr. 84.* Where an *Issue* is not joined, there cannot be a good Trial, nor ought Judgment to be given. 2 *Nelf. Abr. 1042.* All *Issues* are to be certain and single, and join'd upon the most material Thing in the Cause; that all the Matter in Question between the Parties may be tried. 23 *Car. B. R. 2 Lill. 85.* An immaterial *Issue* joined, which will not bring the Matter in Question to be tried, is not helped after Verdict by the Sta-

tute of *Jeofails*; but there must be a Repleader: But an unformal *Issue* is helped. 18 *Car.* 2. B. R. The Stat. 32 *Hen.* 8. cap. 30. helps Misjoining of *Issues*. A Repleader may be awarded after Verdict, for the Badness and Incertainty of the *Issue*: And a Judgment may be reversed in Error, being on an immaterial *Issue*. 2 *Lutw.* 1608. 2 *Lev.* 194. On a joint Trespass by many Persons, there must be only one *Issue* joined: And if several Offences are alledged against the Defendant, he ought to take all but one by *Protestation*, and offer an *Issue* upon that one, and no more. *Moor* 80. If two Negatives are pleaded, it is no good *Issue*. 3 *Lev.* 19. But in Action for Damages, according to the Loss which the Plaintiff hath sustained, every Part ought to be put in *Issue*. 1 *Saund.* 269. In Action upon the Case for Service done for a Time certain, the Defendant ought to put in *Issue* all the Time alledged in the Declaration. 2 *Lutw.* 268. Upon a General *Issue* in Waste, the Plaintiff must shew his Title. *Ibid.* 1547. When any special Point is in *Issue*, the Plaintiff is not obliged to set forth any other Matter. *Cro. Eliz.* 320. If there are several Things in a Declaration, upon which an *Issue* may be joined, and 'tis joined in any of them, it is good; and an Affirmative and an implied Negative will make a good *Issue*. *Style* 151, 210. There must be in every *Issue* an Affirmation on the one Part, as that the Defendant owes such a Debt, &c. and a Denial on the other Part, as that he oweth not the Debt, &c. And though Matter is contradictory, there must be a Negative and Affirmative of it, to make an *Issue*. 1 *Ventr.* 213. Also a Negative should be as broad and full as the Affirmative, or it is no Negative to make an *Issue*; as if a Defendant pleads a Grant of four Acres, and two Acres only are denied, &c. 1 *Roll. Rep.* 86. It has been held, that *Issue* ought not to be joined on a Traverse, but on an Affirmative and Negative. 2 *And.* 6. But where the Matter which is the Gift or Cause of the Action is found, it has been adjudged good after Verdict, though there was no Negative and Affirmative to make the *Issue*; as where in Debt upon Bond the Defendant pleads Payment, and concludes to the Country, without giving the Plaintiff Opportunity to deny the Payment, if the Jury in such Case find the Money paid, it is good after Verdict. *Sid.* 341. If several *Issues* are joined, and the Jury give a Verdict but as to one of them, the Whole is discontinued: And where there are two *Issues* joined, one good and the other bad, if entire Damages are given upon the Trial on both *Issues*, it will be Error; but if several Damages are found, the Plaintiff may release the bad Damages, and have Judgment for the Rest. 2 *Lill. Abr.* 87, 88. And it is said Judgment may be entered as to one Part of the *Issue*; and a *Nolle prosequi* to another Part of the same *Issue*, where it may be divided. *Pasch.* 23 *Car.* B. R. There may be a Plea to *Issue* to Part, and a Demurrer to Part; which have no Dependence on each other. 1 *Saund.* 338. Where the Declaration of the Plaintiff is good, and the Plea of the Defendant is ill; if the Plaintiff in his Replication tender an *Issue* upon such ill Plea, and a Trial is had, and it is found for the Plaintiff, he shall have Judgment. *Cro. Car.* 18. And when a Plea is naught, that the Plaintiff might have demurred upon it, and he doth not, but takes *Issue*, and it is found for the Defendant; this is

aided by the Statute of *Jeofails*, and the Defendant shall have Judgment: So likewise where the Replication is naught, and *Issue* is taken upon it, and found for the Plaintiff, he shall have Judgment. *Cro. Eliz.* 455. *Cro. Jac.* 312. If *Issue* be taken on a dilatory Plea, &c. and found against the Defendant, final and peremptory Judgment shall be given; but it is otherwise upon a Demurrer. *Raym.* 118. A good *Issue* is offered to the Defendant, he ought not to plead over; and if he pleads over, the Plaintiff shall have Judgment. 1 *Saund.* 338, 318. If he does not join *Issue*, but demurs, it is the same. *Lutw.* A Plea being pleaded to the Plaintiff's Declaration, and the Plaintiff's Attorney's Hand set to it, then the *Issue* is joined between the Plaintiff and Defendant, and not before: And the Plaintiff's Attorney is also to be paid by the Defendant's Attorney for entering the Plea; and for Paper-Books, in special Pleadings, &c. 2 *Lill.* 87, 88. And when *Issue* is joined between the Parties, it cannot be afterwards waved, if it be a good *Issue*, without the Consent of both Parties: But where the Defendant pleads the General *Issue*, and it is not entered, he may within four Days of the Term wave that *Issue*, and plead specially; and where the Defendant pleads in Abatement, he may at any Time after wave his Plea of special Matter, and plead the General *Issue*, unless there be a Rule made for him to plead as he will stand by it. 12 *W.* 3. B. R. 3 *Salk.* 211. If the Plaintiff neglects to enter the *Issue*, the Term it is joined, the Defendant in the first five Days of the next Term, may alter his Plea *de novo*: And if the Plaintiff will not try the *Issue* after joined, in such Time as he ought by the Course of the Cause, the Defendant may give him a Rule to enter it; which if he do not, he shall be nonsuit, &c. 2 *Lill.* 84. If the Tender of the *Issue* comes on the Part of the Plaintiff, the Form of it is, *Et hoc petit Inquiratur per Recordum* or *per Patriam*; and when on the Part of the Defendant, *Et de hoc Ponit se super Patriam*, &c.

Issues on Sheriffs, Are for Neglects and Defaults, by Amercement and Fine to the King, levied out of the *Issues* and Profits of their Lands; and double or treble *Issues* may be laid on a Sheriff for not returning Writs, &c. But they may be taken off before estreated into the *Exchequer*, by Rule of Court, on good Reason shewn. 2 *Lill. Abr.* 89. *Issues* shall be levied on *Furors*, for Non-appearance; though on reasonable Excuse proved by two Witnesses, the Justices may discharge the *Issues*. Stat. 35 *Hen.* 8. cap. 6.

Itinerant, (*Itinerans*) Travelling, or taking a Journey: And those were anciently called *Justices Itinerant*, who were sent with Commission into divers Counties, to hear Causes.

Jubilee, (*Annus Jubilæus*) The most solemn Time of Festival at Rome, when the Pope gives his Blessing and Remission of Sins. It was first instituted by Boniface the 8th, in the Year 1300, who granted a plenary Indulgence and Remission of Sins to all those which should visit the Churches of St. Peter and St. Paul at Rome in that Year, and stay there fifteen Days; and this he ordered to be observed once in every hundred Years: Which Pope Clement the 6th reduced to fifty Years, Anno 1350. and to be held upon the Day of Circumcision of our Saviour: And Urban the 4th in the Year 1389. ordained it to be

be kept every Thirty-three Years, that being the Age of our Saviour: After which, Pope *Sixtus* the 6th reduced it to Twenty-five Years. In Imitation of the Grand *Jubilee* of Rome, the Monks of Christ-Church in *Canterbury*, every fiftieth Year invited a great Concourse of People to come thither, and visit the Tomb of *Thomas Becket*. And King *Edw.* 2. in the fiftieth Year of his Age, which was 1362. caused his Birthday to be observed at Court, in the Nature of a *Jubilee*; giving Pardons, Privileges, and other civil Indulgences.

Jubileus. Because when the *Jubilee* was first instituted, it was ordered to be kept every hundred Years; therefore *Jubileus* signified afterwards a Man one hundred Years old; and likewise a Possession or Prescription for fifty Years, &c.

Judaism, (Judaismus) The Custom, Religion, or Rites of the *Jews*: Also the Income heretofore accruing from the *Jews* to the King; and the Word *Judaism* was formerly used for a Mortgage; and it sometimes signifies Usury. 9 E. 2.

Judge, (Judex) Is a Chief Magistrate in the Law, to try Civil and Criminal Causes, and punish Offences. He is appointed with a certain Jurisdiction; and our King hath the Nomination and Appointment of *Judges*. 1 *Inst.* 56. A *Judge* at his Creation takes an *Oath*, That he will serve the King, and indifferently minister Justice to all Men, without denying Right to any; and this he shall not forbear to do, though the King by his Letters, or by express Words command the contrary, &c. and he is answerable in Body, Lands and Goods. 18 Ed. 3. c. 1. *Judex est Lex Loquens*, and ought to judge by Laws, and not by Examples: And by *Glanvil* a *Judge* is called *Justitia in abstracto*, because he should be as it were Justice it self. Co. Lit. 71. 7 Rep. 4. And all the Commissions of *Judges* are bounded with this Limitation. *Facturi quod ad Justitiam pertinet secundum Legem & Consuetudinem Angliae*. *Judges* have not Power to judge according to that which they think fit; but that which by Law they know to be right: *Judex bonus nihil ex arbitrio suo faciat, nec proposito Domestica voluntatis, sed juxta Leges & Fura pronunciat*. 7 Rep. 27. They are to give Judgment according to Law, and what is alledged and proved: And they have a private Knowledge, and a judicial Knowledge, though they cannot judge of their private Knowledge, but may use their Discretion; but where a *Judge* has a judicial Knowledge, he may and ought to give Judgment according to it. *Plowd.* 82. King *Hen.* 4. demanded of *Judge Gascoigne*, if he saw one in his Presence kill *A. B.* and another Person who was not culpable, should be indicted of this, and found Guilty before him, what he would do in this Case? To which he answered, That he ought to respite the Judgment against him, and relate the Matter to the King, in order to procure him a Pardon; for there he cannot acquit him, and give Judgment according to his private Knowledge. *Ibid.* And the same King *Hen.* when his eldest Son the Prince, was by the Lord Chief Justice committed to Prison, for a great Misdemeanor, thank'd God that he had a Son of that Obedience, and a *Judge* of that Courage and Impartiality. *Stow.* The King in all Cases doth judge by his *Judges*; who ought to be of Counsel with Prisoners, and if they are doubtful or mistaken in Matter of Law, a Stander-by may be allowed to inform the Court, as *Amicus*

Curia. 2 *Inst.* 178. Our *Judges* are to execute their Offices in proper Person, and cannot act by Deputy, or transfer their Power to others; as the *Judges* of Ecclesiastical Courts may. 1 *Roll. Abr.* 382. Bro. *Judges* 11. Yet where there are divers *Judges* of a Court of Record, the Act of any one of them is effectual; especially if their Commission do not expressly require more. 2 *Hawk.* 3. Though what a Majority rules when present, is the Act of the Court. No *Judge* of any Court is compellable to deliver his Opinion before Hand, in Relation to any Question which may after come judicially before him. 3 *Inst.* 29. *Judges* of the Common Law, have no ordinary Jurisdiction to examine Witnesses at their Chambers; tho' by Consent of Parties, and Rule of Court, they may on Interrogatories; and some Things done by *Judges* at their Chambers, in Order to Proceedings in Court, are accounted as done by the Court. They are to have a Paper of the Causes, which are to be spoken to in Court, sent to them by the Attornies the Day before spoken to, that they may be prepared; and where special and doubtful Matter arises upon reading the Record of a Cause, so that the *Judges* are not for the Present satisfied of the Law, they will order Paper-Books to be made and delivered them, by the Attornies on both Sides, containing Copies of the Record, that they may the better consider of the Matters in Dispute. 2 *Lill. Abr.* 90, 91. A *Judge* shall not be generally excepted against, or challenged; or have any Action brought against him, for what he does as *Judge*. 1 *Inst.* 294. 2 *Inst.* 422. And to kill a *Judge* of either Bench, or of Assize, &c. in his Place administering Justice, is Treason: Also drawing a Weapon only upon a *Judge*, in any of the Courts of Justice, the Offender shall lose his Right-hand, forfeit his Lands and Goods, and suffer perpetual Imprisonment. 25 Ed. 3. cap. 2. 2 *Inst.* 549. *Judges* are not in any Way punishable for a mere Error of Judgment. 2 *Hawk.* 4. The *Judges* of Courts of Record are freed from all Prosecutions whatsoever, except in the Parliament where they may be punished, for any Thing done by them in such Courts as *Judges*; this is to support their Dignity and Authority, and draw Veneration to their Persons, and Submission to their Judgments: But if a *Judge* will so far forget the Dignity and Honour of his Post, as to turn Solicitor in a Cause which he is to judge, and privately and extrajudicially tamper with Witnesses, or labour Jurors, he may be dealt with according to the same Capacity to which he so basely degrades himself. 12 Rep. 24. *Vaugh.* 138. S. P. C. 173. Bribery in *Judges* is a very high Offence, punishable by Loss of Office, Fine and Imprisonment; and at Common Law, Bribery of *Judges* in Relation to a Cause depending before them, was sometimes punished as High Treason. 1 *Leon.* 295. Cro. Jac. 65. 1 *Hawk.* 170. If a *Judge* who hath no Jurisdiction of the Cause, give Judgment of Death, and award Execution, which is executed, such *Judge* is guilty of Felony; and also the Officer who executes the Sentence. H. P. C. 35. 10 Rep. 76. And if Justices of Peace, on Indictment of Trespas, arraign a Man of Felony, and judge him to Death, and he is executed, it is Felony in them. H. P. C. 35. *Dalt.* cap. 98. A *Judge* ought not to judge in his own Cause, or in Pleas where he is Party. 8 Rep. 118. And no one shall be *Judge* of Assize in the County

where born, or he doth inhabit, under the Penalty of 100 l. by Statute; but this is not to prejudice any *Judge* in the Courts at *Westminster*, in hearing and determining *Assises* in those Courts. 18 Ed. 3.

Judger. In *Cheshire*, to be *Judger* of a Town, is to serve on the Jury there. *Leicester's Hist. Antiq.* 302.

Judgment, (*Judicium, quasi Juris dictum*) Is the Determination or Sentence of the Court upon the Suit, &c. And the ancient Words of *Judgments* are, *Consideratum est*, &c. because *Judgment* is ever given by the Court upon due Consideration had of the Record and Matter before them. 1 *Inst.* 39. Of *Judgments* some are final, and some not, &c. A *Judgment* may be given not only upon Trial of the Issue, but by *Default*, *Nihil dicit*, *Confession* or *Demurrer*; and *Outlawry* is a *Judgment* in it self. 1 *Inst.* 167. 2 *Inst.* 236. *Finch* 457. There is likewise *Judgment* for *Departing in Despite of the Court*, without Leave, in common Recoveries, &c. And after an Issue joined to be tried by the Plaintiff and Defendant, the Plaintiff may if he will without going to Trial, accept of a *Judgment* from the Defendant, without any Verdict in the Cause, which *Judgment* must be by *Relicta Verificatione cognovit actionem*: But on this *Judgment* Error may be brought without putting in of Bail, which it may not on *Judgment* after Verdict. 2 *Lill. Abr.* 104. *Judgment* is sometimes had with a *cessat Executio*; and if the Defendant gives a *Judgment*, with Stay of Execution, till a certain Day, the Plaintiff may notwithstanding sue forth a *Capias* or *Fieri facias* into the County where the Action is laid, returnable before the Day, to enable him at that Day to take a *Testatum* against the Defendant; though he shall not in that Case sue out a *Capias* to warrant a *Scire facias* against the Bail. *Pasch.* 22 Car. 2. If Debt be brought against an Executor upon the Bond of the Testator, and he pleads *Plene Administravit*, this is a Confession of the Debt; and the Plaintiff may have *Judgment* with a *Cessat Executio* till the Defendant hath Assets. 4 Rep. 2 Nels. Abr. 1052. On *Interlocutory Judgments*, upon dilatory Pleas, it is in many Cases *Respondeat Ouster*, to answer over; and if the Plaintiff or Defendant die after *interlocutory Judgment*, the Action shall not abate. Stat. 8 & 9 W. 3. cap. 10. *Judgment* upon a *Demurrer*, to a Declaration, &c. is no Bar to any other Action; because it is not on the Merits, and the Plaintiff may afterwards make his Declaration right, and then proceed. 2 *Lill.* 113. But other *Judgments* may be pleaded in Bar to any other Action for the same Causes; and *Judgment* in an inferior Court, may be alledged in Bar to an Action in a superior Court. 2 *Lev.* 93. A *Judgment* on *Nihil dicit*, in Case, Trespass, or Covenant, &c. is not a perfect *Judgment* until Writ of Enquiry of Damages taken out and executed upon it; of which Notice is to be given the Defendant, and the Time of Execution, &c. But in Debt, it is a perfect *Judgment* as soon as signed, &c. and there needs no Writ of Enquiry. 2 *Lill.* 105. Where Damages are given upon a *Judgment* without Trial, there shall issue out a Writ of Enquiry of Damages; and when *Judgment* is given on Trial of the Issue, the Court gives Damages, without Writ of Enquiry. 1 *Inst.* 167. *Judgment* ought not to be given upon *Default* in real Actions; but a *Grand Cape* upon *Default* before Appearance, and a *Petit Cape* on De-

fault after Appearance. 1 *Lev.* 105. In every Case the Party in *Judgment* ought to be in *Misericordia*, or a *Capiatur* be against him; unless the Defendant comes *primo die placiti*, and confesses the Action; or it may be assigned for Error by either Party. *Cro. Jac.* 211. And if in Debt, Part is found for the Plaintiff, and the Defendant is acquitted of the Residue, the *Judgment* must be, *Quod Quer' in Misericordia* for that Part whereof the Defendant is acquitted. *Cro. El.* 699. But the Statute 4 & 5 W. & M. takes away the *Capiatur* in Trespass, Assault, false Imprisonment, &c. and there is in Lieu thereof 6 s. 8 d. paid to the Secondary for the Fine before he signs *Judgment*. All *Judgments* given in any Court of Record, must be entered in Latin, or it will be Error. 21 Car. B. R. The Plaintiff's Attorney, four Days after the *Postea* is brought into Court, if the Rule for *Judgment* is out, may enter *Judgment* for his Client by the Course of the Court. 2 *Lill. Abr.* 95. After a Rule to sign *Judgment*, there ought to be four Days exclusive of the Day on which the Rule was made, before the *Judgment* is signed, that the Party may have a reasonable Time to bring Writ of Error: In C. B. they never give Rules for signing *Judgment*, but stay till the *quarto die post*, which makes but four Days inclusive. *Mod. Caf.* 241. And a *Judgment* cannot be entered until after the *Postea* is brought in and entered in the Office, and a Rule given thereupon for the Defendant to shew Cause why *Judgment* should not be entered against him; and that he may have Liberty to find out what he can to arrest the *Judgment*. 2 *Lill.* 115. If a *Disfringas* is returnable within Term, and the Party, &c. is tried two or three Days only before the End of the Term, the *Judgment* shall be entered that very Term, though there be not four Days to move in Arrest of *Judgment*. 1 *Salk.* 77. But if Verdict be given after Term, no *Judgment* can be given on it till the next Term following; for the *Judgment* is the Act of the Court, and the Court sits not but in Term. *Mich.* 22 Car. B. R. If Verdict pass for the Plaintiff, and he will not enter his *Judgment*; the Defendant by Motion of Court may oblige him to it. 2 *Lill. Abr.* 97. The Defendant may enforce the Plaintiff to enter his *Judgment*, to the End he may plead it to another Action. *Latch.* 216. 1 *Danv.* 722. *Palm.* 281. *Judgments* are not only to be signed by a Judge, but entered of Record; before which they are not *Judgments*: And in a *Judgment* given to recover a Sum of Money, the Sum must be entered in Words at length; and not in Figures, which may be easily altered; and a *Judgment* was reversed, because the Time when given was in Figures, and the Sum recovered expressed in Figures, &c. But the Court may amend their *Judgments* of the same Term, because the Term is but as one Day in Law; though they may not do it in another Term. 2 *Lill.* 103. 3 *Lev.* 430. A *Judgment* signed the very Day the Rules were out, has been set aside for Irregularity. 5 *Mod.* 205. And if a *Judgment* be unduly obtained, the Court will vacate the *Judgment*, and restore the Party damaged; if not punish the Offender: But it is against the Course of the Court to vacate a *Judgment* the last Day of the Term. *Pasch.* 1656. By Statute, if a Plaintiff die before *Judgment*, it shall not hinder the *Judgment* being entered, provided it be done within two Terms after Verdict. 17 Car. 2. cap. 8. A *Judgment*

ment entered into C. B. shall relate to the *Effoin*-Day of the Term, and be a *Judgment* from that Time: But a *Judgment* in B. R. shall relate only to the first Day of the Term. *Cro. Car.* 102. If a Rule be given for the Defendant to plead at a certain Day, and he do not plead accordingly, the Plaintiff may enter *Judgment* against him, without moving the Court; though in real Actions, and criminal Causes, on Indictments, &c. there must be Motion in Court for a peremptory Rule. 2 *Lill.* 116. Yet a Plaintiff after he hath signed *Judgment* against the Defendant, may wave it if he will, and accept of a Plea from the Defendant. *Trin.* 23 *Car. B. R.* If a *Judgment* be obtained, but the Plaintiff doth not take out Execution within a Year and a Day, the *Judgment* must be revived by *Scire facias*: And if the *Judgment* be not above seven Years standing, a *Scire facias* may be had to revive it without Motion. *Pasch.* 24 *Car. B. R.* If any Thing be entered in a *Judgment*, which is not mentioned in the Plaintiff's Declaration, the *Judgment* is not good. 2 *Lill.* 104. And where it appears upon the Record, that the Plaintiff hath no Cause of Action, he shall never have *Judgment*. 8 *Rep.* 120. Also if it appeareth to the Court that the Plaintiff hath recovered a Verdict, without Cause of Action, the Court may give *Judgment* for the Defendant. 1 *Plow.* 66. Although it appear to the Court that the Defendant's Title is not good, if the Plaintiff in his Declaration hath not set forth a good Title for himself, the Court shall never give him *Judgment*. 2 *Lill.* 98. Tho' the Plaintiff destroys the Defendant's Title, if he gives him another Title by Pleading, &c. the Defendant shall have *Judgment*; for the Court are to judge upon the whole Record. 8 *Rep.* 90. But if Action of Trespass is brought for Trespas done in Lands belonging to such a House, and it appears at the Trial that the Plaintiff had no Title to the House, the Court cannot give *Judgment* to turn him out of Possession, because that was not judicially before them. 3 *Salk.* 213. If more be in the *Judgment* than the Plaintiff demands, it is erroneous; though this may be helped by a *remissit Damna* for Part. 2 *Lill.* 97. Where one recovers on Action for divers Things, and hath Verdict upon the Whole, but doth wave some one or more of the Things for which his Action was brought, and hath a special *Judgment*; in this Case he must release his Damages to all, and yet he may have Costs of Suit. *Ibid.* If Issue is found against one Party in a Suit, and not against the other, *Judgment* may be for the Plaintiff to recover against him where the Matter is found, and a *Nil capiat per Billam* be entered against the Plaintiff as to the other. 1 *Saund.* 216. And where several Damages are recovered against several Defendants, the Plaintiff may enter a *Nolle Prosequi* as to one of the Defendants, &c. and have *Judgment* against one only for the Damages against him. 3 *Mod.* 101. In Trespas and Assault against three Persons, they plead severally, and are found Guilty, and entire Damages are given, the *Judgment* is good: And where there is but one *Judgment* for the Damages against several, the Plaintiff may make his Election against which he will take his *Judgment*. *Cro. Jac.* 384. *Cro. Eliz.* 118. If one entire *Judgment* is given against two several Persons, and one of them is an Infant, the whole *Judgment* is void; (which being entire cannot be divided) except the Infant be joint Executor

with the other Party. 2 *Lill.* 100. When a *Judgment* is entire, it cannot be divided, to make one Part of it good, and another Part thereof erroneous; but if it be not an entire *Judgment*, it may. *Ibid.* On Action where Damages are to be recovered, if the Declaration be good in Part, and insufficient in Part, and the Defendant demurs upon the entire Declaration; the Plaintiff shall have *Judgment* for that which is well laid, and be barred for the Rest. 2 *Saund.* 379. And if in Action of Debt upon three Bonds, it appears that one of them is forfeited, &c. the Plaintiff shall have *Judgment* for the other two. 1 *Saund.* 286. Where a *Judgment* is partly by the Common Law, and partly by Statute, the *Judgment* at Common Law may remain and be compleat, without the other. 1 *Salk.* 24. Every *Judgment* ought to be compleat and formal: One *Judgment* cannot determine another *Judgment*; and the Judges will not give a *Judgment* against Law, although the Plaintiff and Defendant do agree to it. 1 *Salk.* 213. *Cro. Eliz.* 817. *Trin.* 23 *Car. B. R.* A *Judgment* contrary to the Verdict found in the Cause, is void; for it is to be warranted by the Verdict. *M. b.* 22 *Car. B. R.* If a Verdict is imperfect, *Judgment* cannot be given upon it; and for the Incertainty of the Verdict, *Judgment* may be void. 2 *Lill.* 111. *Raym.* 220. Where a Debt on Specialty is demanded in an Action, it must be for the Whole and exact Sum, or the *Judgment* upon it will not be good. 3 *Mod.* 41. Action of Debt lies upon a good *Judgment*, as well after Writ of Error brought, as before. *Raym.* 100. 2 *Mod.* 127. And 'tis said Debt lies in the *Marshalsea*, or in any other Courts, upon a *Judgment* in B. R. or C. B. and if a *Nul tiel Record* is pleaded, the Issue shall be tried by *Certiorari* and *Mittimus* out of the Chancery. 1 *Salk.* 209. though 'tis held otherwise 439. In Actions of Debt on Bonds, a Rule may be made to stay Proceedings on Payment of Principal, Interest and Costs; but not in Actions of Debt upon *Judgments*; yet the Defendant may plead a Tender & *uncove prius*. *Mod. Ca.* 60. If a *Judgment* is recovered jointly against three Defendants, the Plaintiff cannot bring Action of Debt upon that *Judgment* against one alone. 2 *Leon.* 220. And it has been held, that there is this Difference where Execution is sued upon a *Judgment*, and where an Action of Debt is brought upon it; that if the Plaintiff brings Debt, he must have good Ground for his Action, or he shall not recover; but he may have Execution upon a voidable *Judgment*; and it shall stand good till the *Judgment* is reversed. 1 *Leon.* 82. A Plaintiff shall not have a new Action of Debt on the same Bond, &c. after *Judgment* had on it, as long as the *Judgment* is in Force. 6 *Rep.* 2. *Nelf. Abr.* 1056. An erroneous *Judgment* in Chancery, is reversible in B. R. *Dyer* 315. And if the House of Lords reverse a *Judgment* of B. R. the Lords are to enter the new *Judgment*, and not the Court of B. R. who by the first *Judgment* had executed their Authority. *Trin.* 6 *Ann. B. R.* 1. *Salk.* 403. *Judgments* are to continue, till they are attain of Error. *Stat.* 4 *H. 4. cap.* 23. And after Verdict given in any Court of Record, there shall be no Stay of *Judgment*, for Want of Form in a Writ, Count, &c. or mistaking the Name of either Party, Sum of Money, Day, Month, Year, &c. rightly named in any Writ or Record preceding, &c. 18 *Eliz. cap.* 14. 16 & 17 *Car.* 2. 8 & 9 *W.* 3. orders

orders *Judgment* for Costs, upon Demurrers; and on suing Writs of Error, where the former *Judgment* is affirmed, &c. And the Statutes of Jeofails extend to *Judgments* upon *Nihil dicit*, Confession, & *non sum informatus*, &c. 4 & 5 Ann. See Error, Jeofail and Issue.

Judgments acknowledged for Debts. The Course for one to acknowledge a *Judgment* for Debt, is for him that doth acknowledge it to give a general Warrant of Attorney to any Attorney, or some particular Attorney of that Court where the *Judgment* is to be acknowledged, to appear for him at his Suit, against the Party who is to have the *Judgment* acknowledged unto him; and also to file common Bail, and receive a Declaration, and then plead *Non sum Informatus*, &c. or to let it pass by *Nihil dicit*, whereupon *Judgment* is entered for Want of a Plea. 2 Lill. 105. If one gives a Warrant of Attorney to confess a *Judgment*, and dies before it is confessed, this is a Countermand of the Warrant. 1 Ventr. 310. And if a Feme Sole gives Warrant of Attorney to confess *Judgment*, and marries before it is entered, the Warrant is also countermanded; and *Judgment* shall not be entered against Husband and Wife. 1 Salk. 399. A Man under Arrest gives Warrant of Attorney to confess a *Judgment* in B. R. if no Attorney for the Defendant is then present, the Court of B. R. on a Supposition that the *Judgment* was obtained by Force or Fear, will set aside the same. 1 Salk. 402. A *Judgment* confessed upon Terms, being in Effect conditional, the Court will see the Terms performed: But where a *Judgment* is acknowledged absolutely, and a subsequent Agreement is made, this does not affect the *Judgment*, and the Court will take no Notice of it. *Ibid.* 400. A Man gave Bond and *Judgment*, defeated upon Payment of Money on such a Day, and it was agreed that Execution should not be sued out before; but a *Fieri facias* was sued out a Month before and executed, upon Demand and Non-payment of the Money: And though this was a Breach of the Agreement, since it was for a just Debt, the Court would not undo any Thing, for Fear it should frustrate the *Judgment*. *Mod. Caf.* 49. If a Warrant be to enter *Judgment* as of such a Term, or any Time after; the Attorney may enter it at any Time during Life; but without those Words, the *Judgment* must be entered the Term expressed in the Warrant: And if no Term be mentioned, it may be intended the next Term. 1 *Mod.* 1. Or it has been held, it may be entered within a Year after the Date of it: And if *Judgment* upon a Warrant of Attorney be not entered within the Year, it cannot be done without Leave of the Court, on Motion and Affidavit made of the Party's being living, and the Debt not satisfied. 2 Lill. Abr. 118. 2 Show. 253. It is dangerous to take a *Judgment* acknowledged in the Vacation, as of the preceding Term; and if any such *Judgment* be taken, the Warrant of Attorney to confess the same must bear Date before, or in the Term whereof it is confessed: But the safest Way is to make it a *Judgment* of the subsequent Term; though common Practice is otherwise. 2 Lill. 103. By Holt Chief Justice, if one will enter a *Judgment* as of a precedent Term, he must actually enter it before the *Effoin*-Day of the succeeding Term: And if *Judgment* be signed in *Hillary* Term, and in the subsequent Vacation the Defendant sells Lands, if before

the *Effoins* of *Easter* Term, the Plaintiff enters his *Judgment*, it shall affect the Lands in the Hands of the Purchaser; and if one enters *Judgment* so in Vacation, when the Party is dead, the *Judgment* shall be good by Relation, if he was living in the precedent Term. 1 Salk. 401. *Law Securities* 74. By Stat. 29 Car. 2. c. 3. Judges that sign *Judgments* of Lands, are to set down the Day of the Month and Year of their so doing upon the Paper or Record; and they are to be *Judgments* against Purchasers *bona fide* only from that Signing: If any Person having acknowledged or suffered a *Judgment* as a Security for Money, afterwards on borrowing other Money of another, mortgage his Lands, &c. without giving Notice of such *Judgment*, unless he pay it off in six Months, he shall forfeit his Equity of Redemption, &c. 4 & 5 W. & M. The particular Times of entering *Judgments* of Debt by Confession, *Non sum Informatus*, &c. And docketting them after every Term, by the Clerks of Courts, &c. is directed under Penalties by Stat. 4 & 5 W. & M. cap. 20. And no *Judgment* shall affect Purchasers of Lands or Mortgagees till docketted. *Ibid.*

Form of a Warrant of Attorney to confess Judgment.

To Mr. A. B. and C. D. Attornies of his Majesty's Court of Common Pleas at Westminster, or to any other Attorney of the same Court.

TH E S E are to desire and authorize you, or any other Attorney of the said — Court, to appear for me E. F. of, &c. in the said — Court, this present *Easter* Term, or any other subsequent Term, at the Suit of G. H. of, &c. and thereupon to confess *Judgment* against me unto the said G. H. by *Non sum Informatus*, *Nil dicit*, or otherwise, in any Action of Debt for 500 l. of lawful British Money, together with Costs of Suit: And for your or any of your so doing, this shall be your sufficient Warrant. In Witness, &c.

On *Judgments*, a Release of Errors is usually entered into at the Time of the Warrant of Attorney given, or *Judgment* had. And in case of several *Judgments*, if two are given in one Term, and the last is first executed, that Creditor hath the best Title. *Latch.* 53. When a *Judgment* is satisfied, it is to be acknowledged on Record by Attorney, &c. Acknowledging a *Judgment* in the Name of another, who is not privy or consenting to the same, is Felony. Stat. 21 Jac. 1. cap. 26.

Judgment in criminal Cases. No Man can be attainted of Treason or Felony, but on *Judgment* by express Sentence, or by Outlawry, or Abjuration. 2 Hawk. 447. And a Person shall not have two *Judgments* for one Offence; for in Outlawry which is a *Judgment*, Execution shall be awarded against the Offender, but no Sentence pronounced. *Finch* 389, 467. But one convicted of a scandalous Libel, had *Judgment* to pay a Fine, and to go to all the Courts in Westminster-hall, with a Paper in his Hat signifying his Crime; and on his Behaving impudently, his Punishment was encreased. 1 Salk. 401. No *Judgment* or Punishment can be inflicted unknown to our Laws; but only by Act of Parliament. *Dalif.* 20. And the Law makes no Distinction, in fixed and stated *Judgments*, between a Peer and a Com-

a Commoner; or between a common and ordinary Cause and one extraordinary. 2 Hawk. 443. Judgment cannot be given for a corporal Punishment, in the Absence of the Party. 1 Salk. 400. Though Persons may have Judgment to be fined in their Absence, having a Clerk in Court to undertake for the Fine. 1 Salk. 56. Judgment in High Treason is for the Offender to be drawn, hanged, his Entrails taken out and burnt, his Head cut off, and Body quartered, &c. In Petit Treason, to be drawn to the Place of Execution, and hanged: And a Woman in all Cases of High and Petit Treason, to be drawn and burnt. A Man or Woman for Felony, is to be hanged by the Neck till dead. Misprision of Treason incurs Imprisonment for Life. In *Præmunire*, the Party offending is to be out of the King's Protection, and his Body to remain in Prison during the King's Pleasure, &c. And for Misprision of Felony, Fine and Imprisonment is inflicted. 2 Hawk. 443, 444. For Crimes and Misdemeanors of an infamous Nature; Perjury or Forgery at Common Law, Gross Cheats, Conspiracy, Keeping Bawdy-houses, &c. the Judgments are discretionary in the Court, by Fine, Pillory, Whipping, &c. 2 Hawk. 445.

Judgment arrested, In Civil and Criminal Cases. See Arrest of Judgment.

Judgment of Trial by the Holy Cross, Was a Trial in Ecclesiastical Causes, anciently in Use among our Saxon Ancestors. Cress. Church Hist. 960.

Judicial Proceedings. No Judicial Proceedings, commenced or prosecuted in the Style of *Oliver Lord Protector*, &c. were abateable by his Majesty K. Char. the Second's reassuming the Government: And a pretended Act of Parliament, for turning the Books of the Law, and Proceedings of Courts of Justice, into English, was declared to be in Force, by Stat. 12 Car. 2. c. 3.

Jugulator, A Cut-throat, or Murderer. — *Statutum est præterea ut nullus occultus Jugulator, quales Murderers appellant Angli, de catero Chartam de Regia gratia obtineret.* Tho. Walsingham. 343.

Jugum terræ, A Yoke of Land, and contains Half a Plough-land, according to Domesday. 1 Inst. 5.

Juncaria, (From the Lat. *Juncus*) Soil or Ground where Rushes grow. *Cum Piscariis, Turbariis, Juncariis, &c. ad Messuagium pertinet.* Pat. 6 Ed. 3.

Jura Regalia, Or the Rights of the King. See Regalia.

Jurats, (*Jurati*) Are in Nature of Aldermen, for the Government of many Corporations. As *Romney Marsh* is incorporate of one Bailiff, twenty-four Jurats, and the Commonalty thereof, by Chart. 1 Ed. 4. And we read of the Mayor and Jurats of *Maidstone, Rye, Winchelsea, &c.* Also *Fersey* hath a Bailiff and twelve Jurats, or sworn Assistants, to govern that Island. The Name is taken from the French; for in France, among others, there are *Major & Jurati, &c.* They are mentioned in the Stat. 2 & 3 Ed. 6. c. 30. Sometimes Jurats are taken for Furors. 13 Ed. 1. cap. 26.

Juridical Days, (*Dies Juridici*) Days in Court, on which the Law is administered. See Day.

Jurisdiction, (*Jurisdiclio*) Is an Authority or Power, which a Man hath to do Justice, in Causes of Complaint made before him: Of which there are two Kinds; the one, which a Man hath by Reason of his Fee, and by Virtue there-

of doth Right in all Plaints concerning the Lands of his Fee; the other is a *Jurisdiction* given by the Prince to a Bailiff, as divided by the Normans; and by him whom they called a Bailiff, we may understand all that have Commission from the King to give Judgment in any Cause. *Custum. Normand. cap. 2.* The Courts and Judges at Westminster have Jurisdiction all over England; and are not restrained to any County or Place: But all the other Courts are confined to their particular Jurisdictions; which if they exceed, whatever they do is erroneous. 2 Lill. Abr. 120. There are three Sorts of Inferior Jurisdictions; the First whereof is *Tenere Placita*, which is the lowest, and the Party may either sue there, or in the King's Courts: The second is *Consuance of Pleas*, and by this a Right is vested in the Lord of the Franchise to hold Pleas; and he is the only Person who can take Advantage of it, by claiming his Franchise: The third Sort is an *Exempt Jurisdiction*, as where the King grants to some City, that the Inhabitants shall be sued within their City, and not elsewhere; though there is no Jurisdiction, which can withstand a *Certiorari* to the superior Courts. 3 Salk. 79, 80. And a Court shall not be presumed to have a Jurisdiction, where it doth not appear to have one. 2 Hawk. 59. In some Causes, the Spiritual and Temporal Courts have a concurrent Jurisdiction. See Court, &c.

Juris utrum, Is a Writ which lies for the Parson of a Church, whose Predecessor hath alienated the Lands and Tenements thereof. *F. N. B.* 48. And if a Man intrude into Lands and Tenements, after the Death of a Parson, the Successor shall have this Writ: So if a Parson be disfeised of Lands, Parcel of his Rectory, and dieth, his Successor shall have a *Juris utrum*. *New Nat. Br.* 109. But if a Parson receive Rent of the Tenant of the Land, which is aliened by his Predecessor, he shall not himself have a Writ of *Juris utrum*; but his Successor shall have it. *Ibid.* 111. A Vicar shall have a *Juris utrum* against a Parson for the Glebe of his Vicarage, which is Part of the same Church: And the Plaintiff ought to be named Parson or Vicar, or such Name in Right of which he bringeth his Action. *Ibid.*

Juro, (*Jurator*) Is one of those Persons that are sworn on a *Fury*; and the Law requires the Returning of able and sufficient Furors. 16 & 17 Car. 2.

Jury, (*Jurata* from Lat. *Jurare*, to swear) Signifies a certain Number of Men sworn to inquire of and try the Matter of Fact, and declare the Truth upon such Evidence as shall be delivered them in a Cause: And they are sworn Judges upon Evidence in Matter of Fact. The Privilege of Trial by *Fury* is of great Antiquity in this Kingdom; some Writers will have it that *Furies* were in Use among the Britains; but it is more probable that this Trial was introduced by the Saxons: And these *Furies* are not only used in the Circuits of the Judges; but in other Courts and Matters: As if a Coroner inquire how a Person killed came by his Death, he doth it by *Fury*; and the Justices of Peace in their Quarter-Sessions, the Sheriff in his County-Court, the Steward of a Court-Leet or Court-Baron, &c. if they inquire of any Offence, or decide any Cause between Party and Party, they do it in like Manner: And at the General Assizes there are usually many *Furies*, because there are

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are a great many Causes, both Civil and Criminal, commonly to be tried; whereof one is called the *Grand Fury*, and the Rest *Petit Furies*, of which it is said there should be one for every Hundred. *Lamb. Eiren. pag. 384.* Anciently the *Fury* as well in Common Pleas, as Pleas of the Crown, were twelve Knights according to *Glanvil* and *Bracton*: And to make a *Fury* in a Writ of Right, called the *Grand Assise*, there must be Sixteen, *viz.* Four Knights, and twelve others. *Finch 412.* Also as there are twelve *Furymen*; so there were in ancient Times twelve Judges for the Trial of Matters of Law in the Exchequer-Chamber. *Co. Lit.* The *Grand Fury* generally consists of Twenty-four Men of greater Quality than the other, chosen indifferently out of the whole County by the Sheriff; and the *Petit Fury* consisteth of twelve Men, impanelled in Criminal Cases, called the *Fury of Life and Death*: The *Grand Fury* finds the Bills of Indictment against Criminals; and the *Petit Fury* convicts them by Verdict, in the Giving whereof all the Twelve must agree; and according to their Verdict the Judgment passeth. *3 Inst. 30, 31, 221.* By the Common Law, *Fury-men* are to be returned, in all Cases for Trial of General Issues, from the County where the Fact was done. *S. P. C. 154.* And *Furymen* are to be Freemen, indifferent, and not outlawed, or infamous; Aliens, Men attainted of any Crime, ought not to serve on *Furies*; and Infants, Persons seventy Years old, Clergymen, Apothecaries, &c. are exempted by Law from serving upon *Furies*. *3 Inst. 221. 2 Inst. 447.* Likewise the King may grant to some other Persons to be discharged of *Furies*; but not a whole Country. By Statute, Jurors empanelled are to be the next Neighbours, most sufficient, and least suspicious; or the Officer shall forfeit double Damages. *28 Ed. 1. cap. 9.* Their Qualification by *13 Ed. 1.* was 40*s.* per Annum Estate; which was increased to 4*l.* per Annum by *27 Eliz. cap. 6.* and is made 10*l.* per Annum Freehold or Copyhold, within the same County, by *4 & 5 W. & M. cap. 24.* But all Cities, Boroughs, and corporate Towns, are excepted out of this last Act: And Trials of Felons in Corporations may be by Freemen worth 40*l.* in Goods, by Stat. *23 Hen. 8. c. 13.* Panels of *Furies* returned to inquire for the King, may be reformed by the Judges of Gaol-delivery, &c. *3 Hen. 8. c. 12.* *Furymen* not appearing shall forfeit Issues, if they have no reasonable Excuse for their Defaults, *viz.* 5*s.* on the first Writ, upon the Second 10*s.* and third Writ 13*s.* 4*d.* *35 H. 8. cap. 6.* Though no *Fury* is to appear at *Westminster* for a Trial, when the Offence was committed thirty Miles off; except the Attorney General require it. *18 Eliz. cap. 5.* Constables, &c. at *Michaelmas* Quarter-Sessions yearly, are to return to the Justices of Peace, Lists of Persons qualified to serve on *Furies*; and Sheriffs are to impanel no others, under the Penalty of 20*l.* &c. *7 & 8 W. 3. cap. 32. 3 Ann. cap. 18.* No Sheriff, Bailiff, &c. shall return any Person to serve on a *Fury*, unless he hath been duly summoned six Days, before the Day of Appearance; nor shall take any Money or other Reward to excuse the Appearance of any *Furyman*, on Pain of forfeiting 10*l.* *4 & 5 W. & M.* Either Plaintiff or Defendant may use their Endeavours for a *Furyman* to appear; but one who is not a Party to the Suit, may not: And an Attorney was thrown over the Bar, because he had

given the Names of several Persons in Writing to the Sheriff, whom he would have returned on the *Fury*, and the Names of others whom he would not have returned. *Moor 882.* There ought to be Twenty-four Jurors summoned and returned for Trial of Issues; and if there be not, it will be Error. *Godb. 370.* But this may be remedied as a Misreturn, by Stat. *18 Eliz. 1 Cro. 123.* A *Furyman* misnamed may be averred he is not the same Person, &c. *21 Jac. 1. cap. 13.* And if a Trial is for any Thing which concerns the Sheriff, or Under-Sheriff, the Coroner is to return the *Fury*. *2 Lill. Abr. 124.* The Process to bring in the *Fury* in B. R. is a *Distingas Furat.* and in C. B. *Venire facias*, and *Habeas Corpora Furator*: Upon the *Venire*, the Sheriff returns a *Fury* in a Panel, or little Piece of Parchment annexed to the Writ, and then goes the Writ of *Habeas Corpora* to bring in the *Fury*; and where after Issue joined, a Suit is continued on the Roll, the Process is to be continued from Time to Time against the Jurors. *Bro. Discontin. 3.* The first twelve Men returned upon a *Fury* that do appear, are to be sworn and try the Cause, if none of them are challenged; but if some of them are challenged, and the Challenge is made good, then so many more of those that remain above the Number of Twelve shall be taken in Order as they stand in the Panel to fill up the Number wanting, and make a full *Fury*; and the Rest summoned to be *Furymen* must depart. *2 Lill. 126.* It is said after a *Furyman* is challenged, and the Challenge is entered, that Juror is not usually allowed afterwards to be sworn on the *Fury* to try that Cause, if there be other *Furymen* enough; though if there be not, then the Cause of Challenge is to be shewn and tried; and if it be found no good Challenge, he may be sworn. *Ibid. 127.* If a *Furyman* appear, and refuse to be sworn, or refuse to give any Verdict, if he endeavours to impose upon the Court, or is guilty of any Misbehaviour after Departure from the Bar, he may be fined, and Attachment issue against him. *2 Hawk. P. C. 145, 146.* After a Juror is sworn, he may not go from the Bar until the Evidence is given, for any Cause whatsoever, without Leave of the Court; and with Leave he must have a Keeper with him. *2 Lill. 123, 127.* A Witness may not be called by the *Fury* to recite the same Evidence he gave in Court, when they are gone from the Bar. *Cro. Eliz. 189.* Nor may a Party give a Brief or Notes of the Cause to the *Fury* to consider of; if he doth, he and the Jurors may be fined. *Moor 815.* The *Furymen* are not to meddle with any Matters which are not in Issue; but they may find a Thing of their own Knowledge, which is not given in Evidence. *3 Leon. 121.* When the Evidence is given, the *Fury* are to be kept together till they bring in their Verdict, without Speech with any, and without Meat or Drink, Fire or Candle, otherwise than with Leave of the Court by Consent of the Parties; and the Court may give them Leave to eat or drink at the Bar, but not out of Court. *1 Inst. 227.* If *Furymen* after sworn, either before or after they are agreed of their Verdict, eat and drink, the Verdict may be good; but they are fineable: And if it be at the Charge of either Parties, the Verdict is void. *Dalif. 10. Cro. Jac. 21.* If they agree to cast Lots for their Verdict, or to bring in Guilty or Not guilty, as the Court shall seem inclined, they may be fined.

fin'd. 2 *Lev.* 205. *Cro. Eliz.* 779. But a *Fury* have been permitted to recall their Verdict; as where one was indicted of Felony, the *Fury* found him Not guilty, but immediately before they went from the Bar, they said they were mistaken, and found him Guilty, which last was recorded for their Verdict. *Plowd.* 211. *Furies* are fineable, if they are unlawfully dealt with to give their Verdict; but they are not fineable for giving a Verdict contrary to the Evidence, or against the Direction of the Court; for the Law supposes the *Fury* may have some other Evidence than what is given in Court, and they may not only find Things of their own Knowledge, but they go according to their Consciences. *Vaugh.* 153. 3 *Leon.* 147. It has been held, where a Person was acquitted of a Robbery by a *Fury*, that the Court of B. R. may impose a Fine on a *Fury*, who finds a Verdict contrary to the Direction of the Judges; though Justices of Assize could not fine them, only for Misdemeanors in Eating, or Drinking, &c. *Bendl.* 153. 2 *Nelf. Abr.* 1061. Attaint may lie against a *Fury* in a Civil Cause, for going contrary to Evidence, in case of any Corruption. *Vaugh.* 144. And Jurors are subject to no Prosecution for giving their Verdicts, except by way of Attaint for a false Verdict; in which Case being found Guilty, they are punishable by Loss of Lands and Goods, their Houses to be rased, and their Bodies cast into Prison, and the Party is to be restored to all that he lost by the Verdict; but this is altered by the Stat. 23 *Hen.* 8. *cap.* 3. 2 *Hawk.* 147. If a *Furyman* is guilty of Bribery, he is disabled to be of any Assizes or *Furies*, and to be imprisoned and ransomed at the King's Will. 5 *Ed.* 3. *cap.* 10. *Furymen* accused of Bribery, are to be tried presently by a *Fury* then taken. 34 *Ed.* 3. *cap.* 8. And if a Juror takes any Thing of either Party to give his Verdict, he shall pay ten Times as much as taken; or suffer a Year's Imprisonment. 38 *Ed.* 3. *c.* 12. But *Furymen*, where there is a full *Fury*, and they try the Cause, are to have their Charges allowed them. 2 *Lill.* 125. If a *Fury* take upon them the Knowledge of the Law, and give a general Verdict, it is good; but in Cases of Difficulty it is best and safest to find the special Matter, and leave it to the Judges to determine what is the Law upon the Fact. 1 *Inst.* 30. A *Fury* sworn and charged in case of Life and Member, cannot be discharged till they give a Verdict: In Civil Cases, it is otherwise; as where Nonsuits are had, &c. And sometimes when the Evidence hath been heard, the Parties doubting of the Verdict, do consent that the *Fury* shall be drawn or discharged. 1 *Inst.* 154, 227.

Special Fury. Where it is conceived an indifferent impartial *Fury* will not be returned between Party and Party by the Sheriff, the Court upon Motion will order the Sheriff to attend the Secondary of B. R. with his Book of Freeholders of the County, and the Secondary in the Presence of the Attornies on both Sides, is to strike a *Fury*: And when a Cause of Consequence is to be tried at the Bar, the Court of B. R. on Motion and Affidavit made, will make a Rule for the Secondary to name forty-eight Freeholders; and each Party is to strike out Twelve, one at a Time, the Plaintiff or his Attorney beginning first, and the Remainder are to be the *Fury* for the Trial; and this is called a *Special Fury*. *Trin.* 23 *Car. B. R.* 2 *Lill.* 123. The Nomination of

a *Special Fury* before the Secondary, is to be in the Presence of the Attornies on each Side; but if either of them refuse to come, then the Secondary may proceed *ex parte*, and he shall strike Twelve for the Attorney who makes Default. *Trin.* 8 *W. B. R.* It has been adjudged, if a Rule is made for a *Special Fury*, and it is not expressed that the Master of the Office or Secondary shall strike Forty-eight Freeholders, and that each of the Parties shall strike out Twelve; in such Case the Master shall strike the Twenty-four, and neither of the Parties strike out any. 1 *Salk.* 405. This is never done in a capital Cause. *T. Jones* 222. Touching the Affairs of Merchants, where two Merchants are Plaintiff and Defendant, a *Fury* of Merchants may be returned to try the Issue between them: The Court was moved, that a *Fury* of Merchants might be returned to try an Issue between two Merchants, and it was granted; because it was conceived they might have better Knowledge of the Matters in Difference than others who were not of that Profession. *Hill.* 21 *Car. B. R.* When an Alien is Plaintiff or Defendant in a Cause, the *Fury* ought to be half Foreigners, and half English; but 'tis not necessary that the Foreigners be all of the same Country. 2 *Lill.* 125. And if the Trial is by all English Jurors, it is not Error; where the Party slips his Time, and does not pray Trial by an equal Number of Aliens, &c. See *Challenge, Verdict*.

Trial by Fury, Was anciently called *Duodecim virale Judicium*.

Jus, Signifies Law or Right, Authority and Rule. *Litt. Dist.*

Jus accrescendi, Is the Right of Survivorship between Jointenants. *Litt.* 280. 1 *Inst.* 180.

Jus Anglozum. The Laws and Customs of the West-Saxons, in the Time of the Heptarchy, by which the People were for a long Time governed, and which were preferred before all others, were termed *Jus Anglorum*.

Jus Coronæ, The Right of the Crown; and it is Part of the Law of England, though it differs in many Things from the general Law relating to the Subject. 1 *Inst.* 15. The King may purchase Lands to him and his Heirs, but he is seized thereof in *Fure Corona*; and all the Lands and Possessions whereof the King is thus seized, shall follow the Crown, in *Descents*, &c.

Jus Duplicatum, Is where a Man hath the Possession of any Thing, as well as a Right to it. *Bract. lib.* 4.

Jus Gentium, Is the Law by which Kingdoms and Society in general are governed. *Selden*.

Jus Hereditatis, The Right or Law of Inheritance.

Jus Habendi & Retinendi, Right to have and retain the Profits, Tithes and Offerings, &c. of a Rectory or Parsonage. *Hugh's Pars. Law.* 188.

Jus Patronatus, Is a Commission granted by the Bishop to some Persons to inquire into who is the rightful Patron of a Church. If two Patrons present their Clerks, the Bishop shall determine who shall be admitted by *Right of Patronage*, &c. on Commission of Inquiry of six Clergymen, and six Laymen, living near to the Church; who are to inquire on Articles as a Jury, whether the Church is void? Who presented last? Who is the rightful Patron, &c. But if Coparceners severally present their Clerks, the Bishop

is not obliged to award a *Jus Patronatus*, because they present under one Title; and are not in like Case where two Patrons present under several Titles. 5 Rep. 102. 1 Inst. 116. The Awarding a *Jus Patronatus* is not of Necessity, but at the Pleasure of the Ordinary, for his better Information who hath the Right of Patronage; for if he will at his Peril take Notice of the Right, he may admit the Clerk of either of the Patrons, without a *Jus Patronatus*. 2 Leon. 168. A Bishop may award a *Jus Patronatus* with a solemn Premonition to all Persons, *Quorum Interest*, &c. where he knows not who is the Patron, to give Notice of an Avoidance by Deprivation, &c. Hob 318. This Inquiry by *Jus Patronatus* is to excuse the Ordinary from being a Disturber.

Jus Possessionis, A Right of Seisin or Possession; and a Parson hath a Right to the Possession of the Church and Glebe, for he hath the Freehold, and is to receive the Profits to his own Use. Parf. Law 188.

Jus Presentationis, The Right of the Patron of presenting his Clerk unto the Ordinary, to be Admitted, Instituted and Inducted into a Church. Ibid.

Jus Recuperandi, Infrandi, &c. A Right of Recovering and Entering Lands, &c.

All these Rights, following the Relation of their Objects, are the Effects of the Civil Law. Co. Lit. 266.

Justa, A certain Measure of Liquor, *Quasi Justa Mensura*; being as much as was sufficient to drink at once. — *Percipiet Frater cotidie duas Justas de Cervisia*. Mon. Angl. Tom. 1. pag. 149.

Justs, (Fr. *Jouste*, i. e. *Decursus*) Were Exercises between Martial Men and Persons of Honour, with Spears on Horseback; and differed from *Tournaments*, which were all Sorts of Military Contentions, and consisted of many Men in Troops; whereas *Justs* were usually between two Men singly. They are mentioned in the Stat. 24 H. 8. c. 13. and are now disused. See *Tournament*.

Justice, (*Justiciarius*) Signifies he that is deputed by the King to administer *Justice*, and do right by Way of Judgment; and is called *Justice*, because he hath his Authority by Deputation, and not *Jure Magistratus*. In the King's Bench, and Common Pleas, there are Chief *Justices*, the former of which is called, *Capitalis Justiciarius Banci Regii*, vel *ad Placita coram Rege tenenda*, hath the Title of Lord whilst he enjoys his Office, and is stiled *Capitalis Justiciarius*, because he is Chief of the Rest; and for this Reason he hath usually the Title of Lord Chief Justice of England. This *Justice* was anciently created by Letters Patent under the Great Seal; but is now made by Writ in this short Form: *Rex, &c. Roberto Raymond Mil. Salutem, Sciatis quod constituimus vos Justiciarium nostrum Capitem ad Placita coram nobis Tenenda, quamdiu vos bene gesseritis, &c. Teste, &c.* And the ancient Dignity of this Supreme Magistrate was very great; he had the Prerogative to be Vicegerent of the Kingdom, when any of our Kings went beyond Sea, being chosen to this Office out of the greatest of the Nobility; and had the Power alone, which afterwards was distributed to three other great Magistrates, that is, he had the Power of the Chief *Justice* of the Common Pleas, of the Chief Baron of the Exchequer, and the Master of the Court of Wards; and he commonly sat in the King's Palace, and there executed that Authority which was formerly per-

formed *per Comitum Palatii*, in determining Differences which happened between the Barons and other great Persons of the Kingdoms, as well as Causes Criminal and Civil between other Men: But K. Richard 1st, first diminished his Power, by appointing two other *Justices*; to each whereof he assigned a distinct Jurisdiction, viz. to one the North Parts of England, and to the other the South; and in the Reign of K. Edward 1. they were reduced to one Court, with a further Abridgment of their Authority, both as to the Dignity of their Persons, and Extent of their Jurisdiction; for no more were chosen out of the Nobility as antiently, but out of the Commons, who were Men of Integrity, and skilful in the Laws of the Land; whence 'tis said the Study of the Law dates its Beginning. *Origines Judiciales*. In the Time of K. John, and other of our antient Kings, it often occurs in Charters of Privilege, *Quod non ponatur respondere, nisi coram nobis vel Capitali Justicia nostra*: And this high Officer hath at this Time a very extensive Power and Jurisdiction in Pleas of the Crown; and is particularly intrusted with not only the Prerogative of the King, but the Liberty of the Subject. The Chief *Justice* of the Common Pleas, hath also the Title of Lord whilst he is in Office, and is called *Dominus Justiciarius Communium Placitorum*, vel *Dominus Justiciarius de Banco*; who with his Assistants did originally, and doth yet, hear and determine all Common Pleas in Civil Causes, as distinguished from the King's Pleas, or Pleas of the Crown. Bract. lib. 3. The Chief *Justices* are installed or placed on the Bench by the Lord Chancellor; and the other *Justices* by the Lord Chancellor and the Lord Chief *Justices*. Besides the Lords Chief *Justices*, and the other *Justices* of the Courts at Westminster, there are many other *Justices* commissioned by the King, to execute the Laws; as *Justices of Assize*, of the Forest, of *Nisi Prius*, *Oyer and Terminer*, &c. all of them treated of under their Heads; and *Justices of Peace*, &c.

Justices of the Peace, (*Justicarii ad Pacem*) Are those that are appointed by the King's Commission to keep the Peace of the County where they dwell; and are rather *Commissioners of the Peace*, of whom some of the greater Quality are of the *Quorum*, because Business of Importance may not be dispatched without the Presence of them, or one of them. *Justices of Peace*, Polydore Virgil tells us, had their Beginning in the Reign of William the 1st, called the Conqueror; but Sir Edward Coke was of Opinion, that in the sixth Year of K. Ed. 1. *Prima fuit Institutio Justiciariorum pro Pace conservanda*: Mr. Prynne affirms, that in the Reign of K. Hen. 3. after the Agreement made between that King and his Barons, Guardians *ad Pacem conservandam* were constituted: And Sir Henry Spelman differs from both these, being of Opinion that they were not made until the Beginning of the Reign of K. Ed. 3. when they were thought necessary for suppressing Com-motions, which might happen upon the De-throning of K. Ed. 2. 'Tis certain the general Commission of the Peace, by Statute, began 1 Ed. 3. Tho' before that Time there were particular Commissions of the Peace to certain Men, in certain Places; tho' not throughout England. 2 Nels. Abr. 1063. Heretofore there were *Conservators of the Peace* at the Common Law, elected by the County, upon a Writ directed to the Sheriff: But the Election of *Conservators* is transferred

ferred by Statutes from the People, to the King; and at length *Justices of Peace* are created Conservators of the Peace by Commission or Letters Patent under the Great Seal: The Power of constituting them is only in the King; tho' they are generally made at the Discretion of the Lord Chancellor or Lord Keeper, by the King's Leave; and the King may appoint in every County in *England* and *Wales* as many as he shall think fit. 1 *Inst.* 174, 175. At first the Number of *Justices* were not above three or four in a County. 18 *Ed.* 3. Afterwards the Number was limited to six in every County; whereof two were to be of the best Quality, two Knights, and two Men of the Law. 34 *Ed.* 3. By the Stat. 14. R. 2. Eight *Justices of Peace* were to be assigned in every County: And the Number of *Justices* has greatly increased since their first Institution; Mr. *Lambard* above One hundred Years ago complaining of their excessive Number; and after him the Learned *Spelman* takes Notice that there were above Threescore in each County: They are now without Limitation; and their prodigious Increase with the unsuitable Appointment many Times made of Persons for this Trust, hath rendered the Office contemptible in the Eye of our best Gentry, for whom it was originally intended: And therefore it hath been propos'd, that in each County there should be eight Honorary *Justices* constituted of Men of Quality, who should not be obliged to an Attendance any farther than their Zeal for *Justice*, and Love for their Country shall incline them; and the like Number of acting *Justices*, Gentlemen capable of Business, who should constantly attend, and be intitled to a Reward for their Pains, and upon any Neglect be subject to Penalties. *Lambard's Inst.* By Statute, *Justices of Peace* must be resident in the County; are to be most sufficient Persons, and of the best Reputation, and they are to have 20 *l.* per Annum in Lands, as a Qualification, and if they act without such Qualification, (except Lawyers) they shall forfeit the Sum of 20 *l.* And they were to be allowed 4 *s.* a Day during their Attendance at the Quarter-Sessions, to be paid by the Sheriffs of Counties. 12 R. 2. 2 H. 5. 18 H. 6. Also they are to hold their Sessions four Times a Year, i. e. the first Week after *Michaelmas*, the *Epiphany*, *Easter*, and *St. Thomas* called *Becket*, being the 7th of *July*. Stat. 2 H. 5. They are *Justices of Record*; for none but *Justices of Record* can take a Recognizance of the Peace: And their Power arises from their Commission, or from Statutes. By Virtue of these Words in their Commission, viz. *Sciatis quod assignavimus vos conjunctim & divisim & quemlibet vestrum Justitiariorum nostros ad Pacem nostram in Comitatu nostro S. Conservandam*, &c. every *Justice of Peace* hath a separate Power, and may do all Acts concerning his Office apart and by himself; and even may commit a Fellow-*Justice* upon Treason, Felony, or Breach of the Peace: And this is the ancient Power which Conservators of the Peace had at Common Law. By Virtue of another *Assignavimus*, or Clause in the Commission, two or more *Justices of Peace* (one of the *Quorum*) have a joint Power to inquire by Jury of all Offences mentioned in the Commission; to take Indictments, and grant Process thereupon; and to hear and try the Offences; which are Matters to be transacted at the Quarter-Sessions. And by the Statutes, in many Cases they are empowered to act

where their Commission doth not reach; the Statutes themselves being a sufficient Commission. *Lamb. lib. 4. Wood's Inst.* 79, 80. The Stat. 4 H. 7. c. 12. 33 H. 1. c. 10. and 37 H. 8. c. 7. give a further general Power than is expressed either in their Commission, or in any particular Statute. The particular Statutes are to be executed as they direct, wherein if no express Power is given to any one *Justice*, he can admonish only, and if not obeyed, may make Presentment of it upon the Statute, and with his Fellow-*Justices* hear and determine it in Sessions; or he may bind the Offender to the Peace, or the good Behaviour: Some Statutes empower one *Justice of Peace* alone to act; some require two, three, four *Justices*, &c. Where a special Authority is given to *Justices of Peace*, it must be exactly pursued; or the Acts of the *Justices* will not be good. 2 *Salk.* 475. And if a *Justice of Peace* does not observe the Form of Proceeding directed by Statute, it is *coram non Judice*, and void: But if he acts according to the Direction of the Statutes, neither the *Justices* in Sessions nor B. R. can reverse what he has done. *Jones* 170. The Power of *Justices* is Ministerial when they are commanded to do any Thing by a superior Authority, as by the Court of B. R. &c. In all other Cases they act as Judges: But they must proceed according to their Commission, &c. And a *Justice* is to exercise his Authority only within the County where he is appointed by his Commission; not in any City which is a County of itself or Town Corporate, having their proper *Justices*, &c. tho' in other Towns and Liberties he may. *Dalt.* When a *Justice of Peace* acts to compel another to perform any Thing required by Law, as where he imprisons or commands any one to be imprisoned, &c. he cannot act out of the Jurisdiction of his County; but he may take Informations any where to prove Offences in the County where committed, and he principally resides, or take a Recognizance to prosecute. *Cro. Car.* 213. And by a late Statute, *Justices* of any County, dwelling in a City that is in it self a County within the County at large, may grant Warrants, take Informations, make Orders, &c. at their own Dwelling-Houses, tho' out of the County, &c. 9 *Geo.* c. 7. A Man may be a *Justice of Peace* in one Part of *Yorkshire*, and yet be no *Justice of Peace* in every Part of the County; this County being divided into separate Ridings. *Hill.* 22 *Car.* B. R. *Justices of Peace* have Power by their Commission to hear and determine Felonies and Trespases, &c. 18 *Ed.* 3. c. 2. But there must be a special Clause in their Commission, otherwise they cannot do it. *H. P. C.* 165. And if a Commission of Oyer and Terminer issues to hear and determine Felonies, that determines the Commissions of *Justices of Peace* as to Felonies, tho' not as to the Peace, &c. The Stat. 1 & 2 *Ph. & M.* c. 13. directs *Justices of Peace* to take Examinations in Cases of Murder and Felony, and to certify them to the *Justices* of Gaol-Delivery, &c. since which they forbear to try great Felonies. *H. P. C.* 166. They commit all Felons, in order to Trial; and bind over the Prosecutors to the Assizes: And if they do not certify Examinations and Informations to the next Gaol-Delivery; or do not bind over Prosecutors, &c. they shall be fined. *Dalt.* c. 11. For Petit Larceny, and small Felonies, the *Justices* in their Quarter-Sessions may try Offenders; other Felonies being of Course try'd

at the Assizes: And in Case of Felonies, Pleas upon Penal Statutes, they cannot hold Cognisance without an express Power given them by the Statutes. *Justices of the Peace* in their Sessions cannot try a Cause the same Sessions, without Consent of Parties, &c. for the Party ought to have convenient Time, or it will be Error. *Cro. Car.* 317. *Sid.* 334. Nor can the Sessions of *Justices* refer a Matter which ought to be try'd to be determined by another Sessions; yet they may refer a Thing to another to examine, and make Report to them for their Determination. 2 *Salk.* 477. The Sessions is all one Day, and the *Justices* may alter their Judgments at any Time while it continues. *Ibid.* 494. 'Tis incident to the Office of a *Justice of Peace* to commit Offenders: And a *Justice* may commit a Person that doth a Felony in his own View, without Warrant; but if it be on the Information of another, he must make a Warrant under Hand and Seal for that Purpose. If a *Justice* issues a Warrant to arrest a Felon, tho' the Accusation be false, the *Justice* is excused, where a Felony is committed; but if there be no Accusation, Action will lie against the *Justice*. 1 *Leon.* 187. A *Justice* makes a Warrant to apprehend a Felon, though he is not indicted, he who executes the Warrant shall not be punished: And if one brings another before a *Justice* on Suspicion of Felony, notwithstanding it happen to be without just Cause, no Action lies. 13 *Rep.* 76. *Cro. Jac.* 432. A *Justice of Peace* may make a Warrant to bring a Person before himself only, and it will be good; tho' it is usual to make Warrants to bring the Offenders before him or any other *Justice* of the County, &c. And if a *Justice* directs his Warrant to a private Person, he may execute it. 5 *Rep.* 60. 1 *Salk.* 347. If a *Justice* grants his Warrant beyond his Authority, the Officer must obey; but if it be where the *Justice* has no Authority, the Officer is punishable if he executes it. *Justices of Peace* may make and perswade an Agreement in petty Quarrels and Breaches of the Peace, where the King is not intitled to a Fine: Tho' they may not compound Offences, or take Money for making Agreements. *Noy* 103. *Justices* may not intermeddle with Property; if they do, Action lies against them and the Officers who execute their Orders. 3 *Salk.* 217. But for Detainer of Goods, in small Matters of poor People, not of Ability to go to Law, in some Places *Justices* interpose and grant Warrants to do Justice. *Mod. Just.* 167. A *Justice of Peace* hath a discretionary Power of binding to the good Behaviour; and may require a Recognizance with a great Penalty of one for his Keeping of the Peace, where the Party bound is a dangerous Person, and likely to break the Peace, and do much Mischief. *Pasch.* 1652. 2 *Lill. Abr.* 131. And where a Person is to be bound to the good Behaviour for Default of Sureties, he may be committed to Gaol. But a Man giving Security for keeping the Peace in B. R. or the Chancery, may have a *Superfedeas* to the *Justices* in the Country not to take Security; and so where a Person hears of a Warrant out against him, gives Surety of the Peace to any other *Justice*, &c. If one make an Assault upon a *Justice of Peace*, he may apprehend the Offender, and send him to Gaol till he finds Sureties for the Peace; and a *Justice* may record a forcible Entry upon his own Possession: In other Cases he cannot judge in his own Cause. *Wood's Inst.* 81. Where a Man abuseth a *Justice* by Words, before his

Face or behind his Back, in Relation to his Office, he may be bound to the good Behaviour; and if a *Justice of Peace* be abused in the Execution of his Office, the Offender may be also indicted and fined. *Crompt.* 149. 4 *Rep.* 16. To say of a *Justice of Peace* he doth not understand Law, &c. is indictable: And Contempts against *Justices* are punishable by Indictment and Fine at the Sessions. 3 *Mod.* 139. 1 *Sid.* 144. But abusing a *Justice* out of his Office, by Words that do not relate to his Office, seems to stand only as in the Case of other Persons. *Justices* shall not be regularly punished for any Thing done by them in Sessions as Judges: And if a *Justice of Peace* be sued for any Thing done in his Office, he may plead the general Issue, and give the special Matter in Evidence; and if a Verdict goes for him, or the Plaintiff be Nonsuit, he shall have double Costs. *Stat.* 21 *Jac.* 1. Tho' if a *Justice of Peace* is guilty of any Misdemeanor in his Office, Information lies against him in B. R. where he shall be punished by Fine and Imprisonment. *Sid.* 192. And for Contempt of Laws, &c. Attachment may be had against *Justices of Peace* in B. R. on Motion of the Attorney General, &c. If a new Commission is made out for *Justices of Peace*, out of which some of the *Justices* in the old Commission are omitted, yet what Acts they do as *Justices* are lawful till the next Sessions, at which the new Commission is published; and when the new Commission is published, they are to take Notice of it, and not act further. *Moor* 187. By granting a new Commission, Discharge under the Great Seal, Accession of another Office, and by the Death of the King, the Power and Offices of *Justices of Peace* determine. 4 *Inst.* 165. But till then they are empowered to act in a great many particular Cases by Statute, as follows, viz.

Justices of Peace are to license Alehouses; and issue Warrants to levy the Penalty of 20 s. on Persons keeping Alehouses, without Licence; 10 s. on Victuallers, &c. permitting Tipling, and 3 s. 4 d. on Tiplers; also a Sum not above 40 s. nor under 10 s. for selling Ale in Vessels not mark'd, or under Measure; and they are to take Recognizances for good Order; suppress unlawful Alehouses, &c. 5 & 6 *Ed.* 6. 21 *Jac.* 1. 3 *Car.* 1. 11 & 12 *W.* 3. They are to reconcile Differences between Masters and Apprentices; and commit disorderly Apprentices, &c. And to consent to the Binding poor Boys out Apprentice, and Apprentices to the Sea-Service. 5 & 43 *Eliz.* 2 *Ann.* *Justices* are to grant Warrants against Persons seducing Artificers to go out of the Kingdom, and bind them over to the Assises or Sessions, where they shall be fined not exceeding 100 l. 5 *Geo.* To bind to the good Behaviour Persons riding Armed, &c. 2 *Ed.* 3. Badgers are to be licensed by three *Justices* in Sessions. 5 *Eliz.* Two *Justices* are to bail Persons for Manslaughter, Felony, &c. where bailable by Law. 1 & 2 *P. & M.* One *Justice* may enter Bakers Houses and examine their Bread; and if it be deficient in Goodness or Weight, may seise and give it to the Poor; and a Penalty of 5 s. per Ounce is inflicted for Under-Weight: *Justices* are also to ascertain the Assise and Weight of Bread. 8 *Ann.* 1 *Geo.* *Justices of Peace* shall issue Warrants for apprehending and committing Bankrupts, after they are certified to be such, &c. 5 *Geo.* Examine Bastardy; and the two next *Justices* are to make Orders for keeping the Child, and charge the

the Father or Mother with Weekly Payments towards the same, &c. and commit lewd Women to the House of Correction. 18 Eliz. 13 & 14 Car. 2. *Justices* in Sessions may make Assessments for Repairs of Bridges, and determine Annoyances, &c. 22 H. 8. They are to levy 6 s. 8 d. on Butchers killing Meat on a Sunday; who selling corrupt Meat, shall be fined. 3 Car. 1. 15 Car. 2. Levy 5 l. on Taylors making or using Cloth Buttons or Button-holes; and one or more *Justices* may summon Parties, examine and convict, and levy the Penalty of 40 s. per Dozen on Persons wearing Cloth Buttons, &c. 8 Ann. 7 Geo. To hear and determine Complaints against those as use or wear any printed Callico, contrary to Law, and levy the Penalty of 5 l. by Distress, subject to Appeal to the Sessions. 7 Geo. *Justices* are to levy 5 l. Penalty on Carriers, &c. taking more for Carriage of Goods than assessed in Sessions; and 20 s. of Carriers travelling on a Sunday: And on Proof before a *Justice* of more than six Horses used by Carriers in Waggon, &c. the *Justice* is to issue his Warrant for Delivery to the Seisor of the Horses forfeited. 3 Car. 1. 3 & 4 W. & M. 5 Geo. To take Recognizances with Sureties on *Certiorari's*, to pay Costs if the Conviction be affirmed. 4 & 5 W. & M. Persons not repairing to Church every Sunday are to forfeit 1 s. for every Offence; and Disturbing a Congregation, or Misusing a Teacher, incurs a Forfeiture of 20 l. leviable by *Justices of Peace*, by Distress, &c. 1 Eliz. 1 W. & M. *Justices* are to levy 20 s. on Clothiers, not paying their Work-People in Money: And the same Penalty on Buyers of Cloth refusing to take it according to the Measure, marked on the Seal by the Mill-man; but if it contains not the Quantity, the Seller shall forfeit a sixth Part: Makers of deceitful Cloth shall forfeit 5 l. and faulty Cloths expos'd to Sale, are liable to Forfeiture; *Justices* are to appoint Overseers and Searchers of Cloth. 3 & 4, 5 & 6 Ed. 6. 21 Jac. 1. 10 Ann. 1 Geo. To levy the Penalty of 20 s. on Coachmen, demanding more than their Fare, giving abusive Language, &c. also to order Satisfaction by Persons refusing to pay a Coachman his just Fare, for defacing Coaches, &c. 9 Ann. 1 Geo. They are to levy 20 s. on Constables, for not apprehending Vagrants; and 40 s. on them for not putting the Acts in force against unlicensed Alehouse-keepers, &c. and to appoint and swear Constables. 13 Car. 2. 11 & 12 W. 3. 12 Ann. *Justices of Peace*, &c. may break and enter Houses where Conventicles are kept, and fine Persons assembled, and the Preachers therein, and also the Persons in whose Houses the Meetings are held. 22 Car. 2. Persons erecting Cottages without laying four Acres of Land to them, (except in Cities, or for Labourers in Mines, Cottages erected on the Waste by order of *Justices*, &c.) are to forfeit 5 l. leviable by Order of the *Justices* in Sessions. 31 Eliz. Two *Justices* are to view the Estreats of Sheriffs, before they issue them out of the County Court; and Officers levying more than is contained in the Estreats, shall forfeit 40 s. 11 H. 7. One *Justice* may commit Persons resisting the Officers of the Customs till the Quarter-Sessions, where they may be fined 100 l. But such Offenders, being so many in Number, armed, &c. are guilty of Felony by a late Act: *Justices* may issue Warrants for apprehending Persons, and seizing Goods, where they are landed without Entry; commit Carmen, &c. Seizures of Goods clandestinely run, out of

the Limits of the Excise-Office in London, are to be heard and determined before two or more *Justices of the Peace*; and *Justices* may levy the Penalty of 20 l. on receiving such Goods. 13 & 14 Car. 2. 6 Geo. 8 & 10 Geo. To determine Offences of Deer-Stealers; and grant Warrants to levy the Penalty of 20 l. for unlawful hunting of Deer in any Park, &c. and 30 l. for every Deer taken and killed: And they are to send out their Warrants to search for Deer stolen: Deer-stealers robbing Forests or Parks, armed and with Faces blacked in Disguise, charged with Offences by Information on Oath, are to surrender themselves to a *Justice*, and make Discovery of their Accomplices, or be guilty of Felony; and *Justices* in Sessions shall give Certificates of Persons killed or wounded in the apprehending such Deer-stealers, to intitle a Reward of 50 l. 1 Jac. 1. 3 & 4 W. & M. 5 & 9 Geo. *Justices* are to order 5 s. to be levied on Persons convicted of Drunkenness, by Distress; and for Want of Distress the Offender is to be set in the Stocks. 21 Jac. 1. To put the Laws in Execution relating to the Excise, and levy the Penalty of 50 l. on Brewers sitting up or altering any Copper, Cooler, &c. without giving Notice; or keeping any private Storehouse; and all other Penalties and Forfeitures concerning the Duty of Excise. 12 & 15 Car. 2. 8 & 9 W. 3. They, by Appointment of Judges, have Power to transport Felons ordered for Transportation. 4 Geo. They are to issue their Warrants for levying a Penalty not exceeding 10 s. of Persons taking Fish in any River, without the Consent of the Owner, for the Use of the Poor, and award treble Damages to the Party grieved; and Angles, Nets, &c. of Persons not being Makers and Sellers, shall be seized, &c. To levy a Sum not under 20 s. nor above 5 l. of Persons taking Salmon or Trout out of Season, under Size, &c. And the Penalty of 20 s. for using Nets to destroy the Spawn or Fry of Fish: And to imprison for three Months Offenders breaking down Fish-Ponds, &c. 1 & 5 Eliz. 22 & 23 Car. 2. 4 & 5 W. & M. 4 & 5 Ann. 1 Geo. One *Justice* may imprison Persons making a forcible Entry on Lands, command the Sheriff to return a Jury to inquire thereof, and order Restitution, &c. And if the Sheriff, &c. neglect his Duty in Case of forcible Entries, he shall forfeit 40 l. recoverable in the Quarter-Sessions. 15 R. 2. 8 H. 6. 21 Jac. 1. The Offences of Freestallers, Ingrossers, &c. are inquirable of by *Justices* in the Sessions by which the Forfeitures are leviable. 5 & 6 Ed. 6. Persons keeping Guns to kill Game, not having 100 l. per Annum Estates, &c. shall forfeit 10 l. And one *Justice* may grant a Warrant to seize Guns, Dogs, &c. of unqualified Persons; and also to search Houses and suspected Persons for Game: Higlers, Carriers, Victuallers, &c. having in their Custody Hare, Pheasant, Partridge, &c. or buying or selling any Game, incur a Forfeiture of 5 l. leviable by *Justices*; and Game-keepers are to be licenced, and their Names entered with the Clerk of the Peace, under the Penalty of 5 l. Also Game-keepers must be Persons qualified, or Servants to Lords of Manors, under the like Penalty. 22 & 23 Car. 2. 4 & 5 W. & M. 5 Ann. 3 Geo. A *Justice of Peace* may enter unlawful Gaming-houses, and commit to Prison the Keepers thereof, &c. And the Sessions may inflict a Penalty of 40 s. a Day on the Masters keeping them; and 6 s. 8 d. a Time on the Game-

Gamesters resorting to them, &c. *Justices* may bind to the good Behaviour Gamesters having no visible Estate. 33 H. 8. 9 Ann. *Justices* are to commit Offenders to the common Gaol; or by a late Act, they may commit Vagrants and Persons charged with small Offences, to the common Gaol, or House of Correction: To issue Warrants for seizing Goods of Offenders to bear the Expence of their Conveyance to Gaol; and levy Money for building and repairing Gaols, &c. 5 H. 4. 3 Jac. 1. 11 & 12 W. 3. 6 Geo. They are to summon Persons keeping more Gunpowder in their Houses in London and Westminster than allowed by Law; and examine them, search their Storehouses, &c. And Persons carrying Gunpowder thro' the Streets, not doing it in covered Carriages, shall forfeit the same, on Conviction before two *Justices*. 5 Geo. To levy the Penalty of 12 l. of *Hawkers*, Pedlars, &c. trading without License; and 5 l. on Persons refusing to produce a License, 8 & 9 W. 3. *Hedge-breakers* are to render such Damages, and pay a Fine not exceeding 10 s. as a *Justice* shall appoint, or be sent to the House of Correction: Persons not giving a good Account how they came by stolen Wood, are liable to the same Penalty; and Buyers of Wood stolen to pay treble Damages. Persons cutting or spoiling Timber-Trees, Fruit-Trees, &c. shall be committed to the House of Correction for three Months, and be whipped in the next Market-Town once a Month, &c. by Order of *Justices*. 43 Eliz. 15 Car. 2. 1 Geo. *Justices of Peace* are to levy the Penalty of 5 l. on Surveyors of the Highways neglecting their Duty in viewing the Roads, &c. And 40 s. not making Presentments every four Months. Also 10 s. a Day on Persons keeping Teams, not sending them to work; and not exceeding 5 l. nor under 10 s. of Persons laying Soil in the Highways, &c. Two *Justices* are to nominate Surveyors; *Justices* are to hold a Sessions for the Highways once in four Months, under the Penalty of 5 l. And the Sessions may order Rates and Assessments for repairing the Highways. 2 & 3 P. & M. 5 Eliz. 13 & 14 Car. 2. 3 & 4 W. & M. 1 Geo. The Forfeiture of 5 l. of Persons selling Horses in a Fair or Market, without producing Vouchers of Sale to Toll-takers, is leviable by *Justices*: And *Justices* are to take the Oaths of Witnesses to prove a stolen Horse to be the Owner's, &c. 31 Eliz. Three *Justices* may cause the Duties on Houses to be reassessed and levied on Parishes, answerable for the Collectors, where there is any Arrear, 6 Geo. *Justices* are to make Orders in their Sessions for erecting Houses of Correction, and Punishment of Offenders, &c. And not being a House of Correction in every County, the *Justices* shall forfeit 5 l. each: A *Justice* may commit any idle Person to the House of Correction. 39 Eliz. 1 Jac. 1. *Justices* are at Midsummer Sessions to issue Warrants to Constables, to prepare Lists of Freeholders to serve on *Juries* qualified by Law, &c. 7 & 8 W. 3. 3 & 4 Ann. One *Justice* may imprison Labourers for a Month, departing without License: And *Justices* in Sessions are to assess the Wages of Labourers, &c. 5 Eliz. 1 Jac. 1. Searchers and Triers of Leather are to be appointed in all Places by Mayors and *Justices* of Corporations, &c. under the Penalty of 40 s. And Persons hindering the Search, incur a Forfeiture of 5 l. Buying tanned Leather before searched, the same shall be forfeited, &c. the Penalties

recoverable before the *Justices* in the Quarter-Sessions: Journeyman Shoemakers purloining or imbezling Leather, shall be ordered by *Justices* to make Satisfaction for Damages, leviable by Distress; also the *Justices* are to make Warrants to search for such Leather, and restore it, &c. 1 Jac. 1. 9 Geo. Persons setting up private Lotteries, shall forfeit 500 l. leviable by two or more *Justices* of the Peace, &c. who have Power to suppress unlawful Lotteries; and setting up Lotteries under Grants of any foreign Prince, is liable to 200 l. Forfeiture; subject to appeal to Sessions. 9 Geo. *Justices* in Sessions may restrain a superfluous Number of Maltsters, examine into the Goodness of Malt, which is not to be mingled bad with good, &c. One *Justice* may levy the Penalty of 10 l. on Maltsters not entering their Malt, for Payment of the Duties; and two *Justices* levy the Forfeiture of 50 l. for altering Steeping Vessels, without giving Notice to the Office of Excise, &c. but the Penalties may be mitigated, so as not to be less than double Duty. 2 & 3 Ed. 6. 39 Eliz. 13 & 14 W. 3. To grant Certificates of Malt having paid Duty, lost or destroyed by Fire, cast away in Barges, &c. in order to its being repaid. 9 Geo. Two *Justices* may administer the Oaths, and summon Persons suspected of Disaffection to the Government, and tender them the Oath of Abjuration, &c. And they may summon any Persons to appear and take the Oaths: *Justices* in the Quarter-Sessions are to administer the Oaths to Officers in the Government. 7 Jac. 1. 6 Ann. 9 Geo. *Parish* are to take the Oaths in the Sessions of the *Justices*, or in Default register their Estates, under Penalties. 1 Geo. The 20 l. Fine, and six Months Imprisonment, Pillory, &c. for wilful Perjury, &c. are inflicted by the Quarter-Sessions. 5 Eliz. *Justices of Peace* may tax Inhabitants of Places towards Relief of poor Persons having the Plague; and cause such infected Persons to be whipped as go Abroad, &c. 1 Jac. 1. *Justices* are to appoint Overseers of the Poor yearly in Easter Week, on Pain of 5 l. who shall meet once a Month under the Penalty of 20 s. A *Justice* may consent to Overseers, &c. setting up a Trade for employing the Poor; and issue his Warrant for relieving a poor Person, by a Weekly Allowance: And *Justices* may make a Tax for Relief of the Poor, &c. who must wear Badges, or be sent to the House of Correction: *Justices* are to make Orders for removing Persons coming into Parishes, and renting under 20 l. a Year, not coming by Certificate; and Overseers refusing to receive a Person removed by Order of *Justices*, shall forfeit 5 l. The Goods of Persons leaving poor Children on the Parish may be seized by *Justices* Warrant: But *Justices of Peace* are not to order Relief to poor Persons till Oath is made of reasonable Cause, and that the Party was refused to be relieved by the Overseers, &c. *Justices* in Sessions are to award Costs on Appeals concerning Settlements of Poor. 43 Eliz. 13 & 14 Car. 2. 3 & 4 W. & M. 8 & 9 W. 3. 1 & 9 Geo. By an old Statute, *Justices of Peace* in their Quarter-Sessions may lay a small Tax on every Parish in the County, for Relief of poor Prisoners. 14 Eliz. All Sums under 5 l. due for Postage of Letters, are recoverable before two *Justices* in the same Manner as small Tithes. 12 Car. 2. Publishers of false Prophecies shall forfeit 10 l. and be imprisoned a Year, being convicted at the Sessions of the Peace. 5 Eliz. *Justices* may com-

mit Popish *Recusants* refusing to take the Oaths, and to appear and make the Declaration 30 *Car.* 2. And their Arms, &c. shall be seized: *Recusants* not repairing to their usual Places of Residence, or removing above five Miles from thence, are to abjure the Kingdom; and the Sessions shall make Proclamation for *Recusants* to surrender themselves. 35 *Eliz.* 3 & 7 *Fac.* 1. 1 *W. & M.* *Justices* in the Quarter-Sessions are to swear *Registers*, and two *Justices* sign the Books of Register of Deeds in *Yorkshire*, &c. 6 & 7 *Ann.* The two next *Justices*, with the Sheriff and Power of the County, shall suppress *Riots*, record and certify them, &c. And Persons guilty of heinous *Riots*, shall suffer one Year's Imprisonment: One *Justice* may require *Rioters* assembled to the Number of Twelve to disperse; and if they continue together an Hour after Proclamation, it is Felony. 13 *H.* 4. 2 *H.* 5. 1 *Geo.* One *Justice of Peace* is to examine Persons robbed upon Oath, when a *Robbery* is committed; and grant Warrants to make *Hue and Cry* after the Robbers, &c. Two *Justices* may set a Tax on the Hundred where the *Robbery* is done, to answer it. 27 *Eliz.* 28 *Ed.* 3. Three *Justices* are to take Informations against *Contemners* of the *Sacrament*, send out a Writ of *Capias exigend'*, &c. against them to appear, and upon their Appearing may fine and imprison them. 1 *Ed.* 6. One *Justice* may levy a Penalty of 10 *l.* on *Scavengers* duly chosen, refusing to serve; and 40 *s.* for not bringing their Carts to take away the Dirt; also 3 *s.* 4 *d.* a Day of *Housekeepers* not sweeping the Streets before their Doors *Wednesdays* and *Fridays*, &c. The *Scavengers Tax* is to be allowed by two *Justices*; and the Quarter-Sessions may appoint *Scavengers*, and order Assessments in any City or Market-Town. 2 *W. & M.* 1 *Geo.* Unmarried Persons refusing to go to Service, are to be sent to the House of Correction by *Justices*; and *Servants* departing without giving a Quarter's Warning, shall be bound over to the Sessions; and Masters putting away *Servants* without giving a Quarter's Warning, shall forfeit 40 *s.* *Servants* assaulting their Masters, are to be imprisoned one Year; and if a *Servant* be abus'd by the Master, &c. *Justices* may discharge him. 5 *Eliz.* One *Justice* may relieve such as have more *Soldiers* quartered on them than they ought, and has Power to regulate *Quarters*; and *Justices* in Sessions are to appoint the Pay of *Soldiers* for *Victuals*, &c. in their *Quarters*: *Justices* may commit Persons permitting themselves to be falsely mustered, and *Deserters*; levy the Penalty of 5 *l.* for harbouring *Deserters*, &c. During the Wars, three *Justices of Peace* had Power to send Warrants to *Constables* to bring before them able bodied Men, having no lawful Callings or visible Means for their Maintenance, and deliver them over to Officers to serve in the Army. *Justices* are to provide Carriages on the March of *Soldiers*; and in Sessions may tax *Parishes* towards relieving maimed *Soldiers*, &c. 43 *Eliz.* 2 & 3 & 12 *Ann.* 1 *Geo.* To levy the Penalty of 5 *l.* for making or selling of *Squibs*, &c. and 20 *s.* on Persons throwing them. 9 & 10 *W.* 3. They are to cause 5 *s.* to be levied on those as do any worldly Labour on a *Sunday*; and the same Penalty on Persons using Boats, without the Allowance of a *Justice of Peace*; Persons present at Bull-baitings, &c. on a *Sunday*, shall forfeit 3 *s.* 4 *d.* 29 *Car.* 2. For profane *Swearing* one *Justice* is to grant his Warrant to levy the Pe-

nalty of 1 *s.* for the first Offence, and double for the second, &c. of *Servants*, *Labourers* and *Common Soldiers*, and 2 *s.* of others, or set the Offenders in the Stocks; and a *Justice* neglecting his Duty, is to forfeit 5 *l.* 21 *Fac.* 1. 6 & 7 *W.* 3. *Journeymen Taylors* making Contracts for advancing their Wages, are to be committed to the House of Correction; and *Justices* may order Payment of their lawful Wages, and punish those *Taylors* who give more than allowed; also inflict a Punishment on *Journeymen Taylors* leaving their Work unfinished. 7 *Geo.* Small *Tithes* under 40 *s.* withheld, are to be determined by two *Justices of the Peace*, on Complaint; and the *Justices* may summon Persons, examine them on Oath, &c. order an Allowance for the *Tithes*, with 10 *s.* Costs: *Quakers* refusing to pay *Tithes* under 10 *l.* is likewise determinable by *Justices*. 7 & 8 *W.* 3. and this is made to extend to any *Tithes* or Church-Rates of *Quakers*, by 1 *Geo.* If any *Tobacco* is planted in *England*, *Justices* shall grant Warrants to search for and destroy it; and Persons employed in cutting *Walnut-Tree Leaves*, &c. to resemble *Tobacco*, are to be committed to the House of Correction by *Justices*. 22 & 23 *Car.* 2. 1 *Geo.* One *Justice* is to examine *Vagrants*, and grant *Passes* to their Places of Settlement or Birth, and to give Certificates to *Constables*, ascertaining how they are to be Passed, &c. send *Vagrants* wandering after conveyed to the House of Correction: To levy the Penalty of 5 *l.* on Masters of Ships refusing to transport back *Vagrants*; and the like Penalty for importing them: And *Justices* in Sessions are to appoint Rates for conveying of *Vagrants*, &c. 12 *Ann.* *Justices* shall cause *Night Watches* to be kept for the arresting suspected Persons, &c. 4 *H.* 7. To levy 5 *s.* of Persons keeping *Weights* and *Measures*, not according to the Standard; and 5 *l.* of Clerks of *Markers*, sealing *Weights* not agreeable to the Standard in the *Exchequer*, &c. 8 *H.* 6. 16 *Car.* 1. Persons employed in the Manufactures of *Wool*, imbeziling *Yarn* or other Materials, shall forfeit double Value, or be ordered to be whipped by *Justices of Peace*. 1 *Ann.* *Justices* near the Sea Coasts are to command *Constables* to be aiding in the Preservation of Ships from *Wrecks*; and to give Testimonials or *Passes* to shipwrecked Persons. 12 *Ann.*

Justices of Peace within Liberties, (*Justiciarii ad Pacem infra Libertates*) Are such in Cities, and other Corporate Towns, as the others are of the County; and their Authority is all one within their several Territories and Precincts, having besides the Assise of Ale and Beer, Wood, *Victuals*, &c. 27 *H.* 8. c. 25. See *Mayors*.

Justices of Trail-baston, Were *Justices* appointed by *K. Ed.* 1. during his Absence in the *Scotch* and *French Wars*. They were so stiled says *Hollinshead*, of trailing or drawing the Staff of *Justice*; or for their summary Proceeding, according to *Sir Edward Coke*, who tells us, they were in a manner *Justices in Eyre*; and it is said, they had a *Baston* or Staff delivered them as the Badge of their Office, so that whoever was brought before them was *Traille ad Baston*, *traditus ad Baculum*; whereupon they had the Name of *Justices de Trail-Baston*, or *Justiciarii ad trabendum Offendentes ad Baculum vel Baston*. Their Office was to make Inquisition through the Kingdom on all Officers and others touching Extortion, Bribery, and such like Grievances; of Intruders into other Mens Lands, Barrctors, Robbers

bers and Breakers of the Peace, and divers other Offenders; by Means of which Inquisitions, some were punished by Death, many by Ransom, and the rest flying the Realm, the Land was quieted, and the King gained great Riches towards the Support of his Wars. *Matt. Westm. Anno 1305.* A Commission of Trail-Baston was granted to Roger de Grey, and others his Associates, in the Reign of King Edw. 3. *Spelm. Gloss.*

Justicier, A Justice or Justicer; as the Lord Bermingham was Justicier of Ireland. *Cron. Angl.* In the Court of King's Bench, Justice was anciently administered sometimes by the King, and sometimes by the High Justicier; who was an Officer of very great Authority. 2 *Hawk. 6.*

Justicies, Is a Writ directed to the Sheriff in some special Cases, by Virtue of which he may hold Plea of Debt in his County Court for a large Sum; whereas otherwise by his ordinary Power he is limited to Sums under 40 s. *F. N. B. 117. Kitch. 74.* It is called Justicies, because it is a Commission to the Sheriff to do a Man Justice and Right, beginning with the Word Justicies, &c. *Bract. lib. 4.* makes Mention of a Justicies to the Sheriff of London, in a Case of Dower; and it may be in Account, Annuity, Customs and Services, &c. *New Nat. Br.* In Debt, the Writ runs thus: *Rex Vic. S. Salutem. Precipimus tibi, quod Justicies A. B. quod juste & sine dilatione redd. C. D. quinq; libr. quos ei debet ut dic. sicut rationabiliter, monstrare potest, quod ei redd. debet ne amplius inde clamorem audiamus pro defectu Justitia, &c. Teste, &c.*

Justification, (*Justificatio*) Is a Maintaining or Shewing good Reason in Court why one did such a Thing, which he is called to answer. *Broke.* And Justification may be in Trespass, and under Writs, Processes, &c. But a Person cannot justify a Trespass, unless he confesseth it; for he ought to plead the special Matter, and confess and justify what he hath done: And where it cannot be pleaded, Justification may be given in Evidence. 3 *Salk. 218.* Where a Defendant justifies in Trespass, on his Possession, by Virtue of any Estate, he must shew his Title; but when the Matter is collateral to the Title to the Land, it is otherwise. 2 *Mod. 70.* If a Sheriff, or other Officer, justifies by Virtue of any returnable Writ, he is to shew that the Writ was return'd; tho' he need not, if the Writs are not returnable Writs. 1 *Salk. 409.* And it must be shewn from what Courts Writs issue. *Ibid. 517.* Justification may be by the Command of an Officer, to aid him; but the Command is traversable: If a Justification is made for several Causes, and some of them are good, and some not good; that shall not make the whole Justification void, but for those only, and it shall be good for the rest. 2 *Nels. Abr. 1067.* When the Action concerns a transitory Thing, if the Defendant do justify the Taking or Doing in one Place; this is a Justification in all Places: If the Action concern a local Thing, a Justification in one Place is not a Justification in another Place; for in the former Case the Place is not material, but the meer Doing or Taking of the Thing is the Substance, and in the latter the Place is material, as the Defendant may be able to justify in one Place, and not in another. *Pasch. 24 Car. B. R. 2 Lill. Abr. 134.* If the Matter of the Justification is local, there, the Defendant ought to shew the Cause specially and traverse the Place; but not where it is tran-

sitory. *Cro. Eliz. 667.* Words spoken may be justified; because spoke in a legal Way: If Words are false, the Defendant may justify in an Action, but not in an Indictment. 1 *Danv. 162. 3 Salk. 226.* There is a justifiable Homicide, &c. and justifiable Assault. See Assault.

Justificatores, (*Justificatores*) Are a Kind of Compurgators, or those that by Oath justify the Innocency, or Oaths of others; as in the Case of Waging of Law: And we read in *Spelman*, who leaves this Word without Explication — *Will. Rex Anglia H. Camerario & Justificatoribus suis, omnibus suis fidelibus Norf. Salutem. Inquire per Comitatum quis justius hujusmodi Forisfacturam haberet tempore Patris mei, sive Abbas Ramefia, &c.*

Justitia, A Judge; also a Statute or Ordinance; and sometimes a Jurisdiction, as anciently used. *Leg. Hen. 1. c. 42.* See Justice.

Justitias facere, Signifies to hold Plea of any Thing. *Selden.*

K.

KALIA, Area in littore onerandarum atque exonerandarum Navium causa, e compactis tabulis trabibusque (clavium instar) firmata. *Spelm.*

Kalagium, Portorium quod Kaiz nomine exigit Telonarius: The Toll-Money paid for loading or unloading Goods at a Key or Wharf. *Pat. 20 Ed. 3.* See Key.

Kalendar Month, Consists of thirty or thirty-one Days, (except February, which hath but eight and twenty and in a Leap-Year nine and twenty) according to the Kalendar; twelve of which Months, make a Year. *Stat. 16 Car. 2. c. 7.*

Kalendæ, Rural Chapters or Conventions of the Rural Deans and Parochial Clergy, so called because formerly held on the Kalends, or first Day of every Month. *Paroch. Antiq. 640.*

Kalends, The Beginning of a Month, &c. by which antient Deeds were dated. See Calends.

Kantref, (*Brit.*) In Wales, a Cantref or Hundred — *Le premier Conquerreur des trois Kantrefs de la terre de Brecknock, &c. Mon. Angl. Tom. 1. fol. 319.*

Karle, (*Sax.*) Is a Man, and with any Addition a Servant or Clown; as the Saxons called a Domestick Servant, a Huskarle: From hence comes the Modern Word Churle. *Domesd.*

Karrata cœni, A Cart-load of Hay. *Mon. Angl. Tom. 1. p. 548.* See Carecta.

Kebbars, The Refuse of Sheep drawn out of a Flock, Oves rejicula; likewise called Cullers. *Cooper's Thesaur.*

Keelage, (*Killagium*) A Privilege to demand Money for the Bottoms of Ships resting in a Port or Harbour. *Rot. Parl. 21 Ed. 1.*

Keep, A strong Tower or Hold in the Middle of any Castle or Fortification, wherein the Besieged make their last Efforts of Defence, was formerly in England called a Keep: And the inner Pile within the Castle of Dover, erected by K. Hen. 2. about the Year 1153, was termed the King's Keep; so at Windsor, &c. It seems to be something of the Nature with what is called abroad a Citadel.

Keeper of the Forest, (*Custos Foresta*) Or chief Warden of the Forest, hath the principal Government over all Officers within the Forest; and warns them to appear at the Court of Justice-Seat, on a general Summons from the Lord Chief Justice in Eyre. *Manwood, Part 1. p. 156.*

Keeper of the Great Seal, (*Custos magni sigilli*) Is a Lord by his Office, styled *Lord Keeper of the Great Seal of England*, and is of the King's Privy Council: Through his Hands pass all Charters, Commissions and Grants of the King, under the *Great Seal*; without which Seal many of those Grants and Commissions are of no Force in Law, for the King is by Interpretation of Law a Corporation, and passeth Nothing but by the *Great Seal*, which is as the Publick Faith of the Kingdom, in the high Esteem and Reputation justly attributed thereto. The *Lord Keeper*, by Statute 5 *Eliz. c. 18.* hath the same Place, Authority, Preheminence, Jurisdiction and Execution of Laws, as the *Lord Chancellor of England* hath: And he is constituted, *Per traditionem magni sigilli*, &c. and by taking his Oath. 4 *Inst.* 87.

Keeper of the Privy Seal, (*Custos privati sigilli*) Is that Officer through whose Hands all Charters, Pardons, &c. pass, Signed by the King, before they come to the *Great Seal*; and some Things which do not pass that Seal at all: He is also of the Privy Council, but was antiently called only *Clerk of the Privy Seal*; after which, he was named *Gardien del Privy Seal*; and lastly, *Lord Privy Seal*, and made one of the Great Officers of the Kingdom. 12 *R. 2. c. 11. Rot. Parl.* 11 *H. 4. Stat. 34 H. 8. c. 4.* The *Lord Privy Seal* is to put the Seal to no Grant without good Warrant; nor with Warrant, if it be against Law, or inconvenient, but that he first acquaint the King therewith. 4 *Inst.* 55. The Fees of the Clerks under the *Lord Privy Seal*, for Warrants, &c. Vide Stat. 27 *H. 8.* See *Privy Seal*.

Keepers of the Liberties of England, By Authority of Parliament. See *Custodes Libertatis*.

Kennets, A Sort of coarse *Welsh* Cloth, mentioned in the Stat. 33 *H. 8. c. 3.*

Kerhere, Signifies a Custom to have a Cartway; or a Commutation for the customary Duty for Carriage of the Lord's Goods. *Cowel.*

Kernellare domum, (From Lat. *Crena*, a Notch) To build a House formerly with a Wall or Tower, *Kernelled* with Crannies or Notches, for the better Convenience of shooting Arrows, and making other Defence. *Du Fresne* derives this Word from *Quarnellus*, or *Quadrannellus*, a four square Hole or Notch; *ubique patent Quarnelli fere fenestra*: And this Form of Walls and Battlements for Military Uses might possibly have its Name from *Quadrallus*, a four square Dart. It was a common Favour granted by our Kings in antient Times, after Castles were demolished for Prevention of Rebellion, to give their chief Subjects Leave to fortify their Mansion-Houses with *Kernelled* Walls. — *Licentiam dedimus Johanni de H. Quod ipse mansum suum de B. in Com. &c. Muro de Petra & calce firmare & Kernellare possit. Dat. 12 Sept. 1312. Paroch. Antiq.* 353.

Kernellatus, Fortified or embattelled, according to the old Fashion: And the Duke of Lancaster claimed to him and his Heirs, *Castrum suum de Halton Kernellatum.* 31 *Ed. 3. Pl. de quo Warrant. apud Cestriam.* And we read *Castrum duplici muro Kernellatum, &c. Surv. Dutch. Cornw.*

Kernes, Idle Persons, Vagabonds. *Ordin. Hibern. 31 Ed. 3. m. 11, 12.*

Key. The lawful Keys and Wharfs for the Landing or Landing of Goods belonging to the Port of London, are the following; viz. *Chester's Key*, *Brewer's Key*, *Galley Key*, *Wool Dock*, *Custom-house Key*, *Bear-Key*, *Porter's Key*, *Sab's Key*, *Wiggin's*

Key, *Young's Key*, *Ralph's Key*, *Dice-Key*, *Smart's Key*, *Somer's Key*, *Hamond's Key*, *Lyon's Key*, *Botolph Wharf*, *Graunt's Key*, *Cock's Key*, and *Fresh Wharf*; besides *Billinggate*, for Landing of Fish and Fruit; and *Bridge-house* in *Southwark*, for Corn and other Provision, &c. but for no other Goods or Merchandise. Deal Boards, Masts and Timber, may be landed at any Place between *Limehouse* and *Westminster*; the Owner first paying or compounding for the Customs, and declaring at what Place he will land them. *Lex Mercat.* 132, 133.

Keyes, (*Cyuli* or *Ciules*) A Kind of Long-Boats of great Antiquity, mentioned in the Stat. 23 *H. 8. c. 18.*

Keyus, A Guardian, Warden or Keeper. *Mon. Angl. Tom. 2. p. 71.* And in the *Isle of Man* the twenty-four chief Commoners, who are the Conservators of the Liberties of the People, are called the *Keys* of the Island.

Kidders, Are those that badge, or carry Corn, dead Victuals, or other Merchandise, up and down to sell; every Person being a common Badger, *Kidder*, *Lader* or *Carrier*, says the Stat. 5 *Eliz. c. 12.* and they are called *Kiddiers.* 13 *Eliz. c. 25.*

Kiddle or Kidel, (*Kidellus*) A Dam or Wear in a River, with a narrow Cut in it, for the laying of Pots or other Engines to catch Fish. The Word is antient, for in *Magna Charta, c. 24.* we read, *Omnes Kidelli deponantur per Thamesiam & Medweyam, & pex totam Angliam, nisi per Costeram Maris*: And by *K. John's Charter*, Power was granted to the City of London, *De Kidellis amovendis per Thamesiam & Medweyam.* A Survey was ordered to be made of the Wears, Mills, Stanks and *Kidels* in the great Rivers of England. 1 *Hen. 4.* Fishermen of late corruptly call these Dams *Kettels*; and they are much used in *Wales*, and on the Sea Coasts of *Kent*.

Kidnapping, Is a Stealing and Conveying away of a Man, Woman or Child; and is an Offence at Common Law, punishable by Fine, Pillory, &c. *Raym.* 474. Also if a Master of a Ship, &c. shall, during his being abroad, force any Man ashore, and willingly leave him behind, he shall suffer three Months Imprisonment. 11 & 12 *W. 3. c. 7.*

Kilderkin, A Vessel of Ale, &c. containing the eighth Part of an Hogshead.

Kilketh, Was an antient servile Payment, made by Tenants in Husbandry. — *Kilketh pro qualibet Husbrandrea 2 denar. M.S.*

Killpythstallion, Is where Lords of Manors were bound by Custom to provide a Stallion for the Use of their Tenants Mares. *Spelman's Gloss.*

Kilth. *Ac omnes annuales Redditus de quadam consuetudine in, &c. vocat' Kilth. Pat. 7 Eliz.*

Kindred, Are a certain Body of Persons of Kin or allied to each other. There are three Degrees of Kindred in our Law; one in the Right Line descending, another in the Right Line ascending, and the third in the Collateral Line; and the Right Line descending, wherein the Kindred of the Male Line are called *Agnati*, and of the Female Line *Cognati*, is from the Father to the Son, and so on to his Children in the Male and Female Line; and if no Son, then to the Daughter, and to her Children, in the Male and Female Line; if neither Son nor Daughter, or any of their Children, to the Nephew and his Children, and if none of them, to the Niece and her Children; if neither Nephew nor Niece, nor any of their Children, then to the Grandson or Grandaughter of the Nephew;

and if neither of them, to the Grandson or Granddaughter of the Niece; and if none of them, then to the Great Grandson or Great Granddaughter of the Nephew and of the Niece, &c. & sic ad infinitum. The Right Line ascending is directly upwards; as from the Son to the Father or Mother, and if neither Father nor Mother, to the Grandfather or Grandmother; if no Grandfather or Grandmother, to the Great Grandfather or Great Grandmother; if neither Great Grandfather or Great Grandmother, to the Father of the Great Grandfather or the Mother of the Great Grandmother; and if neither of them, then to the Great Grandfather's Grandfather, or the Great Grandmother's Grandmother; and if none of them, to the Great Grandfather's Great Grandfather, or Great Grandmother's Great Grandmother, & sic in infinitum. The Collateral Line is either descending by the Brother and his Children downwards, or by the Uncle upwards: It is between Brothers and Sisters, and to Uncles and Aunts, and the Rest of the Kindred, upwards and downwards, a-cross and amongst themselves. 2 Nelf. Abr. 1077, 1078. If there are no Kindred in the Right descending Line, the Inheritance of Lands goes to the collateral Line; but it never ascends in the right Line upwards, if there are any Kindred of the collateral Line, though it may ascend in that Line: And there is this Difference between the right Line descending, and the collateral Line; that the Right of Representation of Kindred in the Right descending Line reaches beyond the Great Grandchildren of the same Parents; but in the collateral Line, it doth not reach beyond Brothers and Sisters Children, for after them there is no Representation among Collaterals. In the Right ascending Line, the Father or Mother are always in the first Degree of Kindred; and by the Civil Law, if the Son died without Issue, his Father or Mother succeeded, and after them his Brother or Sister, Uncle, Aunt, &c. But in Case of Purchase by the Son, if he died without Issue, his Father or Mother could not inherit, but his Brother, or Sisters, &c. by which it appears, that the Father cannot succeed the Son immediately, though he is the next of Kin. It is a constant Rule in the collateral Line, that they who are of the whole Blood are first admitted; but after Brothers and Sisters Children, the nearest in Degree in Kindred is to be considered, and not whether they are of the Whole or Half Blood; as for Instance; there were two Brothers of the whole Blood, and one of the half Blood, those of the whole Blood died, each of them leaving Issue a Son, then one of the Sons died without Issue, in this Case his Uncle of the half Blood shall be admitted, before the other surviving Son of his Brother by the whole Blood: Yet if a Man purchase Lands, and dies without Issue, it shall never go to the half Blood in the collateral Line; though it is otherwise in Case of a Descent from a common Ancestor. 2 Nelf. Abr. Ibid. The Children of the Brothers and Sisters of the half Blood, shall exclude all other collateral Ascendants, as Uncles and Aunts, and all remoter Kindred of the whole Blood in the collateral Line; but then the Brothers of the half Blood, and their Children, shall succeed equally per Stirpes, and not per Capita, according to the distinct Number of their several Persons. Ibid. There are several Rules to know the Degrees of Kindred; in the ascending Line, take the

Son and add the Father, and it is one Degree ascending, then add the Grandfather, and it is a second Degree, a Person added to a Person in the Line of Consanguinity making a Degree; and if there are many Persons, take away one, and you have the Number of Degrees, as if there are four Persons, it is the third Degree, if Five the Fourth, &c. so that the Father, Son, and Grandchild, in the descending Line, though three Persons make but two Degrees: To know in what Degree of Kindred the Sons of two Brothers stand, begin from the Grandfather and descend to one Brother, the Father of one of the Sons, which is one Degree, then descend to his Son the Ancestor's Grandson, which is a second Degree; and then descend again from the Grandfather to the other Brother, Father of the other of the Sons, which is one Degree, and descend to his Son, &c. and it is a second Degree; thus reckoning the Person from whom the Computation is made, it appears there are two Degrees, and that the Sons of two Brothers are distant from each other two Degrees: For in what Degree either of them is distant from the common Stock, the Person from whom the Computation is made, they are distant between themselves in the same Degree; and in every Line the Person must be reckon'd from whom the Computation is made. If the Kindred are not equally distant from the common Stock; then in what Degree the most remote is distant, in the same Degree they are distant between themselves, and so the Kin the most remote maketh the Degree; by which Rule I, and the Grandchild of my Uncle, are distant in the third Degree, such Grandchild being distant three Degrees from my Grandfather, the nearest common Stock. Wood's Inst. 48, 49. The Common Law agrees in its Computation with the Civil and Canon Law, as to the right Line; and only with the Canon Law as to the collateral Line. Ibid.

King, (Rex, from Lat. Rego to rule, in Sax. Cyning or Coning) Is he that hath the highest Power and Rule over the whole Land. The King is the Head of the Commonwealth; and the learned Bracton says, Rex est Vicarius & Minister Dei in Terra, omnis quidem sub eo, & ipse sub nullo nisi tantum sub Deo. Bract. lib. 1. c. 8. But the King, on his Coronation, takes an Oath of the following Purport, viz. To govern the People of this Kingdom, according to the Statutes in Parliament agreed on, and the Laws and Customs of the same; to his Power cause Law and Justice in Mercy to be executed in all his Judgments; to maintain to the Utmost of his Power, the Laws of God, the true Religion and Profession of the Gospel establish'd by Law; and preserve to the Bishops and Clergy, their Rights and Privileges, as by Law are appertaining to them: This is the obligatory Oath of our Kings, as regulated to be taken by 1 W. & M. And the Coronation Oaths, in antient Times, were undoubtedly a Contract between the King and the People in this Nation. A late Author has endeavour'd to prove the original Contract between the King and the People, from the Prophet Samuel's Conference with the Israelites; who refus'd a King offer'd unto them, and insisted upon one like all the other Nations: And taking Notice of the Breaches made in the Constitution of this Kingdom in several Reigns, and the Necessity of their being redress'd, affirms that it is the original Power and Constitution of the States

of the Kingdom, to re-institute the regal Estate, as well where *Kings* act arbitrarily and break through the Constitution, as where there is no immediate Heir to succeed the *King*, so that the Throne is actually vacant; and without this I take it there is no perfect Constitution. *Britann. Constitut.* In *King John's Magna Charta* of Liberties, there was a Clause making it lawful for the Barons of the Realm to chuse twenty-five Barons, to see the Charter observ'd by the *King*; with Power, on any Justice or other Minister of the *King's* failing to do Right, and acting contrary thereto, for Four of the said Barons to address the *King*, and pray that the same might be remedied; and if the same were not amended in forty Days, upon the Report of the four Barons to the Rest of the Twenty-five, those twenty-five Barons with the Commonalty of the whole Land, were at Liberty to distress the *King*, take his Castles, Lands, &c. until the Evils complained of should be remedied, according to their Judgment; saving the Person of the *King*, Queen, and their Children: And when the Evils were redressed, the People were to obey the *King* as before. *King John's Magn. Chart. cap. 73.* But this Clause, and some others in Favour of Liberty, are omitted out of *King Henry 3d's Magna Charta*; though in a Statute made at Oxford, anno 42 Hen. 3. to reform Misgovernments, it was enacted, that twenty-four great Men should be named, Twelve by the *King*, and Twelve by the Parliament, to appoint Justices, Chancellors, and other Officers, to see *Magna Charta* observ'd. The *Barons Wars* mention'd in our antient Histories, seem to have proceeded in some Measure from a like Power granted to them as by the Charter of *King John*; and probably the Parliament's Wars, from their Example. Sir *Edward Coke* tells us, that if there be a *King* regnant in Possession of the Crown, altho' he be but *Rex de facto*, and not *de Jure*, yet he is *Seignior le Roy*; and another that hath Right, if he be out of Possession, is not within the Meaning of the Stat. 11 H. 7. c. 1. for the Subjects to serve and defend him in his Wars, &c. And a Pardon, &c. granted by a *King de Jure*, that is not likewise *de facto*, is void. 3 Inst. 7. Every *King* for the Time being, has a Right to the People's Allegiance, who 'tis said are bound by the Statute 11 H. 7. to defend him in his Wars against every Power whatsoever, and shall incur no Pains or Forfeitures thereby. 1 Hawk. P. C. 36. And a *King* out of Possession, we are bound by the Duty of our Allegiance to resist. *Ibid.* But in the Case of *King Charles* the Second, who was kept out of the Exercise of the *Kingly* Office by Traitors and Rebels, it was adjudg'd that he was *King* both *de Facto* and *de Jure*; and all the Acts which were done to the Keeping him out, were High Treason. *Kel. Rep.* 15. There may be some *Kings de Facto*, to whom it may be dangerous to do any Service, viz. Such as shall depose a rightful *King*: And according to the *Lord Chief Just. Hale*, if the right Heir of the Crown be in actual Exercise of the Sovereignty in one Part of the Kingdom, and a Usurper in the Exercise of it in another, the Law adjudgeth him in the Possession of the Crown that hath the true Right; and the other is not a *King de Facto*, but a Disturber and no *King*; This was the Case between *King Edw. 4.* and *Hen. 6.* And the like was held as to *Queen Mary*, who openly laid Claim to the Crown, and was proclaimed Queen, at the same

Time the *Lady Jane* was proclaimed Queen at London on the Nomination of *King Ed. 6.* so that both being *de Facto* in Possession of the Crown, the Law adjudg'd Possession in *Mary*, who had the Right to the same. *State Trials* 932. It is High Treason to conspire against the *King*, Queen, &c. And a Person may be guilty of Treason against a *King*, though he be not in the Possession of the Crown. The Dignity of the *King of England* is imperial; and our *Kings* have placed on their Heads an imperial Crown: *King Edgar* wrote himself *Imperator & Dominus*, &c. Though no *King of England* us'd any Seal of Arms till the Reign of *Rich. 1.* before that Time, the Seal was the *King* sitting in a Chair of State on one Side of the Seal, and on Horseback on the other Side; but this *King* sealed with a Seal of two Lions, and *King John* was the first that bare three Lions, and afterwards *Edw. 3.* quarter'd the Arms of *France*, which has been continued down to this Time. Also *King Hen. 8.* was the first to whom Majesty was attributed; before which our *Kings* were called *Highness*, &c. *Lex Constitut.* 47, 48. The eldest Son of the *King of England* is Prince of *Wales*, Duke of *Cornwall*, &c. and the younger Sons are born Dukes and Earls of what Places the *King* pleases. *K. Hen. 2.* took his Son into a Kind of subordinate Regality with him, so that there was *Rex Pater* and *Rex Filius*; but he did not divest himself of his Sovereignty, but reserv'd to himself the Homage of his Subjects. And notwithstanding this *King*, by Consent of Parliament, created his Son *John King of Ireland*; and *King Rich. 2.* made *Robert de Vere* Duke of *Ireland*; and *Edw. 3.* made his eldest Son Lord of *Ireland*, with Royal Dominion; yet it has been held, that the *King* cannot regularly make a *King* within his own Kingdom. 4 Inst. 357, 360. *Hen. de Beauchamp*, Earl of *Warwick*, was by *King Hen. 6.* crown'd *King of Wight Island*; but it was resolv'd, that this could not be done without Consent of Parliament, and even then our greatest Men have been of Opinion, that the *King* could not by Law create a *King* in his own Kingdom, because there cannot be two *Kings* of the same Place: And afterwards the same *King Henry* made the same Earl of *Warwick*, *Primus Comes totius Anglie*. A *King* cannot resign or dismiss himself of his Office of *King*, without the Consent of his Parliament; nor could *Hen. 2.* without such Consent, divide the Sovereignty: There is a sacred Band between the *King* and his Kingdom, that cannot be dissolv'd without the free and mutual Consent of both in Parliament; and though in foreign Kingdoms, there have been Instances of voluntary Cessions and Resignations, which possibly may be warranted by their several Constitutions, by the Laws of *England*, the *King* cannot resign his Sovereignty without his Parliament. *Sir Matt. Hale's Hist. Corone.* If a *King* hath a Kingdom by Title of Descent, where the Laws have taken good Effect and Rooting, he cannot change those Laws of himself, without Consent of Parliament: And if a *King* hath a Christian Kingdom by Conquest, after the People have Laws given them for the Government of the Country, to which they submit, no succeeding *King* can alter the same without the Parliament. *Coke's 7 Rep.* 17. It has been held, that Countries got by Conquest may be govern'd by what Laws the *King* thinks fit, and that the Laws of *England* do not take Place in such Countries, until declared so by the Con-

queror, or his Successors; and in Case of an Infidel Country, that their Laws do not cease by Conquest, but only such as are against the Law of God; and where the Laws are rejected or silent, the conquer'd Country shall be govern'd according to the Rule of natural Equity. 2 *Salk. Rep.* 411, 412, 666. Our *Kings* have distributed their whole Power of Judicature to the Courts of Justice; which Courts by immemorial Usage have gain'd a known and stated Jurisdiction, that no *King* can alter without an Act of Parliament. 2 *Hawk. P. C.* 2. But as it has been resolv'd, that the Successor of every *King* begins his Reign on the very Day that the former *King* died; therefore all Patents of Judges, Sheriffs, Justices of Peace, &c. determine by the Death of the *King*. The *Kings* of *England* not having the whole Legislative Power, if the *King* and Clergy make a Canon, though it binds the Clergy *in re Ecclesiastica*, it does not bind Laymen; for they are not represented in the Convocation, but in Parliament: In the primitive Church, the Laity were present at all Synods; and when the Empire became Christian, no Canon was made without the Emperor's Consent, and indeed the Emperor's Consent included that of the People, he having in himself the whole Legislative Power; but the *Kings* of this Kingdom have it not. 2 *Salk. Rep.* 412, 673. Religion, Justice, and Truth, are the Supporters of the Crowns of *Kings*. See *Crown*.

King's Prerogative. The Statute of the *King's Prerogative* 17 *Ed.* 2. contains not the *King's* whole *Prerogative*, but only so much thereof as concerns the Profit of his Coffers, for his *Prerogative* extends much further; and the *King* hath divers Rights of Majesty peculiar to himself, which the Learned in the Law term *Sacra Sacrorum*, viz. Sacred and inseparable, and which are many and various. *Staundf. Prerog. Reg. Plowd.* 314. Sir Henry Spelman calls the *King's* *Prerogative*, *Lex Regia Dignitatis*; and a great many *Prerogatives* arise to the *King* from the Reason of the *Common Law*; which allows that to be Law almost in every Case for the *King*, which is not so for the Subject: But the *King's* *Prerogative* does not extend to any Thing injurious to his Subjects; for the *King* by our Law can do no Wrong. *Finch.* 85. 1 *Inst.* 19. It is the *King's* *Royal Prerogative* to make War or Peace: And as Head of the State he calls, continues, prorogues and dissolves Parliaments; and all Statutes are to have his Royal Assent, which he may refuse to give to a Bill; though his Denial is not an express Negative, but that he will advise upon it. 1 *Inst.* 110, 165. His Proclamation in calling or dissolving Parliaments, declaring War and Peace, &c. has the Effect of a Law; but he cannot by Proclamation introduce new Laws, yet he may inforce old ones discontinued. 3 *Inst.* 162. 2 *Inst.* 743. It was antiently held, that the *King* might suspend or alter any particular Law that was hurtful to the Publick: And he may dispense with a Penal Statute, wherein his Subjects have not any Interest. 4 *Inst.* 7. *Rep.* 36. Acts of Parliament do not bind the *King*, if he be not specially named; unless they concern the Commonwealth, suppress Wrong or Fraud, &c. in which Cases they do; but he may take the Benefit of any Statute, tho' not named. 5 *Rep.* 14. 11 *Rep.* 71. 7 *Rep.* 32. And a *Prerogative* given generally to one *King*, or any Thing to be done to one, goes of Course to others. *Raym.* 212. He determines Rewards and

Punishments; moderates Laws, and pardons Offenders: But the *King* cannot pardon Murder where Appeal is brought by the Subject. 2 *Inst.* 316. And Pardons of Felony, &c. shall be granted only where the *King* may lawfully do it, according to his Coronation-Oath. 14 *Ed.* 3. The *King* may lay Imbargo's on Shipping; but then it must be *pro bono Publico*, and not for the private Advantage of any particular Traders. 1 *Salk.* 32. And though the *King* hath an Interest in every Subject, and a Right to his Service, he cannot discharge the Right of a Subject, or hinder him of a Remedy the Law gives him. *Holt Ch. Just.* 1 *Salk.* 19, 168. As supreme Head of the Church, our *King* hath Power to call a national or provincial Council; and by his Royal Assent the Canons made in Convocation have the Force of Laws: And to him the last Appeal is made. *Dav.* 73. 4 *Inst.* 325. He hath the supreme Right of Patronage all over *England*; and is the Founder and Patron of all Bishopricks, &c. so that none can be made Bishop but by his Nomination: He not only founds Churches, but licenses others to found them, exempt from the Ordinary's Jurisdiction; and he hath the Tithes of Forests and Places extraparochial, which he may grant by Letters Patent: Also the *King* shall pay no Tithes; though his Lessee shall pay them. *Wood's Inst.* 18. 1 *Cro.* 511. He is the Fountain of Honour; and has the sole Power of conferring honourable Titles: He may create Universities, Colleges, Counties, Boroughs, Fairs, Markets, &c. 4 *Inst.* 294. The *King* may incorporate a Town, and inable them to chuse Burgeses of Parliament; but this Part of the *Prerogative* of increasing the Number of Parliament-Men, seems to be given up by our late *Kings*. *Hob.* 14. No Forest, Chase, or Park, can be made, or Castles built, without the *King's* Leave. The *King* hath Power to make an Alien free-born, and to grant Letters of safe Conduct to foreign Parts: He can put a Value upon the Coin, which is made by his Authority; and make foreign Coin current by Proclamation: And to make Money, the Law gives the *King* all Mines of Gold and Silver. *Plowd.* 314. He is the general Guardian of Idiots and Lunatics; and shall have the Lands of Felons, &c. convict; also the Goods of Felons and Fugitives; Goods and Chattels of Pirates; Wreck of the Sea, &c. *Stat.* 17 *Ed.* 2. c. 1. 9 *H.* 3. 4 *Inst.* 136. The *King* is Lord paramount of all the Lands in *England*; and all Estates for Want of Heirs, or by Forfeiture escheat to him: All Lands are said to be holden of the *King*; as by Construction of Law they are originally derived from the Crown. 1 *Inst.* 1. Lands in the *King's* Possession are free from Tenure; and the *King* may not be Jointenant with any. *Finch.* 83. The Grant of the *King* is taken most strongly against a Stranger, and favourably for him: And he may avoid his own Grants for Deceit, &c. *Plowd.* 243. The *King* may grant a Thing in Action, which another cannot; and reserve a Rent to a Stranger, &c. He cannot grant or take any Land, (not cast upon him by Descent) but by Matter of Record: And the *King* may not grant an Annuity to charge his Person, which is not chargeable like the Person of a Subject; tho' he may grant it out of the Revenues of Excise, &c. 4 *Rep.* 54. 2 *Inst.* 186. 1 *Salk.* 58. Where the Title of the *King* and of a common Person concurs, his Title shall be preferr'd. 1 *Inst.* 30. No Distress can be made upon the *King's* Possession;

tion; but he may distrain out of his Fee in other Lands, &c. and may take Distresses in the Highway. 2 *Inst.* 131. An Heir shall pay the King's Debt, though he is not named in the Bond: And the King's Debt shall be satisfied before that of a Subject, for which there is a *Prerogative Writ*. 1 *Inst.* 130, 386. By the Stat. 25 *Ed.* 3. c. 19. a common Person may sue the King's Debtor, notwithstanding he hath a Protection, and recover Judgment against him; but he cannot have Execution, unless he give Security to pay the King's Debt: If he take out Execution before, and levy the Money, the same may be seized to satisfy the Debt of the King. *Godb.* 290. 2 *Nelf. Abr.* 1081, 1082. If a Debtor has not a Writ of Protection, he may be in Execution for a common Person as well as the King: And it hath been adjudg'd, that although the King hath a *Prerogative* by the Common Law, to have his Debt first satisfied, that must be when it is in equal Degree with the Debt of his Subject; and by the Stat. 33 *H.* 8. c. 39. the King's Debt shall be preferred, so as there is no Judgment, &c. *Cro. Car.* 283. *Hardr.* 23. Goods and Chattels may go in Succession to the King; though they may not to any other sole Corporation. 1 *Inst.* 90. In whosesoever's Hands the Goods of the King come, their Lands are chargeable, and may be seized for the same: And the King is not bound by Sale of his Goods in open Market. 2 *Inst.* 713. No Prescription of Time runs against the King; he is not within the Statutes of Limitation of Actions. 11 *Rep.* 74. Action lies not against the King; but a Petition instead of it, to him in the Chancery: And it is lawful for any Subject to Petition the King for Redress, where he finds himself grieved by any Sentence or Judgment. 2 *Inst.* 187. *Hob.* 220. There are no Costs against the King; no Entry will bar him; and no Judgment is ever final against him, but with a *Salvo Jure Regis*: And in the Case of others, the King may issue a Command to the Judges, not to proceed 'till he is advised; where his Title may be prejudic'd, &c. *Litt.* 178. *Finch.* 460. The King may sue in what Court he pleases, and cannot be nonsuit, as he is supposed to be present in all his Courts: He is not bound to join in Demurrer on Evidence, but the Court may direct the Jury to find the Matter specially. *Finch.* 82. 5 *Rep.* 104. The King's only Testimony of any Thing done in his Presence, is of as high a Nature and Credit as any Record; whence it is, that in all Writs or Precepts sent out for the Dispatch of Justice, he useth no other Witness than himself, as *Teste melius*, &c. The King cannot be a Minor; and in him the Law will see no Defect, Negligence or Folly. 1 *Inst.* 41, 57. There are some other *Prerogatives* belonging to our Kings; but as the King's *Prerogative* is Part of the Common Law of England, of Consequence it ought to be ancient; or otherwise it may be an Incroachment on the Liberty of the Subject. See *Debt to the King*, *Grants of the King*, &c.

King's Bench, (*Bancus Regius*, from the Sax. *Banca*, a Bench or Form) Is the Court or Judgment-Seat where the King of England was sometimes wont to sit in his own Person; and was therefore moveable with the Court or King's Household, and called *Curia Domini Regis*, or *Aula Regis*: And by Stat. 28 *Ed.* 1. c. 5. this Court is to follow the King. *King Hen.* 3. sat in Person with the Justices in *Banco Regis* several Times: And the King's Bench was originally the only

Court in *Westminster Hall*; out of which the Courts of *Common Pleas* and *Exchequer* seem to have been derived. 2 *Hawk. P. C.* 6. This Court hath supreme Authority, the King himself being still presumed by Law to sit there, tho' he doth Judge by his Judges; and the Proceedings are supposed to be *Coram nobis*, (i. e. *Rege*) *ubique fuerimus in Anglia*. 4 *Inst.* 73. It consists of a Lord Chief Justice (who is Lord Chief Justice of England) created by Writ, and three other Justices created by Letters Patent; and according to ancient Writers, the Lord Chief Justice hath had three, four, or five Justices for his Assistants. *Fortescue*, cap. 51. The Justices of B. R. are the Sovereign Justices of *Oyer and Terminer*, *Gaol-Delivery*, and of *Eyre*, and Coroners of the Land; and their Jurisdiction is general all over England: By their Presence the Power of all other Justices in the County, during the Time of this Court's Sitting in it is suspended; for in *Præsentia Majoris cessat Potestas minoris*; but such Justices may proceed by Virtue of a special Commission, &c. *H. P. C.* 156. 4 *Inst.* 73. 2 *Hawk. P. C.* 32. It is these Justices who have a Sovereign Jurisdiction over all Matters of a criminal and publick Nature, judicially brought before them, to give Remedy either by the Common Law or by Statute: And their Power is Original and Ordinary; when the King hath appointed them, they have their Jurisdiction from the Law. 1 *Hawk.* 152. 4 *Inst.* 74. Whatsoever Crime is against the publick Good, though it doth not injure any particular Person, comes within the Cognizance of the Justices of this Court; and no private Subject can suffer any Kind of unlawful Violence or Injury against his Person, Liberty, or Possessions, but he may here have a proper Remedy, and not only for Satisfaction of Damages, but the exemplary Punishment of the Offender: This Court is the *Custos morum* of all the Subjects of the Realm; and where it meets with any Offence contrary to the first Principles of common Justice, may inflict a suitable Punishment. 2 *Hawk.* 6. It is in the Discretion of the Justices of B. R. to inflict Fine and Imprisonment, and infamous Punishment on Offenders; and they may commit to any Prison they think fit, and the Law doth not suffer any other Court to remove or bail any Persons imprisoned by them. 1 *Sid.* 145. 1 *Mod.* 666. The Court of B. R. may proceed on Indictments found before other Courts, and remov'd into this in the same Manner as on Indictments or Informations commenc'd in this Court; though the Court before whom such Indictments were found be determined, &c. And notwithstanding certain Justices were appointed to execute a Statute on which the Proceedings were had; nor doth a Statute which appoints certain Crimes to be tried before certain Judges, exclude the Jurisdiction of the Justices of B. R. without express negative Words: But if a Statute creates a new Offence, no Way taken Notice of by the Common Law, and erects a new Jurisdiction for its Punishment, &c. it may be otherwise. 2 *Hawk. P. C.* 7. To this Court it regularly belongs to examine Errors of all Judges and Justices in their Judgments and Proceedings; the Court of Exchequer excepted. *F. N. B.* 20, 21. It hath been held, that a Writ of Error lies in B. R. of an Attainder before the Lord High Steward. 1 *Sid.* 203. And upon Judgment given in the Chancery, Writ of Error in some Cases lies returnable in the Court of King's Bench,

Bench. Practif. Attorn. 1st Edit. 185. But on Proceedings in B. R. by original Writ, Error lies not but to the Parliament. The Court of B. R. being the highest Court of Common Law, hath Power to reform inferior Courts, reverse erroneous Judgments given therein, and punish the Magistrates and Officers for Corruption, &c. 2 *Hawk.* 8. It may award Execution, not only against Persons attainted there, but also against Persons attainted in Parliament, or any other Court; when the Record of their Attainder or a Transcript is remov'd, and their Persons brought thither by *Habeas Corpus*. *Cro. Car.* 176. *Cro. Jac.* 495. Pardons of Persons condemn'd by former Justices of Gaol-Delivery, ought to be allow'd in B. R. the Record and Prisoner being removed thither by *Certiorari* and *Habeas Corpus*. 2 *Hawk.* 27. This Court grants *Habeas Corpus's* to relieve Persons wrongfully imprison'd; and may bail any Person whatsoever: A Person illegally committed to Prison by the King and Council, or either House of Parliament, may be bailed in B. R. and in some Cases on legal Commitments; also Persons committed by the Lord Chancellor, &c. 2 *Hawk.* 110, 111. Writs of *Mandamus* are granted by this Court, to restore Officers in Corporations, Colleges, &c. unjustly turn'd out; and Freemen wrongfully disfranchis'd: Also *Quo Warranto's* against Persons or Corporations, usurping Franchises and Liberties against the King; and on Misuser of Privileges, to seise the Liberties, &c. And in B. R. the King's Letters Patent may be repeal'd by *Scire facias*, &c. This Court in antient Times was ordinarily exercis'd in all criminal Matters, and Pleas of the Crown; leaving private Contracts and Civil Actions to the Common Pleas, and other Courts. 4 *Inst.* 70. It is now divided into a *Crown side* and a *Plea-side*; the one determining Criminal, and the other Civil Causes: The *Crown-side* determines all Criminal Matters, (wherein the King is Plaintiff) as Treasons, Felonies, Murders, Rapes, Robberies, Riots, Breaches of the Peace, and all Causes prosecuted by Way of Indictment, Information, &c. And into the Court of B. R. Indictments from all inferior Courts and Orders of Sessions, &c. may be removed by *Certiorari*; and Inquisitions of Murder are certified of Course into this Court, as it is the supreme Court of Criminal Jurisdiction: Hence also issue Attachments, for disobeying Rules or Orders, &c. 4 *Inst.* 71, 72. On the *Plea-side* it holds Plea of all Personal Actions prosecuted by Bill or Writ, as Actions of Debt, Detinue, Covenant, Account, Actions upon the Case, and all other Personal Actions, Ejectment, Trespas, Waste, &c. against any Person in the Custody of the Marshal of the Court, as every one sued here is suppos'd to be; and in all Personal Actions for or against any Officer, Minister, or Clerk of the Court, who in respect of their necessary Attendance have the Privilege of the Court. *Ibid.* It has been held, that Action upon the Statute of *Winchester*, of Robbery, does not lie by Original in the Court of B. R. because it is a Common Plea; but it has been adjudg'd otherwise, and allow'd on Bill. 2 *Danv. Abr.* 279, 282. An Appeal in B. R. must be arraigned on the *Plea side*; except it come in by *Certiorari*, when it is said it ought to be arraigned on the *Crown-side*. 2 *Hawk.* 308. Where the Court of B. R. proceeds on an Offence committed in the same County wherein it sits, the Process may be made returnable immediately; but where it pro-

ceeds on an Offence removed by *Certiorari* from another County, there must be fifteen Days between the Teste and Return of every Process, &c. 9 *Rep.* 118. 1 *Inst.* 134. 1 *Sid.* 72.

The Officers of the King's Bench are, on the *Crown-side*, the Clerk of the Crown, and the Secondary of the Crown: And on the *Plea-side* there are a great many Clerks and Officers; as two chief Clerks or *Prothonotaries*, and their Secondary and Deputy, the *Custos Brevium*, two Clerks of the Papers, the Clerk of the Declarations, Signer and Sealer of Bills, the Clerk of the Rules, Clerk of the Errors, the Clerk of the Bails, Filizers, the Marshal of the Court, and the Cryer. The *Prothonotaries* are Masters of the King's Bench Office, and their Clerks are the proper Attornies here, who enter all Declarations, Pleas, and other Proceedings. Their Secondary constantly attends the Sitting of the Court, to receive Matters refer'd to him by the Judges, to be examined and reported to the Court; he signs all Judgments, taxes Costs, and gives Rules to answer, &c. And he also informs the Court in Point of Practice. Their Deputy has the Custody of the Stamp for Signing all Writs, &c. and keeps Remembrances of all Records; Writs return'd are filed in his Office, and common Bails, &c. The *Custos Brevium* files Originals and other Writs whereon Proceedings are had to Outlawry; examines and seals all Records of *Nisi prius* for Trials at the Assises, and has several Clerks under him for making up Records throughout England. The Clerks of the Papers make up the Paper-Books of all Special Pleadings and Demurrers, which the Plaintiff's Attorney commonly speaks for, and afterwards gives Rule for the Defendant's Attorney to bring to him again to be entered, &c. The Clerk of the Declarations files all Declarations after they are ingross'd, and continues them on the Back from the Term of Declaring 'till Issue is join'd. The Signer and Sealer of Bills keeps a Book of Entry of the Names of the Plaintiffs and Defendants in all such Writs and Processes; and the Defendants enter their Appearances with him. The Clerk of the Rules takes Notice of all Rules and Orders made in Court, and afterwards draws them up and enters them in a Book at large; and with him also are given all Rules of Course on a *Capi Corpus*, *Habeas Corpus*, Writs of Inquiry, &c. and he or the Clerk of the Papers files all Affidavits used in Court, and makes Copies of them. The Clerk of the Errors allows all Writs of Error, and makes *Superfedeas's* thereupon into any County, and transcribes and certifies Records. The Clerks of the Bails and *Posseas*, file the Bail-Pieces, and mark the *Posseas*, &c. The Filizers of Counties make the mesne Process after the Original, in Suing to the Outlawry; and have the Benefit of all Process and Entries thereupon. The Marshal, by himself or Deputy always attends the Court, to receive into his Custody such Prisoners as shall be committed. The Cryer makes Proclamations of Summoning and Adjourning the Court, calls Nonsuits, and swears Jurymen, Witnesses, &c.

See more of King's Bench under Court, &c. Lord Chief Justice, vide Justice.

King's Household. In the Reign of K. Ed. 3. 16,000*l.* per Annum, and no more, was appointed for the Charge of the King's Household: And anno 29 Hen. 6. the Charge of the Household was reduc'd to 12,000*l.* a Year. But in Q. Elizabeth's Reign, the Profits of the Kingdom being very much advanced,

vanc'd, 40,000*l. per Annum* was allow'd for her *Houshold*. And on the Restoration of K. Charles 2. the Parliament, for the Honour of the King and Kingdom, settled on his Majesty 200,000*l. per Annum*. In the Reigns of King William 3. and Queen Anne 700,000*l. a Year* was allotted for the Support of the *Houshold*, and ordinary Charge of the Civil List. And his Majesty King George has the like Sum of 700,000*l. per Annum* settled upon him by Parliament, arising out of the Duties of Excise, Wine-Licence, Post-Office, &c. *Lex Constitut.* 59, 60.

King's Palace. If any Person shall strike another in the *King's Palace*, he shall have his Right-hand cut off, be imprisoned during Life, and also be fined. 32 H. 8. c. 12.

King's Silver, Is the Money which is paid to the *King* in the Court of *Common Pleas*, for a Licence granted to any Man to levy a *Fine* of Lands, Tenements or Hereditaments to another Person: And this must be compounded according to the Value of the Lands in the Alienation-Office, before the *Fine* will pass. 2 *Inst.* 511. 6 *Rep.* 39, 43. Money paid by Constables and Tithingmen to the Lord of the *Leet*, is also in some Places called *King's Silver*.

Quintal, Is a Weight in Merchandize. See *Quintal*.

Quintidge, A Term used among Merchants and Sea-faring Persons, for a Ship's Ballast. *Merch. Dict.*

Kipe, (From the Sax. *Cypa*) Is a Basket or Engine made of Osiers, broad at one End, and narrower by Degrees, used in *Oxfordshire* and other Parts of *England* for the Taking of Fish; and the Fishing with these Engines is called *Kipping*. We read that no Salmon shall be taken between *Gravesend* and *Henly* upon *Thames* in *Kipper-time*, viz. between the 3d of *May* and the *Epiphany*. *Rot. Parl.* 50 Ed. 3.

Kirby's Quest, Is an antient Record remaining with the Remembrancer of the *Exchequer*; so called from its being the *Inquest* of *John de Kirby* Treasurer to K. Ed. 1.

Kirkmote, A Synod; and sometimes it has been taken for a Meeting in the Church or Vestry. *Blount*.

Knave, An old Saxon Word, which had at first a Sense of Simplicity and Innocence, for it signified a Boy; Sax. *Cnapa*, whence a *Knave-Child*, i. e. a Boy, distinguished from a Girl in several old Writers; afterwards it was taken for a Servant Boy, and at length for any Servant Man: Also it was applied to a Minister or Officer, that bore the Weapon or Shield of his Superior, as *Scild Knapa*, whom the Latines called *Armigerum*, and the French *Escuyer*. 14 Ed. 3. c. 3. And it was sometimes of old made use of as a titular Addition; as *Johannes C. filius Willielmi C. de Derby*, Knave, &c. 22 Hen. 7. 36. The Word is now perverted to the hardest Meaning, viz. A false and deceitful Fellow.

Knight, (Sax. *Cnyt*, Fr. *Chevalier*, Lat. *Miles*, & *Eques Auratus*, from his gilt Spurs usually worn) In its Original is said to be properly a Servant; but there is now but one Instance where 'tis so taken, and that is of *Knights of the Shire*, who serve for their Country in Parliament: In all other Cases it signifies one that bears Arms, who for his Virtue and martial Prowess, is by the King singled from the Rank of Gentlemen, and exalted to a higher Step of Dignity. He who serv'd the King in any Civil or Military Office,

was formerly called *Miles*, which is often mentioned in the old Charters of the *Anglo-Saxon* Kings; but the Word was after restrained to him that serv'd only upon some military Expedition; or rather to such who by Reason of their Tenure were bound to serve in the Wars: And he that by his Office or Tenure was obliged to perform any military Service, was furnished by the Chief Lord with Arms, and so *adoptabatur in militem*; which the French call *Adouber*, and we to *Dub* such a Person a *Knight*, &c. By the Statute 1 Ed. 2. c. 1. all Persons having a full *Knights* Fee of Land, and holding the same by *Knights* Service, might be compelled to be made *Knights*. Repealed by 17 Car. 1. c. 20. The Manner of making *Knights* is thus shortly express'd by *Camden*: *Nostris vero temporibus, qui Equestrem Dignitatem suscipit, flexis genibus leviter in humero percutitur, Princeps his verbis Gallice affatur; Sus vel Sois Chevalier au nom. de Dieu, i. e. Surge aut sis Eques in nomine Dei.* This is meant of *Knights Bachelors*, which is the lowest, but most antient Order of *Knighthood* with us. Of *Knights* there have been reckoned two Sorts, *Knights Spiritual* and *Temporal*; the *Spiritual Knights* are so called by Divines in regard of their *Spiritual Warfare*; the *Temporal Knighthood* consists of *Knights of the Sword*, *Knights Baneret*, of the *Bath*, *Knights of the Garter*, &c. *Selden's Titles of Honour*, pag. 770. The Privilege belonging to *Knights*, see *Fern's Glory of Generosity* 116.

Knights Baneret, (*Milites Vexillarii*) Are made only in Time of War, and is a high Honour: And tho' *Knighthood* is commonly given for some personal Merit, which therefore dies with the Person; yet *John Coupland*, for his valiant Service perform'd against the *Scots*, had the Honour of *Baneret* conferr'd on him and his Heirs for ever by Patent. 29 Ed. 3. See *Baneret*.

Knights of the Bath, (*Milites Balnei*) Have their Name from their *Bathing* the Night before their Creation. In antient Times before *Knights* went into the Service, it was usual for them to go into a Bath and wash themselves, and afterwards they were girt with a Girdle; which Custom was constantly observ'd, especially at the Inauguration of our Kings, on which Times *Knights* were made, who for that Reason were called *Knights of the Bath*: This Order of *Knights* was introduc'd by King Hen. 4. and revived in the Reign of King Geo. with great Ceremony; thirty-seven of these *Knights* being then made, having each three honorary Esquires; and they now wear a red Ribband a-cross their Shoulders; have a Prelate of the Order, who is the Bishop of *Rocheſter*, several Heralds, and other Officers, &c.

Knights of the Chamber, (*Milites Camerae*) Seem to be such *Knights Bachelors* as are made in Time of Peace, because *knighted* in the King's Chamber, and not in the Field: They are mentioned in *Rot. Parl.* 29 Ed. 3. 2 *Inst.* 666.

Knights of the Garter, (*Equites Garterii*, or *Periscelidis*) Are an Order of *Knights*, founded by K. Ed. 3. who after he had obtain'd many notable Victories, for furnishing this honourable Order, made Choice in his own Realm, and all *Europe*, of Twenty-five the most excellent and renown'd Persons for Virtue and Honour, and ordained himself and his Successors, Kings of *England*, to be the Sovereigns thereof, and the Rest to be Fellows and Brethren. *Smith's Repub. Angl. lib. 1. cap. 20.* And according to *Camden*, and others, this Order was insti-

instituted upon *King Edward the Third's* having great Success in a Battle, wherein the *King's Garter* was used for a Token: But *Polydore Virgil* gives it another Original, and says, that this King in the Height of his Glory, the Kings of *France* and *Scotland* being both Prisoners in the Tower of *London* at one Time, first erected this Order; Anno 1350, from the Countess of *Salisbury's* dropping her *Garter*, in a Dance before his Majesty; which the King taking up, and seeing some of his Nobles smile, he said *Honi soit qui mal y pense*, interpreted, *Evil be to him that Evil thinketh*, which has ever since been the Motto of the *Garter*, declaring such Veneration should be done to that filken Tie, that the best of them should be proud of enjoying their Honours that Way: *Camden* in his *Britannia* saith, that this Order of *Knights* received great Ornament from *K. Ed. 4.* And *King Charles 1.* as an Addition to their Splendor, order'd all the *Knights* Companions to wear on their upper Garment, the Cross intircled with the *Garter* and Motto. The honourable Society of this Order is intituled to *St. George*; and they are a College or Corporation, having a Great Seal, &c. The Site of the College is the Royal Castle of *Windfor*, with the Chapel of *St. George*, and the Chapter-house in the said Castle, for their Solemnity on *St. George's Day*, and at their Feasts and Installations. Besides the King their Sovereign, and Twenty-five Companions, *Knights of the Garter*, they have a Dean and Canons, &c. and twenty-six Poor *Knights*, that have no other Subsistence but the Allowance of this House, which is given to them in Respect of their daily Prayer to the Honour of God and *St. George*; and these are vulgarly called Poor *Knights of Windfor*. There are also certain Officers belonging to the Order; as *Prelate of the Garter*, which Office is inherent to the *Bishop of Winchester* for the Time being; the *Chancellor of the Garter*, who is the *Bishop of Sarum*; *Register*, always Dean of *Windfor*; the *Principal King at Arms*, called *Garter*, to manage and marshal their Solemnities; and the *Usher of the Garter*, being likewise *Usher of the Black Rod*. A *Knight of the Garter* wears daily abroad, a blue *Garter* deck'd with Gold, Pearl, and precious Stones, on the Left-leg; and in all Places of Assembly, upon his Coat on the Left-side of his Breast, a Star of Silver Embroidery; and the Picture of *St. George*, enamell'd upon Gold and beset with Diamonds, at the End of a blue Ribbon that crosses the Body from the Left-Shoulder; and when dress'd in his Robes, a Mantle, Collar of SS, &c.

Knights of St. John of Jerusalem, (*Milites Sancti Johannis Hierosolomitani*) Had their Beginning about the Year 1119, and their Denomination from *John, Patriarch of Alexandria*, tho' vowed to *St. John Baptist* their Patron. They had one general Prior, for the Government of the whole Order within *England* and *Scotland*; who was the first Prior of *England*, and sate in the Lords House of Parliament. Their primary Foundation and Abode was first in *Hierusalem*, and then in the *Isle of Rhodes*, until they were expelled thence by the *Turks*; since which their Chief Seat is the *Isle of Malta*. See 32 H. 8. and *Hospitalers*.

Knights of Malta. These *Knights* took their Name and Original from the Time of their Expulsion from *Rhodes*, Anno 1523. The Island of *Malta* was then given them by the Emperor

Charles 5. where they now reside, and are therefore called *Knights of Malta*: They have done great Exploits against the Infidels, especially in the Year 1595.

Knights of Rhodes, The *Knights of St. John of Jerusalem*, after they removed to *Rhode Island*. 32 H. 8. c. 24.

Knights Service, (*Servitium Militare*) Was a Tenure, whereby several Lands in this Kingdom were held of the King, which drew after it Homage, and Service in War, Escuage, Ward, Marriage, &c. But it is taken away by Statute 12 Car. c. 24. A *Knight's Fee* was so much Inheritance in Land as was sufficient to maintain a *Knight*; and this was 15 l. per Ann. in the Time of *King Hen. 3.* But by the Statute 1 Ed. 2. a *Knight's Fee* was 20 l. a Year: And *Sir Tho. Smith* in his *Repub. Angl.* rates it at 40 l. per Annum. Also *Sir Edw. Coke* says, a *Knight's Fee* contain'd 680 Acres. 2 Inst. 596. In *England*, at the Time of *William* called *The Conqueror*, there were Sixty thousand two hundred and fifteen *Knights Fees*; whereof Twenty-eight thousand and fifteen were in the Possession of Religious Houses. *Stow's Annals* 285. *Bract. lib. 5.* See *Chivalry*.

Knights of the Shire, (*Milites Comitatus*) Otherwise called *Knights of Parliament*, are two *Knights* or Gentlemen of Worth, chosen on the King's Writ, in pleno Comitatu, by the Freeholders of every County that can dispend 40 s. a Year; and these, when every Man that had a *Knight's Fee* was customarily constrained to be a *Knight*, were obliged to be *Milites gladio cincti*, for so runs the Writ at this Day; but now *Notabiles Armigeri* may be chosen. Stat. 1 Hen. 5. c. 1. 10 H. 6. c. 2. 23 H. 6. c. 6. Their Expences were to be born by the County, during their Sitting in Parliament, by the 35 H. 8. c. 11. And as to their Qualifications, &c. Vide 9 Ann. c. 5. and *Parliament*.

Knights Templars, (*Milites Templarii*) Were a Religious Order of *Knights*, instituted in the Year of our Lord 1119, and so called, because they dwelt in Part of the Buildings belonging to the Temple at *Jerusalem*, and not far from the Sepulchre of our Saviour: They entertain'd Christian Strangers and Pilgrims, and in their Armor led them through the Holy Land, to view the sacred Monuments of Christianity, without Danger from Infidels. This Order was far spread in Christendom, particularly here in *England*, where it flourish'd in the Time of *King Hen. 2.* And had in every Nation a particular Governor or Master; but at length some of them at *Jerusalem* falling away to the *Saracens* from Christianity, the whole Order was suppress'd by *Clemens quintus*, Anno 1307. And their Substance given partly to the *Knights of St. John of Jerusalem*, and partly to other Religious. *Cassan. de gloria Mundi*, par. 9. These *Knights* at first wore a white Garment; and afterwards in the Pontificate of *Pope Eugenius*, it was ordained that they should wear a Red Cross: In antient Records they were also called *Fratres Militie Templi Solomonis*. Mon. Angl. Tom. 2. pag. 554.

Knights of the Thistle. The honourable the Scotch Knighthood, the *Knights* whereof wear a Green Ribbon over their Shoulders, and are otherwise honourably distinguished.

Knights Court, An Honour Court held by the *Bishop of Hereford* at his Palace there, twice a Year; wherein Lords of Manors, and their Tenants,

nants, holding by *Knights Service* of the Honour of that Bishoprick, were Suiters. *Butterfield's Surv.* 244.

Knighren-cild, Was a *Gild* or Company in London, consisting of nineteen *Knights*, which K. *Edgar* founded, giving them a Portion of void Ground lying within the Walls of the City, now called *Potsoken Ward*. *Stow.* 151.

Known-men. The *Lollards* in England, called Hereticks, for opposing the Church of Rome before the Reformation, went commonly under the Name of *Known-men*, and *Just Fast-men*; which Title was first given them in the Diocese of Lincoln, by *Bishop Smith*, anno 1500.

Kylw, Signifies some liquid Thing; as we have to this Day in the North the Word *Kyle*, which the Country People use for a Kind of Potage: It is mentioned as an Exaction of Foresters, &c. *Mon. Angl. Tom. 1. pag. 722.*

Kyste, (*Sax.*) A Coffin or Chest for Burial of the Dead. *Ex Reg. Episc. Lincoln. M.S.*

Kyth, Is us'd for Kin or Kindred. *Cognatus.*

L

L A S, (*Laqueus, à lax, i. e. Fraus*) A Net, Gin, or Snare. *Litt. Dist.*

Label, (*Appendix, Lemniscus*) Is a narrow Slip of Paper or Parchment, affix'd to a Deed, Writing or Writ, hanging at and out of the same; and an appending Seal is called a *Label*.

Labina, Signifies watery Land; *in qua facile labitur.* — *Famque diversi Liget noſtanter tranſeunt in Aquis & Labinis periclitantur.* *Mon. Angl. Tom. 2. pag. 372.*

Labozarius, Is an antient Writ against Persons refusing to serve and do *Labour*, who have no Means of Living; or against such as having serv'd in the Winter, refuse to serve in the Summer. *Reg. Orig.* 189.

Labourers, Conspiring together concerning their Work or Wages, shall forfeit 10*l.* for the first Offence, 20*l.* for the Second, &c. And if not paid, be set on the Pillory. *Stat. 2 & 3 Ed. 6. c. 15.* Justices of Peace, and Stewards of Leets, &c. have Power to hear and determine Complaints relating to Non-payment of *Labourers* Wages. 4 *Ed. 4. 1.* And *Labourers* taking Work by the Great, and leaving the same unfinished, unless for Non-payment of Wages, or where they are employ'd in the King's Service, &c. are to suffer one Month's Imprisonment, and forfeit 5*l.* The Wages of *Labourers* is to be yearly assessed for every County by the Sheriff, and Justices of Peace in the *Easter-Sessions*, and in Corporations by the Head-Officers, under Penalties. 5 *Eliz. c. 4.* And the Sheriff is to cause the said Rates and Assessments of Wages to be proclaimed. 1 *Jac. 1. c. 6.* All Persons fit for *Labour*, shall be compell'd to serve by the Day, in the Time of Hay or Corn Harvest; and *Labourers* in the Harvest-time may go to other Counties, having Testimonials. From the Middle of *March* to the Middle of *September*, *Labourers* are to work from Five a-Clock in the Morning till Seven or Eight at Night, being allow'd two Hours for Breakfast and Dinner, and Half an Hour for Sleeping the Three hot Months; and all the Rest of the Year from Twilight to Twilight, except an Hour and an Half for Breakfast and Dinner; on Pain of forfeiting 1*d.* for every Hour absent. 5 *Eliz.* If any *Labourer* shall make an Assault upon his Master,

he shall suffer and be punish'd as a Servant making such Assault. *Ibid.*

Laches, (From the Fr. *Lascher, i. e. Laxare*, or *Lasche*, ignavus) In our Law signifies Slackness or Negligence; as it appears in *Littleton*, where *Laches of Entry* is a Neglect in the Heir to enter: And probably it may be an old *English* Word, for when we say there is *Laches of Entry*, it is all one as if it were said, there is *Lack of Entry*; and in this Signification it is used. *Litt. 136.* No *Laches* shall be adjudged in the Heir within Age; and regularly *Laches* shall not bar either Infants or Feme Coverts, for not Entry or Claim, to avoid Descents; but *Laches* shall be accounted in them, for Non-performance of a Condition annexed to the State of the Land. *Co. Litt. 146.*

Latta, A Defect in the Weight of Money; from whence is derived the Word *Lack*. *Du Fresne.*

Lada, Hath divers Significations: 1st, From the *Sax. Lathian*, to convene or assemble, it is taken for a *Lath*, or Court of Justice. 2dly, It is us'd for Purgation by Trial, from *Ladian*; and hence the *Lada simplex*, and *Lada triplex* or *Lada plena*, among the *Saxons*, mentioned in the Laws of King *Ethelred* and *K. Hen. 1.* 3dly, *Lada* is applied to a *Lade* or Course of Water; *Camden* uses *Water-lade* or *Water-course*; and *Spelman* says, that *Lada* is a Canal to carry Water from wet Grounds: Sometimes *Lade* signifies a broad Way. *Spelm. Gloss. Mon. Angl. Tom. 1. pag. 854.*

Lafordswick, (*Sax. Hlaford, i. e. Dominus*, and *Swic*, proditio, Infidelitas erga Dominum) A Betraying one's Lord or Master. This Word is found in King *Canutus's* Laws, c. 61. And in the Laws of King *Hen. 1.* *Quadam Placita emendari (viz. Quadam Crimina expiari) non possunt*, *Hufbrech*, *Openthefe*, *Eberemorth*, & *Lafordswick*. *Leg. H. 1. c. 13.*

Laga, (*Sax. Lag*) Signifies Law: And from hence we deduce *Saxonlage*, *Danelage*, &c.

Lagan, Is Goods sunk in the Sea, from the *Sax. Liggan, cubare*: When Mariners in Danger of Shipwreck cast Goods out of the Ship, and because they know they are heavy and sink, fasten a Buoy or Cork to them, that they may find and have them again; if the Ship be lost, these Goods are called *Lagan*, and so long as they continue upon the Sea, belong to the Lord Admiral; but if they are cast away upon the Land, they are then a Wreck, and belong to the Lord, intitled to the same. 5 *Co. Rep.* 106. At first *Lagan* was that Right which the Chief Lord of the Fee had to take Goods cast on Shore by the Violence of the Sea, &c. *Bract. lib. 3. c. 2.*

Lageman, (*Lagamannus*) *Homo habens Legem*, or *Homo Legalis seu Legitimus*; such as we call now, *Good Men of the Fury*. The Word is frequently used in *Domesday*, and the Laws of *Edward the Confessor*, cap. 38. thus; *Postea inquisisset Justitia per Lagamannos, & per Meliores homines de Burgo*, &c. Sir *Edw. Coke* says, a *Lageman* was he who had *Socam* &c. *Sacam super Homines suos, i. e.* that had a Jurisdiction over their Persons and Estates; of which Opinion were *Somner* and *Lambard*, and that it signified the *Thanes*, called afterwards *Barons*, who sat as Judges to determine Mens Rights in Courts of Justice. In *Senatus consult. de Monticulis Wallie*, cap. 3. it is said let twelve *Laghmen*, which *Lambard* renders *Men of Law*, viz. Six *English* and Six *Welsh*, do Right and Justice, &c. *Blount.*

Lagen, (*Lagena*) In antient Time was a Measure of Wine, &c. whence perhaps comes *Flagen*. The Lieutenant of the Tower has the Privilege to take *unam Lagenam Vini, ante malum & retro*, of all Wine Ships that come up the *Thames*: And Sir Peter Leiceſter, in his Antiquities of *Cheshire*, interprets *Lagena Vini*, a Bottle of Wine. — *Donatio inſuper de Sex Lagenis olei annuatim*. Chart. 2 Ed. 3.

Laghday, or *Labday*, A Time of open Court. See *Law-day*.

Laghſite, *Lagſite*, *Lahſite*, (Sax. *Lag*, Lex, & *ſite*, Ruptio) A Breaking or Transgreſſing of the Law; and ſometimes the Punishment inflicted for ſo doing. *Leg. H. 1. c. 13.*

Laia, A broad Way in a Wood; the ſame with *Lada*. Mon. Angl. Tom. 1. pag. 483.

Lairwite, *Lecherwite*, and *Legergeldum*, (From the Sax. *Lagan*, i. e. Concumbere, & *Wite*, Mulcta) *Pœna vel Mulcta Offendentium in Adulterio & Fornicatione*; and the Privilege of puniſhing Adultery and Fornication did antiently belong to the Lords of ſome Manors, in Reference to their Tenants. *Fleta, lib. 1. c. 47. 4 Inſt. 206.*

Lammas-Day, Is the firſt Day of *Auguſt*, ſo called *quæſi Lamb-maſs*; on which Day the Tenants that held Lands of the Cathedral Church of *York*, (which is dedicated to *St. Peter ad Vincula*) were bound by their Tenure to bring a live Lamb into the Church at High Maſs. It is otherwiſe ſaid to come from the Sax. *Hlaſmaſſe*, viz. *Loaf-maſs*, as on that Day the Engliſh made an Offering of Bread made with new Wheat. 23 *Hen. 8. c. 4.*

Lamps. Houſe-keepers in *London*, living in Streets, are to hang out *Lamps* every Night 'till twelve a-Clock, from *Michaelmas* to *Lady-day*, under the Penalty of 2 s. for every Default. *Stat. 2 W. & M.*

Lancaſter, Was erected into a County Palatine, anno 50 Ed. 3. and granted by the King to his Son *John* for Life, that he ſhould have *Jura Regalia*, and a King-like Power to pardon Treasons, Outlawries, &c. and make Juſtices of Peace and Juſtices of Aſſiſe within the ſaid County, and all Proceſſes and Indictments to be in his Name; but theſe Royalties are abridged by the *Stat. 27 H. 8. c. 24.* There is a Seal for the County Palatine, and another for the *Dutchy*, i. e. Such Lands as lie out of the County Palatine, and yet are Part of the *Dutchy*; for ſuch there are, and the Dukes of *Lancaſter* held them, but not as *Counties Palatine*, for they had not *Jura Regalia* over thoſe Lands. 2 *Lutw. 1236. 3 Salk. 110, 111.* The Statute 37 *H. 8. c. 16.* annexes Lands to the *Dutchy* of *Lancaſter*, for the Enlargement of it. Fines levied before the Juſtices of Aſſiſe of *Lancaſter*, of Lands in the County Palatine, ſhall be of equal Force with thoſe acknowledged before the Juſtices in the Common Pleas. 37 *H. 8. c. 19.* And Proceſs againſt an outlawed Perſon in the County Palatine of *Lancaſter*, is to be directed to the Chancellor of the *Dutchy*, who ſhall thereupon Iſſue like Writs to the Sheriff, &c. 5 & 6 Ed. 6. 26. The Statute 17 *Car. 2.* concerning Cauſes of Replevin, ſhall be of Force in the Court of Common Pleas for the County Palatine of *Lancaſter*. 19 *Car. 2. 5.*

Lanceti. Theſe were *Agricola quadam, ſed ignote ſpeciei*. *Spelm.*

Land, (*Terra*) Signifies generally not only arable Ground, Meadow, Paſture, Wood, Moors, Waters, &c. but alſo Meſſuages and Houſes, for

in Conveying the Land, the Buildings paſs with it. *Co. Litt. 4. 19.*

Landboc, (From the Sax. *Land*, and *Boc*, Liber) Was a Charter or Deed whereby Land was held. *Sic Anglo-Saxones Chartas & Instrumenta nuncuparunt, prædiorum ceſſiones, jura & firmitates continentia*. *Spelm. Gloſſ.*

Landcheap, (Sax. *Land-ceap*, from *Ceapan*, to buy and ſell) An antient cuſtomary Fine, paid at every Alienation of Land lying within ſome Manor, or Liberty of a Borough; as at *Malden* in *Effex*, there is to this Day a Cuſtom called by the ſame Name, that for certain Houſes and Lands ſold within that Place, thirteen Pence in every Mark of the Purchase-Money ſhall be paid to the Town; and this Cuſtom of *Land-cheap* they claim (*inter alia*) by a Grant from the Biſhop of *London*, made anno 5 *H. 4.* *Somner* ſays, *Landceap eſt fortæſſe præcium fundi paſto datum vel debitum*. *Somn. Sax. Diſt.*

Landea, A Ditch in Marſhy Lands to carry Water into the Sea. — *Vera judicia & awarda faciat de Valliis, Landeis, & Watergagiis*. *Du Cange.*

Landefricus, The Lord of the Soil. *Leg. Ethelred. cap. 6.*

Landegandman, Was one of the inferior Tenants of a Manor; it is uſ'd in *Cuſtumar. de Hecham. Spelm.*

Land-gable, A Tax or Rent iſſuing out of Lands; according to *Domeſday*, *Cenſus prædialis vel tributum, quod à prædiis colligitur*: And it is ſaid to be a Quit-Rent for the Site of a Houſe, or the Land whereon it ſtood, being the ſame with what we now call Ground-Rent. *Domeſd. Lincoln.*

Landimers, *Agrimenſores*, Meaſures of Land, ſo called of old; *Landimera autem eſt Terra limes vel Meta*: From the Sax. *Gemara*, i. e. *Terminus*; and hence we ſay *Meers*.

Landirecta. In the *Saxon* Times the Duties which were laid upon all that held Land, were term'd *Trinoda neceſſitas*, viz. Expedition, *Burghbote* and *Brigbote*; which Duties the Saxons did not call *Servitia*, becauſe they were not Feodal ariſing from the Condition of the Owners, but *Landirecta*, Rights that charged the very Land whoever did poſſeſs it. *Spelm. of Feuds.*

Landlord, Is he of whom Lands or Tenements are holden; and a Landlord may diſtrain on the Lands of common Right, for Rent, Services, &c. *Co. Lit. 57, 205.*

Landtenant, Is he that poſſeſſes the Land, or hath it in his manual Occupation. 14 Ed. 3. *Stat. 1. cap. 3.* See *Tenant*.

Langetmanni, Are Lords of Manors, as interpreted by Sir *Edw. Coke. 1 Inſt. 5.* They are mentioned in *Domeſday*.

Langeolun, An under Garment made of Wool, formerly worn by the Monks, which reach'd down to their Knees; ſo call'd, becauſe *Lanea ſi.* Mon. Angl. Tom. 1. pag. 419.

Lanis de creſcentia Walliæ traducendis abſque Cuſtuma, &c. An antient Writ that lies to the Cuſtomer of a Port, to permit one to paſs Wool without paying Cuſtom, he having paid it before in *Wales*. *Reg. Orig. 279.*

Lapis Sarmozius, A marble Stone about twelve Foot long, and three Foot broad, plac'd at the upper End of *Weſtmiſter-Hall*, where was likewiſe a marble Chair erected on the Middle thereof, in which our Kings antiently ſat at their Coronation-Dinner, and at other Times the Lord Chancellor. — *Qui quidem Henricus de Cliff,*

Cliff, (*Clericus Rotulorum*) in *Magna Aula* Westm. *apud* Lapidem Marmorium in *praesentia* Domini Cancellarii, *praestitit* Sacramentum, &c. *Claus. Ed. 2. m. 1. Dorso*. Over this marble Table are now erected the Courts of Chancery and King's Bench. *Orig. Juridical. 37.*

Lapis Pacis, The same with *Osulum Pacis*; as mentioned by *Du Cange*.

Lapse, (*Lapsus*) Is a Slip or Omission of a Patron to present to a Church, within Six Months after it becomes void; in which Case we say, that Benefice is in *Lapse* or *lapsed*. 13 *Eliz. c. 12.* And *Lapse* is defined to be a Title given to the Ordinary to collate to a Benefice, on the Patron's Negligence in Presenting within Six Months; and also to be a Devolution of a Right of Presenting from the Patron to the Bishop; from the Bishop to the Archbishop; and from the Archbishop to the King. *Wood's Inst. 158.* If after an Avoidance, the Patron doth not present in six Months, the Ordinary hath the next six Months to collate to the Benefice; and if he doth not collate in six Months, then the Metropolitan hath further six Months; and if he doth not collate within his six Months, it then devolves to the Crown. 2 *Roll. Abr. 360. Hob. 30. 4 Rep. 17.* And the Computation of the six Months, is by the Kalendar Months, exclusive of the Day in which the Church becomes void. 6 *Rep. 62.* Where a Patron presents his Clerk before the Bishop hath collated, the Presentation is good notwithstanding the six Months are past, and shall bar the Bishop who cannot take any Advantage of the *Lapse*: And so if the Patron makes his Presentation before the Archbishop hath collated, though twelve Months are past: But if the Bishop collates after twelve Months, this bars not the Archbishop. 2 *Roll. Abr. 369. 2 Inst. 273.* If a Bishop doth not collate to Benefices of his own Gift, they *lapse* at the End of six Months to the Archbishop; and if the Archbishop neglects to collate within six Months, to a Benefice of his Gift, the King shall have it by *Lapse*. *Dr. & Stud. cap. 36.* And if a Church continues void several Years by *Lapse*, the Successor of the King may present. *Cro. Car. 258.* But if the King hath a Title to present by *Lapse*, and he suffers the Patron to present, and the Presentee dies, or resigns before the King hath presented, if the Presentation is real and not by Covin, he hath lost his Presentation, for *Lapse* is but for the first and next Turn; and by the Death of the Incumbent, a new Title is given to the Patron; though it has been adjudged that the King in such Case may present at any Time as long as that Presentee is Incumbent. 2 *Cro. 216. 7 Rep. Moor 244.* When the Patronage of the Church is litigious, and one Party doth recover against the other in a *Quare Impedit*, if the Bishop be not named in the Writ, and six Months pass while the Suit is depending, *Lapse* shall incur to the Bishop: If the Bishop be named in the Writ, then neither the Bishop, Archbishop, or King, can take the Benefice by *Lapse*; and yet it is said if the Patron within the six Months brings a *Quare Impedit* against the Bishop, and then the six Months pass without any Presentation by the Patron, *Lapse* shall incur to the Bishop. 2 *Roll. Abr. 365. 6 Rep. 52. 1 Inst. 344. Hob. 270.* Though where the Bishop is a Disturber, or the Church remains void above six Months by his Fault, there shall be no *Lapse*. 1 *Inst. 344.* A Clerk presented being refused by

the Bishop for any sufficient Cause, as Illiterature, ill Life, &c. he is to give the Patron Notice of it, that another may be presented in due Time, otherwise the Bishop shall not collate by *Lapse*; because he shall not take Advantage of his own Wrong, in not giving Notice to the Patron as he ought to do by Law. *Dyer 293.* And if an Avoidance is by Resignation, which must necessarily be to the Bishop by the Act of the Incumbent; or by Deprivation, which is the Act of the Law, *Lapse* shall not incur to the Bishop, till six Months after Notice given by him to the Patron: When the Church becomes void by the Death of the Incumbent, &c. the Patron must present in six Months without Notice from the Bishop, or shall lose his Presentation by *Lapse*. *Dyer 293, 327. 1 Inst. 135. 4 Rep. 75.* In the Cases of Deprivation and Resignation, where the Patron is to have Notice before the Church can *lapse*, the Patron is not bound to take Notice from any Body but the Bishop himself, or other Ordinary, which must be personally given to the Party, if he live in the same County; and such Notice must express in certain the Cause of Deprivation, &c. If the Patron live in a Foreign County, then the Notice may be published in the Parish-Church, and affixed on the Church door. *Cro. Eliz. 119. Dyer 328.* A *Lapse* may incur against an Infant or Feme Covert, if they do not present within six Months. 1 *Inst. 246.* But there is no *Lapse* against the King, who may take his own Time; and Plenary shall be no Bar against the King's Title, because *Nullum tempus occurrit Regi*. 2 *Inst. 273. Dyer 351.* By Presentation and Institution, a *Lapse* is prevented; though the Clerk is never inducted: And a Donative cannot *lapse*, either to the Ordinary or the King. 2 *Inst. 273.*

Larceny, (*Fr. Larrecin, Lat. Latrocinium*) Is a Theft or Felony of another's Goods, in his Absence; and in Respect of the Thing stolen, it is either great or small: *Grand Larceny* is a felonious Taking and Carrying away the personal Goods of another, above the Value of 12 *d.* not from the Person, or by Night, in the House of the Owner; and *Petit Larceny* is when the Goods stolen do not exceed the Value of 12 *d.* It agrees with *Grand Larceny* in all Things except only the Value of the Goods; so that wherever an Offence would be *Grand Larceny*, if the Thing stolen was above 12 *d.* Value, it is *Petit Larceny* if it be but of that Value, or under. *H. P. C. 60, 69.* If two Persons steal Goods to the Value of 13 *d.* it is *Grand Larceny* in both; and if one at different Times steals divers Parcels of Goods from the same Person, which together exceed the Value of 12 *d.* they may be put together in one Indictment, and the Offender found Guilty of *Grand Larceny*; but this is very seldom done: On the contrary, the Jury sometimes, where it is an Offender's first Offence, &c. find it specially, as they may, that the Goods are of but 10 *d.* Value; whereby it will be only *Petit Larceny*, though the Offender is indicted for stealing Things of the Value of 30 or 40 *s.* *H. P. C. 70. Pult. 125. 3 Inst. 109. Hest. Rep. 66.* And *Grand Larceny* is a Felony punished with Death; *Petit Larceny* only with Whipping, or other Corporal Punishment, &c. But the Offenders may have the Benefit of Transportation by Statute. There is not only *Simple Larceny*, taking away the Goods of another, but a *mixt* or complicated *Larceny*, which has a further Degree of Guilt in it, and

is either a Taking from the Person, or from the House; as in case of Robbery, Burglary, &c. Also there is a *Private Larceny* from a Man's Person, without his Knowledge; or an *Open Larceny*, with his Knowledge; Private, by picking the Pocket, &c. Openly, where a Thief takes off my Hat, or Periwig, from my Head, and runs away with it: And as to *Private Larceny* from the Person above 12 d. it is excluded Clergy, if laid in the Indictment as done *clam & secreta*, &c. according to the Words of the Stat. 8 Eliz. but otherwise it is not; *Open Larceny* with Knowledge, by the Common Law is within the Benefit of Clergy. *H.P.C.* 75. *Dalt.* c. 110. 3 *Inst.* 68. *Dyer* 224. Of all moveable Goods, the Property whereof is in any Person, Felony or *Larceny* may be committed; as Money, Household-stuff, Hay, Corn and Trees severed from the Ground, &c. But the Goods stolen must be mere Personal, to make it *Larceny*; for if it be of any Thing in the Realty, or fixed to the Freehold; as Corn, or Fruit growing, not severed, Lead on a Church, &c. it is not *Larceny*. 3 *Inst.* 109. 8 *Rep.* 33. *Dalt.* 372. And of Paper and Parchment, on which Conveyances are written concerning Lands, or Obligations, &c. *Larceny* cannot be committed. *Wood's Inst.* 366. Where a Person finds the Goods of another that are lost, and converts them to his own Use it is no *Larceny*. *H.P.C.* 61. To take away Goods the Owner of which is unknown, sometimes is no *Larceny*; such as Treasure-Trove, Wrecks, Waifs, Strays, before Seizure by the Person who hath a Right to the same; though in other Cases, a Man may be Guilty of *Larceny* in taking away Goods, the Owner whereof is not known. *Dalt.* 370. 3 *Inst.* 108. *H.P.C.* 67. And in some extraordinary Cases, the Law will rather feign a Property, where in Strictness there is none, than suffer an Offender to escape Justice. 1 *Hawk. P.C.* 94. A Man may commit *Larceny*, by taking away his own Goods, in the Hands of another; where the Owner delivers Goods to a Carrier, and afterwards secretly steals them from him, with an Intent to charge him for them, &c. because the Carrier had a special Property, and the Possession for a Time. 3 *Inst.* 110. *Dalt.* 373. *Pult.* 126. To make the Crime of *Larceny*, there must be a felonious Taking; or an Intent of stealing the Thing, when it comes first to the Hands of the Offender, at the very Time of the Receiving. 3 *Inst.* 107. *Dalt.* 367. And if one intending to steal Goods, gets Possession of them by Ejectment, Replevin, or other Process at Law unduly obtained, by false Oath, &c. it is a felonious Taking. 3 *Inst.* 64. *Kel. Rep.* 43. 44. If a Man hath Possession of Goods once lawfully, though he afterwards carry them away with an ill Intention, it is no *Larceny*: Where a Taylor imbezils Cloth delivered to him, to make a Suit of Clothes, &c. it is not Felony. *H.P.C.* 61. 5 *Rep.* 31. And if I lend a Person my Horse to go to a certain Place, and he goes there, and then rides away with him, it is not *Larceny*; but Remedy is to be had by Action for the Damage: Though if one comes on Pretence to buy a Horse, and the Owner gives the Stranger Leave to ride him, if he rides away with the Horse, it is Felony; for here an Intention is implied. *Wood's Inst.* 364. 365. In the above Cases, there is a lawful Possession by Delivery, to extenuate the Offence: But Persons having the Possession of Goods by Delivery, may in some Instances be

guilty of Felony, by taking away Part thereof; as if a Carrier open a Pack, and take out Part of the Goods; a Miller, who has Corn to grind, takes out Part of the same, with an Intent to steal it, &c. in which Cases, the Possession of Part, distinct from the Whole, was gained by Wrong, and not delivered by the Owner, &c. *H.P.C.* 62. *S.P.C.* 25. 1 *Hawk. P.C.* 90. If a Lodger hath the Possession of Goods and Furniture in a House, by the Consent and Delivery of the Owner, the Taking away, Imbeziling or Purloining thereof, with an Intent to steal them, is Felony and *Larceny*. *Stat.* 3 & 4 *W. & M. c.* 9. And by Statute, if a Servant being of the Age of eighteen Years, and not an Apprentice, goes away with Goods of his Master or Mistress delivered him to keep; or being in his Service, imbezils them, or converts them to his own Use, with Intention to steal them, it is Felony, if the Goods are of the Value of 40 s. or above. 21 *H.* 8. *cap.* 7. Also if one Servant delivers the Goods to another Servant, this is a Delivery by the Master; yet if the Master or another Servant delivers a Bond, or Cattle to sell, and the Servant goes away with the Bond and receives the Money thereon due, or receives the Money for the Cattle sold, and goes away with the same, this is no Felony or *Larceny* within the Statute. *Dalt.* 388. *H.P.C.* 62. 3 *Inst.* 105. So if a Servant receives his Master's Rents; for the Master did not deliver the Money to the Servant; and it must be of Things delivered to keep: And if Goods delivered to the Servant to keep, are under 40 s. Value, and he goes away with them, this is only a Breach of Trust, by Reason of the Delivery; but if the Goods were not delivered to him, it is Felony and *Larceny* to go away with or imbezil them, though under the Value of 40 s. &c. *Dalt.* 369. See 12 *Ann. c.* 7. A Person that hath the bare Charge of Goods, and not the Possession; as a Butler that hath the Charge of Plate, a Shepherd of Sheep, a Servant who hath the Charge of a Chamber by Delivery of the Key to him, &c. may be guilty of *Larceny*: If my Shepherd whom I trust with my Sheep, suffers them by his Negligence to be lost, drowned, &c. Action on the Case lies. *H.P.C.* 61. 3 *Inst.* 108. If a Man reduc'd to extrem Necessity, (not owing to his own Unthriftiness) steals Victuals merely to satisfy his present Hunger, and keep him from Starving, by our ancient Books, this is neither Felony nor *Larceny*. 1 *Hawk. P.C.* 93. An Acquittal of *Larceny* in one County, may be pleaded in Bar of a subsequent Prosecution for the same Stealing in another County: And an Averment that the Offences in both Indictments are the same, may be made out by Witnesses, or Inquest of Office, without putting it to Trial by Jury; though that of latter Years hath been the usual Method. 2 *Hawk. P.C.* 370. But it is no Plea in Appeal of *Larceny*, that the Defendant hath been found Not guilty in Action of Trespas brought against him by the same Plaintiff for the same Goods, for *Larceny* and Trespas are entirely different; and a Bar in an Action of an inferior Nature, will not bar another of a Superior. *Ibid.* 371. If a Person be indicted for Felony or *Larceny* generally, and upon the Evidence it appears that the Fact is but a bare Trespas, he cannot be found Guilty and have Judgment on the Trespas, but ought to be indicted anew, tho' it may be otherwise where the Jury find a special Verdict, or when the

the Fact is specially laid, &c. In Trespass where the Taking is felonious, no Verdict ought to be given, unless the Defendant hath before been tried for the Felony. 2 Hawk. 440. All Felony includes Trespass, so that if the Party be Guilty of no Trespass in taking the Goods, he cannot be Guilty of Felony or Larceny in carrying them away; and in every Indictment of Larceny, there must be the Words *Felonice cepit & asportavit*, &c. H. P. C. 61. 1 Hawk. 89. See Felony.

Larderarius Regis, The King's Larderer, or Clerk of the Kitchen. *Cowel*.

Larding Money. In the Manor of Bradford in the County of Wilts, the Tenants pay to their Lord, a final yearly Rent by this Name; which is said to be for Liberty to feed their Hogs with the Mast of the Lord's Woods, the Fat of a Hog being called *Lard*: Or it may be a Commutation for some customary Service of Carrying Salt or Meat to the Lord's Larder. This was called *Lardarium* in old Charters; & *Decimam Lardarii de Haga*. Mon. Ang. Tom. 1. p. 321.

Larons, (Fr.) Thieves; mentioned in the Statute for View of Frank-pledge. 18 Ed. 2.

Lassatinus, Often occurs in *Walsingham*, and signifies an Assassin or Murderer. Anno 1271.

Last, (Sax. *Hlastan*, i. e. *Onus*, Fr. *Left*) Denotes a Burden in general, and particularly a certain Weight or Measure of Fish, Corn, Wool, Leather, Pitch, &c. As a *Last* of White Herrings, is twelve Barrels; of Red Herrings, twenty Cades or Thousand; of Pilchards, ten Thousand; of Corn, ten Quarters, and in some Parts of England twenty-one Quarters; of Wool, twelve Sacks; of Leather, twenty Dickers, or ten Score; of Hides or Skins, twelve Dozen; of Pitch, Tar or Ashes, fourteen Barrels; of Gunpowder, twenty-four Firkins, weighing a hundred Pound each, &c. Stat. 32 Hen. 8. cap. 14. 1 Jac. 1. c. 33. 15 Car. 2. c. 7.

Last, In the Marshes of Kent, is a Court held by the Twenty-four *Furats*, and summoned by the Bailiffs; wherein Orders are made to lay and levy Taxes, impose Penalties, &c. for the Preservation of the said Marshes. *Hist. of Imbanking and Draining*, fol. 54.

Lastage, (*Lastagium*) A Custom exacted in some Fairs and Markets, to carry Things bought where one will, by the Interpretation of *Raftal*: But it is taken for the Ballast or Lading of a Ship, by the Stat. 21 R. 2. cap. 18.—*Omnes Homines London. sint quieti & liberi*, &c. de Theolonia, & *Passagio*, & *Lastagio*, & *ab omnibus aliis Consuetudinibus*. Diploma Hen. 1. de Libertatibus London. *Lastage*, says another Author, is properly that Custom which is paid for Wares, sold by the *Last*, as Herrings, Pitch, &c.

Last Her, (*Ultimus Heres*) *Quippe Rex omnium Heredum ultimus est, uti oceanus omnium fluviorum receptaculum*. Braët. lib. 7. cap. 17.

Laterare, To lie Side-ways, in Opposition to lying End-ways; used in the Description of Lands. *Chart. dat. Ann. 1317*.

Lathe, *Leth*, (*Læsum*, *Leda*, Sax. *Læthe*) Is a great Part of a County, containing three or four Hundreds, or Wapentakes; as it is used in Kent and Sussex. Leg. Ed. Confess. c. 35.—*Et sint quieti de feffis Comitatum, Leth, Hundred. & auxiliis vicecomitum*. Pat. 1 H. 4. par. 8. m. 8. See *Lada*.

Lathreve, *Leidgrebe* or *Trithingrebe*, Was an Officer under the Saxon Government, who had Authority over a third Part of the County;

and whose Territory was therefore called *Trithing*, otherwise a *Leid* or *Leithen*, in which Manner the County of Kent is still divided; and the *Rapes* in Sussex seem to answer the same. As to the Jurisdiction of this Officer, those Matters that could not be determined in the Hundred-Court, were thence brought to the *Trithing*, where all the principal Men of three or more Hundreds being assembled by the *Lathreve* or *Trithingrebe* did debate and decide it; or if they could not, then the *Lathreve* sent it up to the County-Court, to be there finally determined. —*Suoque olim subaudiens magistratui quem Ledgevium appellabant*. See *Spelm. ant. Government of England*.

Latin. There are three Sorts of *Latin*. 1. *Good Latin* allowed by Grammarians and Lawyers. 2. *False* or incongruous *Latin*, which shall abate Original Writs; but will not make void any judicial Writ, Declaration, Plea, &c. And 3. Words of *Art*, known only to the Sages of the Law; and not to Grammarians, called *Lawyers Latin*. 2 Lill. Abr. 146, 147. Stat. 36 Ed. 3. c. 15. When there is no *Latin* for a Thing, if a Word be made which hath some Countenance of *Latin*, and an *Anglice* is added to it, it will be good; as *Velvetum*, *Anglice* Velvet, &c. 10 Rep. 133. And if a *Latin* Word be falsely englished, the *English* Word shall be adjudged void, and the *Latin* Word stand. 5 Rep. 127. March. 16. See *Indictment*.

Latinarius, An Interpreter of *Latin*, or *Latiner*; which may be derived from the Fr. *Latiner*. 2 Inst. 515.

Latitat, Is a Writ whereby all Men are originally called to answer in personal Actions in the *King's Bench*; having its Name upon a Supposition that the Defendant doth lurk and lie hid, and cannot be found in the County of *Middlesex* to be taken by *Bill*, but is gone into some other County, to the Sheriff of which, this Writ is directed to apprehend him there. F. N. B. 78. *Terms de Ley* 421. The Original of it is this; In ancient Time, while the King's Bench was moveable, when any Man was sued, a Writ was sent forth to the Sheriff of the County where the Court was resident, called a *Bill of Middlesex*, to take him; and if the Sheriff returned *Non est Inventus*, &c. then was a second Writ sued out, that had these Words, *Cum Testatum est quod Latitat*, &c. and thereby the Sheriff was commanded to attach the Party in any other Place, where he might be found: And when the Tribunal of the King's Bench came to be settled at *Westminster*, the same Course was observ'd for a long Time; but afterwards, by the Contrivance of Clerks, it was devised to put both these Writs into one, and so to attach the Defendant upon a Fiction that he was not in the County of *Middlesex*, but lurking elsewhere; and that therefore he was to be apprehended by the Sheriff of the County where he was suspected to be and lie hid: It is called a *Testatum* Writ, issuing out of B. R. grounded upon a *Bill of Middlesex*, supposed to be sued out before, and returned *Non est Inventus*: And a *Latitat* out of the King's Bench is in Nature of the Original Writ *Clausum fregit*, on which the Practice is in the Common Pleas. 2 Lill. Abr. 147. A *Latitat* cannot issue into the County of *Middlesex*, except the Court remove out of *Middlesex*, into another County; for in the County where the Court of B. R. is, the Process must be by *Bill*, and out of the

the County by *Latitat*. *Ibid*. If the Writ of *Latitat* is issued during Term-Time, the *Teste* thereof is to be the first Day of the Term; and if in the Vacation, it must be the last Day of the Term preceding: A Note is to be made of it on Paper in Court-hand, and the *Latitat* being filled up, is to be carried with the Note to the King's Bench Office, and there the Writ is signed; from whence it is carried to the Seal-Office, where it is sealed, and the Day stamp'd on the Backside; and then a Warrant is to be procured from the Sheriff of the County to execute the Writ. *Bract. Solic.* 217.

Form of a Writ of *Latitat* out of B. R.

Georgius Dei Gra. Magn. Britann. Franciæ & Hibern. Rex Fidei Defensor, &c. Vic. Southton. Salut. Cum Vic nostro Midd. nuper Præcepimus quod Capelet C. D. & E. F. si invent. fuissent in Balliva sua & eos salvo Custod. Ita quod haberet Corpora eorum coram nobis apud Westm. ad certum Diem jam præterit. ad Respondend. A. B. de Placito Transgr. Acetiam Separat. Bill. ipsius A. versus præfat. C. & E. pro Decem Libris de Debit. secundum Cons. Cur. nostr. cor. nob. exhibend. dictusque vic. nostr. Midd. ad Diem ill. nob. Retorn. quod præd. C. & E. non sunt invent. in Balliva sua, super quo ex parte præd. A. in Cur. nostr. coram nobis sufficient. Testatum est quod præd. C. & E. Latitant & Discur. in Com. tuo, Ideo tibi Præcipimus quod Capias eos si Invenit. fuerint in Balliva tua & eos salvo Custodias ita quod habeas Corpora eorum coram nobis apud Westm. die Martis, &c. Ad Respondend. præfato A. de Placito & Bill. præd. Et habeas ibi tunc hoc Breve. Teste R. Raymond Mil. apud. Westm. die, &c.

Latro, He who had the sole Jurisdiction in a particular Place *de Latrone*: It is mentioned in *Leg. Will.* 1. See *Infangthesf*.

Lavatorium, A *Laundry*, or Place to wash in; applied to such a Place in the Porch or Entrance of Cathedral Churches, where the Priests and other officiating Members were obliged to wash their Hands before they proceeded to Divine Service: And in the Statutes of St. Paul's Church in London, it was ordained, *ut Sacrifista Lavatorium in vestibulo per servientes frequenter mundari faciat*. Liber Statut. Eccl. Paul. London. M.S. f. 59.

Laudare, To advise or persuade. *Leg. Edw. Confess. cap. 39.*—*Rex Angliæ assignabat ei in terra sua ad Laudem & Consilium Regis Franciæ, &c. Hoveden, p. 729.* *Laudare* signifies also to arbitrate; and *Laudator*, an Arbitrator. *Knight, p. 2526.*

Laudum, An Arbitrament, or Award, *Walsingham, p. 60.*

Laverbread. In the County of Glamorgan and some other Parts of Wales, they make a Sort of Food of a Sea-Plant, which seems to be the Oyster-green, or Sea Liverwort; and this they call *Laverbread*.

Lanregans, A Kind of offensive Weapons now disused, and prohibited by the Stat. 7 R. 2. c. 13.

Laurels, Pieces of Gold coined in the Year 1619. with the King's Head laureated, which gave them the Name of *Laurels*; the Twenty-Shilling Pieces whereof were mark'd with XX. The ten Shillings X. and the five Shilling Piece with V. *Camb. Annal. Fac. 1. M.S.*

Lex, (In Sax. *Lag*, Lat. *Lex*, from *Lego* or *Legendo*, Choosing, or rather à *Ligando* binding) Is the Rule and Bond of Men's Actions: And according to *Bracton, Lex est Sanctio iusta iubens Ho-*

nesta & prohibens Contraria: And the Divine Schoolman says, *Lex Humana est quoddam dictamen rationis, quo diriguntur humani actus*. The Law is *Rectum*, as it discovers that which is crooked or wrong; and these three Qualities are incident to the Law, *viz.* It must be *Iusta, Iubens Honesta, Prohibens Contraria*: And *Iusta* requires five Properties; *Possibilis, Necessaria, Conveniens, Manifesta, nullo privata commodo.* 2 Co. Inst. 56, 587. Laws are said to be *Arbitrary*, or *Natural Laws*; the last of which, are essentially just and good, and bind every where and in all Places where they are observed: *Arbitrary Laws* are either concerning such Matter as is in its self morally indifferent, in which Case both the Law and the Matter, and Subject of it is likewise indifferent, or concerning the natural Law it self, and the Regulating thereof; and all arbitrary Laws are founded in Convenience, and depend upon the Authority of the Legislative Power which appoints and makes them, and are for maintaining publick Order: Those which are natural Laws, are from God; but those which are arbitrary, are properly humane and positive Institutions. *Selden on Fortescue, cap. 17.* The learned *Selden* tells us, that the Laws of any Country began, when there first began to be a State in the Land: And that we may consider the World as one universal Society, and then that Law by which Nations are governed, is called *Ius gentium*; if we consider the World as made up of particular Nations, the Law which regulates the publick Order and Right of them is termed *Ius publicum*; and that Law which determines the private Rights of Men, is called *Ius civile.* *Ibid.* No Law can oblige a People without their Consent; now this Consent is either *Verbis* or *Factis*, i. e. 'tis expressed by Writing, or implied by Deeds and Actions; and where a Law is grounded on an implied Assent, *rebus & factis*, 'tis either Common Law, or Custom; if it is universal, it is Common Law; and if particular to this or that Place, then 'tis Custom. 3 Salk. Rep. 112. The Law in this Land hath been variable; the Roman Laws were in Use anciently in Britain, when the Romans had several Colonies here, each of which was governed by the Roman Laws: Afterwards we had the Laws called *Merchenlage*, *West Saxonlage* and *Danelage*; all reduced into a Body, and made one by King *Edw. Confess. Magn. Chart. cap. 1 & 14. Camd. Britan. 94.* At present the Laws of England are divided into three Parts: 1. The Common Law, which is the most ancient and general Law of the Realm, and common to the whole Kingdom; being appropriate thereto, and having no Dependence upon any Foreign Law whatsoever. 2. Statutes, or Acts of Parliament, made and passed by the King and the Lords and Commons in Parliament; being a Reserve for the Government to provide against new Mischiefs arising, through the Corruption of the Times: And by this the Common Law is amended where defective, for the Suppression of publick Evils; though where the Common Law and Statute Law concur or interfere, the Common Law shall be preferred. 3. Particular Customs; but they must be particular, for a general Custom is Part of the Common Law of the Land. *Co. Lit. 15, 115.* There is another Division of our Laws, more large and particular; as into the Prerogative or Crown Law; the Law and Custom of Parliament; the Common Law; the Statute Law; Reasonable Customs; the Law of Arms, War and Chivalry; Eccle-

Ecclesiastical or Canon *Laws*; *Civil Law*, in certain Courts and Cases; *Forest Law*; the *Law of Marque* and *Reprisal*; the *Law of Merchants*; the *Law* and *Privilege* of the *Stannaries*, &c. But this large Division may be reduced to the common Division; and all is founded on the *Law* of *Nature* or *Reason*, and the revealed *Law* of *God*, as all other *Laws* ought to be. 1 Co. Inst. 11. And the Original *Laws* were the *Laws* of *Nature*, grounded upon right Reason and Honesty; our circumstantiated *Laws* are only to fix a Rule for an equal and mutual Community in Things, which God and Nature gave us to dispose of: The Use of the *Law* is to secure the Property of what we enjoy; and the Objects of it concern Persons, their Estates, Crimes and Misdemeanors, Courts of Justice, &c. See *Common Law*.

Law hath also a special Signification, wherein it is taken for that which is lawful with us, and not elsewhere; as Tenant by the *Curtesy* of *England*, is called Tenant by the *Law* of *England*.

Law of Arms, (*Lex Armorum*) Is that *Law* which gives Precepts how to proclaim War, make and observe Leagues and Treaties, to assault and encounter an Enemy, and punish Offenders in the Camp, &c. The *Law* and Judgment of Arms are necessary between two strange Princes of equal Power, who have no other Method of determining their Controversies, because they have no superior nor ordinary Judge, but are supreme and publick Persons; and by the *Law* of Arms, Kings obtain their Rights, Rebels are reduced to Obedience, and Peace is established: But when the *Laws* of Arms and War do rule, the Civil *Laws* are of little or no Force. *Treat. Laws* 57. Common Things concerning Arms and War, are under the Cognizance of the Constable and Marshal of *England*. 13 R. 2.

Law-Books. All Books writ in the *Law*, are either *Historical*, as the *Year-Books*; *Explanatory*, such as *Staundford's* Treatise of the Prerogative Royal; *Miscellaneous*, as the Abridgments of the *Law*; or *Monological*, being on one certain Subject, such as *Lambard's* Justice of Peace, &c. *Fulbeck's* Parall. cap. 3. And our Books of Reports have such great Weight with the Judges, that many of them are as highly valued, as the *Responsa Prudentum* among the Romans, which were *Authoritative*. *Wood's* Inst. 10. Authors of *Law-Books*. Vide *Common Law*.

Law-Day, (*Lagedayum*) Called also *View of Frank-pledge*, or *Court-Leet*, was any Day of open Court; and commonly used for the Courts of a County or Hundred. *Et quiete sint de Sectis Comitatum & Hundredorum nostrorum, de visu Franci-plegii & Lawdayorum*, &c. *Chart.* 39 *Hen.* 3.

Lawing of Dogs, Is the Cutting off several Claws of the Fore-feet of Dogs in the *Forest*. *Chart. Forest.* c. 6. See *Expediate*.

Lawless Court, Is a Court held on *Kingshill*, at *Rochford* in *Essex*, on *Wednesday* Morning next after *Michaelmas* Day yearly, at Cock-crowing; at which Court, they whisper, and have no Candle, nor any Pen and Ink, but a Coal: And he that owes Suit or Service there, and appears not, forfeits double his Rent: This Court is mentioned by *Camden*, who says, that the servile Attendance was imposed on the Tenants, for conspiring at the like unreasonable Time to raise a Commotion. *Camd. Britan.* 441. It belongs to the Honour of *Raleigh*, and is called *Lawless*, because held at an unlawful Hour; or *Quia dicta sine*

Lege. The Title of it is in Rhime, and in the *Court-Rolls* runs thus:

*Kingshill in } ff. Curia de Domino Rege,
Rochford } Dicta sine Lege,
Tenta est ibidem
Per ejusdem Consuetudinem,
Ante ortum solis
Luceat nisi solus,
Senescallus solus,
Nil scribit nisi colis,
Toties voluerit
Gallus ut cantaverit,
Per cuius soli — sonitus
Curia est summonita:
Clamat clam pro Rege,
In Curia sine Lege,
Et nisi cito venerint
Citius panituerint,
Et nisi clam accedant
Curia non attendat,
Qui venerit cum lumine
Errat in regimine,
Et dum sunt sine lumine,
Capti sunt in Crimine,
Curia sine Cura.
Furati de Injuria.*

Tenta ibidem die Mercurii (ante Diem) proximi post Festum Sancti Michaelis Anno Regni Regis, &c.

Lawless Man, (*Exlex*) Is he that is an Out-law. *Pro exlege tenebitur, cum Principi non obediat nec Legi, & tunc utlagabitur sicut ille qui est extra Legem, sicut Laugheless Man. Bract. lib. 3. c. 11.*

Law of Marque, (From the Germ. *March*, i. e. *Limes*) Is where they that are driven to it, do take the Shipping or Goods of that People of whom they have received Wrong, and cannot get ordinary Justice in another Territory, when they can take them within their own Bounds and Precincts. *Stat.* 27 *Ed.* 3. c. 17.

Law Merchant, (*Lex Mercatoria*) Is a special *Law* differing from the *Common Law* of *England*, proper to Merchants, and become a Part of the *Laws* of the Realm: And the *Charia Mercatoria* 31 *Ed.* 1. grants this perpetual Privilege to Merchants, coming into this Kingdom: *Quod omnes Ballivi, Ministri Feriarum, Civitatum, Burgorum & Villarum Mercatoriarum Mercatoribus antedictis comparantibus coram eis celerem Fugitiam facient de die in diem sine dilatione; secundum Legem Mercatoriam, de universis & singulis que per eandem Legem poterunt terminari.* See 13 *Ed.* 1. and 27 *Ed.* 3. c. 8. *Co. Lit.* 182. See *Custom of Merchants*.

Law Spiritual, (*Lex Spiritualis*) Is the *Ecclesiastical Law*, allowed by our *Laws* where it is not against the *Common Law*, nor the Statutes and Customs of the Kingdom: And regularly according to such *Ecclesiastical* or *Spiritual Laws*, the Bishops and other *Ecclesiastical* Judges, do proceed in Causes within their Cognitance. *Co. Lit.* 344. This was also called *Law Christian*; and in Opposition to it, the *Common Law* was often called *Lex Mundata, Terrena, &c.*

Lawyer, (*Legista, Legisperitus, Furis, consultus*) By the Saxons called *Labman*, is a Counsellor, or one learned in the *Law*.

Lay-fee, (*Feodum Laicum*) Land held in Fee from a *Lay Lord*, by the common Services to which military Tenure was subject; as distinguished from the *Ecclesiastical* Holding in *Frankalmoign*, discharged from those Burdens. *Kennet's Gloss.*

Layman, Is one that is not of the Clergy ; and the Lat. Word *Laicus* signifies as much as *Populus*, that which is common to the People, or belongs to the *Laity*. Litt. Dict.

Layfall, (*Sax.*) A Place to lay Dung or Soil in. Stat. 22 & 23 Car. 2.

Lazzi. The Saxons divided the People of the Land into three Ranks : The First they called *Edhilingi*, which were such as are now Nobility : The Second were termed *Frilingi*, from *Friling* signifying he that was born a Freeman, or of Parents not subject to any Servitude, which are the present Gentry : And the Third and Last were called *Lazzi*, as born to Labour, and being of a more servile State than our Servants, because they could not depart from their Service without the Leave of the Lord ; but were fix'd to the Land where born, and in the Nature of Slaves : And hence the Word *Lazzi* or *Lazy*, signifies those of a servile Condition. *Nithardus de Saxonibus*, lib. 4.

Lea of Barn, A Quantity of Yarn, so called ; and at *Kidderminster* it is to contain 200 Threads, on a Reel four Yards about. 22 & 23 Car. 2.

Leche or Leak, (From *Sax. Leccian*, to let out Water) In the Bishoprick of *Durham* is used for a Gutter ; and in *Yorkshire* any Slough or watry Hole upon the Road, is called by this Name : Also the Water-Tub or Vessel to put Ashes in to make a *Lee* for Washing of Cloaths, is in some Parts of *England* termed a *Leche*. Cowel.

Leakage, Is an Allowance of Twelve *per Cent*, to Merchants importing Wine out of the Customs ; and of two Barrels in Twenty-two of Ale, to Brewers, &c. out of the Duty of Excise. *Merch. Dict.*

Leap, A Net, Engine or Weel, made of Twigs, to catch Fish in. 4 & 5 W. & M. c. 23. See *Lepa*.

Leap Year, Every fourth Year, having one Day more than other Years. *Vide Bissextile*.

Lease, (*Dimissio*, from the Fr. *Laiffer*, i. e. *Dimittere*, to depart with or forego) Is a Demise or Letting of Lands, Tenements or Hereditaments to another, for Term of Life, Years, or at Will, for a Rent reserved. Co. Lit. 43. Leases are either in *Writing*, or by Word of Mouth, when they are called *Leases Parol* ; and it is said not to be material whether any Rent is reserved upon a *Lease* for Life, or Years, except in the Case of *Leases* by Tenant in Tail, &c. according to the Statute 32 Hen. 8. A *Lease* for Life requires Livery of Seisin ; and generally to the Making of a good *Lease*, several Things necessarily concur ; there must be a Lessor, not restrained to make a *Lease* ; a Lessee not disabled to receive it ; a Thing demised which is demisable, and a sufficient Description of the Thing demised, &c. If it be for Years, it must have a certain Commencement and Determination ; it is to have all the usual Ceremonies, as Sealing, Delivery, &c. and there must be an Acceptance of the Thing demised. Lit. 56. 1 Inst. 46. Plowd. 273, 523. A Demise having no certain Commencement is void : For every Contract sufficient to make a *Lease*, ought to have Certainty in Commencement, in the Continuance, and in the End. Vaugh. 85. 6 Rep. 35. A *Lease* at Will is at the Will of the Lessor or Lessee ; or regularly at the Will of both Parties. 1 Inst. 55. All Estates, Interests of Freeholds, or Terms for Years in Lands, &c. not put in *Writing*, and signed by the Parties, shall have no greater Effect than as Estates at Will ; unless it be of *Leases* not exceeding three Years from the Making, wherein

the Rent reserved shall be two Thirds of the Value of the Thing demised. Stat. 29 Car. 2. c. 3. *Leases* exceeding three Years must be made in *Writing* ; and if the Substance of a *Lease* be put in *Writing*, and signed by the Parties, though it be not sealed, it shall have the Effect of a *Lease* for Years, &c. Wood's Inst. 266. Articles with Covenants to let and make a *Lease* of Lands, for a certain Term, at so much Rent, hath been adjudged a *Lease*. Cro. Eliz. 486. In Covenant, the Words *Have*, *Possess* and *Occupy* Lands, in Consideration of an yearly Rent, without the Word *Demise*, it hath been held a good *Lease* : And a Licence to occupy, take the Profits, &c. which passeth an Interest, amounts to a *Lease*. 3 Bulfr. 204. 3 Salk. 223. A Person seised of an Estate in Fee-simple, in his own Right, of any Lands or Tenements, may make a *Lease* of it for what Lives or Years he will ; and he that is seised of an Estate-tail in Lands, may make a *Lease* of it for his own Life, but not longer ; except it be by Fine or Recovery, or *Lease* warranted by the Stat. 32 H. 8. And if Tenant in Tail, or for Life, make a *Lease* generally, it shall be construed for his own Life. 1 Inst. 42. He that is seised of an Estate for Life, may make a *Lease* for his Life, according as he is seised ; also he may make a *Lease* for Years of the Estate, and it shall be good as long as the Estate for Life doth last : One possessed of Lands for Years, may make a *Lease* of all the Years, except one Day, or any short Part of the Term ; it is to be granted for a less Term than the Maker hath in the Lands ; for if all the Estate is granted, it is an Assignment : And if Lessee for Years makes a *Lease* for Life, the Lessee may enjoy it for the Lessor's Life, if the Term of Years lasts so long ; but if he gives Liberty and Seisin upon it, this is a Forfeiture of the Estate for Years. Wood's Inst. 267. Jointenants, Tenants in Common, and Coparceners, may make *Leases* for Life, Years, or at Will, of their own Parts, and shall bind their Companions : And in some Cases, Persons as are not seised of Lands in Fee, &c. may make *Leases* for Life or Years, by special Power enabling them to do it, when the Authority must be exactly pursued. Ibid. But there is a Difference, where there is a general Power to make *Leases*, and a particular Power. 8 Rep. 69. Every *Lease* must be made for a less Time than the Lessor hath in the Premises : A *Lease* for Life cannot be made to commence *in futuro*, by the Common Law ; because Livery cannot be made to a future Estate : Tho' where a *Lease* is made for Life, *Habendum* at a Day to come, and after the Day the Lessor makes Livery, there it shall be good ; and a *Lease* in Reversion may be made for Life, which commences at a Day that is future. 5 Rep. 94. Hob. 314. 1 Inst. 5. A *Lease* for Years may begin from a Day past, or to come ; as *Michaelmas* last, *Christmas* next, three or four Years after, or after the Death of the Lessor, &c. Though a Term cannot commence upon a Contingency, which depends on another Contingency. 1 Inst. 5. 1 Rep. 156. And if a Man makes a *Lease* to another for so many Years as a third Person shall name, when the Years are named by such Person, it is good for so many Years. 1 Inst. 45. So if a Person lets his Lands for as many Years as he hath in the Manor of D. and he hath then a Term for ten Years, this is a good *Lease* for ten Years ; and in the like Cases,

Cases, by referring to a Certainty, it may be made good and certain. *Ibid.* A *Lease* may be made for Life or Years, of any Thing that lies in Livery or Grant; but *Leases* for Years ought to be made of such Lands, &c. whereunto the Lessor may come to distrain; not of incorporeal Inheritances. 1 *Inst.* 47. And they may be for the Term of One thousand Years, or any Number of Years, Months or Weeks; or be from Week to Week, &c. for three or four Years, and be good for those Years: And a Tenant for Half a Year, or a Quarter of a Year, is Tenant for Years. 1 *Inst.* 6. If one makes a *Lease* for a Year, and so from Year to Year, it is a *Lease* for two Years; and afterwards it is but an Estate at Will. 1 *Mod.* 4. 1 *Lutw.* 213. And if from three Years to three Years, it is a good *Lease* for six Years: Also if a Man make a *Lease* for Years, without saying for how many, it may be good for two Years, to answer the plural Number. *Wood's Inst.* 265. A Lessee hath a Term for a Year by Parol, and so from Year to Year, so long as both Parties please; if the Lessee enters on a second Year, he is bound for that Year, and so on: And if there is a *Lease* by Deed for a Year, and so from Year to Year as long as both Parties agree, this is binding but for one Year; though if the Lessee enter upon the second Year, he is for that Year bound: If 'tis for a Year, and so from Year to Year, so long as both Parties agree till six Years expire; this is a *Lease* for six Years, but determinable every Year at the Will of either Party: But if it is for a Year, and so from Year to Year till six Years determine, this is a certain *Lease* for six Years; adjudged by Holt Chief Justice. *Mod. Caf.* 215. A Parson makes a *Lease* of his Glebe, for so many Years as he shall be Parson, this cannot be made certain; but if he makes a *Lease* for three Years, and so from three Years to three Years, so long as he shall be Parson, this is a good *Lease* for six Years, if he continues Parson so long. 6 *Rep.* 35. 3 *Cro.* 511. And if one make a *Lease* for twenty-one Years, if the Lessee shall so long live; this is a good *Lease* for Years, and a Certainty in an Uncertainty. 1 *Inst.* 46. If a *Lease* be made to A. B. during his own Life, and the Lives of C. and D. it is one entire Estate of Freehold, and shall continue during the three Lives, and the Life of the Survivor of them; and though the Lessee can have it no longer than his own Life, yet his Assignee shall have the Benefit of it so long as the other two are living. 5 *Rep.* 13. *Moor* 32. Where one grants Land by *Lease* to A. B. and C. D. to hold to them during their Lives, although the Words *and the longest Liver of them* be omitted, they shall hold it during the Life of the longest Liver. 5 *Rep.* 9. A *Lease* is made to a Person for sixty Years, if A. B. and C. D. so long live; and afterwards A. B. dies, by his Death the *Lease* is determined: Though if the *Lease* be made to one for the Lives of A. B. and C. D. the Freehold doth not determine by the Death of one of them; and if in the other Case of a Term, the Words *or either of them* be inserted in the *Lease*, it will be good for both their Lives. 13 *Rep.* 66. A *Lease* was made to a Man for ninety-nine Years, if he should so long live; and if he died within the Term, the Son to have it for the Residue of the Term: This was adjudged void as to the Son, because there can be no Limitation of the Residue of a Term which is determined. *Cro. Eliz.*

216. A *Lease* is made for Twenty-one Years, if the Lessee live so long, and continue in the Service of the Lessor; the Lessor died within the Term, and yet it was held that the *Lease* continued, for it was by the Act of God that the Lessee could serve no longer. *Cro. Eliz.* 643. If a *Lease* be to a Man, and to her whom he shall take to be his Wife, it is void: Because there ought to be such Persons at the Time of the Commencement of the *Lease* which might take. 4 *Leon.* 158. When a *Lease* in Reversion is granted as such after another *Lease*, and that *Lease* is void by Rasure, &c. the reversionary *Lease* expectant upon the *Lease* for Years that is void, is void also. *Cro. Car.* 289. But where a Man recites a *Lease*, when in Truth there is no *Lease*; or a *Lease* which is void, and misrecites the same in a Point material, and grants a further *Lease* to commence after the Determination thereof; in such Case the new *Lease* shall begin from the Time of Delivery. *Dyer* 93. 6 *Rep.* 36. *Vaugh.* 73, 80, &c. A *Lease* that has an impossible Date for its Commencement, is said to be void; and an uncertain Limitation makes the *Lease* void, because it being Part of the Agreement, the Court cannot determine what the Contract was. 1 *Mod.* 180. But it hath been adjudged, where a *Lease* bears a Date which is impossible, the Term shall begin from the Delivery, as if there was no Date. 1 *Inst.* 40. If a *Lease* be to hold from the Day of the Date, the Day it self is excluded; otherwise the Day of Delivery is inclusive. 5 *Rep.* 2. A Man makes a *Lease* for Years to one, and afterwards makes a *Lease* for Years to another of the same Land; the second *Lease* is not void, but shall be good for so many Years thereof, as shall come after the first *Lease* ended. *Noy's Max.* 67. And if one make a *Lease* for Years, and afterwards the Lessor enters upon the Lands let, before the Term is expired, and makes a *Lease* of these Lands to another; this second *Lease* is a good *Lease* until the Lessee doth re-enter, and then the first *Lease* is revived, and he is in thereby. 2 *Lill. Abr.* 152. A *Lease* which is only voidable, and not absolutely void, must be made void by the Lessor by Re-entry; but if a *Lease* be void absolutely, there needs no Re-entry: And as a voidable *Lease* is made void by Re-entry, and putting out the Lessee; so it is affirmed by accepting and receiving the Rent, which acknowledges the Lessee to be Tenant. 21 *Car.* B. R. 2 *Lill.* 149. If a Lessor accepts of Rent of an Assignee of a *Lease*, having Knowledge of the Assignment, he may not afterwards charge the Lessee with the Rent in Action of Debt. 3 *Rep.* 23. And where a Lessee for Years accepts of a less Term from the Lessor, even by Word, it is said this is a Surrender of the Term which he had by Deed. *Style* 448. When a Term for Years in *Lease*, and a Fee-simple, meet in one Person, the *Lease* is drowned in the Inheritance; yet in some Cases it may have Continuance, to make good Charges and Payments, &c. *Poph.* 39. 2 *Nelf. Abr.* 1106. If a *Lease* for Years is made to a Man and his Heirs, it shall go to his Executors. 1 *Inst.* 46, 388. And a *Lease* for Years, notwithstanding it be a very long *Lease*, cannot be intailed, but may be assigned in Trust to several Uses. 2 *Lill. Abr.* 150. If such a *Lease* comes to be limited in Tail, the Law allows not a present Remainder to be limited thereupon. *Ibid.* Lessee for Years, though for never so great a Term, has only a Chattel; but Tenant for Life

hath a Freehold. 1 *Inst.* 6. A *Lease* is sealed by the Lessor, and the Lessee hath not sealed the Counterpart, Action of Covenant may be brought upon the *Lease* against the Lessor: But where the *Lease* is sealed by the Lessee, and not the Lessor, nothing operates. *Yelv.* 18. *Owen* 100. A Man, out of Possession, cannot make a *Lease* of Lands, without Entering and Sealing the *Lease* upon the Land. *Dalish.* 81. The Lessee is to enter on the Premises let; and such Lessee for Years is not in Possession, so as to bring Trespass, &c. until actual Entry; but he may grant over his Term before Entry. 1 *Inst.* 46. 2 *Lill.* 160. A Lessee of a future Interest never enters by Virtue of his Term, but enters before, and continues after the Commencement of the Term; and if then the Lessor ousts him, the Lessee may assign over his Term off from the Land. 1 *Lev.* 47. But a *Lease* to begin at *Michaelmas*, if the Lessee enters before *Michaelmas*, and continues the Possession immediately, it is a *Disseisin*. *Ibid.* 46. Where Land and Mines are leased to a Tenant, it only extends to the open Mines; and the Lessee shall not have any others, if there are such: A Man demises Land and Timber, the Lessee is not impowered to sell it. 2 *Lev.* 184. 2 *Mod.* 193. If a *Lease* be made of a Close of Land, by a certain Name, in the Parish of A. in the County of B. whereas the Close is in another County, the said Parish extending into both Counties; such a *Lease* is good to pass such Land: But where a House is leased, without a Name, and the Parish is mistaken; it hath been held otherwise. *Dyer* 292, 276. A Man makes a *Lease* of Lands for Life, or Years, the Lessee hath but a special Interest in the Timber-Trees, as annexed to the Land, to have the Mast and Shadow for his Cattle; and when they are severed from the Lands, or blown down with Wind, the Lessor shall have them as Parcel of his Inheritance. 4 *Rep.* 62. 11 *Rep.* 81. If an House falls down by Tempest, &c. the Lessee hath an Interest to take the Timber to re-edify it for his Habitation. 4 *Rep.* 63. And every Lessee for Years, &c. may take of Timber necessary Plough-bote, House-bote, Fire-bote, &c. without doing Waste. 1 *Inst.* 41. And Tenants suffering Houses to be uncovered, or in Decay; taking away Wain-scot, &c. fixed to the Freehold, unless put up by the Lessee, and taken down before the Term is expired; cutting down Timber-Trees to sell; permitting young Trees to be destroyed by Cattle, &c. Ploughing up Ground that Time out of Mind hath not been ploughed; not keeping Banks in Repair, &c. are Waste. 1 *Inst.* 52. *Dyer* 37. 1 *Salk.* 368. Lessees are bound to repair their Tenements, except it be mentioned in the *Lease* to the contrary. *Noy's Max.* 30. Though a Lessee for Years is not obliged to repair the House let to him, which is burnt by Accident; if there be not a special Covenant in the *Lease*, that he shall leave the House in good Repair at the End of the Term; if the House be burnt by Negligence, the Lessee shall repair it, altho' there be no such Covenant. *Pasch.* 24 *Car. B. R.* A Lessee at Will is not bound to sustain or repair, as Tenant for Term of Years is: If the House of such a Tenant is burnt down by Negligence, Action lies not against the Tenant; but Action lies for voluntary Waste, in pulling down Houses, or cutting Wood, &c. 5 *Rep.* 13. By Stat. 6 & 16 *Ann. cap.* 14. no Action shall be brought against any Person in whose House any

Fire shall accidentally begin, or any Recompence be made by such Person for Damage, so as not to extend to make void any Agreement between Landlord and Tenant; and negligent Firing of Houses is liable to Penalties: A Lessor cannot reserve Rent to any other but himself, his Heirs, &c. And if he reserves a Rent to his Executors, the Rent shall be to the Heir, as Incident to the Reversion of the Land. 1 *Inst.* 47. The Lessor may distrain in the Tenements letten for the Rent, or may have Action of Debt for the Arrears, &c. Also Land leased shall be subject to those lawful Remedies which the Lessor provides for Recovery of his Rent, Possession, &c. into whose Hands soever the Land comes. *Cro. Jac.* 300. And as to the Lessee, if Lessee for Years loses his *Lease*, if it can be proved that there was such a Term let to him by *Lease*, and that it is not determined, he shall not lose his Term; so it is of any other Estate in Lands, if the Deed that created it be lost; for the Estate in the Land is derived from the Party that made it, and not from the Deed otherwise than instrumentally and declarative of the Mind and Intent of the Party, &c. 2 *Lill. Abr.* 152. If a Person be in Possession of the Lands of another, and hath usually paid Rent for them; the Proof of a Quarter or Half Year's Rent paid, will be good Evidence of a *Lease* at Will, though it cannot be expressly proved that the Lands were demised at Will to him in Possession; it shall be presumed the Rent was received by the Owner of the Land upon some private Contract. *Ibid.* 151. Lands are leased at Will, the Lessee cannot determine his Will before or after the Day of Payment of the Rent, but it must be done on that very Day; and the Law will not allow the Lessee to do it to the Prejudice of the Lessor, as to the Rent; nor that the Lessor shall determine his Will to the Prejudice of the Lessee, after the Land is sowed with Corn, &c. *Sid.* 339. *Lev.* 109. For where Lessee at Will sows the Land, if he does not himself determine the Will, he shall have the Corn; so where Tenant for Life sows the Corn, and dies, his Executors shall have it; but it is not so of Tenant for Years, where the Term ends before the Corn is ripe, &c. 5 *Rep.* 716. The Lessor and Lessee, where the Estate is at Will, may determine the Will when they please; but if the Lessor doth it, within a Quarter, he shall lose that Quarter's Rent; and if the Lessee doth it, he must pay a Quarter's Rent. 2 *Salk.* 413. By Words spoken on the Ground by the Lessor, in the Absence of the Lessee, the Will is not determined; but the Lessee is to have Notice. 1 *Inst.* 55. If a Man makes a *Lease* at Will, and dies, the Will is determined; and if the Tenant continues in Possession, he is Tenant at Sufferance. *Ibid.* 57. But where a Lessor makes an Estate at Will to two or three Persons, and one of them dies, it has been adjudged this doth not determine the Estate at Will. 5 *Rep.* 10. Tenant at Will grants over his Estate to another, it determines his Will. 1 *Inst.* 57. A Person is Tenant at Sufferance, who continues after his Term is ended, and wrongfully holdeth over against another, &c. *Ibid.* No Tenant shall take *Leases* of above two Farms, in any Town, Village, &c. nor hold two, unless he dwell in the Parish, under Penalties and Forfeitures, by Stat. 25 *Hen. 8. cap.* 13. See 21 *H. 8. cap.* 13.

Leases by Statute. There are three Kinds of Persons, who may make Leases for Life or Years by Statute, that could not do so heretofore, *viz.* Tenants in Tail, Husband and Wife of the Wife's Land, and Persons seised of Land in Right of the Church. By the Stat. 32 H. 8. c. 18. *Tenants in Tail* are enabled to make *Leases* on the following Conditions, *i. e.* They are to be made by Deed indented; to begin from the Time of Making, or some short Time after, as *Michaelmas* next, &c. If there be an old Lease in Being, it must be absolutely surrendered, or expire within a Year after the making of the New; they must not exceed three Lives or twenty-one Years, from the making, or be for both, but may be for less Terms; they are to be of Lands manurable or corporeal, out of which a Rent may be legally issuing; and of such Lands or Tenements which have been most commonly let to Farm by the Space of twenty Years; the accustomed yearly Rent, paid within twenty Years, is to be reserved; and they are not to be made without Impeachment of Waste, &c. It has been held on this Statute, that where a new Thing is demised with Lands accustomedly let, tho' there be a great Increase of Rent, the Lease is void: But more Rent than the accustomed Rent, may be reserved. 5 Rep. 5. 6 Rep. 37. And the Leases according to the Statute bind the Issues in Tail; but not those in Reversion or Remainder: For if Tenant in Tail makes a Lease warranted by the Statute, and dies without Issue, the Lease as to him in Reversion or Remainder is void; though by a common Recovery, Leases may be made to bind him in Remainder, &c. *Wood's Inst.* 267. A Guardian during the Minority of an Infant Tenant in Tail, who was but one Year old, made a Lease for twenty Years, and it was adjudged not good by the Stat. 32 H. 8. to bind the Issue in Tail; and it is the same in the Case of Tenant in Dower, Tenant by the Curtesy, or Husband seised in Right of his Wife, because they have no Inheritance. *Dyer* 271. The Statute empowers a Husband to make Leases of Land in Tail, held in his Wife's Right, so as in such Leases the Conditions aforementioned are observed, and the Wife be made a Party to and seal the Leases; and the Rent is to be reserved to the Husband and Wife, and her Heirs, &c. If a Lease of the Wife's Land is not warranted by the Statute, it is a good Lease against the Husband, tho' not against the Wife: The Husband and Wife can't bind him in Reversion or Remainder. 1 Inst. 362. Bishops, Spiritual Persons, &c. seised in Fee in Right of their Churches, may make Leases of their Spiritual Livings for three Lives, or one and twenty Years, having all the Qualities required by the Statute, in Case of Leases made by Tenants in Tail. 32 H. 8. And Leases otherwise made are to be void; but not against the Bishops, &c. making them, only against their Successors. 3 Rep. 59. A Bishop, &c. may make Leases of Lands for twenty-one Years, or three Lives, according to the Statute, without Confirmation of Dean and Chapter; and at Common Law might make them for any longer Time, without Limitation, with Confirmation of Dean and Chapter; but this is restrained by the Statutes 1 Eliz. c. 19. & 13 Eliz. c. 10. Such Confirmation will now make good concurrent Leases for twenty-one Years, &c. upon Leases for Years; tho' a Bishop cannot make a concurrent Lease for Life or Lives. *Wood's Inst.* 273. Leases of a Dean

and Chapter are good, without Confirmation of the Bishop, *Dyer* 273. 2 Nelf. Abr. 1096. Where there is a Chapter, and no Dean, they may make Grants, &c. and are within the Statute. 1 Mod. 204. And a Prebendary is seised in Right of the Church within the Equity of the Statute 32 H. 8. 4 Leon. 51. A Prebend's Lease confirmed by the Archbishop, who is his Patron, is good without Confirmation of Dean and Chapter. 3 Bulst. 290. But where a Prebendary made a Lease for Years of Part of his Prebend, and this was confirmed by Dean and Chapter; because it was not confirmed likewise by the Bishop, who was Patron and Ordinary of the Prebend, the Lease was adjudged void. *Dyer* 60. If a Prebend hath Rectories in two several Dioceses belonging to his Prebendary, and his Lease of them is confirmed by the Bishop, Dean and Chapter of the Diocese of which he is Prebend, it is good, tho' not confirmed by the other. *Sid.* 75. A Chancellor of a Cathedral Church may make a Lease, and 'tis said it will be good against the Successor, tho' not confirmed, &c. *Ibid.* 158. When a Bishop is Patron and Ordinary, he may confirm a Parson's Lease for Years, without Dean and Chapter. *Cro. Eliz.* 359. And if a Parson or Vicar makes a Lease for Life or Years, of Lands usually letten, reserving the customary Rent, &c. it must be confirmed by Patron and Ordinary, for they are out of the Statute 32 H. 8. If the Parson and Ordinary make a Lease for Years of the Glebe to the Patron, and afterwards the Patron assigns this Lease to another; such Assignment is good, and is a Confirmation of that Lease to the Assignee. 5 Rep. 15. Antient Covenants in former Leases may be so good to bind the Successor, so as to discharge the Lessee from Payment of Pensions, Tenths, &c. but of any new Matter they shall not. 1 Vent. 223. By the Stat. 13 Eliz. the Lease of a Parson is not good any longer than while the Lessor or Incumbent shall be resident, without Absence fourscore Days in any Year; and an Incumbent offending contrary to this Act, shall lose a Year's Profit of the Benefice, &c. 4 Rep. 403. A Lease for Years of a Spiritual Person, will be void by his Death, if it is not according to the Statutes; and a Lease for Life is voidable by Entry, &c. of the Successor: And so in the like Cases, Leases not warranted by Statute, are void or voidable on the Deaths of the Makers: Acceptance of Rent on a void Lease shall not bind the Successor. 2 Cro. 173. On College Leases, a third Part of the Rent is to be reserved in Corn, &c. 18 Eliz. c. 6. By 14 Eliz. c. 11. it is ordained, that the 13 Eliz. c. 10. shall not extend to Leases of the Masters and Fellows of Colleges, &c. of Houses in Corporation Towns, which may be made for forty Years, &c. The 18 Eliz. c. 11. makes void Leases of Masters and Fellows of Colleges, Deans and Chapters, Masters of Hospitals, &c. by Virtue of 13 Eliz. for twenty-one Years, or three Lives, where another Lease for Years is in Being, and not expired or surrendered within three Years: But Bishops are out of this Statute. If a Bishop be not Bishop *de Jure*, Leases made by him to charge the Bishoprick, are void; tho' all judicial Acts by him are good. 2 Cro. 353. Where a Bishop makes a Lease, which may tend to the Diminution of the Revenues of the Bishoprick, &c. which should maintain the Successor; there the Deprivation or Translation of the Bishop is all one with his Death. 1 Inst. 329. All Assurances

and Demises of Bishops Lands to the King, shall be void. 1 Jac. 1. c. 3.

Leases of the King. Leases made by the King of Part of the Duchy of Cornwall, are to be for three Lives, or thirty-one Years, and not be made dispunishable of Waste, whereon the ancient Rent is to be reserved; and Estates in Reversion, with those in Possession, are not to exceed three Lives, &c. 13 Car. 2. c. 4. 12 Ann. c. 22. Persons for whose Lives Estates are held, remaining beyond Sea, or being absent for seven Years, if no Proof be made of their being alive, shall be accounted dead. 19 Car. 2. c. 6.

Form of a Lease of a House in London

THIS Indenture made the Day, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witneseth, That for and in Consideration of the Rent and Covenants herein after reserved and contained, on the Part and Behalf of the said C. D. his Executors and Administrators, to be paid, kept and performed, he the said A. B. Hath demised, granted, and to Farm letten, and by these Presents doth demise, grant, and to Farm let unto the said C. D. All that Messuage or Tenement, situate, &c. and known by the Sign of, &c. with all and singular Cellars, Sollars, Chambers, Rooms, Lights, Ways, Water-courses, Easements, Profits, Commodities and Appurtenances, to the said Messuage or Tenement belonging or appertaining; together with the Use of the Goods in the Schedule hereto annexed mentioned. To have and to hold the said Messuage or Tenement, and all and singular the Premises, with their and every of their Appurtenances herein before-mentioned, or intended to be hereby demised unto the said C. D. his Executors, Administrators and Assigns, from the Feast of, &c. for and during and unto the full End and Term of fourteen Years, from thence next ensuing, and fully to be compleat and ended. Yielding and Paying therefore Yearly and every Year, during the said Term, unto the said A. B. his Executors, Administrators or Assigns, the Rent or Sum of Twenty Pounds of lawful Money of Great Britain, on the four most usual Feasts or Terms in the Year, (that is to say) the Feast of St. Michael the Archangel, the Birth of our Lord Christ, the Annunciation of the Blessed Virgin Mary, and the Nativity of St. John the Baptist, by even and equal Portions. And if it shall happen the said yearly Rent of Twenty Pounds, or any Part thereof, shall be behind and unpaid by the Space of Eight and twenty Days next after any of the said Feast-Days, on which the same ought to be paid as aforesaid, (being lawfully demanded) that then and at all Times then after, it shall and may be lawful to and for the said A. B. his Executors, Administrators and Assigns, into the said demised Messuage or Tenement and Premises, or into any Part thereof, in the Name of the whole, to re-enter, and the same to have again, repossess and enjoy, as in his and their former Estate, and the said C. D. his Executors, Administrators and Assigns, thereout and from thence to expel and put out, any Thing herein contained to the contrary thereof in any wise notwithstanding. And the said C. D. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said A. B. his Executors, Administrators and Assigns, by these Presents, that he the said C. D. his Executors, Administrators or Assigns, shall and will, during the said Term hereby demised, well and truly pay, or cause to be paid unto the said A. B. his Executors, Administrators or Assigns, the said yearly Rent or Sum of Twenty Pounds, on the Days and Times, and in Manner and Form above-mentioned, for Payment thereof,

according to the Reservation thereof, as aforesaid, and the true Intent and Meaning of these Presents. And also, that he the said C. D. his Executors, Administrators and Assigns, or some or one of them, shall and will, at his or their own proper Costs and Charges, well and sufficiently repair, uphold, support, maintain and keep the said Messuage, or Tenement and Premises, with the Glass Windows, Pavements, Privies, Sinks, Gutters, and Wydraughts belonging to the same, in, by, and with all and all Manner of needful and necessary Reparations and Amendments whatsoever, when and as often as Need or Occasion shall be or require during the Term, (the Casualty of Fire, which may burn down or destroy the said Messuage or Tenement and Premises, or any Part thereof, only excepted) And the said Messuage or Tenement and Premises, being so well and sufficiently repaired, upheld, supported, maintained, and kept at the End of the said Term, or other sooner Determination of this present Demise, unto the said A. B. his Executors, Administrators and Assigns, shall and will peaceably and quietly leave and yield up (except as is before excepted) and shall and will then also leave unto the said A. B. his Executors, &c. all such Goods as are mentioned in the said Schedule hereto annexed, in as good Condition as they are now in, reasonable Usage of them, &c. excepted. And further, That it shall and may be lawful to and for the said A. B. his Executors, Administrators or Assigns, or any of them, with Workmen or others, or without, twice in every Year, during the Continuance of this Demise, at seasonable Times in the Day-time, to enter and come into and upon the said demised Premises, or any Part thereof, and view, search and see the State and Condition of the Reparations of the same; and of all Defects, Defaults, and Want of Repairs, then and there found, to give or leave Notice or Warning in Writing, at and upon the said demised Premises, to and for the said C. D. for the Repairing and Amending of the same within the Space of Three Months then next following: In which said Space or Time of three Months, after every or any such Notice or Warning, he the said C. D. for himself, his Executors, Administrators and Assigns, doth hereby covenant and grant to and with the said A. B. his Executors, Administrators and Assigns, well and sufficiently to repair and amend the Defects and Want of Reparations so to be found as aforesaid, (except as is before excepted); And also, that he the said C. D. his Executors, Administrators and Assigns, shall and will at all Times hereafter, during the Term hereby demised, bear, pay and discharge all Taxes, Charges, Impositions and Parish Duties, which shall be taxed, charged, imposed or assessed upon the said Messuage or Tenement aforesaid, or any Part thereof. And the said A. B. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that he the said C. D. his Executors, Administrators and Assigns, paying the said yearly Rent of Twenty Pounds above reserved, in Manner aforesaid, and performing all and every the Covenants and Agreements herein before contained, which on his or their Parts and Behalves, are or ought to be paid, done and performed, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said Messuage or Tenement and Premises hereby demised, for and during the Term hereby granted, without any lawful Let, Suit, Trouble, or Interruption of or by the said A. B. his Executors, Administrators or Assigns, or any of them, or by any other Person or Persons lawfully claiming, or to claim by, from, or under him, them, or any of them, or by or through his, their, or any of their Acts, Means or Procurement. In Witnesses, &c.

A Lease for Ninety-nine Years, if three Lives live so long.

THIS Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That the said A. B. as well for and in Consideration of the Surrender of a former Lease granted by, &c. unto the said C. D. of the Messuage or Tenement and Premises herein after demised for the Term of Ninety-nine Years, determinable on the Deceases of, &c. as also for and in Consideration of the Sum of, &c. of lawful British Money to him the said A. B. in hand paid by the said C. D. at and before the Sealing and Delivery of these Presents, the Receipt whereof he the said A. B. doth hereby acknowledge, and thereof doth acquit and discharge the said C. D. his Executors, Administrators and Assigns, by these Presents, hath demised, granted, and to Farm letten, and by these Presents doth demise, grant, and to Farm let, unto the said C. D. All that Messuage or Tenement, with all those Lands, &c. situate, lying, and being in, &c. And all Houses, Outhouses, Ways, Waters, Easements, and Appurtenances, &c. to the said Messuage or Tenement, Lands and Premises belonging or any Ways appertaining, (except all Timber-Trees, and Trees fit and proper to be raised and preserved for Timber, now standing, growing or being, or which shall hereafter stand, grow or be, in or upon the said Premises, or any Part thereof; with free Liberty for the said A. B. his Heirs and Assigns, to fell, cut down, take and carry away the same, at all seasonable Times) To have and to hold the said Messuage or Tenement, Lands and Premises above granted, and every Part and Parcel thereof, with the Appurtenances (except before excepted) unto the said C. D. his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during and unto the full End and Term of Ninety-nine Years, from thence next ensuing, and fully to be compleat and ended, if he the said C. D. and E. his Wife, and T. D. his Son; or any or either of them, shall so long happen to live, Yielding and Paying therefor yearly during the said Term unto the said A. B. his Heirs and Assigns, the Rent of, &c. at and upon the Feasts of, &c. by even and equal Portions. And also Yielding and Paying at and upon the Death or Decease of the said C. D. the best Beast or Goods, or the Sum of, &c. for and in the Name of an Heriot; and also at and upon the Death or Decease of the said E. his Wife, (she dying after the said C. D.) the best Beast or Goods, or the Sum of, &c. for and in the Name of another Heriot; and also at and upon the Death or Decease of the said T. D. (he dying successively after the said C. D. and E.) the best Beast or Goods, or the Sum of, &c. for and in the Name of another Heriot: And doing Suit and Service to and at all and every the Court and Courts of the said A. B. his Heirs and Assigns; to be from Time to Time during the said Term, holden in and for the said Manor of, &c. and there be ordered and justified in all Things touching the said Premises as other the Tenants of the said Manor, for their respective Estates are, shall or ought to be. And if it shall happen the said yearly Rent of, &c. or Sums of Money reserved for Heriots, or any Part thereof, to be behind and unpaid by the Space of Twenty-one Days next after either of the said Feasts or Days of Payment on which the same ought to be paid as aforesaid, (being lawfully demanded) and no sufficient Distress or Distresses, in or upon the said Premises, can or may be found whereby the same may be levied, that then and from thenceforth it shall and may be lawful to and for the said A. B. his Heirs and Assigns, into the said Messuage or Tenement, Lands and Premises hereby demised, with the Appur-

tenances to re-enter, and the same to have again, re-possess and enjoy, as in his or their former Right and Estate, any Thing herein contained to the contrary notwithstanding. And the said C. D. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said A. B. his Heirs and Assigns, that he the said C. D. his Executors, Administrators and Assigns, shall and will well and truly pay or cause to be paid unto the said A. B. his Heirs or Assigns, the said yearly Rent and Heriots above reserved, at the Days and Times, and in Manner and Form above expressed, according to the true Intent and Meaning of these Presents. And also, that he the said C. D. his Executors, Administrators and Assigns, at his and their own proper Costs and Charges, shall and will from Time to Time, and at all Times, during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend, hedge, ditch, cleanse and keep the said Messuage or Tenement, Lands and Premises hereby demised, and every Part and Parcel thereof, with the Appurtenances, in and with all Manner of needful and necessary Reparations and Amendments whatsoever, when and as often as Need shall require; and the same so well and sufficiently repaired, maintained, sustained, upheld, amended, hedged, ditched, cleansed and kept, at the End, Expiration or other Determination of the said Term hereby granted, unto the said A. B. his Heirs and Assigns, shall and will peaceably and quietly leave and yield up. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, by these Presents, that (by and under the yearly Rent, Heriots, Covenants and Agreements before, in, and by these Presents mentioned and contained) he the said C. D. his Executors, Administrators and Assigns, shall and may peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage or Tenements, Lands and Premises above-mentioned, and every Part and Parcel thereof with the Appurtenances (except before excepted) for and during the said Term hereby granted, without any Interruption or Denial of the said A. B. his Heirs or Assigns, or of any other Person or Persons whatsoever lawfully claiming or to claim any Right, Title or Interest, from, by or under him, them, or any or either of them. In Witness, &c.

A Freehold Lease for three Lives, Differs from the preceding Chattel Lease only in this, viz. that the Habendum is to the Lessee, his Heirs and Assigns, for and during the natural Lives of him the said C. D. E. his Wife, and T. D. his Son, and during the Life natural of every and either of them longest living; and in every Covenant, the Lessee covenants for himself, his Heirs and Assigns; and the Covenants are the same as in the foregoing Lease, with the Addition of a Letter of Attorney at the End, to deliver Possession and Seisin, as in a Deed of Feoffment.

Lease and Release, Is a Conveyance of Right or Interest in Lands or Tenements, to another that hath the Possession thereof. *Accomp. Conv.* 1. Vol. 129. Tho' the Deed of Feoffment was the usual Conveyance at Common Law; yet since the Statute of H. 8. of Uses, the Conveyance by Lease and Release has taken Place of it, and is become a very common Assurance, to pass Lands, and Tenements; for it amounts to a Feoffment the Use drawing after it the Possession, and supplying the Place of Livery and Seisin, required in that Deed: In the making it, a Lease or Bargain and Sale for a Year, or such like Term, is first prepared and executed; to the Intent that by

Virtue

Virtue thereof the Lessee may be in actual Possession of the Lands intended to be conveyed by the Release, and thereby and by Force of the Statute 27 H. 8. c. 10. for transferring of Uses into Possession, be enabled to take and accept a Grant of the Reversion and Inheritance of the said Lands, &c. to the Use of himself and his Heirs for ever: Upon which, the Release is accordingly made, reciting the Lease and declaring the Uses. And in these Cases, a Pepper-Corn Rent in the Lease for a Year is a good Reservation, and sufficient to raise an Use, to make the Lessee capable of a Release. 2 Vent. 35. 2 Mod. 262. When an Estate is conveyed by Lease and Release, in the Lease for a Year there must be the Words *Bargain and Sell* for Money, and 5 s. or any other Sum, though never paid, is a good Consideration, whereupon the Bargainee for a Year is immediately in Possession on the Executing of the Deed without actual Entry: If only the Words *Demise, Grant and to Farm Let* are used, in that Case the Lessee cannot accept of a Release of the Inheritance until he hath actually entered, and is in Possession. 2 Lill. Abr. 435. But where *Littleton* says, that if a Lease is made for Years, and the Lessor releases to the Lessee before Entry; such Release is void, because the Lessee had only a Right, and not the Possession; and such Release shall not enure to enlarge the Estate, without the Possession: Though this is true at Common Law, it is not so now upon the Statute of Uses. 2 Mod. 250, 251. And if a Man make a Lease for Life, Remainder for Life, and the first Lessee dieth; on which, the Lessor releases to him in Remainder; before Entry, this is a good Release to enlarge the Estate, he having an Estate in Law capable of Enlargement by Release, before Entry had. 1 Inst. 270. It is necessary in all Cases where a Release of Lands is made, that the Estate be turned to a Right, as in a Disseisin, &c. where there two Rights, a Right of Possession in the Disseisor, and a Right to the Estate in the Disseeisee; now when the Disseeisee hath released to the Disseisor, here the Disseisor hath both the Rights in him, viz. The Right to the Estate, and also to the Possession: Or else it is requisite that there be Privy of Estate, between the Tenant in Possession and the Releffor; for a Release will not operate without Privy. 2 Lill. 435. A Release made by one that at the Time of the Making thereof had no Right, is void; and a Release made to one that at the Time of Making thereof hath Nothing in the Lands, is also void, because he ought to have a Freehold, or a Possession, or Privy. *Noy's Max.* 74. He that makes a Release must have an Estate in himself, out of which the Estate may be derived to the Releffee; the Releffee is to have an Estate in Possession in Deed or in Law, in the Land whereof the Release is made, as a Foundation for the Release; there must be Privy of Estate between the Releffor and Releffee; and be sufficient Words in Law not only to make the Release, but also to create and raise a new Estate, or the Release will not be good. 1 Inst. 22. A Release to a Man and his Heirs will pass a Fee-Simple; and if made to a Man, and the Heirs of his Body, by this the Releffee hath an Estate-Tail: But a Release of a Man's Right in Fee-Simple, is not sufficient to pass a Fee-Simple. 1 Inst. 273. And if a Person release to another all his Right which he hath in the Land, without using any more Words, as, *To hold to him*

and his Heirs, &c. the Releffee hath only an Estate for Life. *Dyer* 263. A Release made to a Tenant in Tail, or for Life, of Right to Land, shall extend to him in Remainder or Reversion. 1 Inst. 267. By Release of all a Man's Right unto Lands, all Actions, Entries, Titles of Dower, Rents, &c. are discharged; though it bars not a Right that shall descend afterwards: And a Release of all Right in such Land, will not discharge a Judgment not executed; because such Judgment doth not vest any Right, but only makes the Land liable to Execution. 8 Rep. 151. 3 Salk. 298. 'Tis said a Release of all one's Title to Lands, is a Release of all one's Right. Litt. 509. 1 Inst. 292. By a Release of all Entries, or Right of Entry a Man hath into Lands, without more Words, the Releffor is barred of all Right or Power of Entry into those Lands; and yet if a Man have a double Remedy, viz. a Right of Entry, and an Action to recover, and then release all Entries, by this he is not barred and excluded his Action; nor doth a Release of Actions bar the Right of Entry. *Plowd.* 484. 1 Inst. 345. A Release that doth enure by Way of Passing away an Estate, or Extinguishment, may be made upon Condition, or with a Defeasance, so as the Condition, &c. be contained in the Release, or delivered at the same Time with it: And there may be a Recital, Covenants, Warranty, &c. inserted in this Release; but it is said the Deed is good without any such Additions. *Irra Lease and Release* to make a Tenant to the *Præcipe* to suffer a Recovery, where the Release is made to A. B. and his Heirs, (viz. the Tenant to the *Præcipe*) it must also be to the Use of him the said A. B. and his Heirs and Assigns for ever; for the Releffee must be absolute Tenant of the Freehold. *Lill. Conveyanc.* 331. A *Lease and Release* make but one Conveyance, being in the Nature of one Deed.

Form of a Lease for a Year, to ground a Release.

THIS Indenture made, &c. Between A. B. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, that the said A. B. for and in Consideration of the Sum of 5 s. of lawful British Money to him in hand paid by the said C. D. the Receipt whereof is hereby acknowledged, he the said A. B. hath granted, bargained and sold, and by these Presents doth grant, bargain and sell unto the said C. D. All that Messuage or Tenement, commonly called or known, &c. with the Rights, Members and Appurtenances, situate, lying, and being in, &c. in the County of, &c. And all Houses, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Pastures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatsoever to the said Messuage or Tenement belonging, or in any wise appertaining, or which now are or formerly have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof, or of any Part thereof; and the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances: To have and to hold the said Messuage or Tenement, Lands, Hereditaments and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the said C. D. his Executors, Administrators and Assigns, from the first Day of this Instant, &c. for and during and unto

unto the full End and Term of one whole Year, from thence next and immediately ensuing and following, and fully to be compleat and ended. Yielding and Paying therefore one Pepper Corn in and upon the Feast of St. Michael the Archangel, if demanded: To the Intent that by Virtue of these Presents, and by Force of the Statute for transferring of Uses into Possession, be the said C. D. may be in the actual Possession of all and singular the said Premises above-mentioned, with the Appurtenances, and thereby be enabled to accept and take a Grant and Release of the Reversion and Inheritance thereof, to him and his Heirs, to the only proper Use and Beboof of him the said C. D. his Heirs and Assigns for ever. In Witness, &c.

Form of a Release and Conveyance of Lands.

THIS Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, that the said A. B. for and in Consideration of the Sum of Five hundred Pounds of lawful Money of Great Britain, to him in hand paid by the said C. D. the Receipt whereof the said A. B. doth hereby confess and acknowledge, and for divers other good Causes and Considerations him thereunto moving, be the said A. B. hath granted, bargained and sold, aliened, released and confirmed, and by these Presents doth fully, freely and absolutely grant, bargain and sell, alien, release and confirm unto the said C. D. (in his actual Possession now being, by Virtue of a Bargain and Sale to him thereof made for one Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents, and by Force of the Statute for transferring of Uses into Possession) and to his Heirs and Assigns for ever, All that Messuage or Tenement, &c. with the Rights, Members and Appurtenances thereof, situate, lying and being in, &c. And all Houses, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Pastures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatsoever to the said Messuage or Tenement belonging, or in any wise appertaining, or which now are, or formerly have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof, or of any Part thereof; and also the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances; and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever, as well in Equity as in Law, of him the said A. B. of, in and to all and singular the said Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances; and also all Deeds, Evidences and Writings, touching or concerning the said Premises only, or only any Part thereof, together with true Copies of all other Deeds, Evidences and Writings, which do concern the said Premises, or any Part thereof jointly, with any other Lands or Tenements, now in the Custody or Possession of him the said A. B. or which he can or may get or come by without Suit in Law, the said Copies to be made and written at the Request, Costs and Charges of the said C. D. his Heirs and Assigns. To have and to hold the said Messuage or Tenement, Lands, Hereditaments, and all and singular the Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Beboof of the said C. D. his Heirs and Assigns for ever. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the

said C. D. his Heirs and Assigns, that he the said A. B. now is the true, lawful and rightful Owner of the said Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances. And also that he the said A. B. now is lawfully and rightfully seized in his own Right, of a good, sure, perfect, absolute and indefeasible Estate of Inheritance in Fee Simple, of and in all and singular the Premises above-mentioned, with the Appurtenances, without any Manner of Condition, Mortgage, Limitation of Use and Uses, or other Matter, Cause or Thing to alter, change, charge, or determine the same. And that he the said A. B. now hath good Right, full Power, and lawful Authority, in his own Right, to grant, bargain, sell and convey the said Messuage, Lands, Tenements, Hereditaments, and all and singular the Premises above-mentioned, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Beboof of the said C. D. his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents. And also that he the said C. D. his Heirs and Assigns, shall and may at all Times for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption, and Denial of him the said A. B. his Heirs or Assigns, and of all and every other Person or Persons whatsoever: And that freed and discharged, or otherwise well and sufficiently saved and kept harmless and indemnified of and from all former and other Bargains, Sales, Gifts, Grants, Leases, Mortgages, Jointures, Dowers, Uses, Wills, Intails, Fines, Post-Fines, Issues, Amerciaments, Seizures, Bonds, Annuities, Writings Obligatory, Statutes Merchant and of the Staple, Recognizances, Extents, Judgments, Executions, Rents and Arrearages of Rent, and of and from all other Charges, Estates, Rights, Titles, Troubles and Incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done or suffered, by the said A. B. or any other Person or Persons whatsoever, claiming or to claim, by, from or under him, them, or any of them. And further, that he the said A. B. and his Heirs, and all and every other Person and Persons and his and their Heirs, any Thing having or claiming in the said Premises above-mentioned, or any Part thereof, by, from or under him, shall and will from Time to Time, and at all Times hereafter, upon the reasonable Request, and at the Costs and Charges of the said C. D. his Heirs or Assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Device and Devices, Conveyance and Conveyances in the Law whatsoever, for the further, better, and more perfect granting, conveying and assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Beboof of the said C. D. his Heirs and Assigns for ever, as by the said C. D. his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised or advised and required. And lastly, it is covenanted, granted, concluded and agreed upon by and between the said Parties to these Presents, and the true Meaning hereof is, and it is hereby so declared, that all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever already had, made, levied, suffered, executed and acknowledged, or at any Time hereafter to be had, made, levied, suffered, executed and acknowledged, by or between the said Parties to these

Presents, or either of them, or by or between them, or either of them, and any other Person or Persons whatsoever, of the said Premises above-mentioned, with the Appurtenances, or any Part thereof, either alone by it self, or jointly with any other Lands, Tenements or Hereditaments, shall be and enure, and shall be adjudged, esteemed and taken to be and enure, as for and concerning all and singular the Premises above-mentioned, with the Appurtenances, to and for the only proper Use and behoof of the said C. D. his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent or Purpose whatsoever. In Witness, &c.

Leat, A Trench to convey Water to or from a Mill; mentioned in the Stat. 7 Jac. 1. c. 19.

Leather. There are several Statutes relating to Leather; as the 27 H. 8. c. 14. directs Packers to be appointed for Leather to be transported: But the 18 Eliz. c. 9. prohibits the Shipping of Leather, on Penalty of Forfeiture, &c. Though by 20 Car. 2. c. 5. Transportation of Leather is allowed to Scotland, Ireland, or any foreign Country, paying a Custom or Duty; which Statute is continued by divers subsequent Acts. No Person shall ingross Leather to sell again, under the Penalty of Forfeiture; and Girdlers, &c. currying Leather in their Houses, shall forfeit the same. 5 & 6 Ed. 6. c. 3. None but Tanners are to buy any rough Hides of Leather, or Calves-Skins in the Hair, on Pain of Forfeiture; and no Person shall forestal Hides, under the Penalty of 6 s. 8 d. a Hide: Tanners gashing any Hides, over-liming or raising them for Soal Leather, shall forfeit them; and Leather not sufficiently tanned is to be forfeited: In London, the Master and Wardens of the Shoemakers Company must appoint Searchers, &c. of Leather; and the same is to be done by Mayors, &c. in other Towns and Corporations; and Searchers allowing insufficient Leather, incur a Forfeiture of 40 s. Shoemakers making Shoes of insufficient Leather, are liable to 3 s. 4 d. Penalty. 1 Jac. 1. c. 22. Red tanned Leather is to be brought into open Leather-Markets, and searched and sealed before exposed to Sale, or shall be forfeited; and Contracts for Sale otherwise, to be void. 13 & 14 Car. 2. c. 7. Hides of Leather are adjudged the Ware and Manufacture of the Currier, and subject to search, &c. All Persons dealing in Leather may buy tanned Leather searched in open Market; and any Person may buy or sell Leather Hides or Skins by Weight. 1 W. & M. c. 33. see 9 & 10 Ann. as to Duties on Leather, &c. and 9 Geo. c. 27. Vide Shoemaker.

Leccator, A debauched Person, Lecher, or Whore-master.—*Sciant, quod ego Johannes Constabularius Cestria dedi Hugoni de Dutton & Heredibus suis Magistratum omnium Leccatorum & Meretricum in, &c. Salvo jure meo mihi & heredibus meis.* Ann. 1220.

Lecherwite, A Fine on Adulterers and Fornicators. See *Lairwite*.

Lectrinum, Is taken for a Pulpit. *Mon. Angl. Tom. 3. p. 243.*

Lecturer, (*Prælector*) A Reader of Lectures; and in London, and other Cities, there are Lecturers who are Assistants to the Rectors of Churches in Preaching, &c. These Lecturers are chosen by the Vestry, or Chief Inhabitants of the Parish, and are usually the Afternoon Preachers: The Law requires, that they should have the Consent of them by whom they are employed, and like-

wise the Approbation and Admission of the Ordinary; and they are, at the Time of their Admission, to subscribe to the Thirty-nine Articles of Religion, &c. required by the Stat. 14 Car. 2. They are to be licensed by the Bishop, as other Ministers, and a Man cannot be a Lecturer without a Licence from the Bishop or Archbishop; but the Power of the Bishop, &c. is only as to the Qualification and Fitness of the Person, and not as to the Right of the Lectureship; for if a Bishop determine in Favour of a Lecturer, a Prohibition may be granted to try the Right. *Mich. 12 W. 3. B. R.* If Lecturers preach in the Week-Days, they must read the Common Prayer for the Day when they first preach, and declare their Assent to that Book; they are likewise to do the same the first Lecture Day in every Month, so long as they continue Lecturers, or they shall be disabled to preach till they conform to the same: And if they preach before such Conformity, they may be committed to Prison for three Months, by Warrant of two Justices of Peace, granted on the Certificate of the Ordinary. 13 & 14 Car. 2. c. 4. *Right Clerg. 338.* Where Lectures are to be preached or read in any Cathedral or Collegiate Church, if the Lecturer openly at the Time aforesaid, declare his Assent to all Things in the Book of Common Prayer, it shall be sufficient; and University Sermons or Lectures are excepted out of the Act concerning Lecturers. There are Lectures founded by the Donations of pious Persons, the Lecturers whereof are appointed by the Founders; without any Interposition or Consent of Rectors of Churches, &c. though with the Leave and Approbation of the Bishop; such as that of Lady Moier at St. Pauls, &c.

Lecturnum, (*Lectorium*) The Desk or Reading Place in Churches. *Statut. Eccl. Paul. Lond. MS. 44.*

Ledgrave, The chief Man of the Lathe or Lethie. See *Lathreve*.

Ledo, (*Ledona*) The rising Water or Increase of the Sea—*Ledo sex Horas inundationis, & totidem recessus habet, &c.*

Leet, *Leta*, From the Sax. *Lite*, i. e. *Parvus*, quasi a Little Court; or from the Germ. *Laet*, a Country Judge) In whose Manor soever kept, is accounted the King's Court; because the Authority thereof to punish Offences was originally belonging to the Crown, and thence derived to inferior Persons. *Stat. 18 Ed. 2. 4 Inft. 261.* By the Laws of King Edward, according to Lambard, this was a Court of Jurisdiction above the Wapentake or Hundred; but many Lords of Manors, with their Courts-Baron, have likewise Leets adjoined. *Britton, c. 28. Kitch. 6.* See *Court-Leet*.

Leets or **Leits**, Meetings appointed for the Nomination or Election of Officers; often mentioned in Archbishop Spotteewood's History of the Church of Scotland.

Lega & Lacta. Anciently the Allay of Money was so called. *Debita nummi temperies, quam veteres Legam & Lactam appellabant.* Spelm.

Legabilis, Signifies what is not inailed as Hereditary; but may be bequeathed by Legacy, in a Last Will and Testament. *Articuli propositi in Parlamento coram Rege, Ann. 1234.*

Legacy, (*Legatum*) Is a particular Thing given by Last Will and Testament; and he to whom such Legacy is given, is called a Legatee; and there is a *Residuary Legatee*. It seems necessary, that the Legatee should be born at the Time of making the Will; and it has been adjudged

judg'd where *Legacies* were given to a Man's Children, that those who were born afterwards should have no Share thereof. 1 *Bulst.* 153. But it has been otherwise decreed in Chancery. 1 *Ch. Rep.* 301. A Man devised 200 *l.* a-piece to the two Children of A. B. at the End of ten Years after the Death of the Testator; afterwards the Children died within the ten Years, and it was held a lapsed *Legacy*: For there is a Difference where a Devise is to take Effect at a future Time, and where the Payment is to be made at a future Time; and whenever the Time is annexed to the *Legacy* it self, and not to the Payment of it, if the *Legatee* dies before the Time happens, 'tis a lapsed *Legacy*. 2 *Salk.* 415. A Bequest of Money to one at the Age of Twenty-one, or Day of Marriage, without saying to be paid at that Time, and the *Legatee* dies before the Term; this is a lapsed *Legacy*: And so it is if the Devise had been to her when she shall marry; or when a Son shall come of Age, and they die before. *Godb.* 182. 2 *Ventr.* 342. But a Devise of a Sum of Money, to be paid at the Day of Marriage, or Age of twenty-one Years; if the *Legatee* die before either of these happen, the *Legatee's* Administrator shall have it, because the *Legatee* had a present Interest, though the Time of Payment was not yet come; and 'tis a Charge on the Personal Estate which was in Being at the Testator's Death, and if it were discharged by this Accident, then it would be for the Benefit of the Executor, which was never intended by the Testator. 2 *Ventr.* 366. 2 *Lev.* 207. A Father bequeathed Goods to his Son, when he should be of the Age of twenty-one Years, and if he die before that Time, then his Daughter should have them; afterwards the Father died, and then the Son died before he was of Age; adjudged, that the Daughter should have the Goods given in *Legacy* immediately, and not stay 'till her Brother would have been of Age, if he had lived. 1 *And.* 33. And where a *Legacy* was devised to an Infant, to be paid when he should come of Age, and he died before that Time; it was ruled, that his Administrator should have it presently, and not stay until the Infant should have been of Age, in case he had lived. 1 *Leon.* 278. As an Executor is not obliged to pay a *Legacy*, without Security given him by the *Legatee* to refund, if there are Debts, because the *Legacy* is not due 'till the Debts are paid, and a Man must be just before he is charitable; so in some Cases, the Executor may be compelled to give Security to the *Legatee* for the Payment of his *Legacy*, as where a Testator bequeathed 1000 *l.* to a Person, to be paid at the Age of Twenty-one, and made an Executor, and died, afterwards the *Legatee* exhibited a Bill in Equity against the Executor, setting forth that he had wasted the Estate, and praying that he might give Security to pay the *Legacy* when it should become due; and it was ordered accordingly. 1 *Ch. Rep.* 136, 257. If a *Legacy* is devised, and no certain Time of Payment, and the *Legatee* is an Infant, he shall have Interest for the *Legacy* from the Expiration of one Year after the Testator's Death; for so long the Executor shall have, that he may see whether there are any Debts, and no Laches shall be imputed to the Infant: But if the *Legatee* be of full Age, he shall have no Interest but from the Time of the Demand of his *Legacy*: Where a *Legacy* is payable at a Day certain, it must be paid with Interest from that Day. 2 *Salk.* 415. 2 *Nelf. Abr.*

1114. The Assent or Agreement of the Executor is first to be obtained before any *Legacy* can be taken; until then the *Legatee* may not meddle with the *Legacy*, because the Executor is to pay Debts before *Legacies*, &c. *Wood's Inst.* 329. And this is the Reason why no Property can be transferred to the *Legatee*, without the Executor's Assent: If the Executor refuses to assent to a *Legacy*, he may be obliged to it by a Court of Equity, or the Spiritual Court. *March. Rep.* 19. *Legacies* being Gratuities, and no Duties, Action will not lie at Common Law for the Recovery of a *Legacy*; but Remedy is to be had in the Chancery or Spiritual Court, *Allen* 38. The Cognizance of a *Legacy* properly belongs to the Spiritual Courts, for such Bequests were not good by the Common Law; but this is where a *Legacy* is devised generally: If 'tis payable out of the Land, or out of the Profits of the Land, an Action of the Case lies at Common Law; but the usual Remedy is in Chancery. *Sid.* 44. 3 *Salk.* 223. By *Holt Ch. Just.* A *Legatee* may maintain an Action of Debt at Common Law against the Owner of Land, out of which the *Legacy* is to be paid; and since the Statute of Wills gives him a Right, by Consequence he shall have an Action at Law to recover it. 2 *Salk.* 415. And sometimes the Common Law takes Notice of a *Legacy*, not directly, but in a collateral Way; as where the Executor promised to pay the Money, if the *Legatee* would forbear to sue for the *Legacy*, this was adjudged a good Consideration to ground an Action; but that it would not lie for a *Legacy in Specie*; which would be to devert the Spiritual Court of what properly belonged to their Jurisdiction, by turning Suits which might be brought there into Actions on the Case. *Raym.* 23. If Security is given by Bond to pay a *Legacy*, in such Case an Action at Law is the proper Remedy; by giving the Bond, the *Legacy* becomes a Debt at Common Law, and the *Legatee* can never afterwards sue for it in the Spiritual Court. *Yelv.* 39. For the Recovery of a Debt, or such like Thing in Action, given by Way of *Legacy*, it is best to make the *Legatee* Executor as to that Debt, &c. or he must have a Letter of Attorney to sue in the Executor's Name. *Wood's Inst.* 330. Some Persons are incapable of Taking by *Legacy* by several Statutes; as the 13 *W. 3. c. 6.* relating to Officers, Lawyers, &c. not taking the Oaths; and 5 *Geo. c. 27.* concerning Artificers going abroad, &c. See *Executor and Wills.*

Legalis Homo, Is used for him who stands *Reftus in Curia*, not outlawed, excommunicated, or infamous; and in this Sense are the Words *Probi & Legales Homines*: Hence also *Legality* is taken for the Condition of such a Man. *Leg. Edw. Conf. c. 18.*

Legalis Moneta Angliæ, Lawful Money of England, is gold or silver Money coined here by the King's Authority, &c. 1 *Inst.* 207. See *Coin.*

Legate, (*Legatus*) An Ambassador or Pope's Nuncio. And there are two Sorts of Legates, a *Legate a Latere*, and *Legatus natus*; the Difference between whom is thus: *Legatus a Latere* was usually one of the Pope's Family, vested with the greatest Authority in all Ecclesiastical Affairs over the whole Kingdom where he was sent; and during the Time of his *Legation*, he might determine even those Appeals which had been made from thence to Rome: *Legatus natus* had a more limited Jurisdiction, but was exempted from the Authority of the *Legate a Latere*; and

he could exercise even his Jurisdiction in his own Province. The Popes of Rome had formerly in England the Archbishops of Canterbury their *Legatos natos*; and upon extraordinary Occasions, sent over *Legatos a Latere*.

Legatary, Legatory, Is the same with *Legatee* of a Will. 27 *Eliz. c. 16*.

Legem facere. To make Law, or Oath: *Legem habere*, to be capable of giving Evidence upon Oath; *Minor non habet Legem*, &c. *Seldon's Notes on Hengb. 133*.

Legergild, (Legergildum) See *Lecherwite* and *Lairwite*.

Legiosus. Litigious, and so subjected to a Course of Law. *Cowel*.

Legitimation, (Legitimatio) A making lawful or *Legitimate*; and Naturalization, &c. makes a Foreigner a lawful Subject of the State.

Leipa, A Departure from Service. — *Si quis à Domino suo sine Licentia discedat, ut Leipa emendetur & redire cogatur.* *Leg. Hen. 1. cap. 43*.

Lent, (From the Germ. Lentz, i. e. Ver, the Spring Fast) Is a Time of Fasting for forty Days, next before *Easter*; mentioned in the *Stat. 2 & 3 Ed. 6. c. 19*. And first commanded to be observed in England by *Ercombert*, seventh King of Kent, before the Year 800. *Baker's Chron. 7*. See *Quadragesima*.

Lep and Lace, (Leppe & Lasse) Is a Custom in the Manor of *Writtel* in *Com. Essex*, that every Cart which comes over *Greenbury* within that Manor, (except it be the Cart of a Nobleman) shall pay 4 d. to the Lord. This *Greenbury* is conceived to have been antiently a Market-place; on which Account this Privilege was granted. *Blount*.

Lepa, A Measure which contained the third Part of two Bushels: Whence we derive a *Seed-leap*. *Du Cange*.

Lepozarius, A Greyhound for the Hare. *Concedo eis duos Leporarios, &c. ad Leporem capiendum in Foresta nostra de Effexia.* *Mon. Angl. Tom. 2. fol. 283*.

Lepozium, Is a Place where Hares are kept together. *Mon. Angl. Tom. 2. fol. 1035*.

Lepzold amobendo, An antient Writ that lies to remove a *Leper* or *Lazar*, who thrusts himself into the Company of his Neighbours in any Parish, either in the Church or at other publick Meetings, to their Annoyance. *Reg. Orig. 237*. The Writ lies against those *Lepers* that appear outwardly to be such, by Sores on their Bodies, Smell, &c. and not against others: And if a Man be a *Leper*, and keep within his House, so as not to converse with his Neighbours; he shall not be removed. *New Nat. Br. 521*.

Le Roy le veut, Words by which the *Royal Assent* is signified by the Clerk of the Parliament to publick Bills; and to a private Bill the King's Answer is, *Soit fait comme il est desire*.

Le Roy se Abisera. And by these Words to a Bill, presented to the King by his Houses of Parliament, are understood his Denial of that Bill.

Lessia, A Leash of Greyhounds, now restrained to the Number of Three, but formerly more. *Spelm*.

Lespegend, (Sax. Les-pegen.) *Baro Minor. Hominiibus quos Angli Lespegend nuncupant, Dani vero Yoong Men vocant, &c.* *Constitut. Canut. de Foresta, Arr. 2*.

Lessia, A Legacy; and from this Word also *Lease* is derived. *Mon. Angl. Tom. 1. pag. 562*.

Lessor and Lessee, The Parties to a Lease. See *Lease*.

Lessage, Mentioned in some Writers, is the same as *Lastage*.

Lesues or Lesbes, Is a Word signifying Pastures, in many Places of England, and often inserted in Deeds and Conveyances. *Domesd*.

Letare Jerusalem, Was used for the customary Oblations made on *Midlent Sunday*, when the proper Hymn was *Letare Jerusalem, &c.* by the Inhabitants within a Diocese to the Mother Cathedral Church; and these voluntary Offerings on that Day, were by Degrees settled into an annual Composition or pecuniary Payment, charged on the parochial Priest, who was presumed to receive them from the People of his Congregation, and obliged to return them to the Cathedral Church; and this among other Burdens was at length thrown on the oppress'd Vicars, as appears by the Ordination of the Vicarage of *Erdele*, in the Archdeaconry of *Huntingdon*, anno 1290. where it is provided, *Qui quidem Vicarius solvet Synodalia, Letare Jerusalem, &c.* From the antient Custom of Procession and Oblation at that Time, began the Practice which is still retained in many Parts of England, of *Mothering*, or going to visit Parents on *Midlent Sunday*. See *Quadragesimalia*.

Letters of Absolution, (Litera Absolutoria) Or absolatory Letters, were such in former Times, when an Abbot released any of his Brethren *ab omni subjectione & Obedientia, &c.* And made them capable of Entering into some other Order of Religion. *Mon. Favershamensi, pag. 7*.

Letter of Attorney, (Litera Attornati) Is a Writing authorising an Attorney to do any lawful Act in the Stead of another: As to give Seisin of Lands, receive Debts, sue a third Person, &c. And Letters of Attorney are either General or Special. *West. Symb. par. 1. Stat. 7 R. 2. c. 13*. The Nature of this Instrument is to give the Attorney the full Power and Authority of the Maker, to accomplish the Act intended to be perform'd: And sometimes these Writings are revocable, and sometimes not so; but when they are revocable, it is usually a bare Authority only; and they are irrevocable when Debts, &c. are assign'd to another, in which Case the Word *irrevocable* is inserted. In Cases of Letters of Attorney, the Authority must be strictly pursued: If it be to deliver Livery and Seisin of Lands between certain Hours, and the Attorney doth it before or after; or in a Capital Messuage, and he does it in another Part of the Land, &c. the Act of the Attorney to execute the Estate shall be void. *Plowd. 475*. Where the Attorney does less than the Authority mentions, it is void: But it is said if he doth more, it may be good for so much as he had Power to do. *1 Inst. 258*. If a Mayor and Commonalty make a Feoffment of Lands, and execute a Letter of Attorney to deliver Seisin; the Livery and Seisin, after the Death of the Mayor, will be good, by Reason the Corporation dieth not. *1 Inst.* In other Cases, by the Death of the Party giving it, the Power given by Letter of Attorney generally determines.

Letters Claus, (Litera Clausa) Close Letters, oppos'd to Letters Patent; being commonly sealed up with the King's Signet or Privy Seal, whereas the Letters Patent are left open and sealed with the broad Seal.

Letter of Credit, Is where a Merchant or Correspondent writes a Letter to another, requesting him to credit the Bearer with a certain Sum of Money. *Merch. Diff.*

Letters

Letters of Exchange, (*Litere Cambii*) Reg. Orig. 194. See *Bills of Exchange*.

Letter of Licence, Is an Instrument or Writing made by Creditors to a Man that hath fail'd in his Trade, allowing him longer Time for the Payment of his Debts, and Protecting him from Arrests in going about his Affairs. These *Letters of Licence* give Leave to the Party to whom granted to resort freely to his Creditors, or any others, and to compound Debts, &c. And the Creditors covenant, that if the Debtor shall receive any Molestation or Hinderance from any of them, he shall be acquitted and discharged of his Debt against such Creditor, &c. See my *Accomp. Conveyanc.* Vol. 1.

Letters of Marque, Are extraordinary Reprisals for Reparation to Merchants taken and despoil'd by Strangers at Sea, grantable by the Secretaries of State, with the Approbation of the King and Council; and usually in Time of War, &c. *Lex Mercat.* 173. If a *Letter of Marque* wilfully and knowingly take a Ship and Goods belonging to another Nation, not of that State against whom the Commission is awarded, but of some other in Amity, this amounts to a downright Piracy. *Roll. Abr.* 530. See *Reprisal*.

Letters Patent, (*Litere Patentes*) Sometimes called *Letters Overt*, are Writings of the King sealed with the Great Seal of England, whereby a Person is enabled to do or enjoy that which otherwise he could not; and so called, because they are open with the Seal affixed, and ready to be shewn for Confirmation of the Authority thereby given. 19 H. 7. c. 7. And we read of *Letters Patent* to make Denizens. 32 H. 6. c. 16. *Letters Patent* of Summons of Debt, &c. 9 H. 3. c. 18. *Letters Patent* may be granted by common Persons, but in such Case they are properly *Patents*; yet for Distinction, the King's *Letters Patent* have been called *Letters Patent Royal*. Anno 2 H. 6. c. 10. *Letters Patent* conclude with *Tes-te me ipso*, &c. 2 Inst. 78. See *Patents*.

Levant and Couchant, Is a Law-Term for Cattle that have been so long in the Ground of another, that they have lain down, and are risen again to feed; in ancient Records writ *Levantes* & *Cubantes*. When the Cattle of a Stranger are come into another Man's Ground, and there hath been a good Space of Time, (suppos'd to be a Day and a Night) they are said to be *Levant and Couchant*. *Terms de Ley* 424. 2 Lill. Abr. 167. Beasts of a Stranger on the Lord's Ground may be distrained for Rent, though they have not been *Levant and Couchant*; but it is otherwise if the Tenant of the Land is in Fault in not keeping up his Mounds, by Reason whereof the Beasts escape upon the Land. *Wood's Inst.* 190. See *Distress*.

Lebanum, (From the Lat. *Levare*, to make Lighter) Is leavened Bread.

Levari facias, A Writ directed to the Sheriff for Levying a Sum of Money upon a Man's Lands and Tenements, Goods and Chattels, who has forfeited his Recognizance. *Reg. Orig.* 298. This Writ is given by the Common Law, before the Stat. *Westm.* 2. c. 18. gave the Writ of *Elegit*; and a *Levari facias* commands the Debt to be levied *de exitibus & proficuis Terre*, &c. And Cattle of a Stranger on the Land have been held Issues of the Land, which is Debtor. 1 Salk. 395. On a Judgment in an inferior Court, and a *Levari facias*, whereupon a Warrant was made to levy the Debt *de Terris & Catallis*, it was ad-

judg'd that the Precept ought to be to levy the Money *de Terris, Bonis & Catallis*, &c. 2 Lutw. 1410. There is a *Levari facias* in Debt against a Parson, directed to the Bishop, &c. to levy the Money of his Spiritual Goods. 13 H. 4. 17. When a Year and Day is past, after the Day of Payment by the Recognizance, there should be anciently a *Writ of Debt*; but now a *Scire facias*, &c.

Form of a Writ of *Levari facias*.

REX Vic', &c. Salut. Quia A. B. de, &c. soluisse debuit C. D. vigint. libr. in Festo S. Michaelis, Anno Regni nostri, &c. sicut constat nobis per Inspection. Rotulor. Cancell. nostr. & eas ei nondum solvit, ut dic. Tibi precipimus, quod præd. Pecuniam de Terris Bonis & Catallis ipsius A. in Balliva sua sine dilatione *Levari facias*, ita quod eam habeas in Cancell. nostr. in Crast. Animar. &c. prox. futur. ubicunque tunc fuer. præf. C. ibid. liberand. & hoc nullatenus omittas; Et habeas ibi hoc breve, &c.

There is a *Levari facias damna Disseisoribus*, for the Levying of Damages, wherein the Disseisor has formerly been condemned to the Disseisee. *Reg. Orig.* 214. Also *Levari facias Residuum debiti*, to levy the Remainder of a Debt upon Lands and Tenements, or Chattels of the Debtor, where Part has been satisfied before. *Reg. Orig.* 299. And a *Levari facias quando Vicecomes retinavit quod non habuit emptores*, commanding the Sheriff to sell the Goods of the Debtor, which he has taken, and return'd that he could not sell. *Reg. Orig.* 300.

Levari fœnum, Signifies to make Hay; and *Una Levatio fœni*, was one Day's Hay-making; a Service paid to Lords by their inferior Tenants. *Paroch. Antiq.* 320.

Leuca, Is a Measure of Land, consisting of Fifteen hundred, or Two thousand Paces; and in the *Monasticon*, 'tis Four hundred and eighty Perches, which is a Mile. *Mon. Angl. Tom.* 1. pag. 313.

Leucata, Has the same Signification: *Un. Boscob, &c. continen. unam Leucatam in Latitudine, & dimidium in Longitudine.* *Mon. Angl. Tom.* 1.

Levy, (*Levare*) Is used in the Law for to collect, or exact; as to levy Money, &c. and sometimes to erect, or cast up; as to levy a Ditch, &c. And to levy a Fine of Land, is the usual Term: In ancient Time, the Word *Rere* a Fine, was made Use of. 17 H. 6.

Lewdness, Is punishable by our Law by Fine, Imprisonment, &c. And *Mich.* 15 Car. 2. a Person was indicted for open *Lewdness* in shewing his naked Body in a Balcony, and other Misdemeanors, and was fined 2000 Marks, imprisoned for a Week, and bound to the Good Behaviour for three Years. 1 Sid. 168. In Times past, when any Man granted a Lease of his House; it was usual to insert an express Covenant, that the Tenant should not entertain any *Lewd Women*, &c. See *Bawdy-house*.

Lex, A Law for the Government of Mankind in Society. *Litt. Dist.* And it is often taken for *Judicium Dei*; and for a Purgation. *Leg. H. 1.* c. 62.

Lex Brehonia, The *Brehon* or Irish Law, overthrown by K. John.

Lex Bretoise, Was the Law of the ancient Britains, or Marches of Wales. *Lex Marchiarum*.

Lex Derainia, *Derainia est Lex quadam in Normannia constituta, per quam in simplicibus querellis insecutus factum, quod a parte adversa ei obij-*

citur, se non fecisse declarat. And it is the Proof of a Thing, which one denies to be done by him, where another affirms it; defeating the Assertion of his Adversary, and shewing it to be against Reason or Probability: This was used among the *Old Romans*, as well as the *Normans*. Grand. Customar. c. 126.

Lex Judicialis, Is properly *Purgatio per Judicium Ferri*; sometimes called *Judicium*. Leg. H. 1.

Lex Sacramentalis, i. e. *Purgatio per Sacramentum*. Leg. H. 1. c. 9.

Lex Wallensis, The Law of Wales. Stat. Walliæ.

Ley, The French Word for Law, as *Les Termes de la Ley*.

Ley gager, Is used for *Wager of Law*. 1 Car. 1. cap. 3.

Leys. Pastures in several Counties of this Kingdom are called *Leys*, and so used in *Domesd.*

Libel, (*Libellus*) Signifies literally a little Book; but by Use, it is the original Declaration of any Action in the *Civil Law*. 1 H. 5. c. 3. 2 Ed. 6. c. 13. It signifieth also a scandalous Report of any Man spread abroad, or otherwise unlawfully published, and then called *Famosus Libellus*, an infamous *Libel*: And this is either *in Scriptis*, *aut sine Scriptis*; *in Scriptis* is when any Writing is compos'd or published to another's Disgrace, &c. And *sine Scriptis*, where the Person is painted in a shameful Manner, with a Fool's Coat, Asses Ears, &c. or a Gallows, or other ignominious Sign is fix'd at his Door. 3 Inst. 174. 5 Co. Rep. 124. *Seneca* calls defamatory *Libels* *Contumeliosi Libelli*, and *Bracton*, *Carmina Famosa*; contumelious *Libels*, and infamous Rhimes, which flow from Malice: And the *Romans* would not permit their Lives and Fame to be subject to the Injury and Scandal of Poets; for they made an Ordinance, that whosoever should presume to compose any such Verses, were to be punished with Death. *Treat. of Laws* 75. A *Libel* in a strict Sense is a malicious Defamation and Aspersion of another, express'd in Printing or Writing; and tending either to blacken the Memory of one who is dead, or the Reputation of one that is alive, and to expose him to publick Hatred, Contempt, or Ridicule: But in a larger Signification, it may be applied to any Defamation whatsoever. 5 Rep. 121. All *Libels* are made against private Men, or Magistrates, and publick Persons; and those against Magistrates deserve the greatest Punishment: If a *Libel* be made against a private Man, it may excite the Person libelled, or his Friends, to revenge and break the Peace; and if against a Magistrate, it is not only a Breach of the Peace, but a Scandal to the Government, and stirs up Sedition. *Ibid.* 125. And although a private Person or Magistrate be dead at the Time of Making the *Libel*, yet it is punishable; as it has a Tendency to the Breach of the Peace. *Hob.* 215. And with Regard to this Consideration, it is far from being a Justification of a *Libel*, that the Contents thereof are true, or that the Person upon whom made had a bad Reputation; since the greater Appearance there is of Truth in any malicious Invektive, so much the more provoking it is. 5 Rep. 125. *Moor* 627. It is not material whether the Matter be true or false, if the Prosecution be by Information or Indictment; but in Action on the Case, one may justify that the Matter is true. 5 Rep. 125. *Hob.* 253. When any Man finds a *Libel*, if it be a-

gainst a private Person, he ought to burn it, or deliver it to a Magistrate; and where it concerns a Magistrate, he should deliver it presently to a Magistrate. *Ibid.* If a *Libel* is found in a House, the Master cannot be punish'd for Framing, Printing, and Publishing it; but it is said he may be indicted for having it, and not delivering it to a Magistrate. 1 Vent. 31. If a Printer print a *Libel* against a private Person, he may be indicted and punished for it; and so he may who prints a *Libel* against a Magistrate; and much more one who does it against the King and State: Nor can a Person in such a Case excuse himself, by saying they were dying Speeches, or the Words of dying Men; for a Man may at his Death justify his Villany, and he who publishes it is punishable: And it is no Excuse for the Printing or Publishing a *Libel*, to say that he did it in the Way of Trade, or to maintain his Family. *State Trials*, 1 Vol. 982, 986. Also if Book-sellers, &c. publish or sell *Libels*, tho' they know not the Contents of them, they are punishable. It has been resolved, that where Persons write, print, or sell, any Pamphlets, scandalizing the Publick, or any private Persons, such *libellous* Books may be seized, and the Persons punished by Law; and all Persons exposing any Books to Sale, reflecting on the Government, may be punished: Also Writers of News, though not scandalous, seditious, or reflecting on the Government, if they write false News, are indictable and punishable. *State Trials*, 2 Vol. 477. One was indicted for a *Libel* in scandalizing the King's Witnesses, and reflecting on the Justice of the Nation, and had Judgment of Pillory and Fine. *Ibid.* 3 Vol. 50. A Person for *Libelling* the Lord Chancellor Bacon, affirming that he had done Injustice, and other scandalous Matter, was sentenced to pay 1000*l.* Fine, to ride on a Horse with his Face to the Tail from the Fleet to Westminster, with his Fault written on his Head, to acknowledge his Offence in all the Courts at Westminster, stand in the Pillory, and that one of his Ears should be cut off at Westminster, and the other in Cheapside, and to suffer Imprisonment during Life. *Poph.* 135. One who exhibited a *Libel* against a Lord Chief Justice, directed to the King, calling the Chief Justice, *Traitor*, *perjured Judge*, &c. had Judgment to stand in the Pillory, was fined 1000 Marks, and bound to the Good Behaviour during Life. *Cro. Car.* 125. The Petition of the Seven Bishops in the Reign of King James 2. against the King's Declaration, setting forth, that it was founded on a dispensing Power, which had been declared illegal in Parliament, &c. was called a seditious *Libel* against the King; and they refusing to give Recognizances to appear in B. R. were committed to the Tower; but being after tried at Bar, were acquitted. 3 Mod. 212. The Printing of a Petition to a Committee of Parliament, (which would be a *Libel* against the Party complained of were it made for any other Purpose) and delivering Copies thereof to the Members of the Committee, is not the Publication of a *Libel*, being justified by the Order and Course of Proceedings in Parliament. *Hawk.* P. C. 196. And scandalous Matter in legal Proceedings, by Bill, Petition, &c. in a Court of Justice, amounts not to a *Libel*, if the Court hath Jurisdiction of the Cause. *Dyer* 285. 4 Rep. 14. But he who delivers a Paper full of Reflections on any Person, in Nature of a Petition to a Committee,

mittee, to any other Persons except the Members of Parliament who have to do with it, may be punish'd as the Publisher of a *Libel*. 1 *Hawk.* 196. And by the better Opinion, a Person cannot justify the Printing any Papers which import a Crime in another, to instruct Counsel, &c. but it will be a *Libel*. *Sid.* 414. Sending an abusive Letter to one, without Publishing it to others, is no *Libel*; but if it be sent to a third Person, or any Ways dispers'd, it is a Publication of the *Libel*: And though sending a scandalous Letter to the Party himself is not a *Libel*, nor can any Action be brought upon it, because it is no Publication; yet it is a high Offence. 12 *Rep.* 34. 1 *Lev.* 139. 2 *Brownl.* 157. It is an Offence against the King's Peace punishable by Indictment; and if Copies of it are afterwards dispersed, it aggravates the Crime, or rather makes it a new Crime, for which the Party may have an Action. *Popb.* 35. *Hob.* 62. Writing a Letter to a Man, and abusing him for his Publick Charities, &c. is a *libellous* Act, punishable by Indictment. *Hob.* 215. And a private *Libel*, for a private Matter, as a Letter scandalising a Person courting a Woman, is indictable, and fineable to the King. *Sid.* 270. No Writing is esteem'd a *Libel*, unless it reflect upon some particular Person; and a Writing full of obscene Ribaldry, is not punishable by any Prosecution at Common Law; but the Author may be bound to the Good Behaviour, as a Person of Evil Fame. 1 *Hawk.* 195. Where a Writing inveighs against Mankind in general, or against a particular Order of Men, this is no *Libel*; it must descend to particulars and individuals, to make it a *Libel*. *Trin.* 11 *W.* 3. B. R. But a general Reflection on the Government is a *Libel*, though no particular Person is reflected on: And the Writing against a known Law is held to be criminal. *State Trials*, 4 *Vol.* 672, 903. According to *Holt* Ch. Just. scandalous Matter is not necessary to make a *Libel*; 'tis enough if the Defendant induces an ill Opinion to be had of the Plaintiff, &c. And if a Man speak scandalous Words, unless they are put in Writing, he is not guilty of a *Libel*; for the Nature of a *Libel* consisteth in putting the infamous Matter into Writing. 2 *Salk.* 417. 3 *Salk.* 226. A defamatory Writing, expressing only one or two Letters of a Man's Name, if it be in such a Manner that from what goes before and follows after, it must be understood by the natural Construction of the Whole, to signify and Point at such a particular Person, is as properly a *Libel* as if the whole Name were express'd at large. *Trin.* 12 *Ann.* 1 *Hawk.* 194. Printing or Writing may be *libellous*, though the Scandal is not charged directly, but obliquely and ironical: And where a Writing pretends to recommend to one the Characters of several great Men for his Imitation, instead of taking Notice of what they are generally famous for, pitches on such Qualities only which their Enemies charge them with the Want of; as by proposing such a one to be imitated for his Learning, who is known to be a good Soldier, but an illiterate, &c. this will amount to a *Libel*. *Ibid.* In the Making of *Libels*, if one Man dictates, and another writes a *Libel*, both are guilty; for the Writing after another shews his Approbation of what is contained in the *Libel*; and the first Reducing a *Libel* into Writing may be said to be the Making it, but not the Composing: If one repeats, another writes, and a Third approves what is written, they are all Makers of the *Libel*; be-

cause all Persons who concur to an unlawful Act are guilty. 5 *Mod.* 167. The Making a *Libel* is the Genus; and Composing and Contriving is one Species; Writing, a second Species; and Procuring to be written, a Third; and one may be found guilty of Writing only, &c. 2 *Salk.* 419. If one writes a Copy of a *Libel*, and does not deliver it to others, the Writing is no Publication: But it has been adjudg'd, that the Copying a *Libel*, without Authority, is Writing a *Libel*, and he that thus writes it, is a Contriver; and that he who hath a written Copy of a known *Libel*, if 'tis found upon him, this shall be Evidence of the Publication; but if such *Libel* be not publickly known, then the bare having a Copy is not a Publication. 2 *Salk.* 417. 2 *Nelf. Abr.* 1122. Writing the Copy of a *Libel* is Writing of a *Libel*, as it has the same pernicious Consequence; and if the Law were otherwise, Men might write Copies, and print them with Impunity. 2 *Salk.* 419. And when a *Libel* appears under a Man's own Hand-writing, and no Author is known, he is taken in the Manner, and it turns the Proof upon him; and if he cannot produce the Composer, it is hard to find that he is not the very Man. *Ibid.* If one reads a *Libel*, or hears it read, and laughs at it, it is not a Publishing; for before he reads or hears it read, he cannot know it to be a *Libel*: Though if he afterwards reads or repeats it, or any Part thereof, in the Hearing of others, it is a Publication of it; yet if Part of it be repeated in Mirth, without any malicious Purpose of Defamation, it is said to be no Offence. 9 *Rep.* 59. *Moor* 862. Every one convicted of Publishing a *Libel*, ought to be esteem'd the Contriver or Procurer: The Procurer and Writer of a *Libel* have been held to be both Contrivers; also the Procuring another to publish it, and the Publisher, are both Publishers: And the Contriver, Procurer, and Publisher of a *Libel*, are punishable by Fine, Imprisonment, Pillory, or other corporal Punishment, at the Discretion of the Court, according to the Heinousness of the Crime, &c. *Moor* 627. 5 *Rep.* 125. 3 *Inst.* 174. 3 *Cro.* 17. In Law Proceedings there are two Ways of Describing a *Libel*, by the Sense, and by the Words; the first is *cujus Tenor sequitur*, and the second, *Quae sequitur in hac Anglicana verba*, &c. in which the Description is by particular Words, and whereof every Word is a Mark, so that if there is any Variance, it is fatal; in the other Description by the Sense, it is not material to be very exact in the Words, because the Matter is described by the Sense of them. 2 *Salk.* 660. One great Intention of the Law in prohibiting *Libels* against Persons, is to restrain Men from endeavouring to make themselves their own Judges of Complaints, and to oblige them to refer the Decision thereof to the Law, &c.

Libera Batella, Signifies a free Boat. —

Per Liberam Batellam, hoc est, habere unam Cymbam ad Piscand. subter Pontem Cestria, &c. & ibidem cum omni genere retium. *Plac. in Itin. apud Cestriam*, 14 H. 7.

Libera Chafca habenda, Is a judicial Writ granted to a Person for a free Chafe belonging to his Manor; after Proof made by Inquiry of a Jury, that the same of Right belongs to him. *Reg. Orig.* 36.

Libet Taurus, A free Bull. *Compertum per Fur. quod Will. de H. fuit seistus de Libero Taurro habendo in, &c. Ideo Consideratum est, quod praedictus*

dictus Will. recuperet damna sua quæ taxantur per Fur. ad ius. pro imparatione ejusdem Tauri, &c. Norf. 16 Ed. 1.

Liberate, Is a Writ that lies for the Payment of an yearly Pension, or Sum of Money granted under the Great Seal, and directed to the Treasurer, Chamberlains, and Barons of the Exchequer, &c. for that Purpose. In another Sense it is a Writ to the Sheriff of a County, for the Delivery of Possession of Lands and Goods extended, or taken upon the Forfeiture of a Recognizance. Also a Writ issuing out of the Chancery directed to a Gaoler for Delivery of a Prisoner that hath put in Bail for his Appearance. *F. N. B.* 132. 4 *Inst.* 116. This Writ is most commonly used for Delivery of Goods, &c. on an *Extent*; and by the *Extent* the Confessèe of a Recognizance hath not any absolute Interest in the Goods, until the *Liberate*. 2 *Lill.* 169. It has been adjudg'd, that where an *Extent* is upon a Statute-Merchant, there needs no *Liberate*, for the Sheriff may deliver all in Execution without it; but where an *Extent* is upon a Statute-Staple, or a Recognizance, there must be a Return made of such an *Extent*, and then a *Liberate* before there can be a Delivery in Execution. 3 *Salk.* 159. See *Extent*.

Liberatio, Is taken for Money, Meat, Drink, Clothes, &c. yearly given and delivered by the Lord to his Domestick Servants. *Blount*.

Libertate probanda, Is an antient Writ that lay for such as being demanded for Villains offer'd to prove themselves free; directed to the Sheriff that he should take Security of them for the Proving of their Freedom before the Justices of Assize, and that in the mean Time they should be unmolested. *F. N. B.* 77. *Villénage*, and the Appendixes thereof, viz. Writs *de nativo habendo*, *Libertate probanda*, &c. were of old great Titles in the Books of the Law, but now antiquated.

Libertatibus allocandis, A Writ lying for a Citizen or Burgess, impleaded contrary to his Liberty, to have his Privilege allowed. *Reg. Orig.* 262. And if any do claim a special Liberty to be impleaded within a City or Borough, and not elsewhere, there may be a special Writ *de Libertatibus allocandis*, to permit the Burgesses to use their Liberties, &c. These Writs are of several Forms; and may be sued by a Corporation, or by any single Person, as the Case shall happen. *New Nat. Br.* 509, 510. The Barons of the *Cinque Ports*, &c. may sue forth such Writs, if they are delayed to have their Liberties allowed them. *Ibid.*

Libertas Ecclesiastica, Church Liberty, is a frequent Phrase in old Writers who treat of Ecclesiastical Immunities. The Right of Investiture, extorted from our Kings by the Papal Power, was at first the only Thing challenged by the Clergy as their *Libertas Ecclesiastica*; but by Degrees under the Title of Church Liberty, they contended for a Freedom of their Persons and Possessions from all secular Power and Jurisdiction, as appears by the Canons and Decrees of the Councils held by Boniface, Archbishop of Canterbury, at Merton, Anno 1258. And at London, A. D. 1260, &c.

Liberty, (*Libertas*) Is a Privilege held by Grant or Prescription, by which Men enjoy some Benefit beyond the ordinary Subject. *Bracton*. But in a more general Signification, it is said to be a Power to do as one thinks fit; unless restrained by the Law of the Land. The Laws of Eng-

land, in all Cases, favour Liberty, which is counted very precious, not only in Respect of the Profit which every one obtains by his Liberty; but also in Respect of the Publick. 2 *Lill. Abr.* 169. No Freeman shall be imprisoned or condemned, &c. without Trial by his Peers, or the Law. *Magn. Chart. c.* 19. And no Person is to be arrested, &c. without Process at Law; Matters which concern Liberty are to be speedily determined, &c.

Liberty to hold Pleas, Signifies to have a Court of one's own, and to hold it before a Mayor, Bailiff, &c. See *Franchisa*.

Liblâcum, The Manner of Bewitching any Person; also a barbarous Sacrifice. *Leg. Athelstan* 6.

Libra pēsa, A Pound of Money in Weight: In former Times, it was usual not only to tell the Money, but to weigh it; for besides the King, several Cities and Places, and some Noblemen, had their Mints and the Coinage of Money, which being often very bad, therefore although the Pound consisted of 20 s. as now, they weighed it notwithstanding. *Gale's Hist. Brit.* 761. We read in *Domesday Register*, *reddit nunc trigint. Libras arsas & pensatas*; and that sometimes People took their Money *ad Numerum*, by Tale; in the current Coin upon Content; and sometimes they rejected the common Coin by Tale, and would melt it down to take it by Weight *ad Scalam*, when purified from the Dross and too great Alloy; for which Purpose they had in those Days always a Fire ready in the Exchequer to burn the Money, and then weigh it. *Domesd.*

Library. Where a Library is erected in any Parish, it shall be preserved for the Uses directed by the Founder: And Incumbents and Ministers of Parishes, &c. are to give Security therefore, and make Catalogues of the Books, &c. None of the Books shall be alienable, without Consent of the Bishop, and then only when there is a Duplicate of such Books: If any Book shall be taken away and detain'd, a Justice's Warrant may be issued to search for and restore the same; also Action of Trover may be brought in the Name of the proper Ordinary, &c. And Bishops have Power to make Rules and Orders concerning Libraries, appoint Persons to view their Condition, and inquire of the State of them in their Visitations. *Stat. 7 Ann. c.* 14.

Librata terræ, Is a Quantity of Land, containing four Oxgangs: But some say it is so much Ground only as is worth yearly 20 s. of current Money. *Skene*. See *Fardingdeal*.

Licence, (*Licentia*) Is a Power or Authority given to a Man to do some lawful Act: And is a Personal Liberty to the Party to whom given, which cannot be transferred over; but it may be made to a Man, or his Assigns, &c. 12 *H.* 7. 25. There may be a Parol Licence, as well as by Deed in Writing; but if it be not for a certain Time, it passes no Interest. 2 *Nels. Abr.* 1123. And if there be no Time certain in the Licence; as if a Man license another to dig Clay, &c. in his Land, but doth not say for how long, the Licence may be countermanded; though if it be until such a Time, he cannot. *Poph.* 151. If a Lessor license his Lessee, (who is restrained by Covenant from aliening without Licence) to alien, and such Lessor dies before he aliens, this is no Countermand of the Licence: So it is if the Lessor grants over his Estate. *Cro. Jac.* 103. But where a Lord of a Manor for Life granteth a Licence to a Copyhold Tenant

Tenant to alien, and dieth; the *Licence* is destroyed, and the Power of Alienation ceaseth. 1 *Inst.* 52. Copyhold Tenants leasing their Copyholds for a longer Time than one Year, are to have a *Licence* for it; or they incur a Forfeiture of their Estates. 1 *Inst.* 63. If any *Licence* is given to a Person, and he abuses it, he shall be adjudg'd a Trespasser *ab initio*. 8 *Rep.* 146.

Licence to alien in Mortmain. Alienations in Mortmain to Ecclesiastical Persons, &c. are restrained by several Statutes; but the King may grant *Licences* to any Person, or Bodies Politick, &c. to alien or hold Lands in Mortmain. 27 *Ed.* 1. 7 & 8 *W.* 3. c. 37. See *Mortmain*.

Licence to arise, (*Licentia surgendi*) Is a Liberty or Space of Time given by the Court to a Tenant to arise out of his Bed, who is effoined *de malo lecti* in a Real Action: And it is also the Writ thereupon. *Bracton*. And the Law in this Case is, that the Tenant may not arise or go out of his Chamber, until he hath been viewed by Knights thereto appointed, and hath a Day assign'd him to appear; the Reason whereof is, that it may be known, whether he caused himself to be effoined deceitfully, or not; and if the Demandant can prove that he was seen abroad before the View or *Licence* of the Court, he shall be taken to be deceitfully effoin'd, and to have made Default. *Bracton*, lib. 5. *Fleta*, lib. 6. c. 10.

Licence to found a Church, granted by the King. See *Church*.

Licence to go to Election of Bishops is by *Conge d'Esire* directed to the Dean and Chapter to elect the Person named by the King, &c. *Reg. Writs* 294. *Stat.* 25 *H.* 8. c. 20.

Licence of Marriage. Bishops have Power to grant *Licenses* for the Marrying of Persons; and Parsons marrying any Person without Publishing the Banns of Matrimony, or without *Licence*, incur a Forfeiture of 100*l.* &c. by Statute 7 & 8 *W.* 3. c. 35.

Licence to erect a Park, Warren, &c. See *Park* and *Warren*.

Licentia concordandi, Is that *Licence* for which the King's Silver is paid, on passing a Fine mentioned in the Statute 12 *Car.* 2. cap. 12.

Licentia Transfretandi, Is a Writ or Warrant directed to the Keeper of the Port of Dover, or other Sea-Port, commanding them to let such Persons pass over Sea, who have obtained the King's *Licence* thereunto. *Reg. Orig.* 193.

Lidford Law, Is a proverbial Speech, intending as much as to hang a Man first, and judge him afterwards.

Liege, (*Ligeus*) Is used for *Liege Lord*, and sometimes for *Liege Man*: *Liege Lord* is he that acknowledgeth no Superior; and *Liege Man* is he which oweth Allegiance to his *Liege Lord*. 34 & 35 *H.* 8. The King's Subjects were antiently called *Liege People, (*Ligati*)* because they owe and are bound to pay Allegiance to him. *Stat.* 8 *H.* 6. c. 10. 14 *H.* 8. c. 2. But in antient Times, private Persons as Lords of Manors, &c. had their *Lieges*. *Skene* saith, that this Word is derived from the Ital. *Liga*, a Bond or League; others derive it from *Litis*, which is a Man wholly at the Command of the Lord. *Blount*.

Ligeance, (*Ligeantia*) Is the true and faithful Obedience of a Subject to his Sovereign: And is also applied to the Dominion or Territory of the *Liege Lord*; as Children born out of the *Ligeance* of the King, &c. *Stat.* 25 *Ed.* 3. *Co. Litt.* 129.

Ligeancy, (*Ligeantia*) Is such a Duty or Fealty, as no Man may owe or bear to more than one Lord; and therefore it is used for that Duty and Allegiance, which every good Subject oweth to his *Liege Lord* the King. It has been thus defined, *Ligeantia est Vinculum arctius inter Subditum & Regem utrosque invicem connectens; hunc ad Protectionem & justum regimen, illos ad Tributa & debitam subjectionem*. As there is a mutual Connexion of Dominion and Fidelity between Lords and Tenants; so there is a higher and greater Connexion between the King and Subject: For the Subject oweth to the King his faithful Obedience, and ought to prefer the Service of his Prince and Country before the Safety of his Life; and the Sovereign is to protect and defend his Subjects. *Fortescue*. See *Allegiance*.

Lien, (*Fr.*) Is a Word used in the Law, of two Significations: *Personal Lien*, such as a Bond, Covenant or Contract; and *Real Lien*, a Judgment, Statute, Recognizance, &c. which oblige and affect the Land. *Terms de Ley* 427.

Lieu conus, In Law Proceedings, signifies a Castle, Manor, or other notorious Place, well known and generally taken Notice of by those that dwell about it. 2 *Lill. Abr.* 641. See *Venire facias*.

Lieutenant, (*Locum tenens*) The King's Deputy; or he that exercises the King's or any other's Place, and represents his Person; as the *Lieutenant of Ireland*. *Stat.* 4 *Hen.* 4. c. 6. and 2 & 3 *Ed.* 6. c. 2. The *Lieutenant of the Ordnance*. 39 *Eliz.* c. 7. And the *Lieutenant of the Tower*, an Officer under the *Constable*, &c. And the Word *Lieutenant* is used for a military Officer, next in Command to the Captain.

Life, (*Vita*) Is common Nature; and the *Life* of every Man is under the Protection of the Law. *Wood's Inst.* 11. A Lease made to a Person during *Life*, is determinable by a Civil Death; but if it be to hold during *natural Life*, it will be otherwise. 2 *Rep.* 48.

Lightermen, Are those that carry away by Water, Dung and Rubbish, or Coals, &c. in *Lighters*, from the City of London. 22 & 23 *Car.* 2.

Lights. Stopping *Lights* of a House is a Nuisance; but Stopping a Prospect is not, being only Matter of Delight, not of Necessity: And a Person may have either an *Affise of Nuisance* against the Person erecting any such Nuisance, or he may stand on his own Ground and abate it. 9 *Rep.* 58. 1 *Mod.* 54.

Lignagium, Signifies the Right which a Man hath to the Cutting of Fuel in Woods; and sometimes it is taken for a Tribute or Payment due for the same.

Ligula, A Copy or Transcript of a Court-Roll or Deed; mentioned by Sir *John Maynard* in his *Mem. in Scaccar.* 12 *Ed.* 1.

Limitation, (*Limitatio*) Is a certain Time assign'd by Statute, within which an Action must be brought: And *Limitation* of Time is two-fold, viz. To make Title to an Inheritance by the Common Law; and in Writs by several Statutes. 1 *Inst.* 115. There is a *Limitation* in Real and Personal Actions; and in the former, he that will sue for any Lands or Hereditaments, ought to prove that he or his Ancestors were seised of the Lands sued for by Writ of *Affise*, or he cannot maintain his Action: And this is called *Limitation of Affise*. *F. N. B.* 77. *Stat. Westm.* 1. c. 38. No Person shall have any Writ of Right, or make any Title or Claim to any Lands, &c. of the Possession of his

his Ancestors, but of a Seisin within sixty Years, next before the Teste of the Writ, &c. In *Assise of Mortdancestor*, Writ of *Entry sur Disseisin*, or other possessory Action, upon the Possession of an Ancestor, it must be within fifty Years; and upon the Party's own Possession, within thirty Years, and the Plaintiff is barred, not proving such Possession, &c. 32 H. 8. c. 2. But this Statute is not to extend to a Writ of Right of Advowson, &c. by Statute 1 M. c. 5. The 21 Jac. 1. c. 16. ordains, that all Writs of *Formedon*, &c. for Title to Lands *in Esse*, shall be sued and prosecuted within twenty Years after the Title had: But there is a Proviso in the Statute, to relieve Infants, Feme Coverts, Persons beyond Sea, or in Prison, and the Heirs of such Persons, so as they commence their Suits within the Times limited after their Impediments are removed. It has been held, that the Act 32 H. 8. doth not extend to Rent, Services, &c. out of Land: And one that hath been out of Possession for sixty Years, if his Entry is not taken away, may enter and bring his Action for his own Possession. *Wood's Inst.* 557. If a Man hath been in Possession twenty Years without Interruption, and afterwards another gets into Possession; he may bring an Ejectment, because twenty Years Possession is a good Title in him to maintain Action of Ejectment, as if he had at that Time been actually possessed: But if the Plaintiff be out of Possession more than twenty Years, where there is an actual Disseisin, and not a Disseisin by Perception of Profits, &c. only, he is barred by the Statute of *Limitations*. 2 Salk. 421, 423. By Statute, Actions of Debt, Actions upon the Case, (except for Words) Actions of Account, (except concerning Merchandise) of Detinue, Trover, and Trespass, are to be commenced within six Years after the Cause of Action; and not after; Actions of Assault and Battery, within four Years; and for Slander within two Years after the Cause of Action, &c. 21 Jac. 1. c. 16. If these Personal Actions are not brought in the Time limited by this Statute, they are barred: And the Statute of *Limitations* is a good Bar to a Suit for Seamen's Wages, if 'tis well pleaded. *Mod. Ca.* 26. 4 & 5 Ann. c. 16. The Statute of *Limitations* extends to Accounts current only between Merchants; for when an Account is stated and balanced, Debt lies, and the Action must be brought within six Years: The Statute is not pleadable to an Account current, but it is to an Account stated. 1 Mod. 70, 268. 2 Saund. 124. Where Money is to be paid as a Trust, it is not within the Statute of *Limitations*. *March.* 151. 2 Ventr. 345. If the Consideration of a Promise is executory, or Money is to be paid on Request, &c. it is not material when the Promise was made, but when the Cause of Action did arise; and the Defendant ought to plead that *Causa Actionis non accrevit infra sex annos*, &c. 2 Salk. 422. When Words are actionable in themselves, there Damages shall be recovered according as they were first spoken, if the Action be brought within two Years, as required by the Statute of *Limitations*; and otherwise the Party will be barred by the Statute: But where the Words are actionable only in Respect of the Special Damages which happen after the Speaking, in such Case, if the Damage is seven Years afterwards, it is no Bar. *Sid.* 95. An Action barrable by the Statute, a fresh Promise will revive it; so it is of an Acknowledgment, because that is Evidence of a Promise. 3 Salk.

228. And a *Latitat* taken out and filed, and continued, is an Avoidance of the Statute; for 'tis a Demand, and a good Bringing of an Action within the Time mentioned by the Statute of *Limitations*. 3 Salk. 229. 1 Lill. Abr. 19. If after Proceedings in an inferior Court the six Years expire, and then the Cause is removed into B. R. the Plaintiff may set forth the Suit below, and aver that to be within six Years, &c. and thereby prevent the Bar of the Statute. *Sid.* 228. 2 Salk. 424. If a Plaintiff is beyond Sea when the Cause of Action doth accrue, he shall have Liberty at his Return to bring it; but if the Defendant is beyond Sea, and the Plaintiff here, he must file an Original against the Defendant, and continue it till he returns; and if he do not file an Original, or outlaw the Defendant, the Statute of *Limitations* will bar him. 2 Salk. 420. The King is not within the general Acts of *Limitation*; nor Ecclesiastical Persons, for Lands belonging to their Churches. 11 Rep. 74.

Limitation of Estate, In a legal Sense, imports how long the Estate shall continue, or is rather a Qualification of a precedent Estate. A *Limitation* is by such Words as *Durante vita*, *Quamdiu*, *dum*, &c. And if there be not a Performance according to the *Limitation*, it shall determine an Estate, without Entry or Claim; which a Condition doth not. 10 Rep. 41. 1 Inst. 204. There may be a conditional *Limitation* to support a Person's Intent, &c. 1 Ventr. 199. If a *Limitation* of an Estate be uncertain, the *Limitation* is void; and the Estate shall remain as if there had been no such *Limitation*. *Cro. Eliz.* 216. But a Thing that is limited in a Will by plain Words, shall not be afterwards made uncertain by general Words which follow it. *Hill.* 23 Car. B. R. Where a Devise is to the eldest Son, upon Condition that he pays such Legacies; and if he refuses, the Land shall remain to the Legatees: On his Refusal, the Legatees may enter by Way of *Limitation*. *Noy* 51. And in all Cases, where after a Condition, an Interest is granted to a Stranger, it is a *Limitation*. 1 Leon. 269. *Cro. Eliz.* 204. Lands may be given and limited to one in Tail, Remainder to another, Remainder in Fee, &c. Though a *Limitation* of an Estate cannot begin after the Determination of an absolute Estate in Fee-simple; for that would be to suffer Perpetuities to be made, which the Law abhors. 2 Lill. Abr. 173.

Limitation of the Crown. The Statutes 1 W. & M. c. 8. 12 W. 3. c. 2. and 1 & 2 Ann. c. 17. 4 Ann. c. 8. &c. are Acts for the *Limitation of the Crown*, and settling it on Protestant Heirs in the House of Hanover. See *Crown*.

Linarium, A Flax-plat, where Flax is sown. — *Et Messuagium*, &c. cum Linario, quod jacet juxta predict. Messuagium. Pat. 22 Hen. 4. Par. 1. m. 33.

Lindesfern, A Place often mentioned in our ancient Histories; being formerly a Bishop's See, now Holy Island.

Linen. Using Means whereby Linen Cloth shall be made deceitfully, incurs a Forfeiture of the Linen, and a Month's Imprisonment. *Stat.* 1 Eliz. c. 12. Any Persons may set up Trades of dressing Hemp or Flax, and making Thread for Linen Cloth, &c. 15 Car. 2. c. 15. And Linen may be exported Duty-free. 3 Geo. c. 7.

Litera, (From the Fr. *Litiere*, or *Lictiere*, Lat. *Lectum*) Was antiently used for Straw for a Bed, even the King's Bed. — Petrus A. tenuit, &c.

per Serjeantiam inveniendi unum Servientem cum Hambergello per 40 Dies, & inveniend. Literam ad Lectum Regis, Facnum ad Palfridum Regis, quando jacuerit apud, &c. Term. Hill. 1 Ed. 2. Litter is now only in Use in Stables among Horses: And *Tres Carrectatas Litera* is three Cart-loads of Straw or Litter. Mon. Angl. Tom. 2. pag. 33.

Literatura. *Ad Literaturam ponere* signifies to put Children out to School; which Liberty was antiently denied to those Parents who were servile Tenants, without the Consent of the Lord: And this Prohibition of educating Sons to Learning, was owing to this Reason; for Fear the Son being bred to Letters might enter into Orders, and so stop or divert the Services which he might otherwise do as Heir to his Father.

Quilibet custumarius Tenen. non debet Filium suum ad Literaturam ponere, neq; Filiam suam maritare, sine Licentia a voluntat. Dom. Paroch. Antiq. 401.

Literæ *Ad faciendum Attornatum pro seſta faciend.* Reg. Orig. 192.

Literæ *Canonici ad Exercendam Jurisdictionem loco suo.* Ibid. 305.

Literæ *Per quas Dominus remittit Curiam suam Regi.* Ibid. 4.

Literæ *De Requeſtu.* Ibid. 129. See these in their proper Places.

Literæ ſolutoziæ, Were magical Characters, ſuppos'd to be of ſuch Power, that it was impossible for any one to bind those Persons who carried these about them. *Bede, lib. 4. c. 22.*

Lith of Pickering, In the County of York, viz. The Liberty, or a Member of Pickering, from the Sax. *Lid, i. c. Membrum.*

Libery, (Fr. *Livre, i. e. Inſigne, Geſtamen, or Liverer, i. e. Tradere*) Hath three Significations. In one Senſe, it is uſed for a Suit of Clothes, Cloak, Gown, Hat, &c. which a Nobleman or Gentleman gives to his Servants or Followers, with Cogniſance or without; mentioned in the 1 R. 2. c. 7. and divers other Statutes: And formerly great Men gave *Liveries* to ſeveral who were not of their Family, to engage them in their Quarrels for that Year; but afterwards it was ordained, that no Man of any Condition whatſoever, ſhould give any *Livery* but to his Domeſticks, his Officers, or Counſel learned in the Law. By 1 R. 2. it was prohibited, on Pain of Imprifonment; and the 1 Hen. 4. c. 7. made the Offenders liable to Ransom at the King's Will, &c. which Statute was farther confirmed and explained, Anno 2 & 7 Hen. 4. and 8 H. 6. c. 4. and yet this Offence was ſo deeply rooted, that Edw. 4. was obliged to confirm the former Statutes, and further to extend the Meaning of them; adding a Penalty of 5 l. on every one that gives ſuch *Livery*, and the like on every one retained for Maintenance, either by Writing, Oath; or Promise, for every Month. 8 Ed. 4. c. 2. But moſt of the above Statutes are repealed by 3 Car. 1. c. 4. *Livery* in the ſecond Signification, was a Delivery of Poſſeſſion to thoſe Tenants which held of the King in *Capite*, or by Knights Service; as the King by his Prerogative hath *Primer Seifin* of all Lands and Tenements ſo holden of him. *Staundf. Prerog. 12.* In the third Uſe, *Livery* was the Writ which lay for the Heir of Age, to obtain the Poſſeſſion or Seifin of his Lands at the King's Hands. *F. N. B. 155.* By the Statute 12 Car. 2. c. 24. All *Wardſhips, Liveries, &c.* are taken away.

Libery of Seifin, (*Liberatio Seifine*) Is a Delivery of Poſſeſſion of Lands, Tenements and Hereditaments, unto one that hath Right to the ſame; being a Ceremony in the Common Law, uſed in the Conveyance of Lands, &c. where an Eſtate of Fee-ſimple, Fee-tail, or other Freehold paſſeth. *Bract. lib. 2. c. 18. Weſt. Symb. part 1. lib. 2.* And it is a Teſtimonial of the willing Departing of him who makes the *Livery*, from the Thing whereof the *Livery* is made; and of the willing Acceptance of the other Party receiving the *Livery*; firſt invented that the common People might have Knowledge of the Paſſing or Alteration of Eſtates from Man to Man, and thereby be better able to try in whom the Right of Poſſeſſion of Lands and Tenements were, if the ſame ſhould be conteſted, and they ſhould be impanelled on Juries, or otherwiſe have to do concerning the ſame. *Weſt. Ibid.* This *Livery* may be made of a Houſe, Lands, or any Thing corporeal; but not of incorporeal Things: Where a Houſe and Lands are convey'd, the Houſe is the Principal, and the Lands acceſſory; and there the *Livery* muſt be made, and not upon the Land. 2 Rep. 31. 4 Leon. 374. Of *Livery and Seifin* there are two Kinds; a *Livery in Deed*, and *Livery in Law*: *Livery in Deed* is when the Feoffor taketh the Ring of the Door, &c. and delivereth the ſame to the Feoffee, in the Name of Seifin. 1 Inſt. 48. 6 Rep. 26. And *Livery in Deed* may be either by Words, and ſome ſolemn Act; or by Words, without any ſolemn Act, if the Feoffor and Feoffee are on the Land. *Wood's Inſt. 237.* *Livery in Law* is when the Feoffor himſelf, being in View of the Houſe or Land, ſaith to the Feoffee, after Delivery of the Deed, *I give to you yonder Land, &c. to you and your Heirs, go enter into the ſame and take Poſſeſſion accordingly*; now if the Feoffee enters on the Land, during the Lifetime of the Feoffor, it is a good Feoffment and *Livery*. 1 Inſt. 48, 52. If a Deed of Feoffment be delivered upon the Land, in the Name of Seifin of all the Lands, it will be a good *Livery and Seifin*; but the bare Delivery of a Deed upon the Land, though it may make the Deed, it ſhall not amount to *Livery and Seifin*, without thoſe Words. 1 Inſt. 52, 181. If one makes a Feoffment to four Perſons, and *Seifin* is delivered to Three of them, in the Name of All; the Eſtate is veſted in all of them. 3 Rep. 26. And if Lands lie in divers Places in one County, *Livery and Seifin* in one Parcel in one Place, in the Name of the Reſt, is ſufficient; though if the Lands lie in ſeveral Counties, it is otherwiſe, for then *Livery and Seifin* muſt be in every County. *Litt. 61.* No Perſon ought to be in the Houſe, or upon the Land, when *Livery* is made, but the Feoffor and Feoffee; all others are to be removed from it: If the Leſſor Feoffor makes *Livery and Seifin*, the Leſſee being upon the Land contradicting it, the *Livery* is void. *Cro. Eliz. 321.* A Leſſor enfeoff'd a Stranger, and came to make *Livery and Seifin*, the Leſſee's Wife being in the Houſe; the Leſſor enters, and by Force turns the Wife into the Backſide, which was Part of the Land let, and then he makes *Livery* in the Houſe, in the Name of all the Lands let; as the Woman was remaining all the While upon the Land, and contradicting the *Livery*, the *Livery* was held void: But if ſhe had voluntarily gone out of the Houſe, upon Part of the Land; or the Leſſor had turned her into the Street, ſo that ſhe had

not been upon any Part of the Land, it had been good. *Dalif. Rep.* 94. If a Man agrees with me to make a Feoffment upon Condition, and after makes a Charter of Feoffment without any Condition, and then makes *Livery and Seisin secundum formam Chartæ*, this is absolute without any Condition; for the *Livery* is not made according to the Agreement, but according to the Charter. 34 *Aff.* 1. But if a Person enfeoffs another, as a Security for the Payment of Money, and afterwards makes *Livery of Seisin* to him and his Heirs generally; the Estate hath been holden to be upon Condition, since the Intent of the Parties was not changed, but continued at the Time of the *Livery*. 1 *Inst.* 222. And where a Charter of Feoffment is made, and in the Deed there is no Condition; but when the Feoffor would make *Livery of Seisin* to the Feoffee by Force of the Deed, he expressing the Estate, makes *Livery of Seisin* upon Condition, the Feoffment is of Force as if it had not been made. *Litt. Sect.* 359. 2 *Danv. Abr.* 13. A Man makes a Lease for Years, Remainder to another for Life, in Tail, or in Fee: Here *Livery and Seisin* in Deed must be made to the Lessee for Years; without which nothing passeth to him in Remainder, it being for the Benefit of him in Remainder, and not the Lessee who hath only a Term: And if the Lessee entereth, before *Livery and Seisin* made to him, the *Livery* will be void. *Litt.* 60. 1 *Inst.* 49. *Wood's Inst.* 238. A Lease for Years is granted to A. B. with Remainder to his right Heirs, whereon *Livery* is made; the Remainder is void, because there is not any Person *in esse*, who can presently take by the *Livery*; and every *Livery* ought to have its Operation presently. 4 *Leon.* 67. There was a Lease made to a Man and his Wife, and their Daughter, to hold from *Michaelmas* next, and the Lessor made *Livery* after *Michaelmas*; this was adjudg'd good, being made by the Lessor himself, but it had been otherwise, if it had been to be done by Attorney, or if the Lessor had made *Livery* before *Michaelmas*. 2 *Roll. Rep.* 109. Lease for twenty Years to a Man, to commence from a Time past; and after the Expiration of the said Term, then to him and his Wife, and their Son, for their Lives, and the longest Liver of them, with a Letter of Attorney to make *Livery and Seisin*, &c. It is a good Lease for Years, with Remainder for Life, if *Livery and Seisin* be made by the Attorney at the Time of executing the Lease; but if the *Livery and Seisin* be made by the Attorney some Time afterwards, in such Case it is said the *Livery* is void. *Moor* 14. A Man may make a Letter of Attorney to deliver *Seisin* by Force of the Deed, which may be contained in the same Deed; and a Letter of Attorney may be likewise made to receive *Livery and Seisin*. 5 *Rep.* 91. 1 *Inst.* 49, 52. The Manner of making *Livery of Seisin* is thus: The Parties to the Deed, Grantor and Grantee, or the Attornies by them authorized, come to the Door of the House, or some Part of the Land; and there having declared the Cause of their Meeting, in the Presence of Witneses, they read the Deed or the Contents thereof; and if by Attorney the Power of Attorney; and then, if it be a House, they take the Ring, Latch, or Key of the Door, (all the People being out of the House), or if it be Land, a Clod of Earth, and a Twig or Bough of one of the Trees thereon; and the same Ring or Key, Clod, &c. with the Deed, they deliver to

the Grantee, or his Attorney, saying the usual Words, viz. 'I A. B. do hereby deliver unto you C. D. Possession and Seisin of this Messuage or Tenement, &c. To hold to you, your Heirs and Assigns, according to the true Intent and Meaning of this Indenture, &c. And afterwards, if it be a House, the Grantee, &c. enters first alone, and shuts to the Door; and then he opens it, and lets in others. *Accomp. Convey.* 2d Edit. Vol. 1.

Livery and Seisin endorsed on the Deed.

Memorandum, That on the Day, &c. full Possession and Seisin was had and taken of the Messuage or Tenement, and Premises within granted, by A. B. one of the Attornies within named, and by him delivered over unto the within-named C. D. To hold, &c. according to the Contents and true Meaning of the within written Indenture, in the Presence of, &c.

If a House or Lands belong to an Office, by Grant of the Office by Deed, the House or Land passeth without *Livery*: And by a Fine, which is a Feoffment of Record; by a Lease and Release; Bargain and Sale by Deed inrolled; Exchange, &c. a Freehold passeth, without *Livery*; and so in a Deed of Feoffment to Uses, by Virtue of the Statute of Uses. 1 *Inst.* 49. So that *Livery and Seisin* is not so commonly used as formerly; neither can Estates be created now by *Livery and Seisin* only, without Writing. *Stat.* 29 *Car.* 2. c. 3.

Libre, Is a Piece of Foreign Coin, in France going for 1 s. 6 d. and in other Countries of less Value; but in Spain their *Livres* pass at 5 s. Accounts are kept by this Money in France, Spain, &c. *Merch. Dict.*

Local, (*Localis*) Tied or annexed to a certain Place: Real Actions are local, and to be brought in the County where the Lands lie; but a Personal Action, as of Trespass for Battery, &c. is transitory, not local; and it is not material that the Action should be tried or laid in the same County where the Fact was done; and if the Place be set down, it is not needful that the Defendant should traverse the Place, by saying he did not commit the Battery in the Place mentioned, &c. *Kitch.* 230. A Thing is local that is fixed to the Freehold. *Ibid.* 180. See *Action*.

Lockman. In the Isle of Man, the Lockman is an Officer to execute the Orders of the Governor, much like our Under-Sheriff. *King's Descript.* *Isl. Man* 26.

Locus, Signifies a Coffin. — *Cujus Corpus in Loculo plumbeo translatus est.* *Sim. Dunelm.* cap. 6.

Locus in quo, The Place where any Thing is alleged to be done in Pleadings, &c. 1 *Salk.* 94.

Locus partitus, Is a Division made between two Towns or Counties, to make Trial in, where the Land or Place in Question lieth. *Flet. lib.* 4. cap. 15.

Locutorium. The Monks and other Religious in Monasteries, after they had dined in their common Hall, had a withdrawing Room, where they met and talked together among themselves, which Room for that sociable Use and Conversation they called *Locutorium à Loquendo*; as we call such a Place in our Houses Parlour, from the Fr. *Parler*: And they had another Room, which was called *Locutorium Forinsecum*, where they might talk with Laymen. *Walsingh.* 257.

Lodemerge,

Lodemerge, Mentioned in the Laws of Oleron, is expounded to be the Skill or Art of Navigation. *Chaucer*.

Lodmanage, Is the Hire of a Pilot, for bringing a Ship from one Port or Place to another. The Pilot receives *Lodmanage* of the Master, for conducting the Ship up the River; but the *Loadfman* is he that undertakes to bring a Ship thro' the Haven, after brought thither by the Pilot, to the Key or Place of Discharge: And if thro' his Ignorance, Negligence, or other Fault, the Ship or Merchandize receive any Damage, Action lies against him at the Common Law. *Rough-ton*, fol. 27.

Logia, A little House, Lodge or Cottage. *Mon. Angl. Tom.* 1. pag. 400.

Logwood, (*Lignum Tinctorium*) Is Wood used by Dyers, brought from foreign Parts; prohibited by Stat. 23 *Eliz.* cap. 9. But allowed to be imported by the 14 *Car.* 2. c. 11.

Lollards, Had their Name from one *Walter Lollard*, a German, at the Head of them, who lived about the Year 1315. And they were certain Hereticks, (in the Opinion of those Times) that abounded here in England in the Reigns of King *Edw.* 3. and *Hen.* 5. whereof *Wickliff* was the Chief in this Nation. *Stow's Annals* 425. *Spotswood* in his History of Scotland, says, The Intent of these *Lollards* was to subvert the Christian Faith, the Law of God, the Church and the Realm; and so said the Stat. 2 *Hen.* 5. cap. 7. But that Statute was repealed 1 *Ed.* 6. c. 12. Several Decrees were made by our Archbishops against these *Seſtariſts*, as well as Statutes: And the High Sheriff of every County was anciently bound by his Oath to suppress them. 3 *Inſt.* 41.

Lollarby, The Doctrine and Opinion of the *Lollards*. 1 & 2 *P. & M.* c. 6.—*Rogerus Aſton miles pro Proditione & Lollaridia diſtrahatur & ſuſpendatur, & ſic ſuſpenſus pendeat ad voluntatem Regis.* *Middleſ. Plac. Hill.* 1 *Hen.* 5. Rot. 7.

London, The Metropolis of this Kingdom, formerly called *Auguſta*, has been built above three thousand Years, and flouriſhed for fifteen hundred Years. It is divided into Twenty-fix *Wards*, over each of which there is an Alderman; and is governed by a *Lord Mayor*, who has great Authority: It's *Exchange*, where Merchants of all Nations meet, is not to be equalled; and for Statelineſs of Buildings, Extent of Bounds, Learning of Arts and Sciences, Traffick and Trade, this City gives Place to none in the World. *Stow*. *London* is a Corporation by Preſcription; and for better Government, has divers Courts, viz. The Court of *Huſtings*, Sheriff's Court, Lord Mayor's Court, Court of Common Council, &c. 2 *Inſt.* 330. *Wood's Inſt.* 520. In *London*, every Day, except *Sunday*, is a Market overt, for the Buying and Selling of Goods and Merchandize. 5 *Rep.* 85. No Perſon not being a Freeman of *London*, can keep any Shop or other Place to put to Sale by Retail any Goods or Wares, or ſhall uſe any Handicraft Trade for Hire, Gain or Sale within the City, upon Pain of forfeiting 5 *l.* 8 *Rep.* 124. And there are three Ways to be a Freeman of *London*; by *Servitude*, of an Apprenticeship; by *Birthright*, as being the Son of a Freeman; and by *Redemption*, i. e. by Order of the Court of Aldermen. *Ibid.* 126. 4 *Mod.* 145. The Customs of *London* are against the Common Law, and made good by Parliament. 4 *Inſt.* 249. But to ſet forth a Custom or Uſage in the City of *London*, it muſt be ſaid *Antiqua Civitas*, or it

will not be good. 2 *Leon.* 99. By *Magna Charta*, the City of *London* ſhall have all their ancient Uſages, Liberties and Customs, which they have uſed to enjoy; and they are confirmed to them by that Statute. 9 *Hen.* 3. cap. 9. Lords of Rents in *London* may recover them in the Huſtings by Writ of *Gavelet*. 10 *Ed.* 2. The Mayor, &c. of *London* is to cauſe Errors, Defaults, and Miſprieſions to be redreſſed, under the Penalty of 1000 Marks; and the Conſtable of the *Tower* ſhall execute Proceſs againſt the Mayor for Default, &c. 28 *Ed.* 3. cap. 10. Citizens and Freemen of *London* may recover Debts under 40 *s.* in the Court of Requeſts at *Guildhall*, commonly called the Court of Conſcience. 3 *Fac.* 1. c. 15. After the Fire of *London*, a Judicature was erected for determining Differences relating to Houſes burnt; and certain Rules were laid down for rebuilding the City, the ſeveral Streets, Lanes, &c. The Lord Mayor and Aldermen were to ſet out Markets; the Number of Pariſhes and Churches was aſcertained, and a Duty granted on Coals for rebuilding of the Churches, &c. 19 *Car.* 2. cap. 23. and 22 *Car.* 2. c. 11. And the Tithes of the Pariſhes in *London*, the Churches whereof were burnt, were appointed; none leſs than 100 *l.* per Annum, nor above 200 *l.* per Annum to be aſſeſſed, and levied quarterly. 22 & 23 *Car.* 2. c. 15. The Lord Mayor, &c. is empowered to appoint Perſons to ſet out the Manner of Paving and Pitching the Streets of *London*; and alſo of Drains and Sewers, and to impoſe a Tax upon Houſes for Maintenance thereof. 22 & 23 *Car.* 2. cap. 17. Scavengers are to be elected in *London*, and within the *Bills of Mortality*, in each Pariſh, by the Conſtable, Church-wardens, &c. to ſee that the Streets be kept clean; and Houſe-keepers are to ſweep and cleanſe the Streets, every *Wednesday* and *Saturday*, under Penalties, &c. 2 *W. & M. Seſſ.* 2. cap. 2. Perſons authorized by the Lord Mayor, Aldermen and Common Council of *London*, ſhall have the ſame Power in *London* and the Liberties thereof, as Commiſſioners of Sewers have in any other County or Place. 7 *Ann.* cap. 9. By a late Statute, for regulating Elections within the City, it is ordained, That Elections of Aldermen and Common Councilmen, are to be by Freemen Houſholders, paying Scot and Lot, and having Houſes of the Value of 10 *l.* a Year; and none ſhall vote at Elections of Members of Parliament, but Liverymen, who have been Twelve-months on the Livery, and who are not diſcharged from Payment of Taxes, or thoſe as have received any Alms, &c. Alſo no Act or Ordinance of the Common Council, ſhall be made without the Aſſent of the Mayor and Aldermen, or the major Part of them preſent: And Freemen of *London* may diſpoſe of their perſonal Eſtates as they think fit, notwithſtanding the Custom of the City, &c. 11 *Geo.* cap. 18.

In *Trinity Term* 35 *Car.* 2. a *Quo Warranto* iſſued againſt the Lord Mayor and Citizens of *London*; on which Judgment was given in *B. R.* that the Charter and Franchiſe of the ſaid City, ſhould be ſeiſed into the King's Hands, as forfeited: But by 2 *W. & M. Seſſ.* 1. cap. 8. the ſaid Judgment was reverſed and made void, and all Officers and Companies were reſtored, &c. See *Customs of London, Courts, &c.*

Longitude. For the Diſcovery of the *Longitude* at Sea, the Lord Admiral and ſeveral others are appointed Commiſſioners, to receive Propo-

fals, &c. and if they are satisfied of such a Discovery, the first Discoverer is intitled to a Reward of 10,000*l.* if it determines the same to one Degree of a Circle, 15,000*l.* if to two Thirds of that Distance, and 20,000*l.* if to one Half of a Degree, to be paid by the Treasurer of the Navy. *Stat. 12 Ann. Sess. 2 cap. 15.*

Loquela, An Imparlance.—*Petronilla de S. debet 20 s. pro habenda Loquela in Curia Domini Regis contra Will. de F. Rot. Pipe 2. Johann. Linc.* And *Loquela sine Die* was a Respite in Law, or Demurrer to an indefinite Time. *Paroch. Antiq. 210.*

Lord, (*Dominus*, Sax. *Hlaford*, signifying Bountiful) Is a Word or Title of Honour, diversly used, being attributed not only to those who are noble by Birth or Creation, otherwise called *Lords of Parliament*, and Peers of the Realm; but to such so called by the *Courtesy of England*; as all the Sons of a Duke, and the eldest Son of an Earl, and to Persons honourable by Office, as the *Lord Chief Justice*, &c. and sometimes to a private Person that hath the *Fee of a Manor*, and consequently the Homage of the Tenants within his Manor; for by his Tenants he is called *Lord*. In this last Signification, it is most used in our Law-Books; where it is divided into *Lord Paramount*, and *Lord Mean*, and *Very Lord*, &c. *Old Nat. Br. 79. See Nobility.*

Lord in gross, Is he who is *Lord*, not by Reason of any Manor; as the King in Respect of his Crown, &c. *E. N. B. 3, 8.*

Logimers, (*Fr. Lormiers*, from the Lat. *Lorum*) Is one of the Companies of *London*, that make Bits for *Bridles*, Spurs, and such like small Iron Ware, mentioned in the *Stat. 1 R. 2. c. 12.*

Losinga, Signifies a Flatterer, or Sycophant: And *Godwin*, writing of the Bishops of *Norwich*, says of Bishop *Herbert*; *Surgit in Ecclesiâ Monstrum genitire Losinga. Brompt. Chron. pag. 991.*

Lut, A Contribution, or Duty. See *Scot.*

Lut or **Loth**, Is the Thirteenth Dish of Lead in the Mines in *Derbyshire*, which belongs to the King. *Eschaet. Ann. 16 Ed. 1.*

Lotteries. In late Reigns, several Statutes have been made for raising Money for the Use of the Government, by Way of *Lottery*; and the subjecting Duties on Beer and Ale, Malt, Paper, &c. for the Repayment thereof: As the 5 & 6 *W. 3. cap. 7.* to raise one Million, by 10*l.* Tickets, and the fortunate Adventurers to have Annuities, &c. The 10 *Ann. c. 19.* for raising two Millions at 6 *per Cent.* Interest. The 1 *Geo. cap. 1.* to raise and compleat 1,400,000*l.* The 5 *Geo. cap. 4.* for raising the Sum of 500,000*l.* by 3*l.* Tickets; and Annuities of 4*l.* *per Cent.* to the Fortunate. The 7 *Geo. c. 20.* for raising 700,000*l.* by *Lottery*, at Tickets 10*l.* each. And the 8 & 9 *Geo.* to raise the like Sum, &c. These *Lotteries* are publickly drawn, by Commissioners appointed; and the Annuities, and Interest for Prizes and Blanks, are paid till Redemption by Parliament. By the 8 *Geo. c. 2.* for Suppression of private *Lotteries*, no Person shall set up, or keep any Office, of Sales of Houses, Lands, Plate, Goods, &c. for Improvement of small Sums of Money, or expose to Sale, any Houses or Goods, by Way of *Lottery*, Lots, Tickets, or Numbers, or publish Proposals relating to the same, &c. on Pain of forfeiting 500*l.* And Adventurers in such Sales shall forfeit double the Sum contributed. See 9 *Geo. Justices of Peace.*

Love. Provoking unlawful Love is one Species of the Crime of Witchcraft, punishable by *Stat. 1 Jac. 1. c. 12.*

Lourgulary, Is the Casting any corrupt and poisonous Thing in the Water, which was *Lourgulary*, and Felony; and some think it a Corruption of *Burglary*. *Statut. pro Stratis London. Anno 1573.*

Loobellers, Are such Persons as go out in the Night-time with a *Light* and a *Bell*, by the Sight and Noise whereof Birds sitting on the Ground become stupified, and so are covered and taken with a Net: The Word is derived from the Sax. *Low*, which signified a *Flame of Fire*. *Antiq. Warwick. p. 4.*

Luminare, A Lamp or Candle, set burning on the Altar of any Church or Chapel; for the Maintenance whereof Lands and Rent-charges were frequently given to Parish-Churches, &c. *Kennet's Gloss.*

Lunatick, Is defined to be a Person who is sometimes of good and sound Memory and Understanding, and sometimes not; *aliquando gaudet lucidis intervallis*: And so long as he hath not Understanding, he is *Non compos mentis*. As a *Lunatick*, without Memory, understands not what he does; in criminal Cases, his Acts shall not be imputed to him; unless he kill or offer to kill the King, when by our old Books he might be guilty of Treason, and punished as a Traitor; though this is contradicted by the late Opinions. 1 *Inst. 247. 3 Inst. 46. H. P. C. 10, 43.* And it is said, if one who has committed a capital Offence, become *Lunatick* and *Non compos* before Conviction, he shall not be tried; and if after Conviction, that he shall not be executed. 1 *Hawk. P. C. 2.* Whilst a Man is *lunatick*, and he doth a criminal Act, 'tis his Madness and not his Intention, which is the Cause of the Action, and *Actus non facit reum, nisi mens sit rea*; and for that Reason, his Punishment could not be an Example to others. *Plowd. 19. 1 Inst. 247.* But he who incites a Madman or *Lunatick* to do a Murder, or other Crime, is a principal Offender, and as much punishable as if he had done it himself. *H. P. C. 43. Keyl. 53.* By the ancient Common Law, a dangerous Madman may be kept in Prison, till he recovers his Senses. *Bro. Coron. 101.* And by a late Statute, *Lunaticks*, or Madmen wandering may be apprehended by a Justice's Warrant, and locked up and chained; or be sent to their last legal Settlement, &c. *Stat. 12 Ann. Sess. 2. cap. 23.* A *Lunatick* cannot lawfully promise, or contract for any Thing; and the Grants of *Lunaticks* and Infants are parallel. 1 *Inst. 247. 3 Mod. 301.* Every Deed made by a *Lunatick*, who is *Non compos*, is voidable; though a *Lunatick* himself making a Purchase, if he then recover his Memory, he may agree to it, and afterwards his Heir cannot disagree to it: But otherwise his Deeds may be avoided by his Heir; except he levy a Fine, or do any other Act of Record, &c. *Litt. 405, 406. 4 Rep. 126.* The Deed of a *Lunatick* shall not be voidable by himself; for he shall not be allowed to work his own Disability, by making himself a Madman. 4 *Rep. 124.* If a *Lunatick* sue an Action, it must be sued in his own Name; and if an Action be brought against a *Lunatick*, he is to appear by Attorney, if of full Age, and by Guardian, if under Age. 1 *Inst. 135.* There are *Commissions of Lunacy*, issued out of the *Chancery*, to examine

examine whether the Person be *lunatick*, or not ; and to make Inquests of his Lands, &c. though if Lands are seized by the King, by Virtue of a Commission of Lunacy, and he grants the Custody of the *Lunatick sine computo reddendo* ; if he afterwards is of sound Memory, he shall have an Action of Account for the Profits. *Dyer* 25. The King hath the Guardianship of the Lands of *Lunaticks* ; but not the sole Interest in granting, and the Custody of their Lands, or Bodies ; as he hath of *Idiots* : And the King, or other Guardian of a *Lunatick*, is accountable to him, his Executors, &c. 4 *Rep.* 124. As a *Lunatick* may recover his Understanding, and have Discretion enough to dispose and govern his Lands, the King shall not have the Custody of him and his Lands ; for after he has recovered his Memory and Understanding, he is to have his Estate at his own Disposal. *Dyer* 302. 3 *Salk.* 301. The Stat. 17 *Ed.* 2. cap. 10. ordains, that the King is to provide that the Lands of *Lunaticks* be safely kept, and they and their Families maintained by the Profits ; and the Residue shall be kept for their Use, and be delivered to them when they come to their right Mind ; the King taking nothing to his own Use, &c.

Lunda, A Weight formerly used here.—*Lunda anguillarum constat de 10. Sticis.* *Fleta*, lib. 2. cap. 12.

Lundzef, A Sterling Silver-penny, which had its Name from being coined only at London, and not at the Country Mints. *Lownd's Ess. upon Coin*, p. 17.

Lupanatrix, A Bawd or Strumpet : And by the Custom of London, a Constable may enter a House, and arrest a common Strumpet, and carry her to Prison. 3 *Inst.* 206. — *Rex Majori & Vic. London, &c. Intelleximus quod plures Roberie, Murdera perpetrantur, per receptatores publicas Lupanatrices in diversis Locis in Civitate nostra pradiit*, &c. *Claus.* 4. *Ed.* 1. p. 1. m. 16.

Lupinum caput gerere, Signified to be outlawed, and have one's Head exposed like a Wolf's, with a Reward to him that shall bring it in. *Plac. Coron.* 4 *Johan. Rot.* 2.

Luplicetum, (*Lat.*) A Hop-garden, or Place where Hops grow. 1 *Inst.* 4.

Lushburghs or **Luxenburghs**, Were a base Sort of Foreign Coin, made of the Likeness of English Money, and brought into England in the Reign of King *Ed.* 3. to deceive the King and his People : On Account of which, it was made Treason for any one wittingly to bring any such Money into the Realm, as knowing it to be false. *Stat.* 25 *Ed.* 3. 3 *Inst.* 1.

Lysel-Silber, A small Fine or Composition, paid by customary Tenants to their Lord, for Leave to plough and sow, &c. *Somn. Gavelk.* 27.

M.

M, Is the Letter, with which Persons convicted of Manslaughter, are mark'd on the Brawn of the left Thumb. 4 *H.* 7. c. 13.

Mar, In the Irish Language signifies a Son, *Filius.* *Litt. Dict.*

Macegreffs, (*Macegrarii*) Are such as buy and sell Flesh stolen, knowing the same. *Brit. c.* 39. *Leg. Ine*, cap. 30. — *Macegrariis Carnes Furtivas Scientibus, vendentibus & ementibus.* *Stat. Wallie.*

Machecollare, (From the Fr. *Maschecoulis*) Signifies to make a Warlike Device, especially over the Gate of the Castle, in the Form of a Grate, through which scalding Water, or any other offensive Thing, may be thrown upon the Heads of Assailants. 1 *Inst.* 5.

Madding Money. Old Roman Coins, found about *Dunstable*, are so called by the Country People ; and have their Name from *Magintum*, used by the Emperor *Antoninus* in his *Dunstable Itinerary.* *Camd.*

Mæremium, (Derived from the Fr. *Meresme*) Properly signifies any Sort of Timber, fit for Building ; seu quodvis Materiæmen. *Claus.* 16 *Ed.* 2. m. 3.

Maybote or **Megbote**, (From the Sax. *Mag. i. e. Cognatus*, & *Borc, compensatio*) A Compensation for the Slaying or Murder of one's Kinsman, in ancient Times, when corporal Punishments for Murder, &c. were sometimes commuted into pecuniary Fines, if the Friends and Relations of the Party killed were so satisfied. *Leg. Canuti*, cap. 2.

Mayick, (*Magia, Necromantia*) Witchcraft and Sorcery. See *Conjurat.*

Magister. This Title often found in old Writings, signified that the Person to whom attributed had attain'd some Degree of Eminency in *Scientia aliqua, præsertim literaria* ; and formerly those who are now called *Doctors*, were termed *Magistri*.

Magistrate, (*Magistratus*) A Ruler ; and he is said to be *Custos utriusque Tabule* ; the Keeper or Preserver of both Tables of the Law : If any *Magistrate*, or Minister of Justice, is slain in the Execution of his Office, or keeping of the Peace ; it is Murder, for the Contempt and Disobedience to the King and the Laws. 9 *Co. Rep.*

Maginal Assisa eligenda, is a Writ directed to the Sheriff, to summon four lawful Knights before the Justices of Assise, there upon their Oaths to chuse twelve Knights of the Vicinage, &c. to pass upon the *Great Assise*, between *A. B.* Plaintiff, and *C. D.* Defendant, &c. *Reg. Orig.* 8.

Magna Charta, The Great Charter of Liberties granted in the ninth Year of King *Hen.* 3. It is so called, either for the Excellency of the Laws therein contained, or because there was another Charter called the *Charter of the Forest* established with it, which was the less of the two ; or in Regard of the great Wars and Trouble in the Obtaining it, and the remarkable Solemnity in denouncing Excommunication and *Anathema's* against the Breakers thereof : And *Spelman* calls it, *Augustissimum Anglicarum Libertatum diploma & Sacra Anchora.* King Edward the Confessor granted to the Church and State several Privileges and Liberties by Charter ; and some were granted by the Charter of King *Hen.* 1. Afterwards King *Stephen*, and King *Hen.* 2. confirmed the Charter of *Hen.* 1. and King *Rich.* 1. took an Oath at his Coronation to observe all just Laws, which was an implicate Confirmation of that Charter ; and King *John* took the like Oath : This King likewise, after a Difference between him and the Pope, and being embroiled in Wars at home and abroad, particularly confirmed the aforementioned Charter ; but soon after broke it, and thereupon the Barons took up Arms against him, and his Reign ended in Wars ; to whom succeeded King *Hen.* 3. who in the 37th Year of his Reign, after it had been several Times

Times by him confirmed, and as often broken, came to *Westminster hall*, and in the Presence of the Nobility and Bishops, with lighted Candles in their Hands, *Magna Charta* was read; the King all that while laying his Hand on his Breast, and at last solemnly swearing *faithfully and inviolably to observe all the Things therein contained, as he was a Man, a Christian, a Soldier, and a King*: Then the Bishops extinguished the Candles, and threw them on the Ground; and every one said, *Thus let him be extinguished, and sink in Hell, who violates this Charter*: Upon which the Bells were set on Ringing, and all Persons by their Rejoycing approved of what was done. But notwithstanding this very solemn Confirmation of this Charter, the very next Year King *Henry* invaded the Rights of his People, till the Barons levied War against him; and after various Success, he confirmed this Charter, and the *Charter of the Forest*, in the Parliament of *Marlbridge*, and in the 52d Year of his Reign: And his Son King *Edw. 1.* confirming these Charters, in the 25th Year of his Reign, made an Explanation of the Liberties therein granted to the People; adding some which are new, called *Articuli super Chartas*: And *Magna Charta* was not only then confirmed, but more than thirty Times since. *Co. Lit. 81.* This excellent Statute, or rather Body of Statute Law, so beneficial to the Subject, and of such great Equity, is the most ancient written Law of the Land: And it is divided into 38 Chapters; the 1st of which, after the solemn Preamble of its being made *for the Honour of God, the Exaltation of Holy Church, and Amendment of the Kingdom*, &c. ordains, That the Church of *England* shall be free, and all Ecclesiastical Persons enjoy their Rights and Privileges. The 2d is of the Nobility, Knights-service, Reliefs, &c. The 3d concerns Heirs, and their being in Ward. The 4th directs Guardians for Heirs within Age, who are not to commit Waste. The 5th relates to the Custody of Lands, &c. of Heirs, and Delivery of them up when the Heirs are of Age. The 6th is concerning the Marriage of Heirs. The 7th appoints Dower to Women, after the Death of their Husbands, a third Part of the Lands, &c. The 8th relates to Sheriffs and their Bailiffs, and requires that they shall not seize Lands for Debt, where there are Goods, &c. the Surety not to be distrained, where the Principal is sufficient. The 9th grants to *London*, and all Cities and Towns, their ancient Liberties. The 10th orders, that no Distress shall be taken for more Rent than is due, &c. By the 11th the Court of Common Pleas is to be held in a certain Place. The 12th gives Assises for Remedy, on Disseisin of Lands, &c. The 13th relates to Assises of Darrein Presentment, brought by Ecclesiasticks. The 14th enacts, that no Freeman shall be amerced for a small Fault, but in Proportion to the Offence; and by the Oaths of lawful Men. The 15th, no Town shall be distrained to make Bridges, &c. but such as of ancient Time have been accustomed. The 16th is for repairing of Sea-Banks and Sewers. The 17th prohibits Sheriffs, Coroners, &c. from holding Pleas of the Crown. The 18th enacts, that the King's Debtor dying, the King shall be first paid his Debt, &c. The 19th directs the Manner of levying Purveyance for the King's House. The 20th concerns Castleward, where a Knight was to be distrained for Money for keeping his Castle, on his Neglect. The 21st forbids Sheriffs,

Bailiffs, &c. to take the Horses or Carts of any Person to make Carriage without paying for it. By the 22d the King is to have Lands of Felons a Year and a Day, and afterwards the Lord of the Fee. The 23d requires Wears to be put down on Rivers. The 24th directs the Writ *Præcipe in Capite*, for Lords against Tenants offering Wrong, &c. The 25th declares that there shall be but one Measure throughout the Land. The 26th, Inquisition of Life and Member, to be granted freely. The 27th relates to Knights-service, Petit Serjeanty, and other ancient Tenures, (taken away together with Wardship, &c. by 12 *Car. 2.*) The 28th directs, that no Man shall be put to his Law, on the bare Suggestion of another, but by lawful Witnesses. The 29th, no Freeman shall be disseised of his Freehold, imprisoned and condemned, but by Judgment of his Peers, or by Law. The 30th requires that Merchant Strangers be civilly treated, &c. The 31st relates to Tenures coming to the King by Escheat. By the 32d no Freeman shall sell Land, but so that the Residue may answer the Services. The 33d, Patrons of Abbeys, &c. shall have the Custody of them in the Time of Vacation. The 34th, a Woman to have an Appeal for the Death of her Husband. The 35th directs the Keeping of the County-Court monthly, and also the Times of holding the Sheriff's Turn, and View of Frankpledge. The 36th makes it unlawful to give Lands to religious Houses in *Mortmain*. The 37th relates to *Escuage*, and Subsidy, to be taken as usual. And the 38th ratifies and confirms every Article of this great Charter of Liberties. By the Stat. 25 *Ed. 1.* it is declared, that the Great Charter shall be taken as the *Common Law*.

Magna præcaria, A great or general Reap-day: And in 21 *R. 2.* the Lord of the Manor of *Harrow on the Hill*, in *Com. Middlesex*, had a Custom, that by Summons of his Bailiff upon a general Reap-day, then called *Magna præcaria*, the Tenants should do a certain Number of Days-work for him; every Tenant that had a Chimney, being obliged to send a Man. *Phil. Purvey, p. 145.*

Magnum Centum, The great Hundred, or Six Score. *Chart. 20 H. 3.*

Magnus Pactus, The Town and Port of *Portsmouth*.

Mahomer a, The Temple of *Mahomet*; and because the Gestures, Noise, and Songs there, were ridiculous to the *Christians*, therefore they called Antick Dancing, and any Thing of Ridicule, a *Monnerie*. *Matt. Paris.*

Maids, Taking them away unmarried, without Consent of Father or Mother, or Guardian; is punishable by Stat. 4 & 5 *P. & M. c. 8.*

Maiden Wives, Is when at any Assises no Person is condemned to die.

Maiden Rents, A Noble paid by every Tenant in the Manor of *Builth*, in *Com. Radnor*, at their Marriage; anciently given to the Lord, for his omitting the Custom of *Marcheta*, whereby he was to have the first Night's Lodging with his Tenant's Wife; but it was more probably a Fine for a Licence to marry a Daughter.

Maignagium, (*Fr. Maignen, i. e. Faber ararius*) A Brasier's Shop; though some say it signifies a House.—*Idem Hugo tenebat unum Maignagium in foro ejusdem ville, &c. Lib. Ramef. Sect. 265.*

Maimem or **Maphem**, (*Mahemium*, from the Fr. *Mehaigne*, i. e. *Membri Mulitatio*) Signifies a Maim, Wound, or corporal Hurt, by which a Man loseth the Use of any Member, that is or might be of any Defence to him: As if a Man's Skull be broke, or any Bone broken in any other Part of the Body; a Foot, Hand, Finger, or Joint of a Foot, or any Member be cut off; if by any Wound, the Sinews be made to shrink; or where any one is castrated; or if an Eye be put out, any Fore-tooth broke, &c. But the Cutting off an Ear, or Nose, the Breaking of the hinder Teeth, and such like, was held no *Maimem*; as they were not a Weakening of a Person's Strength, but a Disfiguring and Deformity of the Body. *Glanvil. lib. 4. cap. 7. Bract. lib. 3. tract. 2. Britton, cap. 25. S. P. C. lib. 1. cap. 41.* By Statute, if any one on Purpose, by Malice, Fore-thought, and lying in Wait, shall cut off the Nose, put out the Eye, disable the Tongue, or cut off or disable any Limb or Member of any of the King's Subjects, with an Intent to maim or disfigure him, the Person offending, his Aiders, Abettors, &c. are guilty of Felony, without Benefit of Clergy; though no Attainder of such Felony shall corrupt the Blood, or forfeit the Dower of the Wife, Lands or Goods of the Offender. *Stat. 22 & 23 Car. 2. cap. 1.* In these Cases of Maiming, a voluntary Act the Law judgeth of Malice: And if a Man attack another, of Malice fore-thought, in order to murder him with a Bill, or any such like Instrument, which cannot but endanger the Maiming him; and in such Attack, happen not to kill but only to maim him, he may be indicted of Felony on this Statute; and it shall be left to the Jury on the Evidence, whether there were a Design to murder by Maiming, and consequently a malicious Intent to maim as well as kill, in which Case the Offence is within the Statute. *1 Hawk. P. C. 112.* All *Maimem* by the Common Law was Felony: And it is said that anciently a *Maimem* by Castration was punished with Death, and other *Maimems* with the Loss of Member for Member; but afterwards no *Maimem* was punished in any Case with the Loss of Life or Member, but only with Fine and Imprisonment, and Damages to the Party. *3 Inst. 62, 118. S. P. C. 32. H. P. C. 133.* For *Maimem*, Indictment or an Appeal may be had; or in common Cases Action of Trespas, at the Plaintiff's Election: And *Maimem* shall be under the Inspection of the Court, to increase Damages given by the Jury, &c. if the Court thinks fit. *Sid. 108.* *Maimem* was commonly tried by the Judges inspecting the Party; and if they doubted whether it were a *Maimem* or not, they use to take the Opinion of some able Chirurgeon in the Point. *Homo Mahemiatu*, a Man maimed or wounded. See *Appeal of Maimem*.

Maii Inductio, An ancient Custom for the Priest and People of Country Villages to go in Procession to some adjoining Wood on a May-day Morning; and return in a Kind of Triumph, with a May-pole, Boughs, Flowers, Garlands, and other Tokens of the Spring. This *May-Game*, or Rejoicing at the Coming of the Spring, was for a long Time observed, and still is in some Parts of England; but there was thought to be so much Heathen Vanity in it, that it was condemned and prohibited within the Diocese of Lincoln by the good old Bishop Groshead. — *Faciunt etiam, ut audivimus, Clerici Ludos quos vo-*

cant Inductionem Maii, & Festum Autumni, &c. quod nullo modo vos latere possit: Si vestra prudentia super hiis diligenter Inquireret, &c.

Mail, (*Macula, Lorica*) A Coat of Mail, so called from the Fr. *Maille*, which signifies a square Figure, or the Hole of a Net: So *Maille de Haubergeons* was a Coat of Mail, because the Links or Joints in it resembled the Squares of a Net: Mail is likewise used for the Leather Bag wherein Letters are carried by the Post, from *Bulga*, a Budget.

Maille, Anciently a Kind of Money; and Silver Half-pence were termed *Mailles*, *9 Hen. 5.* By Indenture in the Mint, a Pound-weight of old Sterling Silver was to be coined into three hundred and sixty *Sterlings* or Pennies, or seven hundred and twenty *Mailles* or Half-pennies, or one thousand four hundred and forty Farthings. *Lownd's Ess. on Coin, 38.*

Mainad, A false Oath, or Perjury. — *Si nolit abjurare, emendet ipsum Mainad*, i. e. *Perjurium dupliciter.* *Leg. Inæ, cap. 34.*

Mainpernable, That may be let to Bail; and what Persons are *mainpernable*, or may be let to Bail, appears by the *Stat. Westm. 1. 3 Ed. 1. c. 15.* See *Bail*.

Mainpernores, (*Manuceptores*) Are those Persons to whom a Man is delivered out of Custody or Prison, on their becoming bound for his Appearance, &c. which if he do not do, they shall forfeit their Recognizances; and they are called *Manuceptores*, because they do it as it were *Manu capere & ducere captivum à Custodia vel Prisona.*

Mainprise, (*Manuceptio*, from the Fr. *Main*, i. e. *Manus*, & *Pris*, *captus*) Signifies in our Law the Taking or Receiving of a Person into friendly Custody, who otherwise might be committed to Prison, upon Security given that he shall be forth-coming at a Time and Place assigned; as to let one to *Mainprise* is to commit him to those that undertake he shall appear at the Day appointed. *Old Nat. Br. 42. F. N. B. 249.* *Manwood* makes this Difference between *Mainprise* and *Bail*: He that is *mainprised* is said to be at large, after the Day he is set to *Mainprise*, until the Day of his Appearance; but where a Man is let to *Bail*, by any Judge, &c. until a certain Day, there he is always accounted by the Law to be in their Ward for the Time; and they may, if they will, keep him in Prison all that Time; so that he that is so bailed shall not be said to be at large, or at his own Liberty. *Manw. p. 167.* A Man under *Mainprise* is supposed to go at large, under no Possibility of being confined by his Sureties or *Mainpernores*, as in case of *Bail*. *4 Inst. 179.* *Mainprise* is an Undertaking in a Sum certain; *Bail* answers the Condemnation in Civil Cases, and in Criminal, Body for Body: *Mainprise* may be where one is never arrested, or in Prison; but no Man is bailed, but he that is under Arrest, or in Prison; so that *Mainprise* is more large than *Bail*, and every *Bail* is *Mainprise*, but every *Mainprise* is not *Bail*. *H. P. C. 96. Wood's Inst. 582, 618.* There is an ancient *Writ of Mainprise*, whereby those who are bailable, and have been refused the Benefit of it, may be delivered out of Prison; as where Persons are imprisoned on Suspicion of Larceny, or indicted of Trespas, before Justices of Peace, &c. *Reg. Orig. 269. F. N. B. 250. 2 Hawk. P. C. 93.* See *Manuceptio*.

Mainport, (*In Manu portatum*) Is a small Duty, which in some Places Parishioners pay to the Rector of the Parish, in Recompence for certain Tithes: It is commonly of Loaves of Bread; and thi-

this *Mainport* Bread was paid to the Vicar of Blyth, as you may read in the *Antiq. of Nottinghamshire*, p. 473.

Maintwozn, In the North of England is taken for as much as forsworn. *Brownl. Rep.* 4.

Maintamozs, Are those that maintain or second a Cause depending between others, by disbursing Money, or making Friends for either Party, &c. not being interested in the Suit, or Attornies employed therein. *Stat. 19 Hen. 7. cap. 14.*

Maintenance, (*Manutenentia*) Signifies the unlawful Upholding of a Cause or Person, metaphorically drawn from the Succouring a young Child that learns to go by one's Hand; and in Law is taken in the worst Sense. *32 Hen. 8. c. 9.* Also it is used for the Buying or Obtaining of any pretended Rights to Lands. *Stat. Ibid.* And *Maintenance* is either *ruralis*, in the Country; as where one assists another in his Pretensions to Lands, by taking or holding the Possession of them for him; or where one stirs up Quarrels or Suits in the Country: Or it is *Curialis*, in a Court of Justice; where one officiously intermeddles in a Suit depending in any such Court, which no Way belongs to him, and he hath nothing to do with, by assisting the Plaintiff or Defendant with Money or otherwise, in the Prosecution or Defence of any such Suit. *Co. Lit.* 368. *2 Inst.* 213. *2 Roll. Abr.* 115. And he who fears that another will maintain his Adversary, may by Way of Prevention have an original Writ grounded on the Statutes, prohibiting him so to do. *1 Hawk. P. C.* 225. *Reg. Orig.* 182. Also a Court of Record may commit a Man for an Act of *Maintenance* done in the Face of the Court. *Hevl. Rep.* 79. Not only he who lays out his Money to assist another in his Cause, but he that by his Friendship or Interest saves him that Expence which he might otherwise be put to, is guilty of *Maintenance*. *Bro. Mainten.* 7, 14, 17, &c. And if any Person officiously give Evidence, or open the Evidence without being called upon to do it; speak in the Cause, as if of Counsel with the Party; retain an Attorney for him, &c. or shall give any publick Countenance to another in Relation to the Suit; as where one of great Power and Interest, says that he will spend 20 Pounds on one Side, &c. or such a Person comes to the Bar with one of the Parties, and stands by him while his Cause is tried, to intimidate the Jury; if a Juror solicits a Judge to give Judgment according to the Verdict, after which he hath nothing more to do, &c. these Acts are *Maintenance*. *1 Hawk.* 249, 250. But a Man cannot be guilty of *Maintenance*, in respect of any Money given by him to another, before any Suit is actually commenced: Nor is it such, to give another Advice, as to what Action is proper to be brought, what Method to be taken, or what Counsellor or Attorney to be employed; or for one Neighbour to go with another to his Counsel, so as he do not give him any Money: And Money may be lawfully given to a poor Man, out of Charity, to carry on his Suit, and be no *Maintenance*: Attornies may lay out their Money for their Clients, to be repaid again; but not at their own Expence, on Condition of no Purchase no Pay, if they carry the Cause or lose it. *Fitzherb. Mainten.* 18. *3 Roll. Abr.* 118. *2 Inst.* 564. It is said, that if a Man of great Power, not learned in the Law, tells another who asks his Advice, that he hath a good Title, it is *Mainte-*

nance. *1 Hawk.* 250. If a Person hath any Interest in the Thing in Dispute, though on Contingency only, he may lawfully maintain an Action relating to it; as if Tenant in Tail, or for Life, be impleaded, he in Reversion or Remainder, &c. may maintain the Defence of the Suit, with his own Money; and a Lessor may lawfully maintain his Lessee. *2 Roll. Abr.* 115. A Lord may justify maintaining a Tenant, in Defence of his Title; and the Tenant may maintain his Lord: One bound to warrant Lands, may lawfully maintain the Tenant impleaded; and a Man may maintain those who are enfeoff'd of Lands in Trust for him, concerning those Lands, &c. An Heir apparent, or the Husband of such an Heir, may maintain the Ancestor in an Action concerning the Inheritance of the Land whereof he is seised in Fee; a Master maintain his Servant, and assist him with Money, but not in a real Action, unless he hath some of his Wages in his Hands; and a Servant by Reason of Relation may maintain his Master, in all Things, except laying out his own Money in the Master's Suit. *1 Hawk.* 252, 253. *1 Inst.* 368. By the Statutes, none of the King's Officers shall maintain Pleas, or Suits, in the King's Courts, for Lands, &c. under Covenant to have Part thereof, or any Profit therein. And Clerks of Justices, &c. are not to take Part in Quarrels, or delay Right, on Pain of treble Damages. *3 Ed. 1. cap. 25.* No Persons shall take upon them to maintain Quarrels, to the Let and Disturbance of the Common Law, by themselves, or by any other. *1 Ed. 3. cap. 14.* and *20 Ed. 3. 4.* The King's Counsellors, Officers or Servants, or any other Person whatsoever, shall not sustain Quarrels by *Maintenance*, upon grievous Pain, Imprisonment and Ransom. *1 R. 2. c. 4.* No Man shall obtain or buy any pretended Right or Title to any Land, unless the Seller hath taken the Profits a Year, or been in Possession, on Pain of forfeiting the Value, &c. And none shall unlawfully maintain any Suit concerning Lands, or retain any Person for *Maintenance*, by Letters, Rewards or Promises, under the Penalty of 10 l. for every Offence, to be divided between the King and the Prosecutor. *32 H. 8. cap. 9.* But maintaining Suits in the Spiritual Court, is not within the Statute relating to *Maintenance*. *Cro. Eliz.* 594. Though *Maintenance* in a Court-Baron, is as much within the Purview of the Stat. *1 R. 2.* as *Maintenance* in a Court of Record. *1 Hawk.* 255. A Lessor having good Right to Land, but not Possession, made a Lease of it, and did not seal it on the Land; it was adjudged within the Stat. *32 Hen. 8. 1 Leon.* 166. The Law will not suffer any Thing in Action, Entry, &c. to be granted over; this is to prevent Titles being granted to Men of Substance, to oppress the meaner Sort of People. *1 Inst.* 214. And where a Bond was given for Performance of Covenants in a Lease, and after the Covenants being broken, the Lessee assigned both the Lease and Bond to another, and then the Assignee put the Bond in Suit, this was held *Maintenance*; so it would have been if the Lessee had assigned the Bond and not the Lease, and afterwards the Covenants were broken, and the Bond put in Suit. *Gadb.* 81. *2 Nels. Abr.* 1142. By the Common Law, Persons guilty of *Maintenance* may be prosecuted by Indictment, and be fined and imprisoned; or by Action, &c. *1 Inst.* 368.

Majority. The only Method of determining the Acts of many, is by a *Majority*: The major Part of Members of Parliament enact Laws, and the *Majority* of Electors chuse Members of Parliament; the Act of the major Part of any Corporation, is accounted the Act of the Corporation; and where the *Majority* is, there by the Law is the Whole. *Stat. 19 Hen. 7. Stud. Com. pan. 25.*

Maisnada, Signifies a Family, *quasi Mansionata.*

Maison de Dieu, A House of God, Monastery, Hospital or Alms-house. *Stat. 2 & 3 P. & M. cap. 23. 39 Eliz. cap. 5, &c.* All Hospitals, *Maisons de Dieu*, and abiding Places for Poor, Lame and Impotent Persons, erected by the Statute 39 *Eliz. cap. 5.* or at any Time since founded, according to the Intent of that Statute, shall be incorporated and have perpetual Succession, &c. *21 Fac. 1. c. 1.*

Maisura, A House or Mansion, a Farm; from the Fr. *Maison.*—*Baldwinus Comes Exon. Omnibus Baronibus suis & hominibus, &c. dedi Maisuram quam ipse tenet, &c. M.S. Cartar. pen. Eliam Ashmole Armig.*

Majus jus, Is a Writ or Law proceeding in some customary Manors, in order to a Trial of Right of Land: And the Entry is thus: *Ad hanc Curiam venit A. B. in propria Persona sua & dat Domino, &c. ad vidend. Rotul. Curie, Et petit inquirend. utrum ipse habet Majus jus in uno Messuagio, &c. Et super hoc Homag. dicunt, &c. Ex Libro M.S. Episcop. Heref. tem. Ed. 3.*

Make Law, (*Facere Legem*) Is to perform that Law which a Man had formerly bound himself unto; that is to clear himself of an Action commenced against him, by his Oath and the Oaths of Neighbours: And this Custom seems to be borrowed of the *Feudists*, who call those Men that swear for another in this Case *Sacramentales*. *Old Nat. Br. 267. Kitch. 192. See Wager of Law.*

Make Services and Customs, Signifies nothing but to perform them. *Old Nat. Br. 14.*

Malandzinus, A Thief or Pirate; mentioned in *Walsingham, pag. 388.*

Malberge, *Mons Placiti*, A Hill where the People assembled at a Court, like our Assises; which by the *Scots* and *Irish* are called *Parly-bills*. *Du Cange.*

Malecreditor, Is one of bad Credit, who is suspected and not to be trusted. *Fleta, lib. 1. cap. 38.*

Malediction, (*Maledictio*) A Curse which was anciently annexed to Donations of Lands, made to Churches and religious Houses.—*Si quis autem (quod non optamus) hanc nostram Donationem infringere temptaverit, perpeffus sit gelidis glaciariis flatibus & malignorum Spirituum; terribiles tormentorum cruciatus evasisse non queat, nisi prius in riguis poenitentia genitibus, & pura emendatione emendaverit. Chart. Reg. Athelstani Monast. de Wiltune, Anno 933.*—And we read in a Charter of *Wiliam de Waren*, Earl of Surrey; *Venientibus contra hac & destruentibus ea, occurrat Deus in Gladio ira & furoris & vindicta & Maledictionis aterna: Servantibus autem hac & Defendentibus ea, occurrat Deus in pace, gratia & misericordia & salute aterna. Amen, Amen, Amen.*

Malefactor, (From the Fr. *Malfaite*, i. e. to offend) Is a doing of Evil, or Transgressing. *2 Cro. Rep. 266.*

Maletent, Is interpreted to be a Toll for every Sack of Wool, by the *Stat. 25 Ed. 1. cap. 7.*

Nothing from henceforth shall be taken for Sacks of Wool, by Colour of *Maletent*, &c. *Stat. 35 ejusdem.*

Malice, Is a form'd Design of doing Mischief to another; it differs from Hatred. *2 Inst. 42.* In Murder, 'tis Malice makes the Crime; and if a Man having a malicious Intent to kill another, in the Execution of his *Malice* kill a Person not intended, the *Malice* shall be connected to his Person, and he shall be adjudged a Murderer. *Plowd. 474.* The Words *Ex malitia preconceptata* are necessary to an Indictment of Murder, &c. See *Murder*.

Malignare, Signifies the same as to maim any one, by our ancient Law.—*Qui ordinatum occidit vel Malignaverit emendet ei sicut Rectum est. Leg. Hen. 1. c. 11.*

Malignus, i. e. *Diabolus*: *Proh Dolor, hunc pepulit propria de sede Malignus.*

Malo grato, The doing a Thing unwillingly. *Libertatem Ecclesie, &c. Malo grato Stabilierunt; i. e. he being unwilling. Matt. Paris. 1245.*

Malt. Bad Malt shall not be mingled with good, under Penalties; and Half a Peck of Dust is to be taken out of every Quarter by Skreening, &c. before it shall be offered to Sale, on Pain of forfeiting 20 *d.* per Quarter. *Stat. 2 & 3 Ed. 6. cap. 10.* Where bad Malt is made, or bad Malt shall be mix'd with good, a Constable by the Direction of a Justice of Peace, may search for the same; and order it to be sold at reasonable Price, &c. *11 Fac. 1. cap. 28.* A Duty of 6 *d.* per Bushel was granted on Malt, by *Stat. 13 & 14 W. 3.* which by subsequent Statutes hath been continued yearly ever since: And Malsters are once a Month, to make an Entry at the Excise-Office of all Malt made, under the Penalty of 10 *l.* and to pay the Duty in three Months, or forfeit double Value: Also if any Malsters alter their steeping Vessels, without giving Notice, or shall use any private Cistern, they shall forfeit 50 *l.* &c. See *Braffum*.

Malt-mulna, A Quern or Malt-mill; it is mentioned by *Matt. Paris.* in the Lives of the Abbots of *St. Albans*.

Maltstrot, A Payment for the Liberty of making Malt. *Somn. Gavell. p. 27.*

Malveilles, (From the Fr. *Malvueillance*) Is used in our ancient Records, for Crimes and Misdemeanors, or malicious Practices.—*Ces sont les Treasons, Felonies, & Malveilles faitz au nostre Seigneur le Roy, & a son Peuple per Roger. de Mortimer, &c. Record. 4 Ed. 3.*

Malveilla, A warlike Engine to batter and beat down Walls. *Matt. Paris.*

Malveisin, (Fr. *Malvais voisin, malus vicinus*) An ill Neighbour.

Malveis procurores, Are understood to be such as use to pack Juries, by the Nomination of either Party in a Cause, or other Practice. *Artic. super Chart. cap. 10.*

Malum in se, Our Law-Books make a Distinction between *Malum in se* and *Malum prohibitum*. *Vaugh. Rep. 332.* All Offences at Common Law generally are *Mala in se*; but Playing at unlawful Games, and Frequenting of Taverns, &c. are only *Mala prohibita* to some Persons, and at certain Times, and not *Mala in se*. *2 Roll. Abr. 355.*

Man Island, Laws concerning it. See *Ile*.

Mans, Signified formerly an old Woman. *Gerard. of Tilb. cap. 95.*

Managium, (From the Fr. *Menage*, a Dwelling or Inhabiting) Is a Mansion-house or Dwelling-place. — *Concessi capitale Managium meum cum pertinentiis*, &c. Mon. Angl. Tom. 2. pag. 82.

Manbote, (Sax.) A Compensation or Recompence for Homicide; particularly due to the Lord for Killing his Man or Vassal. *Spelm. de Conc.* Vol. 1. pag. 622.

Manca, Was a square Piece of Gold Coin, commonly valued at thirty Pence; and *Mancusa* was as much as a Mark of Silver, having its Name from *Manu-cusa*, being coined with the Hand. *Leg. Canut.* But the *Manca* and *Mancusa* were not always of that Value; for sometimes the former was valued at six Shillings, and the latter as used by the English Saxons was equal in Value to our Half-Crown: *Manca sex solidis aestimetur*. *Leg. H. 1. c. 69.* *Thorn*, in his Chronicle, tells us, that *Mancusa est pondus duorum solidorum & sex denariorum*; and with him agrees *Du Cange*, who says that twenty *Manca* make fifty Shillings. *Manca* and *Mancusa* are promiscuously used in the old Books for the same Money. *Spelm.*

Manch, Is sixty Shekels of Silver, or seven Pounds and ten Shillings; and One hundred Shekels of Gold, or seventy-five Pounds. *Merch. Dist.*

Manciple, (*Manceps*) A Clerk of the Kitchen, or Caterer; and an Officer in the *Inner Temple* was antiently so called, who is now the Steward there, of whom *Chaucer*, our antient Poet, sometime a Student of that House, thus writes;

*A Manciple there was within the Temple,
Of which all Catours might taken Ensample.*

This Officer still remains in Colleges in the Universities. *Cowel.*

Mandamus, Is a Writ issuing out of the Court of *King's Bench*, sent by the King to the Head of some Corporation, commanding them to admit or restore a Person into his Place or Office, &c. 2 *Inst.* 40. It lies to restore a Mayor, Alderman, or Capital Burgeſs of a Corporation; a Recorder, Town-Clerk, Attorney turned out of an Inferior Court, Steward of a Court, Constable, &c. 11 *Rep.* 99. *Raym.* 153. 1 *Keb.* 549. 2 *Nelf. Abr.* 1148, 1149. By some Opinions it doth not lie to restore a Common Council-Man. 2 *Cro.* 540. But a Common Council-Man hath been restored by *Mandamus*. 1 *Ventr.* 302. A *Mandamus* may be had to restore a Freeman; and also to admit one to the Freedom of the City, having served an Apprenticeship. *Sid.* 107. To restore a Fellow of the College of Physicians, it lies; though not for a Fellow of the College in the Universities, if there is a Visitor. 1 *Lev.* 19, 23. And this Writ lieth, not for the Deputy of an Office, &c. yet he who hath Power to make such Deputy, may have it. *Mod. ca.* 18. 1 *Lev.* 306. It lieth not generally to elect a Man into any Office; nor for a Clerk of a Company, which is a private Office; or to restore a Barrister expelled a Society; a Proctor; &c. 2 *Lev.* 14. 18. 2 *Nelf.* 1150, 1151. But a *Mandamus* may lie to remove Persons as well as restore them; by Virtue of any particular Statute, on Breach thereof. 4 *Mod.* 233. If *Justices of Peace* refuse to admit one to take the Oaths, to qualify himself for any Place, &c. *Mandamus* lies; so to a Bishop or Archdeacon, to swear a Churchwarden; and to admit an Executor to prove a Will, or an Administra-

tor; to a Rector, Vicar or Churchwarden, to restore a Sexton, *Mod. c.* 310. *Wood's Inst.* 558. In the Writ of *Mandamus*, the Words are to admit or restore, *vel Causam significare quare*, &c. And if a Corporation have Power to disfranchise a Freeman, and they do it accordingly, if a Writ is granted to restore him, *vel Causam significare quare*, and they certify a sufficient but false Cause; the Court of B. R. cannot restore him, but there lies an Action for a false Return: And if then it be found for him, he shall have a *peremptory Mandamus*, which is usually granted after the first Writ; or if he be imprisoned, he may bring Action of Trespass and false Imprisonment. &c. 11 *Rep.* 99. 5 *Mod.* 254. There is to be Judgment upon the Return of the Writ, before any Action of the Case may be brought for a false Return of a *Mandamus*. 2 *Lev.* 238. And Returns upon Writs of *Mandamus* must be certain for the Court to adjudge upon. 11 *Rep.* 99. By Statute, where any Writ of *Mandamus* shall issue out of B. R. &c. the Persons required by Law are to make their Return to the first *Mandamus*; and on the Return made thereto, the Person suing out the Writ may plead to and traverse all or any of the material Facts contained in such Return, to which the Person making the Return shall reply, take Issue, &c. And the Parties proceed as if Action had been brought for a false Return, and if Judgment be given for the Plaintiff, he shall have Damages and Costs, as in Action on the Case, &c. 9 *Ann. c.* 20. And all the Statutes of *Feofails*, shall extend to Writs of *Mandamus*, and Proceedings thereon. A Person having a *Mandamus* to be admitted to any Office or Privilege, ought to suggest whatever is necessary to intitle him to be admitted; and if that be not done, or if it is false, it will be good Matter to return on the *Mandamus*: And on the Return of these Writs, as well as others of this Nature, there are usually great Arguments in Favour of Liberty, &c. *Mod. c.* 310. It has been held, that several Persons cannot have one *Mandamus*; nor can several join in an Action on the Case for a false Return. 2 *Salk.* 433. A Writ of *Mandamus* may not be directed to one Person, or to a Mayor and Aldermen, &c. to command another to do any Act; it must be directed to those only who are to do the Thing required, and obey the Writ. 2 *Salk.* 446, 701. This Writ is not to be *Tested*, before granted by the Court; and if the Corporation, to which the *Mandamus* is sent, be above forty Miles from London, there shall be fifteen Days between the *Teste* and the Return of the first Writ of *Mandamus*; but if but forty Miles, or under, eight Days only; and the *Alias* and *Pluries* may be made returnable *immediate*: Also at the Return of the *Pluries*, if no Return be made, and there is Affidavit of the Service, Attachment shall go forth for the Contempt, without hearing Counsel to excuse it. *Ibid.* 434. A Motion was made for an Attachment, for not returning an *Alias Mandamus*; and by *Holt Ch. Just.* In Case of a *Mandamus* out of Chancery, no Attachment lies till the *Pluries*, for that is in Nature of an Action to recover Damages for the Delay; but upon a *Mandamus* out of B. R. the first Writ ought to be returned, tho' an Attachment is not granted without a *peremptory Rule* to return the Writ, and then it goes for the Contempt, &c. *Ibid.* 429.

Mandamus, Was also a Writ that lay after the Year and Day, where in the mean Time the Writ

Writ called *Diem clausit Extremum* had not been sent out to the *Escheator*, on the Death of the King's Tenant in *Capite*, &c. And was likewise a Writ or Charge to the Sheriff, to take into the Hands of the King all the Lands and Tenements of the King's Widow Tenant, who against her Oath married without his Consent. *F. N. B.* 253. *Reg. Orig.* 195.

Mandatarj, (*Mandatarius*) He to whom a Command or Charge is given: And he that comes to a Benefice by *Mandamus*, is called by this Name.

Mandate, (*Mandatum*) Is a Commandment judicial of the King, or his Justices, to have any Thing done for the Dispatch of Justice; of which there is great Diversity. *Reg. Judic.* And we read of the Bishop's *Mandate*, to the Sheriff, &c. *Stat.* 31 *Eliz.* c. 9.

Mandati dies, *Mandie* or *Maunday Thursday*, the Day before *Good Friday*, when is commemorated and practised the Command of our Saviour, in washing the Feet of the Poor, &c. And our Kings of *England*, to shew their Humility, long executed the ancient Custom on that Day, of washing the Feet of Poor Men, in Number equal to the Years of their Reign, and giving them Shoes, Stockings and Money.

Mandato Panes, Loaves of Bread given to the Poor upon *Maundy Thursday*. *Chartular.* *Glaston.* MS. fol. 29.

Mandatum, Has been sometimes taken for that Part of a Monastery where Guests and Poor were entertained — *Fecit reparari & Emendari Domum Mandati ubi recipiuntur Hospites & Pauperes.* *Du Cange.*

Manentz, Was anciently used for *Tenentes* or Tenants; *Qui in solo alieno manent*: And it was not lawful for them or their Children to depart without Leave of the Lord. *Concil. Synodal. apud Clovertho. Anno* 822.

Mangonare, Signifies to buy in the Market. *Leg. Ethelred.* c. 24.

Mangonus, An Engine of War made to cast Stones; and it differs from a *Petrard* as follows, viz.

*Interea grossos Petraria mittit ad intus
Assidue Lapides, Mangonellusque Minores.*

Manipulus, Was an Handkerchief which Priests always had in their Left-hands. *Blount.*

Maner, (From the Fr. *Manier*, or *Mainer*, i. e. *Manu tractare*) To be Taken with the Manner, Is where a Thief having stoln any Thing, is taken with the same about him, as it were in his Hands; which is called *Flagrante delicto*, *S. P. C.* 179. Such a Criminal is not bailable by Law: And anciently if one guilty of Felony or Larceny had been freshly pursued; and taken with the Manner, and the Goods so found upon him had been brought into Court with him, he might be tried immediately, without any Appeal or Indictment; and this is said to have been the proper Method of Proceeding in such *Manors* which had the Franchise of *Infangthefe*. *H. P. C.* 201. *S. P. C.* 28. 2 *Hawk. P. C.* 211. By *Fitzherbert* this Word is thus used; where a Man takes a Thing by *Manour*, or levying or eltopping, in such Case he shall have an *Affise*, where it signifies Hand-Labour, and is but an Abbreviation of *Mainovere*.

Manning, (*Manoperz*) A Day's Work of a Man; and in ancient Deeds there was sometimes

reserved so much Rent, and so many *Mannings*.

Mannire, Is where one is cited to appear in Court, and stand to the Judgment there: It is different from *Bannire*; for though both of them signify a Citation, one is by the adverse Party, and the other by the Judge. *Leg. H.* 1. c. 10.

Manor, (*Manerium*, derived from the Fr. *Manoir*, i. e. *Habitatio*, or from *Manendo*, of abiding, because the Lord of it did usually reside there) Is an ancient Royalty or Lordship, formerly called *Barony*, consisting of Demesnes and Services, and of a Court-Baron as incident to it: It is a noble Kind of Fee, granted out partly to Tenants for certain Services to be performed, and partly reserved to the Use of the Lord's Family, with Jurisdiction over his Tenants for their Farms or Estates. And as to the Original of *Manors*, it is said, that after the Conquest there were certain Circuits of Ground granted by the King or Conqueror to some *Barons* or Men of like Worth, for them and their Heirs to dwell upon, and exercise Jurisdiction, more or less within their Territories, as the King thought fit to grant, performing such Services, and paying such yearly Rent for the same, as he by his Grant required; and that afterwards these great Men allotted Part of their Lands to other meaner Men, reserving again to themselves Rents and Services; and by that Means, as they became Tenants to the King, so the inferior Tenants became Tenants to them. *Horn's Mirr. Just. lib.* 1. But at this Time a *Manor* rather signifies the Jurisdiction and Royalty Incorporeal, than the Land; for a Man may have a *Manor in Gros*, that is, the Right and Interest of a Court-Baron, &c. and another enjoy all the Land belonging to it. *Kitch.* 4. *Bract. lib.* 5. *Tract.* 5. cap. 28. A *Manor* may be compounded of divers Things; as of an House, Arable Land, Meadow, Pasture, Wood, Rents, Advowson, Court-Baron, &c. *Terms de Ley* 434. *Manerium est nomen collectivum*, and comprehends Messuages, Lands, Gardens, Woods, &c. *Mish.* 4 *Eliz.* A Parsonage may be a *Manor*, if granted by the Parson, Patron and Ordinary, &c. to be held of the Parson by certain Services. *Pasch.* 22 *Eliz.* By a Grant of the Demesnes and Services, the *Manor* passeth; and by a Grant and Render of the Demesnes only, the *Manor* is destroyed, because the Services and Demesnes are thereby severed by the Act of the Party; though 'tis otherwise, if by Act of Law, as by Partition. 6 *Rep.* 63. There are two Coparceners of a *Manor*; the Demesnes are assigned to one, and the Services to the other, the *Manor* is gone; but if one die without Issue, and the *Manor* descends to her who had the Services, the *Manor* is revived again, for the Severance was by Act in Law. 1 *Inst.* 122. 8 *Rep.* 79. 3 *Salk.* 25. 40. A new *Manor* may arise and revive by Operation of Law. 1 *Leon.* 204. A *Manor* cannot be without a Court-Baron: And it must be Time out of Mind; at this Day a *Manor* cannot be made, because a Court-Baron cannot now be made. 1 *Inst.* 58, 108. It may contain one or more Villages or Hamlets; or only great Part of a Village, &c. And there are Capital *Manors*, or Honours, which have other *Manors* under them, the Lords whereof perform Customs and Services to the Superior Lords. 2 *Inst.* 67. 2 *Roll. Abr.* 72. There may be also Customary *Manors* granted by Copy of Court-Roll, and held of other *Manors*. 4 *Rep.* 26. 11 *Rep.* 17. But it cannot be a *Manor* in Law, if it wanteth Freehold

Tenants; nor be a Customary *Manor*, without Copyhold Tenants: If all the Freeholds escheat, or come to the Lord by Purchase, the *Manor* is lost; so if there are no Suitors in a Court-Baron but one, or there be only one Copyholder in a Customary *Manor*: For there should be two Freeholders, or Suitors at least. 1 *Inst.* 58. *Lit.* 73. 2 *Roll. Abr.* 121. But it is said, if there be but one Freehold Tenant, the Seignior continues between the Lord and that one Tenant. 1 *And.* 257. 1 *Nelf. Abr.* 524. The Custom remains, where Tenements are divided from the rest of the *Manor*, the Tenants paying their Services; and he who hath the Freehold of them, may keep a Court of Survey, &c. *Cro. Eliz.* 103.

Manse, (*Mansa*) An Habitation, or Farm and Land. *Spelm.* See *Mansum*.

Manſion, (*Manſio*, à *Manendo*) Among the ancient Romans was a Place appointed for the Lodging of the Prince, or Soldiers in their Journey; and in this Sense we read *Primam Manſionem*, &c. It is with us most commonly used for the Lord's chief Dwelling-house within his Fee; otherwise called the *Capital Meſſuage*, or Manor Place. *Skene*. Sometimes *Manſio* signifies a Family; and the Latin Word *Manſia*, according to Sir Edward Coke, seems to be a certain Quantity of Land: *Hida vel Manſia*, and *Mansa*, are mentioned in some old Writers and Charters. *Fleta*, lib. 6. And that which in ancient Latin Authors was termed *Hida*, was afterwards called *Manſus*.—*Manſio eſſe poterit conſtructa ex pluribus Domibus vel una, quæ erit habitatio una & ſola ſine vicino; etiam & ſi alia Manſio ſit vicinata non erit villa, quia villa eſt ex pluribus Manſionibus vicinata & collata ex pluribus vicinis.* *Braët. lib.* 5. *Traët.* 5. p. 1. *Manſion-Houſe* is taken in Law for any Houſe of Dwelling of another; in Cases of committing *Burglary*, &c. 3 *Inst.* 64.

Manſlaughter, (*Homicidium*) Is the unlawful Killing a Man without any preſented Malice; as when two Perſons meet, and upon ſome falling out, the one kills the other. It is done in a preſent Heat, on a ſudden Quarrel, and upon a juſt Provocation; and without any deliberate Intention of doing Miſchief: And it differs from *Murder* only, in that it is not done with foregoing Malice; and from *Chancemedley*, having a preſent Intent to kill. *Staundf. P. C. lib.* 1. c. 9. This Crime is Felony; but for the firſt Time admits of Clergy: And there can be no Acceſſaries to this Offence before the Fact, becauſe it muſt be done without Premeditation. *H. P. C.* 217. In the Laws of *Canutus*, the ſame Diſtinction was made between *Murder* and *Manſlaughter*, as now; for we find, if a Man were killed wilfully and premeditatedly, then the Offender was to be delivered to the Kindred of the ſlain, &c. But if on his Trial, the Fact was proved not to be wilful, then he was reſigned to the Biſhop, &c. *Leg.* 53. *Manſlaughter* muſt be upon a ſudden Quarrel, where the Party guilty doth not appear to be Maſter of his Temper, by talking calmly upon the Quarrel, or afterwards in other Diſcourſe, whereby the Heat of Blood may be preſumed to be cooled. *Crompt.* 25 *Kel.* 56. Therefore if two Perſons meet together, and in ſtriving for the Wall, one of them kills the other, this is *Manſlaughter*: And ſo it is if, upon a ſudden Occaſion, they had gone into the Fields and fought, and one had killed the other; for all is one continued Act of Paſſion, on the firſt ſudden Occaſion. 3 *Inst.* 51. 55. *H. P. C.* 48. And if two

Perſons, who have formerly fought on Malice, are afterwards to all Appearance reconciled, and fight again on a freſh Quarrel, and one of them is kill'd, it ſhall not be conſtrued that they were moved on the old Grudge, unleſs it appear by the whole Circumſtances of the Fact. 1 *Hawk.* P. C. 82. If two Men fall out on a Sudden and fight, and one breaks his Sword, and a Stranger ſtanding by lends him another, with which he kills his Adverſary, it is *Manſlaughter* in both. *H. P. C.* 56. And where a Stranger to a Perſon, a Man's Servant, &c. coming ſuddenly, ſees him fighting with another, and ſides with him and kills the other; this is only *Manſlaughter*: Alſo if a Man's Friend is aſſaulted, and he in Vindication of his Friend, on a Sudden takes up a miſchievous Inſtrument, and kills the Enemy of his Friend, this is *Manſlaughter*: So where a Perſon in Reſcuing another injuriouſly reſtrained of his Liberty, by pretended Preſs-Maſters, &c. kills any of them. *H. P. C.* 57. *Plowd.* 101. *Kel.* 46, 136. But if the Perſon killed were a Bailiff, or other Officer of Juſtice, reſiſted by any one in the due Execution of his Duty; it would be Murder. *Kel.* 67, 86. Several Perſons having forcible Poſſeſſion of a Houſe, afterwards kill'd the Perſon whom they had ejected, as he was endeavouring in the Night forcibly to regain the Poſſeſſion, and to fire the Houſe; and they were adjudg'd only guilty of *Manſlaughter*, notwithstanding they did the Fact in Maintenance of a deliberate Injury, becauſe the Party ſlain was ſo much in Fault himſelf: Yet if in ſuch, or any other Quarrel, whether it were ſudden or premeditated, a Juſtice of Peace, Conſtable, or even a private Perſon be killed in endeavouring to keep the Peace, he who kills him is guilty of Murder. 1 *Hawk.* 85. It hath been adjudg'd, that upon a Killing on a ſudden Quarrel, if a Man be ſo far provoked by another by Words or Geſtures, as to make a Puſh at him with a Sword, or ſtrike at him with any other ſuch Weapon as manifeſtly endangers his Life, before the other's Sword is drawn, and thereupon a Fight enſues, and he who made ſuch Aſſault kill the other, it is Murder; for by Aſſaulting the other in ſuch a Manner, without giving him an Opportunity to defend himſelf, ſhewed that he intended to kill him: But in Caſe he who draws upon another in a ſudden Quarrel, make no Paſs at him 'till his Sword is drawn, and then fighting with him kill him, he is guilty of *Manſlaughter* only; becauſe by Giving the other Time to be on his Guard, he ſhews his Intent is not ſo much to kill as to combat with the other, according to the common Notions of Honour. *Kel.* 61, 131. 1 *Hawk.* P. C. 81, 82. And as to Provocations, no Treſpaſs, Breach of a Man's Word, or Affront by Words, &c. will be thought a juſt Provocation to excuſe the Killing of another. *Ibid.* 130. Though if upon ill Words, as giving the Lie, or calling another Son of a Whore, both Parties ſuddenly Fight, and one kills the other, this is *Manſlaughter*: And if one upon angry Words aſſault another, by pulling him by the Noſe, and he that is aſſaulted draws his Sword and immediately kills the other, this is but *Manſlaughter*; for an Indignity was offered to the Slayer, from whence he might reaſonably apprehend that there might be ſome further Deſign upon him. *Ibid.* 55, 60, 155. There is a *Manſlaughter* puniſhable as Murder; by Statute: By the 1 *Fac.* 1. c. 8. If any Perſon ſhall ſtab another,

another, not having then a Weapon drawn, or not stricken first, so that he dies within six Months, although it were not of Malice or Forethought, it is Felony without Benefit of Clergy: But this doth not extend to Persons stabbing others *Se Defendendo*, or by Misfortune, &c. with no Intent to commit *Manslaughter*; and the Statute relates to the Party only that actually gave the Stroke, or stab'd the other, and not to those that were aiding or abetting. *H. P. C.* 58. A Blow given, or Weapon drawn at any Time during the Quarrel, before the Thrust or Stab given, is within the Statute; and Drawing out a Pistol, and Levying it at the Party killing, or throwing a Pot, Bottle, &c. at him, are within the Equity of the Words, having 2. Weapon drawn. 3 *Lev.* 255, 266. 2 *Lev.* 266. And he that is ousted of Clergy by this Statute must be specially indicted upon it; though even then the Jury may find *Manslaughter* generally: For the Statute makes no new Offence, but only takes away the Benefit of the Clergy which was allow'd at Common Law. *H. P. C.* 58, 266. The Statute is but a Declaration of the Common Law; and made to prevent the Compassion of Juries, who oftentimes were perswaded to believe that to be a Provocation to extenuate the Crime of Murder, which in Law was not. *Kel.* 55. If a Man is taken in Adultery with another Person's Wife, and the Husband draws his Sword and presently kills the Adulterer; this is a just Provocation, and makes it *Manslaughter*. 1 *Ventr.* 158. *Raym.* 212. Two Masters of Defence play at Hand-sword, and one wounds the other, of which he dies, it is only *Manslaughter*; and it is said not to be Felony where they play by the King's Command, for that they play by Consent to try their Manhood, and may be the better able to do the King Service upon Occasion. 3 *Inst.* 56, 160. *Dalt.* 352. *Hob.* 134. When two Persons play at Foils, and one kills the other, it is *Manslaughter*. *H. P. C.* 32, 57. These last Cases are without an ill Intent: And if one shoots off a Gun in a Highway, or throws a Stone over a Wall, in a Place where People often meet, and a Person is kill'd; or at another in play, and kill him; if done without an evil Intention, it is *Manslaughter*. 3 *Inst.* 57. And any unlawful Act, without an ill Intent, is *Manslaughter*; but with an ill Intent, and where the Act is deliberate, if Death happens, it is murder. *H. P. C.* 32, 44. 3 *Inst.* 56. *Kel.* 112. A Person shoots at the Tame Fowl of another, which is an unlawful Act, and kills a Stander-by, it is Murder: If he be shooting at Hare, Wild Fowl, &c. and not qualified to keep a Gun, or to kill Game, it is *Manslaughter*: And where he is qualified to keep a Gun it is only *Chancemedley*. 3 *Inst.* 56. Though in Cases of this Nature it ought to be considered how far the unlawful Act doth tend immediately, or by necessary Consequence to the Injury of another. *H. P. C.* 31. *Kel.* 117. See *Chancemedley* and *Murder*.

Manſum Capitale, The Manor-house or *Manſe*, or Court of the Lord. *Kenet's Antiq.* 150.

Manſus Presbyteri, The *Manſe* or House of Residence of the Parish-Priest; being the Parsonage or Vicarage-house. *Paroch. Antiq.* 431.

Mantheof, (From the Lat. *Mannus*, a Nag, and Sax. *Theof*, i. e. Thief) Signified antiently an Horse-stealer. *Leg. Alfred.*

Mantile, Is a long Robe; from the French Word *Manteau*, mentioned in the Stat. 24 H. 8. cap. 15.

Manualia Beneficia, Were the daily Distributions of Meat and Drink to the Canons and other Members of Cathedral Churches, for their present Subsistence. — *Consuetudinem, &c. qua Canonici & alii Beneficiati seu Clerici Cathedralium, & aliarum collegiarum Ecclesiarum, distributiones quæ Manualia Beneficia nuncupantur, &c.* Lib. Statutor. Eccles. Sancti Pauli London. M.S.

Manualis Obedientia, Is used for sworn Obedience, or Submission upon Oath. *Henricus de Teisdale Rector Ecclesie de G. fecit pro illa Domino Johanni Archiepiscopo Ebor. Manualem Obedientiam apud Ebor. 11. Kal. Maii 1295. Ex Registr. Ebor.*

Manuceptio, A Writ that lies for a Man who taken on Suspicion of Felony, and offering sufficient Bail for his Appearance, cannot be admitted thereto by the Sheriff, or others having Power to let to *mainprise*. *F. N. B.* 249.

Manuel, (*Manualis*) Signifies what is employ'd or used by the *Hand*, and whereof a present Profit may be made: As such a Thing in the *manuall* Occupation of one, is where it is actually used or employ'd by him. *Staundf. Prærog.* 54.

Manufacture, A Commodity produc'd by the Work of the *Hand*, as Cloth, &c. *Merch. Dict.*

Manumission, (*Manumissio*) Is the Freeing a Villein or Slave out of Bondage; which was formerly done several Ways: Some were *manumitted* by Delivery to the Sheriff in the County, &c. and others by Charter; one Way of *Manumission* was for the Lord to take the Bondman by the Head, and say, *I will that this Man be free*, and then shoving him forward out of his Hands. And there was a *Manumission* implied; when the Lord made an Obligation for Payment of Money to the Bondman, or sued him where he might enter without Suit, &c. The Form of *Manumitting* a Person in the Time of Will. 1. called *The Conqueror*, is thus set down. — *Si quis velit servum suum Liberum facere, tradat eum Vicecomiti per Manum dextram, in pleno comitatu, & quietum illum clamare debet a jugo Servitutis sue per Manumissionem, & ostendat ei liberam portas & vias, & tradat illi libera Arma, scilicet Lanceam & Gladium, & deinde Liber homo efficitur.* *Lamb. Archæi.* 126.

Manuopera, Cattle, or any Implements used to work in Husbandry. *Mon. Angl. Tom. 1. pag.* 977. *Eleta, lib. 2. cap. 52.*

Manupastus, Signifies a Domestick; *Sæpe obvenit in forensi dialecto, pro Famulo & serviente Domestica.* *Spelm.* He shall be culpable, as of a Thing done by one of his Family, or by his own *Hand*. — *Erat culpabilis tanquam de Manupasto.* *Leg. Hen. 1. c. 66.*

Manure, (*Colo, Melioro*) To till, plough, or *manure* Land. *Litt. Dict.*

Manus, Was antiently used for an Oath, and for him that took it as a Compurgator. And it often occurs in old Records; *Tertia, quarta, &c. Manu Furare*; that is, the Party was to bring so many to swear with him that they believed what he vouched was true: And we read of a Woman accused of Adultery; *Mulieri hoc neganti Purgatio Sexta Manu extitit Indicta, i. e.* She was to vindicate her Reputation upon the Testimony of Six Compurgators. *Reg. Eccl. Christi. Cant.* If a Person swore alone, it was *propria Manu & Unica*. The Use of this Word came probably from its being required at a Person's Hands to justify himself; or from laying the *Hand* upon the New Testament, on Taking the Oath.

Mantenentia, A Writ so called, used in Cases of Maintenance. Reg. Orig. 182, 189.

Manwryth, (Sax. *Manwyrð*) The Price or Value of a Man's Life or Head, mentioned by Blount.

Mara, A Mere, Lake, or great Pond, that cannot be drawn dry. *Mon. Angl. Tom. 1. pag. 666.*

— *Castrum & Manerium de Bolyngbroke, cum Soke Mara & Marisco. Paroch. Antiq. 418.*

Marca, A certain Quantity of Money. See Mark.

Marcatu, The Rent of a Mark by the Year, antiently reserv'd in Leases, &c. *Et unum Marcaturum Redditus de, &c. Mon. Angl. Tom. 1. pag. 341.*

Marchers, or **Lords Marchers**, Were those Noblemen that lived on the *Marches* of Wales or Scotland; who in Times past (according to Camden) had their Laws, and *Potestatem vite, &c.* like Petty Kings; which are abolished by the Stat. 27 H. 8. c. 26. and 1 Ed. 6. c. 10. In old Records, the Lords Marchers of Wales were styled *Marchiones de Marchia Wallie.* See 1 & 2 P. & M. c. 15.

Marches, (*Marchia*, from the Germ. *March*, i. e. *Limes*, or from the Fr. *Marque*, viz. *Signum*, being the notorious Distinction between two Countries or Territories) Are the Limits between England and Wales, or between us and Scotland; which last are divided into *West* and *Middle Marches.* 4 Hen. 5. c. 7. 22 Ed. 4. c. 8. 24 H. 8. c. 9. And the Word is used generally for the Precincts of the King's Dominions by 24 H. 8. c. 12. There was formerly a Court called the *Court of the Marches of Wales*, where Pleas of Debt or Damages, not above the Value of Fifty Pounds, were tried and determined; and if the Council of the *Marches* held Plea for Debts above that Sum, &c. a *Prohibition* might be awarded. *Hill. 14 Car. 1. Cro. Car. 384.*

Marchet, (*Marchetum*) *Consuetudo pecuniaria*, in *Mancipiorum filiabus Maritandis.* *Bract. lib. 2. cap. 8.* This Custom, with some Variation, is observ'd in some Parts of England and Wales, as also in Scotland and the Isle of Guernsey: And in the Manor of *Dinevor* in the County of Carmarthen, every Tenant at the Marriage of his Daughter pays 10 s. to the Lord, which in the British Language is called *Gwabr Merched*, i. e. a Maid's Fee. The Custom for the Lord to lie the first Night with the Bride of his Tenant, was very common in Scotland, and the North of England: But it was abrogated by Malcolm the Third, at the Instance of his Queen; and instead thereof a Mark was paid to the Lord by the Bridegroom, from whence it is denominated *Marcheta Mulieris.* See *Maiden Rents.*

Maretrum, (Fr. *Maret*, a Fen or Marsh) Signifies marshy Ground overflowed by the Sea or great Rivers. *Co. Litt. 5.*

Marinarius, A Mariner or Seaman: And *Marinariorum Capitaneus* was the Admiral or Warden of the Ports, which Offices were commonly united in the same Person; the Word *Admiral* not coming into Use till the latter End of the Reign of King Edw. 1. before which Time the King's Letters ran thus. — *Rex Capitaneo Marinario- rum & eisdem Marinariis Salutem. Paroch. Antiq. 322.* The Mariners of a Ship are accountable to the Master; the Master to the Owners; and the Owners to the Merchant, for all Damages by Negligence, or otherwise. *Lex Mercat. or Merch.*

Compan. 66. If a Mariner be hired, and he deserts the Service before the Voyage is ended, by the Law *Marine*, and by the Common Law, he shall lose his Wages: And if a Ship is lost by Tempest, &c. the Mariners lose their Wages as well as the Owners their Freight; and this is to oblige them to use their utmost Endeavours to preserve the Ship. *Leg. Oleron. 1 Sid. 179.* Where a Mariner is wounded in the Service of a Ship, he is to be provided for at the Charge of the Ship; and if his Illness is very violent, he is to be left ashore with necessary Accommodations, and the Ship is not to stay for him; if he recovers, he is intitled to his full Wages, deducting what the Master expended for him. *Leg. Ol. c. 7.* The Common Law hath Jurisdiction for Mariners Wages; and in the Admiralty they may all join. 1 *Ventr. 146.* Personating Mariners, and Receiving their Wages; and Forging Letters of Attorney, &c. or falsely Taking out Letters of Administration for the Receipt of Seamen's Wages, incurs a Forfeiture of 200 l. &c. *Stat. 9 & 10 W. 3. Mariners, &c. casting away or destroying Ships is Felony. 1 Ann. See Felony.*

Maritime, (*Maritimus*) Signifies Sea Affairs; any Thing belonging to the Sea.

Maritima Angliæ, The Profit and Emolument arising to the King from the Sea, which antiently was collected by Sheriffs; but it was afterwards granted to the Lord Admiral. — *Richardus de Lucy dicitur habere Maritimam Angliæ. Pat. 8 H. 3. m. 4.*

Mark, (*Merca*, Sax. *Mearc*) Of Silver is now thirteen Shillings and four Pence: Though in the Reign of King Hen. 1. it was only six Shillings and a Penny in Weight; and some were coined, and some only cut in small Pieces, but those that were coined were worth something more than the others. In former Times, Money was paid, and Things valued oftentimes by the Mark; *Assignavimus Regin. pro dote sua, mille Marcas Argenti annuatim 13 s. 4 d. computatis pro Marca. Paten. 3 Joh. m. 17.* We read of a Mark of Gold of eight Ounces, and 6 l. in Silver; or as others write 6 l. 13 s. 4 d. *Stow's Annals 32. Rot. Mag. Pipe, Ann. 1 Hen. 2.*

Mark to Goods, Is what ascertains the Property or Goodness thereof, &c. And if one Man shall use the Mark of another, to the Intent to do him Damage, Action upon the Case lieth. 2 *Cro. 471.*

Market, (*Mercatus*, from *Mercando*, Buying and Selling) Is the Liberty by Grant or Prescription whereby a Town is enabled to set up and open Shops, &c. at a certain Place therein, for Buying, Selling, and better Provision of such Victuals as the Subject wanteth: It is less than a Fair; and usually kept once or twice a Week. *Bract. lib. 2. cap. 24. 1 Inst. 220.* And according to *Bracton*, one Market ought to be distant from another *Sex leucas (vel Milliar.) & dimidiam, & tertiam partem dimidiæ:* If one hath a Market by Charter or Prescription, and another obtains a Market near it to the Nuisance of the Former; the Owner of the Former may avoid it. 2 *Inst. 406.* The Fair or Market is taken for the Place where kept: And it was customary of old, for most Fairs and Markets to be kept on Sundays; and in many Places they are still kept in Churchyards: But by Statute 27 H. 6. c. 5. no Fair or Market shall be kept upon any Sunday, or upon the Feasts of the Ascension, Corpus Christi, Good Friday,

day, *All Saints*, &c. except for necessary Vic-
tuals, and in Time of Harvest: And they ought
not to be held in Church-yards, by 13 *Ed. 1. c. 6.*
All Fairs are *Markets*: And there may be a *Mar-*
ket without an Owner; though where there is an
Owner, a Butcher cannot prescribe to sell Meat
in his own House upon a *Market-Day*; for the
Market must be in an open Place, where the
Owner may have the Benefit of it. 4 *Inst. 272.*
In the Country, Things sold in the *Markets* are
to be in the usual Place, appointed for the Sale:
But in *London*, every Shop is a *Market* overt, for
such Goods as are put there to be sold by the
Trade of the Owner; though if the Sale be in a
Ware-house, and not publickly in the Shop, the
Property is not altered. 5 *Rep. 83. Moor 300.*
Sale upon a Sunday, though in a Fair or *Mar-*
ket, will not alter the Property of the Thing
sold. 5 *Rep.* All Contracts for any Thing vendi-
ble in *Markets*, &c. shall be binding, and Sales
alter the Property, if made according to the fol-
lowing Rules, *viz.* 1. The Sale is to be in a
Place that is open, so that any one that passeth
by may see it, and be in a proper Place for
such Goods. 2. It must be an actual Sale for a
valuable Consideration. 3. The Buyer is not to
know that the Seller hath a wrongful Possession
of the Goods sold. 4. The Sale must not be
fraudulent betwixt Two, to bar a third Person
of his Right. 5. There is to be a Sale and a
Contract, by Persons able to contract. 6. The
Contract must be originally and wholly in the
Market overt. 7. Toll ought to be paid, where
required by Statute, &c. 8. The Sale is not to
be in the Night, but between Sun and Sun;
(though if the Sale be made in the Night, it
may bind the Parties) A Sale thus made shall
bind the Parties, and those that are Strangers, as
have Right. 5 *Rep. 83.* But it shall not bind the
King, for any of his Goods sold in *Market* overt;
though regularly it bindeth Infants, Feme Co-
verts, Men beyond Sea, and in Prison, Persons
Non Compos, &c. 2 *Inst. 713.* And yet if a Sale be
made by an Infant, or Feme Covert, where they
appear or are known to be such, (except by a
Woman Covert for such Things as she usually
trades for, by her Husband's Consent) it bindeth
not. 5 *Rep. 83.* Sale of Goods stolen in *London* to
Brokers, &c. alters not the Property. 1 *Jac. 1.*
c. 21. And the Statutes which ordain, that Toll-
takers shall be appointed in *Markets* and Fairs to
enter in their Books the Names of the Buyers,
Sellers, Vouchers and Prices of Horses sold, and
deliver a Note thereof to the Buyer, &c. Secure
the Property of stolen Horses to the Owner,
although sold in Fair or *Market*. 2 & 3 *P. & M.*
c. 7. and 31 *Eliz. c. 12.* Every one that hath a
Market shall have Toll for Things sold, which is to
be paid by the Buyer; and by antient Custom
may be paid for the Standing of Things in the
Market, though nothing be sold; but not other-
wise: A Piepowder Court is incident as well to
a *Market* as a Fair; and Proprietors of *Markets*
ought to have Pillory and Tumbrel, &c. to pu-
nish Offenders. 2 *Inst. 221. 4 Inst. 272. 1 Inst. 281.*
Keeping a Fair or *Market*, otherwise than it is
granted; as by Keeping them upon two Days,
when only one is granted; or on any other Day
than appointed; extorting Toll, or Fees, where
none are due, &c. are Causes of Forfeiture.
Finch. 164.

Marketzeld, or *Marketgeld*, Signifies Toll of
the *Market*; the Word *Zeld* denoting a Payment.

— *Et valent per Ann. le Streteward & le Mar-*
ketzeld, xviii s. in omni Terra pertinen. ad Honorem
de Haulton. Ex Cod. M.S. in Bibl. Cotton.

Mark-penny, Was a Penny antiently paid at
the Town of *Maldon*, by those who had Gutters
laid or made out of their Houses into the Streets.
Hill. 15 Ed. 1.

Marle, (*Marla*, from the Sax. *Margel*, i. e.
Medulla) Otherwise called *Malin*, is a Kind of
Earth or Mineral; which in divers Counties of
this Kingdom is used to fertilize Land. 17 *Ed. 4.*
cap. 4.

Marlerium or *Marletum*, A *Marle-pit*. —
Sciant, quod habeant Libertatem in Marleriis, &c.
Et quod capiant Marlam ad Terram suam Marlend.
Chart. Roger de la Zouch. And in another Deed,
Vigint. ac. Terre Marlatus, marbled Lands.

Marque, (*Fr. i. e. Bonorum detentio*) In our an-
tient Statutes signifies as much as *Reprisals*;
Marque and *Reprisal* are used as *Synonyma*, and
Letters of Marque in the same Signification. 4 *H. 5.*
cap. 7.

Marquis, or *Marquess*, (*Marchio*) Is a Title
of Honour before an *Earl*, and next to a *Duke*:
And by the Opinion of *Hotoman*, the Name is de-
rived from the German *March*, signifying origi-
nally *Custos Limitis*, or *Comes & prefectus limitis*.
In the Reign of King *Rich. 2.* came up first the
Title of *Marquess*, which is a Governor of the
Marches; for before that Time those that go-
vern'd the *Marches* were called commonly
Lords Marchers, and not *Marquesses*, as Judge *Do-*
deridge has observed in his *Law of Nobility and*
Peerage. *Selden's Mare claus. lib. 2. cap. 19.* A
Marquis is created by Patent; and antiently by
Cincture of Sword, Mantle of State, &c.

Mariscus, Is used for Fenny Ground in the
Book of Domeſday.

Marriage, (*Maritagium*) Signifies not only the
lawful Joining of Man and Wife; but also the
Interest of bestowing a *Ward* or Widow in *Mar-*
riage, in our antient Law. *Magn. Chart. c. 6.*
And *Maritagium* is also applied to Land given in
Marriage; and that Portion which the Husband
receives with his Wife. *Braff. lib. 2. cap. 34.*
Glanvil, lib. 7. cap. 1. In this Sense there are di-
vers Writs de *Maritagio*, &c. *Reg. 171.* But *Mar-*
riage is generally the Conjunction of Man and
Woman in a constant Society and Agreement of
Living together; till the Contract is dissolv'd by
Death or Breach of Faith, or some notorious
Misbehaviour, destructive of the Ends for which
it was intended. It is one of the Rights of hu-
man Nature; and was instituted in a State of
Innocence, for Preservation thereof: And no-
thing more is requisite to a compleat *Marriage*,
by the Laws of *England*, than a full, free, and
mutual Consent between Parties, not disabled to
enter into that State, by their near Relation to
each other, Infancy, Precontract or Impotency;
and as to the Solemnization of *Marriage*, this is a
Civil Right, regulated by the Laws and Customs
of the Nation where we reside; and every State
allows such Privileges to the Parties as it deems
expedient, and denies legal Advantages to those
who refuse to solemnize their *Marriage* in the
Manner the State requires; but they cannot dis-
solve a *Marriage* celebrated in another Manner,
Marriage being of Divine Institution, to which
only a full and free Consent of the Parties is ne-
cessary. Before the Time of *Pope Innocent III.*
there was no Solemnization of *Marriage* in the
Church, but the Man came to the House where
the

the Woman inhabited, and led her home to his own House, which was all the Ceremony then used: And it has been since held, that if a Man and a Woman are married by a Priest in a Place which is not a Church or Chapel, and without any Solemnity of the Celebration of Mass, yet it is a good Marriage. *Mcor's Rep.* 170. *1 Roll. Abr.* 359. *1 Sid.* 64. Though it has been also otherwise adjudged. *10 Ed.* 4. Marriages by Romish Priests, whose Orders are acknowledged by the Church of England, are deemed to have the Effects of a legal Marriage in some Instances; but Marriages ought to be solemnized according to the Rites of the Church of England, to intitle the Privileges attending legal Marriages, as Dower, Thirds, &c. And by Statute, Popish Recusants convicted, married otherwise than according to the Orders of the Church of England, by a Minister lawfully authorized, and in some open Church, &c. shall be disabled, the Man to be Tenant by the Curtesy, and the Woman to claim her Dower, Jointure, or Widow's Estate, &c. *3 Jac.* 1. c. 5. Marriage at Common Law is either in Right or in Possession; and a Marriage *de Facto*, or in Reputation, as among Quakers, &c. is allowed to be sufficient to give Title to a personal Estate. *1 Leon.* 53. *Wood's Inst.* 59. But in the Case of a Dissenter, married to a Woman by a Minister of the Congregation, who was not in Orders; it was held, that when a Husband demands a Right to him as Husband by the Ecclesiastical Law, he ought to prove himself a Husband by that Law, to intitle him to it: And notwithstanding the Wife, who is the weaker Sex, and the Children of this Marriage, may intitle themselves to a temporal Right by such Marriage; yet the Husband shall not, by the Reputation of the Marriage, unless he hath a substantial Right: And this Marriage is not a meer Nullity, because by the Law of Nature the Contract is binding; for though the positive Law of Man ordains Marriage to be made by a Priest, that Law only makes this Marriage irregular, and not expressly void. *1 Salk.* 119. Marriages contracted between lawful Persons, being solemnized in the Face of the Church, and consummated, were declared valid, notwithstanding any Precontract, not consummated, by Stat. 32 H. 8. c. 38. But this was repealed by the 2 & 3 Ed. 6. c. 23. And all Marriages solemnized by Justices of Peace, during Oliver's Usurpation, were ordained to be good and valid, as if solemnized according to the Rites and Ceremonies of the Church. Stat. 12 Car. 2. c. 33. By the Ordinances of the Church, when Persons are to be married, the Bans of Matrimony shall be published in the Church where they dwell three several Sundays or Holidays, in the Time of Divine Service; and if at the Day appointed for their Marriage, any Man do allege any Impediment; as Precontract, Consanguinity, or Affinity, Parents not consenting, where under Age, &c. why they should not be married, and become bound with sufficient Sureties to prove his Allegation, then the Solemnization must be deferred until such Times as the Truth is try'd. *Rubrick.* And no Minister shall celebrate Matrimony between any Persons without a Faculty or Licence, except the Bans of Marriage have been first published as directed, according to the Book of Common Prayer, upon Pain of Suspension *per triennium*; nor shall any Minister, under the like Penalty, join any Persons in Marriage who are so licensed, at any un-

seasonable Times, or in any private Place, &c. Canon 62. Also on the Granting of Licences, Bond is to be taken, that there is no Impediment of Precontract, Consanguinity, &c. Nor any Suit or Controversy depending in any Ecclesiastical Court, touching any Contract of Marriage of either of the Parties with any other; that the Parties have the Consent of Parents, &c. And the Marriage be celebrated in the Parish-Church where one of the Parties dwelleth, and in no other Place, and that between the Hours of Eight and Twelve in the Morning: Oath is to be likewise made by one of the Parties as to there being no Impediment, and two Witnesses are to testify the Consent of Parents, &c. Licences to the contrary shall be void; and the Parties marrying are subject to Punishment as for clandestine Marriages. Can. 102. But notwithstanding the Canons afore-mentioned, Marriages, especially of Persons of Quality, are frequently in their own Houses, out of Canonical Hours, in the Evening; and oftentimes solemnized by others in other Churches, than where one of the Parties lives, and out of Time of Divine Service, &c. There are besides some Things disus'd on granting Licences for Marriage; as the Testification of Witnesses of the Consent of Parents, &c. Though I don't know by what Authority all these Things are dispens'd with, except it be in Regard to the Substance of the Marriage, to make the same good without all the Ceremonies. Parsons, Vicars, or Curates, marrying any Persons, or employing other Ministers to do it, without Publishing the Bans of Matrimony according to Law, or without a Licence for the Marriage first had and obtain'd, shall forfeit 100 l. The Person so married 10 l. and Parish-Clerks, &c. assisting, knowing it to be so 5 l. Stat. 7 & 8 W. 3. c. 35. And by a subsequent Act, the preceding Statute is confirm'd; and extends to privileged Places, so that if a Parson offending be a Prisoner in any Place, on Conviction he shall be removed to the County Gaol, there to remain in Execution charged with the said Penalty of 100 l. &c. 10 Ann. c. 19. Before these Statutes an Information was exhibited against a Person for Combination, in procuring a clandestine Marriage in the Night, without Bans or Licence, between a Maid-servant and a young Gentleman who was Heir to an Estate; and the Parson being in Liquor, they were fined 100 Marks, and ordered to be committed till paid: But it doth not appear that the Marriage could be made void. Cro. Car. 557. Marriages are prohibited in Lent, and on Fasting-Days, because the Mirth attending them is not suitable to the Humiliation and Devotion of those Times; yet Persons may marry with Licences in Lent, although the Bans of Marriage may not then be published. And formerly, in Popish Times, Priests were restrained from Marriage, and their Issue accounted Bastards, &c. But on the Reformation, Laws were made, declaring that the Marriage of Priests should be lawful, and their Children legitimate; tho' the Preambles to those Statutes set forth, that it would be better for Priests to live chaste, and separate from the Company of Women, that they might with the more Fervency attend the Ministry of the Gospel. 2 & 3, and 5 & 6 Ed. 6. All Persons of the Age of Consent to marry, viz. A Man at Fourteen, and a Woman at Twelve) who are not prohibited by the Levitical Degrees, or otherwise by God's Law, may lawfully marry: But

But *Marriages* made within the Degrees, are incestuous and unlawful. 1 *Inst.* 24. 2 *Inst.* 684. The Son of a Father by another Wife, and Daughter of a Mother by another Husband, Cousin Germans, &c. may marry with each other: A Man may not marry his Brother's Wife, or Wife's Sister; an Uncle his Niece, an Aunt her Nephew, &c. But if a Man takes his Sister to Wife, they are Baron and Feme, and the Issue are not Bastards till a Divorce. *Levit. c.* 18, 20. 2 *Inst.* 683. 1 *Roll. Abr.* 340, 357. 5 *Mod.* 448. A Libel was exhibited against a Person for *Marrying* his Wife's Sister; the Defendant suggested for a Prohibition, that his Wife was dead, and he had a Son by her, to whom an Estate was descended as Heir to his Mother; yet the Ecclesiastical Court proceeded to annul the *Marriage*, and to bastardise the Issue: But a Prohibition was granted *quoad* the Annulling the *Marriage*, and Bastardising the Issue, and giving Leave to proceed to punish the Inceit. 2 *Salk.* 548. 4 *Mod.* 182. A Sister's Bastard Daughter is said to be within the *Levitical* Law of Affinity; it being morally as unlawful to marry a Bastard as one born in Wedlock, and 'tis so in Nature; and if a Bastard doth not fall under the Prohibition *Ad proximum Sanguinis non accedas*, a Mother may marry her Bastard Son. 5 *Mod.* 168. 2 *Nelf. Abr.* 1161. There are Persons within the Reason of the Prohibition of *Marriage*, though not mentioned, and must be prohibited; as the Father from *Marrying* his Daughter, the Grandson from *Marrying* the Grandmother, &c. *Vaugh.* 321. The Temporal Courts by the Stat. 28 *H. 8. c.* 7 are to determine what *Marriages* are within or without the *Levitical* Degrees; and prohibit the Spiritual Courts if they impeach any Persons, for *Marrying* without these Degrees. *Vaugh.* 206. 2 *Ventr.* 9. And it is said were it not for that Statute, we should be under no Obligation to observe the *Levitical* Degrees. *Ibid.* When there is a perpetual Impotency; Fear or Imprisonment, so that there can be no Consent; or where Persons are precontracted; a Man or Woman have a Wife or Husband living, &c. in such Cases the *Marriages* are to be adjudg'd void, as prohibited by God's Law. 1 *Inst.* 235. 2 *Inst.* 687. And altho' matrimonial Causes have been for a long Time determinable in the Ecclesiastical Courts, they were not so from the Beginning; for as well Causes of Matrimony as Testamentary, were Civil Causes, and appertained to the Jurisdiction of the Civil Magistrate, until Kings allow'd the Clergy Cognisance of them. *Davis Rep.* 51. If Persons married are *infra annos Nubiles*, the Ecclesiastical Judges are to judge as well of the Assent, whether sufficient, &c. as of the first Contract; and where they have Cognisance, the Common Law Judges ought to give Credit to their Sentences, as they do to our Judgments. 7 *Rep.* 23. Loyalty or Lawfulness of *Marriage* is always to be tried by the Bishop's Certificate; on Inquisition taken before him, and Examination of Witnesses, &c. *Dyer* 303. If the Right of the *Marriage* come naturally in Question, as in Dower, &c. the Lawfulness of *Marriage* is to be tried by the Bishop's Certificate; but in a Personal Action, where the Right of *Marriage* is not in Question, it is triable by Jury at Common Law. 1 *Lev.* 41. Whether a Woman is married, or she is the Wife of such a Person, is triable by a Jury: And in personal Actions it is right to lay the Matter upon

the Fact of the *Marriage*, to make it issuable and triable by a Jury; and not upon the Right of the *Marriage*, as in Real Actions and Appeals. 1 *Inst.* 112. 3 *Salk.* 64. If the *Marriage* of the Husband is in Question, *Marriage* in Right ought to be, and that shall be tried by Certificate. 1 *Leon.* 53. But if on Covenant to do such a Thing to another upon the *Marriage* of a Man's Daughter, the Party alledges that he did marry her, &c. This shall be tried *per Pais*; for the *Marriage* is only in Issue, and not whether he was lawfully espous'd. *Cro. Car.* 102. Conditions against *Marrying* generally, are void in Law: And if a Condition is annex'd to a Legacy; as where Money is given to a Woman, on Condition that she marries with Consent of such a Person, &c. such a Condition is void by the Ecclesiastical Law, because the *Marriage* ought to be free without Coercion; yet it is said it is not so at the Common Law. 2 *Nelf. Abr.* 1162. *Popb.* 58, 59. 2 *Lill.* 192. A Man contracts to marry with A. and after marries B. whereupon A. sues him in the Spiritual Court, and Sentence is given that he shall espouse A. and cohabit with her, which he doth, and they have Issue; such Issue shall inherit, though there was no Divorce from the *Marriage* of B. *Moor* 169. 1 *Danv. Abr.* 700. If Persons are married before the Age of Consent, they may at that Age disagree and marry again, without any Divorce: Though if they once give Consent when at Age, they cannot afterwards disagree; and where they are married before, there needeth not a new *Marriage*, if they agree at that Age. 1 *Inst.* 33. 2 *Inst.* 182. A Man is at the Age of Consent, and the Woman not; or the Woman of Age, and the Man not; he or she may disagree to the *Marriage* at the other's Coming of Age to consent, as well as the other, for there is a mutual Power of Disagreement. 3 *Inst.* 88. 6 *Rep.* 22. 1 *Danv. Abr.* 699. A Woman cannot disagree within her Age of twelve Years, till which the *Marriage* continues; and before her Disagreement is void. 1 *Danv.* 699. Though if a Man marries a Woman under that Age, and afterward she within her Age of Consent disagrees to the *Marriage*, and at her Age of twelve Years marries another; now the first *Marriage* is absolutely dissolv'd, so that he may take another Wife; for although the Disagreement within the Age of Consent was not sufficient, yet her Taking another Husband at the Age of Consent, and cohabiting with him, affirms the Disagreement, and so the first *Marriage* is avoided. *Moor* 575, 764. If after Disagreement of the Parties, at the Age of Consent they agree to the *Marriage*, and live together as Man and Wife, the *Marriage* hath Continuance, notwithstanding the former Disagreement: But if the Disagreement had been before the Ordinary, they could not afterwards agree again to make it a good *Marriage*. 1 *Danv. Abr.* 699. If either Party be under seven Years of Age, Contracts of *Marriage* are absolutely void: But *Marriages* of Princes made by the State in their Behalf, at any Age, are held good; though many of these Contracts have been broke through. *Swinb. Matrimon. Contr.* By the Laws of England, where a mutual Contract of *Marriage* in Words of present Time can be proved, the Ecclesiastical Courts will compel the Parties to solemnize their *Marriage*, altho' either or both of them are married elsewhere, and Children have been the Fruits of it; and the Children

dren of such *Marriages* are deem'd Bastards. *Read. Stat. 4 Vol. 192.* If the Contract is made in Words of future Time, and this is not carried into Execution by Consummation, &c. And the Parties marry elsewhere, the *Marriage* is good. A Contract of *Marriage* in the present Time is when it is said, *I marry You; You and I are Man and Wife, &c.* And such Contract is a *Marriage*, and not releasable; but a Contract of *Marriage* in future Time, which is, where it is said, *I will marry You, or I Promise to marry You, &c.* is releasable. *East. Term. 2 Ann. B. R. Holt Ch. Just.* held, that if a Contract was in Words of future Time, as *I will take Thee, &c.* and the Man does take her accordingly, and cohabit with her, 'tis a *Marriage*; and the Spiritual Court cannot punish for Fornication. *Mich. 5 Ann. 2 Salk. 477, 478.* And it has been adjudg'd on a Promise of future *Marriage*, if the Parties afterwards lie together, the Contract passes thereby into a real *Marriage* in Construction of Law. *Swinb. I will take, and I do take,* are Words of Contract in the future and present Time; and the Words, *I will take Thee from henceforth, &c.* are as much as, *I do take Thee,* and an absolute *Marriage*: If it is demanded of a Man, whether he will take the Woman to his Wife, and he answers, *I Will*; and it is demanded of the Woman, if she will take the Man to her Husband, and she answers, *I Will*; by this *Marriage*, and not Spousals, is said to be contracted. *Ibid.* It is not necessary in Contracts of *Marriage*, that both Parties use the same Words or Expressions; but if one Party says *I will marry Thee*, and the other answers, *I am content, &c.* hereby Spousals *de futuro* are contracted: And if a Man say to a Woman, *I Promise to marry Thee*, and if thou art content to marry me, Kifs me, or give me thy Hand, if the Woman do Kifs or give her Hand, Spousals are contracted. *Swinb. pag. 210.* Also if a Ring be solemnly delivered by a Man, and put on the Woman's Fourth Finger; if she accepts and wears it, without any Words, the Parties are presumed to have mutually consented to *Marriage*. *Ibid.* And where the Promise of the Man is prov'd, but no actual Promise on the Woman's Side; if she carry her self as one consenting and approving the Promise of the Man, it is Evidence that the Woman likewise promis'd. *Pasch. 3 Ann. 3 Salk. 16.* In Contracts it is not necessarily required, that the Parties contract Matrimony at the same Instant, by Answering one another; but if there be some Distance of Time betwixt the Promise of the one and the other, the Contract may be good, if the Party first Promising continues in the same Mind until the other Party hath promised: But where Persons are under Age to consent, this is not Matrimony, but Spousals, if it be either, because at their Ages they may dissent; and when Words of the Contract are only conditional on one Side, and on the other absolute; or if the Words are spoken in Jest, they are not obligatory. *Swinb.* If a Father or Mother promise *Marriage* for their Child, the Silence of the Child being present and hearing the same, hath been adjudg'd a Consent to the Contract. *Ibid. 69.* And Contracts of *Marriage* may be by absent Parties, by Mediation of their Proctors, by Messengers or Letters; when by Proxy it is by special Power of Attorney to contract Matrimony or Spousals for the Party in his Name, with such a Woman, &c. And the Proctor says, *I do contract Matrimony with Thee in the*

Name of such a One, whose Proctor I am, &c. or that *such a Man doth contract Matrimony with Thee by me his Proctor*; to which the Woman answers, *I do take him to my Husband, by Thee being his Proctor*; and both Parties are to continue in the same Mind until the Contract is finish'd, for before that the Proctor may be revoked, and then the Contract will be void. *Swinb.* A Promise or Contract of *Marriage*, by Messenger or Letter is good; unless it appear the Party dissents before the other consents thereto, and the mutual Consent of the other Party ought to be sent immediately, or shortly after, or it will not be good. *Ibid.*

By *Marriage* with a Woman, the Husband is intitled to all her Estate Real and Personal; and the Effects of *Marriage* are, that the Husband and Wife are accounted one Person, and he hath Power over her Person as well as Estate, &c. *1 Inst. 357.* On Promise of *Marriage*, Damages may be recovered, if either Party refuses to marry; but the Promise must be mutual on both Sides to ground the Action. *1 Salk. 24.* And by Statute 29 Car. 2. c. 3. no Action shall be brought on any Agreement or Consideration of *Marriage*, except it be put in Writing, and sign'd by the Party to be charged, &c. A Promise by Letter to give Money in *Marriage* with a Daughter is a sufficient Promise in Writing, within the Statute 29 Car. 2. 2 Ventr. 361. Where a Person promises to give his Daughter Wedding-Clothes on the *Marriage*, she shall have two Suits, one for the Wedding-Day, and the other for the Time of Feasting afterwards, according to the Dignity of the Person. *Cro. Car. 53.* Contracts and Bonds for Money to procure *Marriage* between others, have been held void in Equity. *3 Lev. 41.* And where-ever a Parent or Guardian insists upon private Gain, on the *Marriage* of Children, Covenant or Obligation for it shall be set aside in Chancery, as extorted from the Husband. *1 Salk. 156.* If a Man before *Marriage* gives Bond and Judgment to the Wife, to leave her worth 1000*l.* at his Death, in Consideration of a *Marriage-Portion*, this shall be made good out of the Husband's Estate, and be satisfied before any Debts; provided a Judgment be not obtained against him with her Consent. An intended Husband, in Consideration of a *Marriage*, covenanted with the intended Wife, that if she would marry him, and she should happen to survive him, he would leave her worth 500*l.* The *Marriage* took Effect, and the Wife survived, and he did not leave her worth that Money; she married a second Husband, and he brought an Action of Debt against the Administrator of the first Husband for the 500*l.* To which it was objected, that this being a Personal Action, it was suspended by the *Marriage*, which was a Release in Law, and so extinct; but the Plaintiff had Judgment, for the Action is not suspended, because during the Coverture there was no Cause of Action: Nothing in this Case is due whilst the Coverture takes Place, and the Debt arises by the Death of the Husband. *Palm. 99. 2 Sid. 58.* A Man and a Woman intending to intermarry, he entered into Articles with her before their *Marriage*, by which he agreed to settle such Lands upon her, &c. And in Pursuance of those Articles she married him; if he dies before any Settlement made, the Widow in Equity shall have the Articles executed, and had the Lands for her Life, &c. *2 Ventr. 243.* Though a Term to raise Daughters Por-

tions,

tions, in a *Marriage-Settlement* is limited in Remainder, to commence after the Death of the Father generally; or if it be in Case he die without Issue Male of his Wife, and she dies first without such Issue, leaving a Daughter, &c. In Equity the Term is saleable during the Lifetime of the Father, when the Daughter is eighteen Years old, or married; because every Thing is happened and past which is contingent, for 'tis impossible there should be Issue Male of the Wife when she is dead; and as to the Father's Death, that is not contingent, but certain, by Reason all Men must die: But if there is a Contingency not yet happened, as if the Daughters are to be unmarried, or not provided for at the Time of the Father's Death, &c. it is otherwise. 1 Salk. 159. Upon *Marriages*, Settlements are usually made of the Estate of the Husband, &c. To the Husband for Life, after his Death to the Wife for Life for her *Jointure*, and to their Issue in Remainder, with Limitations to Trustees to support contingent Uses, and Leases to Trustees for Terms of Years, to raise Daughters Portions, &c. And they are made several Ways, by *Lease and Release*, *Fine and Recovery*, *Covenant to stand seised to Uses*, &c. *Accomp. Conv.* 143. These Settlements the Law is ever careful to preserve, especially that Part of them which relates to the Wife; of which she may not be dejected, but by her own *Fine*: And if a Woman about to marry, to prevent her Husband's Disposal of her Land, conveys it to Friends in Trust, and they with the Husband after *Marriage* make Sale of the same; the Court of Chancery will decree the Purchaser to reconvey to her. *Totbil* 43. *Marriage* is dissolved by the natural Death of the Husband or Wife, or by Divorce; and where a *Marriage* is dissolv'd by the Death of the Husband, Dower, &c. survives to the Wife, when no Settlement is made of the Husband's Lands, &c. See *Baron and Feme*.

Form of a Marriage-Deed of Settlement of Lands.

THIS Indenture tripartite, made the Day and Year, &c. Between A. B. of the first Part, C. D. E. F. and G. H. of the second Part, and E. D. Daughter of the said, &c. of the third Part, Witnesseth, that the said A. B. for and in Consideration of a Marriage intended (by God's Permission) shortly to be had and solemnized between the said A. B. and the said E. D. and of the Sum of 5000 l. to be had and received by the said A. B. as a Marriage-Portion with the said E. and that a competent *Jointure* may be had, made, and provided for the said E. D. (in Case the said Marriage shall take Effect) and for the Settling and Assuring of the Messuages, Lands, Tenements and Hereditaments herein after mentioned, to and upon the several Uses, Intents and Purposes herein after limited and declared, pursuant to the Agreement made upon the Contract of the said intended Marriage; he the said A. B. hath granted, aliened, released and confirmed, and by these Presents doth grant, alien, release and confirm unto the said C. D. E. F. and G. H. (in their actual Possession now being by Virtue of a Bargain and Sale, &c.) and their Heirs, All that Capital Messuage commonly called, &c. and all those Messuages or Tenements, &c. And all other the Messuages, Lands, Tenements and Hereditaments of the said A. B. situate, lying and being in, &c. in the County of, &c. And all Houses, Buildings, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Ways, Waters, Water-

courses, &c. And also the Reversion and Reversions, Remainder and Remainders, &c. And all the Estate, &c. of him the said A. B. of, in, and to the same Premises, and of, in, and to every Part and Parcel thereof, with the Appurtenances. To have and to hold all and singular the said Messuages, Lands, Tenements and Hereditaments above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the said C. D. E. F. and G. H. their Heirs and Assigns, to and for the several Uses, Intents, Trusts, and Purposes herein after mentioned, limited, expressed and declared, (that is to say) To the Use and Behoof of the said A. B. and his Heirs, until the Marriage between him and the said E. D. his intended Wife, shall be had and solemnized; and from and after the Solemnization thereof, to the Use and Behoof of the said A. B. and his Assigns, for and during the Term of his natural Life, without Impeachment of Waste; and from and after the Determination of that Estate, by Forfeiture, or otherwise, to the Use and Behoof of the said C. D. E. F. and G. H. and their Heirs, for and during the natural Life of the said A. B. In Trust; to preserve and support the contingent Remainders herein-after limited, from being defeated and destroyed, and for that Purpose to make Entries, and bring Actions, as the Case shall require; yet nevertheless in Trust, to permit and suffer the said A. B. and his Assigns, to receive and take the Rents, Issues, and Profits thereof, to his and their own proper Use and Benefit during his natural Life; and from and after the Decease of the said A. B. to the Use and Behoof of the said E. D. (intended Wife of the said A. B.) and her Assigns, for and during the Term of her natural Life, for her *Jointure*, and in full Satisfaction and Bar of her Dower or Thirds, which she may claim to have in any Lands, Tenements or Hereditaments, whereof or wherein he the said A. B. shall at any Time during his Life, be seised of any Estate of Inheritance; and from and after the Decease of the Survivor of them the said A. B. and E. his intended Wife, to the Use and Behoof of the Heirs Males of the Body of the said A. B. on the Body of the said E. D. lawfully to be begotten; (or to the Use and Behoof of the first Son of the Body of the said A. B. &c. and the Heirs Males of the Body of such first Son lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the second Son, &c. and so to the Third and Fourth; and then to the Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Son and Sons, and all and every other Son and Sons, severally and successively in Remainder one after another) And for Default of such Issue, to the Use and Behoof of the said C. D. E. F. and G. H. their Executors, Administrators and Assigns, for and during the Term of 500 Years thence next following, and fully to be compleat and ended, upon the Trusts, and to and for the Ends, Intents and Purposes herein after declared, of and concerning the same Term; and from and after the Expiration, or other sooner Determination of that Term, to the Use and Behoof of the said A. B. his Heirs and Assigns for ever. Provided always, and it is hereby declared and agreed, by and between the said Parties to these Presents, that the said Term of 500 Years so limited to them the said C. D. E. F. and G. H. their Executors, Administrators and Assigns, as aforesaid, is upon this Condition; That if the said A. B. shall happen to die without Issue Male, by him begotten on the Body of the said E. or shall leave Issue Male, and such Issue Male shall happen to die before he shall attain the Age of twenty-one Years, without Issue Male; and that in either of the said Cases, there shall happen to be one or more Daughter or Daughters of their Bodies begotten, that then, and in such Case, if the said A. B. his Heirs

or Assigns do, and shall well and truly pay, or cause to be paid to such Daughter or Daughters respectively, at her and their respective Ages of twenty-one Years or Days of Marriage, the several Portions following (that is to say) if it shall happen there shall be but one such Daughter, then the Sum of 5000 l. for the Portion of such Daughter, to be paid to her at the Age of twenty-one Years, or Day of Marriage, which shall first happen, with Interest in the mean Time after the Rate of 5 l. per Cent. per Annum; and if it shall happen that there shall be Two or more such Daughters, then the Sum of 6000 l. &c. for the Portion of such Two or more Daughters, to be equally divided among them, Share and Share alike, and to be paid to them respectively at their respective Ages of twenty-one Years or Days of Marriage, which shall first happen, with Interest therefore in the mean Time, &c. And if any such Daughter or Daughters shall happen to die unmarried, before her or their Portion or Portions shall become payable as aforesaid, then the Portion or Portions of her or them so Dying, shall go and be paid to the Survivors or Survivor of them, equally to be divided amongst them, Share and Share alike, (to be paid at the same Time as the original Portions should or ought to become payable, as aforesaid, in Case they had been Living) so as no one such Daughter shall have for her Portion by Survivorship, or otherwise, by Virtue of the said Term of 500 Years, above the Sum of 5000 l. And in Case there shall be no such Daughter who shall live to be married, or attain the Age of twenty-one Years, that then, and in either of the said Cases so happening, the said Term shall cease, determine, and be void, any Thing herein contained to the contrary notwithstanding. Provided also, and upon this further Condition, that in Case the said A. B. shall happen to die without such Issue Male as aforesaid, and shall happen to leave one or more Daughter or Daughters, as aforesaid, and such Daughter or Daughters, or either of them, shall happen to marry in the Life-time of the said A. B. and E. his intended Wife, or either of them, or in the Life-time of the said Trustees, or any or either of them, without the Consent of such of them the said A. B. and E. and of the said Trustees, or the greater Number of them then Living, signed and declared under their Hands; that then the Portion and Portions hereby intended for such Daughter and Daughters so marrying respectively, shall go and be paid to such other Daughter or Daughters, who shall marry with such Consent as aforesaid; and in Case all such Daughters shall happen to marry without such Consent as aforesaid, that then the said Term of 500 Years shall cease and be void. Provided also, and it is hereby further declared and agreed, that it shall and may be lawful to and for him the said A. B. during his Life, and after his Death for the said E. his intended Wife, during her Life, in Case the said intended Marriage shall take Effect, by any Writing or Writings under his or her Hand and Seal respectively, attested by Two or more credible Witnesses, to make any Lease or Leases, Demise or Grant of all or any Part or Parts of the said Messuages and Lands to any Person or Persons whatsoever, for the Term of twenty-one Years, or for any Term or Number of Years not exceeding twenty-one Years, so as such Leases, Demises or Grants for Years, be made to commence and take Effect in Possession within one Year after the Date thereof; and so as upon all and every such Lease or Leases, Demises or Grants for Years to be made by the said A. B. and E. his intended Wife respectively, there be reserved payable yearly during the Continuance thereof, the best and most improv'd yearly Rents, which at the Time of Making thereof, can or may be gotten for the same; and so that in every such Lease there be

contained a Clause of Re-entry for Non-payment of the Rent or Rents thereby reserv'd; and so as the Lessee and Lessees to whom such Lease and Leases shall be made, do seal and deliver Counterparts of such Lease and Leases. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant, to and with the said C. D. E. F. and G. H. their Heirs and Assigns, that the said Messuages, Lands and Premises above-mentioned, shall and may from henceforth, for ever hereafter, be, remain and continue, to, for, and upon the several Uses, Intents, Trusts and Purposes, and under and subject to the several Limitations and Agreements, before-mentioned and expressed concerning the same, according to the true Intent and Meaning of these Presents. And also, that he the said A. B. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Messuages, Lands and Premises above-mentioned, or any Part thereof, by, from, or under him, them, or any of them, shall and will at all Times hereafter, upon the reasonable Request of the said C. D. E. F. and G. H. their Heirs and Assigns, make, do and execute, or cause or procure to be made, &c. all and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect Granting and Assuring of all and singular the said Messuages, Lands and Premises above-mentioned, with the Appurtenances, to and for the several Uses, Intents and Purposes above declared, limited and appointed, and according to the true Intent and Meaning of these Presents, as by the said C. D. E. F. &c. and their Heirs, or their, or any of their Counsel learned in the Law shall be reasonably devised or advised and required. And further, it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that all and every Fine and Fines, and also all and every Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever already had, made, levied, suffered, executed or acknowledged, or at any Time hereafter to be had, made, &c. of the said Messuages, Lands and Premises above-mentioned, or any Part thereof, either alone or jointly with any other Lands, Tenements or Hereditaments, by or between the said Parties to these Presents, or by or between them or any of them, and any other Person or Persons, as for and concerning all and singular the said Messuages, Lands and Premises above-mentioned, and every Part thereof with the Appurtenances, shall be and enure, and shall be adjudg'd, esteem'd and taken to be and enure, to and for the several Uses, Intents and Purposes above-mentioned, limited, expressed and declared, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent or Purpose whatsoever. In Witnesses, &c.

By Statute, to steal or take away any Woman, having an Estate in Lands or Goods, or that is Heir apparent, against her Will, and marry or defile her, is Felony. 3 H. 7. c. 2. And if any Persons married, do marry any other Person, the former Husband or Wife being alive, it is Felony: But where a Husband or Wife are abroad beyond Sea, &c. seven Years, the one not knowing the other to be Living; or there is a Divorce of the Husband and Wife, &c. they are excepted out of the Act 1 Jac. 1. c. 11. If the first Marriage were beyond Sea, and the later in England, the Party may be indicted for it here; the later Marriage making the Crime: Though if the

the first Marriage be in England, and the later beyond Sea, the Offender can't be indicted there. 1 Sid. 171. Kel. 80. See *Forcible Marriage*, &c.

Marshal, (*Marescallus*) Is a French Word, signifying as much as *Tribunus militum*, with the antient Romans; and *Marescallus* may also come from the German *Marschalk*, i. e. *Equitum Magister*, which *Hotoman* in his Feuds under verb. *Marschalkus* derives from the old Word *March*, which signifies a Horse; and others make it of the Sax. *Mar*, i. *Equus*, & *Scalch*, *Præfectus*. In France there are *Marshals of the Camp*, called *Marshals of France*; of the Nobility and Diets in Poland; and in divers Countries, *Provost Marshals* to punish Robbers, &c. With us there are several Officers of this Name; the Chief whereof is the *Earl Marshal of England*, mentioned in the Stat. 1 Hen. 4. c. 7. and 13 R. 2. c. 2. &c. whose Office consists especially in Matters of War and Arms, as well in this Kingdom as in other Countries; and this Office is very antient, having formerly greater Power annex'd to it than now; it has been long hereditary in the Family of the Duke of Norfolk. The next is the *Marshal of the King's House*, otherwise called *Knight Marshal*; and his Authority is exercised in the King's Palace, in hearing and determining all Pleas of the Crown, and Suits between those of the King's House, and other Persons within the Verge, and punishing Faults committed there, &c. 18 Ed. 3. c. 7. 27 Ed. 3. Stat. 2. c. 6. and 2 H. 4. c. 13. *Crompt. Jurisd.* 192. *Fleta* mentions a *Marshal of the King's Hall*, to whom it belongs, when the Tables are prepared, to call out those of the Household and Strangers, according to their Rank and Quality, and properly place them. *Fleta*, lib. 2. cap. 15. There are other inferior Officers called *Marshals*, as *Marshal of the Justices in Eyre*. Anno 3 Ed. 1. cap. 19. *Marshal of the King's Bench*, Stat. 5 Ed. 3. c. 8. who hath the Custody of the Prison, called the *King's Bench Prison* in *Southwark*: This Officer gives Attendance upon the Court, and takes into his Custody all Prisoners committed by the Court; he is fineable for his Absence, and his Non-attendance is a Forfeiture of his Office. *Hill*. 21 & 22 Car. 2. There is also a *Marshal of the Exchequer*, to whom that Court commits the Custody of the King's Debtors, for securing the Debts; he likewise assigns Sheriffs, Customers, and Collectors, their Auditors, before whom they shall account. Stat. 51 Hen. 3. 5.

Marshallsey, (*Marescallia*) Is the Court or Seat of the *Marshal of the King's House*: And it is used for the Prison in *Southwark*, which is so called; the Reason whereof may be, because the *Marshal* was wont to sit there in Judgment. Stat. 9 R. 2. c. 5. and 2 H. 4. c. 23. *King Char. 1.* by Letters Patent under the Great Seal, erected a Court by the Name of *Curia Hospitalii Domini Regis*, &c. which takes Cognisance more at large of all Causes than the *Marshallsey* could; of which the *Knight Marshal* or his Deputy is Judge. See *Court of Marshallsey*.

Marshes and Fens, Laws concerning them. *Vide Fens*.

Martial Law, Is the Law of War, that depends upon the just but arbitrary Power and Pleasure of the King, or his Lieutenant; for though the King doth not generally make any Laws but by common Consent in Parliament, yet in Time of War, by Reason of the Necessity of it to guard against Dangers which often arise, he useth absolute Power, so that his Word is a Law.

Smith de Repub. Angl. lib. 2. cap. 4. Alien Enemies invading the Kingdom, &c. are to be dealt with by *Martial Law*. H. P. C. 10, 15. But Persons are not to be put to Death by *Martial Law*, in Time of Peace; except it be Soldiers for Desertion, &c. tried by *Court Martial*, by Statutes 4 & 5 W. & M. 7 Ann. &c. See *Law of Arms*.

Martyrology, (*Martyrologium*) A Book of *Martyrs*; also a Calendar or Register kept in Religious Houses, wherein are set down the Donations of their Benefactors, and the Days of their Death, that upon every Anniversary they may commemorate and pray for them: And several Benefactors have made it a Condition of their Beneficence, to be inserted in the *Martyrology*. *Paroch. Antiq.* 189.

Masagium, Antiently used for *Messuagium*, a Messuage. — *Et unum Masagium in Villa de M.* &c. Pat. 16 R. 2.

Masser, A Priest that says Mass. *Blount*.

Massey, (*Massey*) In former Times secular Priests, to distinguish them from the Regulars, were called *Massey-Priests*; and they were to officiate at the Mass, or in the ordinary Service of the Church: Hence *Messe-Preost* in many of our Saxon Canons, for the Parochial Minister; who was likewise sometimes called *Messe Thegne*, because the Dignity of a Priest in many Cases was thought equal to that of a Thein or Lay Lord. But afterwards the Word *Massey-Priest* was restrained to Stipendiaries retain'd in Chantryes, or at particular Altars, to say so many Masses for the Souls of the Dead.

Mast, (*Glans*, *Pessona*) The Acron and Nuts of the Oak, or other large Tree. — *Glandis nomine continentur glans, castanea, fagina, ficus & nucus, & alia quæque qua edi & pasci poterunt præter Herbam*. *Bract. lib. 4. Tempus Pessonæ* often occurs for *Mast-time*, or the Season when *Mast* is ripe; which in Norfolk they call *Shacking-time*. — *Quod habeat decem Porcos in Tempore de Pesson. in Bosco meo*, &c. *Mon. Angl. Tom. 2. pag. 113, 231.* There is a Tree called *Mast-Tree*; and a *Mast* or Sail of a Ship.

Master, (*Magister*) Signifies in general a Governor, Teacher, &c. And also in many Cases an Officer. See *Servant*.

Master of the Armour, (*Magister Armorum & Armatura Regis*) Is an Officer that hath the Care and Oversight of his Majesty's Arms and Armour, mentioned in the Stat. 39 Eliz. c. 7.

Master of the Ceremonies, (*Magister Admissio-num*) Is one that receives and conducts Ambassadors to Audience of the King, &c. This Office was instituted by King *James 1.* for the more magnificent Reception of Ambassadors, and Strangers of the greatest Quality.

Master of Chancery, (*Magister Cancellarie*) In the Chancery there are *Masters*, who are Assistants to the Lord Chancellor, or Lord Keeper, and Master of the Rolls: Of these there are some Ordinary and some Extraordinary; the *Masters* in Ordinary are Twelve in Number, (whereof the *Master of the Rolls* is accounted the Chief) and some sit in Court every Day during the Term, and have referred to them interlocutory Orders for stating Accounts, computing Damages, and the like; and they also administer Oaths, take Affidavits, and Acknowledgments of Deeds and Recognizances: The extraordinary *Masters* are appointed to act in the Country, in the several Counties of England, beyond ten Miles Distance from London; by taking Affidavits, Recognizances,

nizances, Acknowledgment of Deeds, &c. for the Ease of the Suitors of the Court. By the Stat. 13 Car. 2. a publick Office was ordained to be kept near the Rolls, for the *Masters in Chancery*; in which they or some of them are constantly to attend, for the Administ'ring of Oaths, Caption of Deeds, and Dispatch of other Business: And their Fees for taking Affidavits, Acknowledgment of Deeds, Exemplifications, Reports, Certificates, &c. are ascertain'd by that Act; and to take more, incurs Disability for such *Master* to execute his Office, and a Forfeiture of 100*l.* &c.

Master of the Court of Wards and Liveries, Was the Chief Officer of that Court, assigned by the King; to whose Custody the Seal of the Court was delivered, &c. as appears by the Statute 33 H. 8. c. 33. But as this Court was abolished by Stat. 12 Car. 2. c. 24. This Office of Course dropp'd with it.

Master of the Faculties, (*Magister Facultatum*) Is an Officer under the Archbishop of Canterbury, who grants Licenses and Dispensations, &c. 22 & 23 Car. 2.

Master of the Horse, Is he that hath the Ordering and Government of the King's Stables, and of all Horses, Racers, and Breeds of Horses belonging to his Majesty: He has the Charge of all Revenues appropriated for defraying the Expence of the King's Breed of Horses; of the Stable, Litters, Sumpter Horses, Coaches, &c. and has Power over the Equeries and Pages, Grooms, Coachmen, Farriers, Smiths, Sadlers, and all other Artificers working to the King's Stables, to whom he administers an Oath to be true and faithful: But the Accounts of the Stables, of Liveries, Wages, &c. are kept by the *Auener*; and by him brought to be passed and allowed by the Court of *Green-Cloth*. The Office of *Master of the Horse* is of high Account, and always bestowed upon some great Noblemen; and this Officer only has the Privilege of making Use of any Horses, Footmen, or Pages belonging to the King's Stables: At any solemn Cavalcade he rides next to the King, with a led Horse of State. He is the Third great Officer of the King's Household; being next to the Lord Steward and Lord Chamberlain; and is mentioned in the Statute 39 Eliz. c. 7. and 1 Ed. 6. c. 5.

Master of the Jewel Office, An Officer of the King's Household, having the Charge of all Plate used for the King's or Queen's Table, or by any great Officer at Court; and also of all the Royal Plate remaining in the Tower of London, of Chains and Jewels not fixed to any Garment. 39 Eliz. c. 7.

Master of the Household, (*Magister Hospitalis Regis*) Otherwise called *Grand Master of the King's Household*, is now styled *Lord Steward of the Household*, which Title this Officer hath bore ever since Anno 32 H. 8. But under him there is a Principal Officer still called *Master of the Household*, who surveys the Accounts, and has great Authority.

Master of the King's Musters, Is a Martial Officer in the King's Armies, whose Office it is to see that the Forces are compleat, well armed and trained; and to prevent Frauds, which would otherwise Waste the Prince's Treasure, and weaken the Forces, &c.

Master of the Mint, Is an Officer that receives the Silver of the Goldsmiths, and pays them for it, and oversees every Thing belonging

to the Mint; he is at this Day called *Warden of the Mint*.

Master of the Ordnance, A great Officer, to whose Care all the King's Ordnance and Artillery is committed. 39 Eliz. c. 7.

Master of the Posts, Was an Officer of the King's Court, that had the Appointing, Placing, and Displacing of all such through England, as provided *Post-Horses*, for the speedy Passing of the King's Messages, Letters, Pacquets, and other Business; and was to see that they kept a certain Number of good Horses of their own, and upon Occasion that they provided others for the Furnishing of those Persons which had a Warrant from him to take and use *Post-Horses*, either from or to the Seas, or other Places within the Realm: He likewise paid them their Wages, and settled their Allowances, &c. 2 Ed. 6. c. 3. The Stat. 12 Car. 2. c. 34. for erecting one *General Post-Office* in London, ordains that there shall be a *Master of the Post-Office*, appointed by the King by Letters-Patent, (and of late this Office is executed by Two jointly) who and his Agents, and the Persons employed by them, have the Sending and Carriage of all Letters, at certain Rates prescribed; and the *Post-master* is to continue constant Posts, and provide Persons riding Post, with *Post-Horses*, under Penalties, taking 3*d.* per Mile for a Horse, and 4*d.* for the Guide, every Stage, &c. Vide Stat. 9 Ann. c. 10. See *Post*.

Master of the Revels, An Officer to regulate and oversee the Diversions of Dancing and Masking, used in the Palaces of the King, Inns of Court, &c. and in the King's Court is under the Lord Chamberlain.

Master of the Rolls, (*Magister Rotulorum*) Is an Assistant to the Lord Chancellor in the High Court of Chancery, and in his Absence heareth Causes there, and also at the Chapel of the Rolls, and makes Orders and Decrees. *Crompt. Jurisd.* 41. His Title in his Patent is, *Clericus parva Baga, Custos Rotulorum*, &c. And he has the Keeping of the Rolls of all Patents and Grants which pass the Great Seal, and the Records of the Chancery. He is called *Clerk of the Rolls*. Stat. 12 R. 2. c. 2. and in *Fortescue*, c. 24. and no where *Master of the Rolls* until the 11 H. 7. c. 20. In which Respect Sir *Tho. Smith* says, he may not unfitly be styled *Custos Archivorum*. In his Disposition are the Offices of the Six Clerks, and the Clerks of the Petty Bag, Examiners of the Court, and Clerks of the Chapel. 14 & 15 H. 8. c. 1.

Master of the Temple. The Founder of the Order of the *Knights Templars*, and his Successors, were called *Magni Templi Magistri*; and probably from hence he was the Spiritual Guide and Director of the Temple. The *Master of the Temple* here was summoned to Parliament Anno 49 H. 3. and the Chief Minister of the Temple Church in London is now called *Master of the Temple*. Dugd. Warw. 706.

Master of the Wardrobe, (*Magister Garderobe*) Is a considerable Officer at Court, who has the Charge and Custody of all former Kings and Queens antient Robes remaining in the Tower of London; and all Hangings, Bedding, &c. for the King's Houses: He hath also the Charge and Delivery out of all Velvet or Scarlet Cloth allow'd for Liveries, &c. And of this Officer Mention is made in the Stat. 39 Eliz. c. 7. The Lord Chamberlain has the Oversight of the Officers of the Wardrobe.

Massinus.

Mastinus, A great Dog, called a Mastiff. — *Canes & Mastini per omnes Forestas Anglia occiduntur.* Knight, lib. 2. cap. 15.

Masure, Is an old decay'd House or Wall, &c. *Domestd.* And *Masure Terra*, Fr. *Masure de Terre*, signifies a Quantity of Ground; but with us it is taken for *Domicilium cum fundo*, vel *pro fundo cum Domicilio competenti*.

Materia, A great Beam, or Timber proper for Building. *Dedi illis Materiam & Ligna ad omnia necessaria sua, & ad Domos suas Adificand.* Mon. Angl. Tom. 1. pag. 821.

Matricula, A Register; as in the antient Church, there was *Matricula Clericorum*, which was a List or Catalogue of the officiating Clergy; and *Matricula Pauperum*, a List of the Poor to be relieved: Hence to be entered in the Register of the Universities is to be *matriculated*, &c.

Matrix Ecclesia, The Mother Church; and is either a Cathedral, in Respect of the Parochial Churches within the same Diocese; or a Parochial Church, with Respect to the Chapels depending on it, and to which the People resort for Sacraments and Burials. *Leg. H. 1. c. 19.*

Matter of Deed, and **Matter of Record**, Are often mentioned in Law-Proceedings, and differ thus: The first seems to be nothing else but some Truth or *Matter of Fact* to be proved by some Specialty, and not by any Record; and the latter is that which may be proved by some Record: For Example; If a Man be sued to an Exigent, during the Time he was abroad in the Service of the King, &c. this is *Matter in Deed*, and he that will alledge it for himself, must come before the *Scire facias* for Execution be awarded against him; but after that, nothing will serve but *Matter of Record*, that is, some Error in the Process appearing upon the Record. There is also a Difference between *Matter of Record* and *Matter in Deed*, and *Nude Matter*; the last being a naked Allegation of a Thing done, to be proved only by Witnesses, and not either by *Record* or *Specialty*. *Kitch. 216.*

Maugre, (From the Fr. *Mal*, and *gre*, i. e. *Animo iniquo*) Signifies as much as in Despight of one's Teeth; as where it is said, That the Wife shall be remitted, *Maugre* the Husband, that is, whether the Husband will or no. *Litt. Sect. 672.*

Maum, A soft brittle Stone, in some Parts of Oxfordshire; and in Northumberland they use the Word *Maum* for soft and mellow. *Plot's Nat. Hist. Oxfordsh. pag. 69.*

Maud, A Kind of great Basket or Hamper, containing eight Bales, or two Fats: It is commonly a Quantity of eight Bales of unbound Books, each Bale having One thousand Pounds weight. *Book Rates, pag. 3.*

Maundy Thursday, The Thursday before Easter: See *Mandati Dies*.

Maxims in Law, Are the Foundations of it; or certain Rules or Positions, which are the Conclusions of Reason, and ought not at any Time to be impeached. They are Principles and Authorities, and Part of the general Customs or Common Law of the Land; and are of the same Strength as Acts of Parliament, when the Judges have determined what is a *Maxim*; which belongs to the Judges, and not a Jury. *Terms de Ley 438. Doct. & Stud. Dial. 1. c. 8.* *Maxims of the Law* are holden for Law; and all other Cases that may be applied to them, shall be taken for granted. *1 Inst. 11. & Rep.* The *Maxims* in our Books, which are many and various, are such as

the following, viz. It is a Maxim, That Land shall descend from the Father to the Son, &c. That if a Man have two Sons by divers Venters, and the one purchase Lands and dies without Issue, the other shall never be his Heir, &c. That an Obligation, or other Matter in Writing, cannot be dissolved by an Agreement by Word, without Writing. *Co. Litt. 11, 141.*

Mayor, (*Præfectus urbis*, antiently *Meyr*, comes from the Brit. *Miret*, i. e. *Custodire*, or from the old English Word *Maier*, viz. *Potestas*, and not from the Lat. *Major*) Is the Chief Governor or Magistrate of a City or Town; as the Lord Mayor of London, the Mayor of Southampton, &c. King Rich. 1. Anno 1189. changed the Bailiffs of London into a Mayor; and from that Example, King John made the Bailiff of King's Lynn a Mayor, Anno 1204. Though the famous City of Norwich obtained not this Title for its Chief Magistrate, till the seventh Year of K. Hen. 5. Anno 1419. Since which, there are few Towns of Note, but have had a Mayor for Government. *Spelm. Gloss.* Mayors of Corporations are Justices of Peace *pro Tempore*; and they are mentioned in several Statutes; but no Person shall bear any Office of Magistracy concerning the Government of any Town, Corporation, &c. that hath not received the Sacrament, according to the Church of England, within one Year before his Election; and who shall not take the Oaths of Supremacy, &c. *Stat. 13 Car. 2. cap. 1.* And by this Statute, Mayors, &c. were likewise to subscribe a Declaration, that there lay no Obligation upon them from the Oath commonly called the solemn League and Covenant; but this is repealed by a late Statute 5 Geo. The 10 *Ann. c. 2.* prohibited Mayors and Officers of Corporations from going to Conventicles, under the Penalty of 40 l. &c. But this is altered by the 5 Geo. cap. 6. though the Gown, Mace, or other Ensigns of Magistracy, may not be worn or carried to a Conventicle, on Pain of Disability to enjoy any Office, &c. If any one intrudes into, and thereupon executes the Office of Mayor, a *Quo Warranto* Information may be brought against him; and he shall be ousted and fined, &c. And no Person who hath been or shall be in an annual Office in a Corporation for one Year, shall be chosen into the same Office the next Year; and obstructing the Choice of a Successor incurs a Penalty of 100 l. *Stat. 9 Ann. c. 20.* Also where Default is made in the Election of a Mayor of a Corporation, the Court of King's Bench may compel the Electors to chuse one, &c. by Writ of *Mandamus*. *11 Geo. cap. 4.* The Authority of Mayors is contained in the following Particulars: By Stat. 23 Hen. 8. Mayors, &c. have Power to set the Price of Ale and Beer: And they are authorized to convict Persons selling Ale without Licence; and also to levy the Penalties on the Offenders by Distress, &c. 3 Car. 1. And they are to cause Quart and Pint Pors for the Selling of Ale, to be examined whether they hold their full Measure; and to mark them, under the Penalty of 5 l. *11 & 12 W. 3.* Mayors, Bailiffs, and Lords of Leets, are to regulate the Assize of Bread, and examine into the Goodness thereof; and if Bakers make unlawful Bread, they may give it to the Poor, and pillory the Offenders, &c. 52 Hen. 3. And the 8 *Ann.* and 1 *Geo.* directs that Mayors and Chief Magistrates of Towns, &c. may in the Day-time enter into any House, Shop, Bake-house or Ware-house, of any Baker or Seller of Bread, to search for, view, and try

all or any the Bread there found; and if the Bread be wanting in the Goodness, deficient in Baking, under Weight, or not truly mark'd; or shall consist of any other Sort than what is allowed, the same Bread shall be seized and distributed to the Poor: And the former Statute imposes a Penalty of 40 s. for Want of Weight, or not being mark'd as appointed, &c. but this is made 5 s. for every Ounce wanting in Weight, and 2 s. 6 d. if under an Ounce, (Complaint being made, and the Bread weighed before a Magistrate within twenty-four Hours) by the 1 Geo. Mayors, &c. are empowered to make Enquiry into Offences committed against the Stat. 1 Eliz. which requires that the Common Prayer be read in Churches; and that Churchwardens do their Duty in presenting the Names of such Persons as absent themselves from Church on Sundays, &c. Head Officers of Corporations are to appoint and swear Overseers or Searchers to examine into Defects of Northern Cloth, &c. and the Overseers shall fix a Seal of Lead to Cloths, expressing the Length and Breadth; and if they find any faulty, or sealed with a false Seal, &c. they are to present the same at the next Quarter-Sessions: Mayors, &c. neglecting their Duty, are liable to a Penalty of 5 l. 39 Eliz. cap. 20. Chief Magistrates of Ports, where Goods are conveyed away, which are liable to Customs, before Entry made and the Duties agreed, are to grant their Warrants for the Apprehension of the Offender, &c. 12 Car. 2. By 23 El. Mayors, &c. may call before them and examine Dyers, suspected to use Logwood in Dying; and if they find Cause, may bind them over to the Quarter-Sessions, where on Conviction, they are liable to a Forfeiture of 20 l. But see the Stat. 14 Car. 2. cap. 11. by which Logwood is permitted to be imported. Mayors, and Head Officers of Corporations, are to punish Drunkenness, by imposing a Fine of 5 s. on View, Confession, or Proof by one Witness; or cause the Offender to be put in the Stocks for six Hours. 1, 4 & 21 Jac. 1. And Persons sitting tipling in an Alehouse, Inn, &c. are liable to Punishment by Mayors, who may levy 3 s. 4 d. on such Offenders, for every Offence, for the Use of the Poor, or cause them to be set in the Stocks four Hours: And the Alehouse-keepers, &c. suffering Tipling in their Houses, are subject to a Penalty of 10 s. Ibid. Head Officers and Justices of Peace in Corporations, may inquire of Forcible Entries, commit the Offenders, and cause the Tenements to be seized, &c. within their Franchises, in like Manner as Justices of Peace in the County. 8 H. 6. Mayors, &c. shall inquire into unlawful Gaming, against the Stat. 33 Hen. 8. They are to search Places suspected to be Gaming-houses, and levy Penalties, &c. and they have Power to commit Persons playing at unlawful Games. Horses stolen, found in a Corporation, may be redeemed by the Owner, making Proof before the Head Officer of the Corporation, of the Property, &c. 31 El. Mayors and Head Officers in Corporate and Market-Towns, and Lords of Liberties and their Stewards, are to appoint and swear two skilful Persons yearly, to be Searchers and Sealers of Leather; and they are to appoint Triers of insufficient Leather, and of Leather wares: Searchers not doing their Duty, to forfeit 40 s. and Triers 5 l. 1 Jac. 1. cap. 22. Persons robbing Orchards, Hedge-breakers, &c. are punishable by Mayors; and a Person on Conviction by the Oath

of one Witness, shall pay to the Person injured such Damage as the Mayor, &c. shall think fit, or be whipp'd. 43 Eliz. Mayors, &c. on Receipt of Precepts from Sheriffs, (when Writs are issued for Elections) requiring them to chuse Burgeses or Members of Parliament, by the Citizens, &c. are to proceed to Election; and make Returns by Indenture between them and the Electors; and making a false Return, shall forfeit 40 l. to the King, and the like Sum to the Party chosen not returned, &c. 23 H. 6. In Time of Sickness, a Tax may be laid on Inhabitants of Corporations, for relieving such Persons as have the Plague, by Mayors, &c. who are to appoint Searchers and Buriers of the Dead: And if any infected Persons shall go abroad with Sores upon them, after a Head Officer hath commanded them to keep Home, it is Felony; and if they have no Sores about them, they are punishable as Vagrants. 1 Jac. 1. The Stat. 43 Eliz. which directs, that the Father, Grandfather, Mother, Grandmother, and Children, of every poor Person, shall be assessed towards their Relief by Justices, &c. and which empowers Overseers of the Poor, &c. to place forth poor Apprentices, and sets forth the Office of Overseers; gives like Authority to Head Officers in Corporate Towns, as Justices of Peace have in their Counties; which said Justices are not to intermeddle in Corporations for the Execution of this Law. Mayors, Bailiffs, and other Head Officers of Corporate Towns, &c. are to make Proclamation for Rioters to disperse, as follows: Our Sovereign Lord the King charges and commands all Persons assembled, immediately to disperse themselves, and peaceably depart to their Habitations, upon Pain of Imprisonment, &c. And if the Rioters being Twelve in Number, do not disperse within an Hour after, it is Felony without Benefit of Clergy, &c. 1 Geo. Matters relating to Servants, and Apprentices, may be determined by Mayors; who have Power to compel Persons to go to Service, &c. 5 Eliz. Mayors may arrest Soldiers departing without Licence: And they are to be present at Musters; quarter and billet Soldiers, &c. 18 Hen. 6. 13 & 14 W. 3. 1 Geo. Persons using Games on a Sunday, forfeit 3 s. 4 d. to the Use of the Poor: Carriers, &c. travelling on that Day 20 s. and Persons doing any worldly Labour thereon 5 s. all leviable by Warrant from Mayors and Head Officers of Corporations, as well as other Justices. 1 & 3 Car. 1. 29 Car. 2. And by 3 Car. 1. c. 4. If any Person shall profanely Swear or Curse in the Presence of a Mayor, &c. or be convicted thereof before him, by the Oaths of two Witnesses, he shall forfeit for every Offence 1 s. to the Use of the Poor, or be set in the Stocks three Hours: But the Stat. 6 & 7 W. 3. confines the Forfeiture of 1 s. to Servants, Labourers, &c. other Persons being ordered to pay 2 s. and double, treble, &c. on repeating the Offence. Vagrants, or other idle and disorderly Persons, Blind, Lame, &c. or pretending to be so, begging in Streets, a Mayor or Constable may cause them to be whipp'd. 12 Ann. By former Statutes, Mayors are empowered to make Passes of Vagrants; and Justices in Liberties and Corporations are to issue Warrants to Constables, &c. to make a Search for and apprehend Vagrants before the Quarter-Sessions. In every City, Town, &c. there is to be a common Balance, and sealed Weights, under divers Penalties: There is also to be a common Bushel seal-

ed. 8 & 11 H. 6. And *Mayors*, &c. are to provide a Mark for the Sealing of Weights and Measures, being allowed 1 d. for sealing every Bushel, and hundred Weight; and a Half-penny for every other Measure, and Half-hundred Weight, &c. *Mayors* shall punish Offenders using false Weights; and they may burn such Weights and Measures, and inflict Penalties, &c. If they permit Persons to sell by Measures not sealed, they shall forfeit 5 l. Sealing Weights not agreeable to the Standard, is liable to the same Penalty, and refusing to seal Weights and Measures, subjects them to a Forfeiture of 40 s. 7 Hen. 7. *Mayors*, &c. are to inspect and order the Size of Faggot, Biller, Tale-Wood, &c. 43 Eliz. See *Corporation*.

Meal-Rents, Certain Rents heretofore paid in *Meal* by the Tenants of the Honour of *Clun*, to make Meat for the Lord's Hounds; they are now payable in Money.

Meals. The Shelves of Land, or Banks, on the Sea-coasts of *Norfolk*, are called the *Meals* and the *Males*. Cowel.

Mean, (*Medius*) Signifies the Middle between two Extrems; and that either in Time or Dignity: In Time, it is the *Interim* betwixt one Act and another; and applied to *mean Profits* of Lands, &c. As to Dignity, there is a *Lord Mean* or *Mesne*, that holds of another Lord; and *mean Tenant*, &c. Stat. 13 Ed. 1. *Mesne* likewise signifies a Writ, which lies where there is Lord *Mean* and Tenant; and the Tenant is distrained by the superior Lord, for the Rent or Service of the *Mean* behind, to recover Damages, &c. E. N. B. 135.

Meaf, A Messuage or Dwelling-house. Stat. 14 H. 3. Also a Measure of Herrings, containing five Hundred; the Half of a Thousand is called *Mease* or *Mese*. Merch. Dict.

Measure, (*Mensura*) Is a certain Quantity or Proportion of any Thing sold; and in many Parts of *England*, is one Bushel. The Statute of *Magna Charta*. cap. 25. ordains, that there shall be but one *Measure* throughout *England*, according to the Standard in the *Exchequer*: Which Standard is called in our Histories *Mensura Regalis*, and was formerly kept in the King's Palace; and in all Cities, Market-Towns and Villages, it was kept in the Churches. 4 Inst. 273. By 17 Car. 1. c. 19. there is to be but one Weight and *Measure*, and one Yard, according to the King's Standard; and whosoever shall keep any other Weight or *Measure*, whereby any Thing is bought or sold, shall forfeit for every Offence 5 s. And by 22 Car. 2. c. 8. *Water-Measure*, as to Corn and Grain, or Salt, is declared to be within the Stat. 17 Car. 1. And if any sell Grain, or Salt, &c. by any other Bushel or *Measure*, than what is agreeable to the Standard in the *Exchequer*, commonly called *Winchester-Measure*; he shall forfeit 40 s. &c. Notwithstanding these Statutes, in many Places and Counties there are different *Measures* of Corn and Grain; and the Bushel in one Place is larger than in another; but the Lawfulness of it is not well to be accounted for, since Custom or Prescription is not allowed to be good against a Statute. Dalt. 250. And we have three different *Measures*, viz. one for *Wine*, one for *Ale* and *Beer*, and one for *Corn*. Selling by false Weights and *Measures*, being an Offence by the Common Law, may be punished by Fine, &c. upon an Indictment at Common Law, as well as by Statute. See the Stat. 11 Hen. 7. cap. 4. which inflicts particular Fines for Offences, Pillory, &c.

Measurer, or *Meeter* of Woollen Cloth, and of Coals, &c. is an Officer in the City of *London*; the latter of great Account. See *Alnager*.

Measuring Money. The Letters Patent, whereby some Persons exacted for every Cloth made, certain Money, besides *Alnage*, called *Measuring Money*, shall be revoked. Rot. Parl. 11 Hen. 4.

Medfee, Is a Bribe or Reward; also a Compensation where Things exchanged are not of equal Value: It is said to come from the Word *Meed*, which signifies *Merit*.

Mediæ & infimæ manus homines, Men of a mean and base Condition, of the lower Sort. Blount.

Medianus, Is a Word used for middle Size; *Medianus Homo*, a Man of a middle Fortune.

Mediators of Questions, Were six Persons authorized by Statute, who upon any Question arising among *Merchants*, relating to any unmercaptible Wool, or undue Packing, &c. might before the Mayor and Officers of the *Staple* upon their Oath certify and settle the same; to whose Order and Determination therein, the Parties concerned were to give entire Credence and submit. 27 Ed. 3. Stat. 2. c. 24.

Medietas Lingua, Signifies a *Fury* or Inquest impanelled, whereof the one Half consists of Natives, and the other *Strangers*; and is used in Pleas, wherein the one Party is a Stranger, the other a Denizen: And this Manner of Trial was first given by the Stat. 27 Ed. 3. cap. 8. Before which, this was wont to be obtained by the King's Grant. Staund. P. C. lib. 3. cap. 7. He that will have the Advantage of Trial *per Medietatem Lingua* must pay it; for 'tis said he cannot have the Benefit of it by Way of Challenge. S. P. C. 158. 3 Inst. 27. In Petit Treason, Murder and Felony, *Medietas Lingua* is allowed; but for High Treason, an Alien shall be tried by the Common Law, and not *per Medietatem Lingua*. H. P. C. 261. And a Grand Jury ought not to be *de Medietate Lingua*, in any Case. Wood's Inst. 623. *Egyptians* are excluded from this Trial, by 1 & 2 P. & M. c. 4. But we read, That *Solomon de Stanford* a *Jew*, had a Cause tried before the Sheriff of *Norwich*, by a Jury of *Sex probos & legales Homines*, & *sex legales Judæos de Civitate Norwici*, &c. Pasch. 9 Ed. 1.

Mediterranean, Is that which passeth through the Midst of the Earth; and hence the *Sea* which stretcheth it self from *West* to *East*, dividing *Europe*, *Asia* and *Africa*, is called the *Mediterranean Sea*; mentioned in the Statute 12 Car. 2. cap. 4.

Medlese, (From the Fr. *Mesler* i. e. *Miscere*) Is that which *Bracton* calls *Medletum*, and signifies Quarrelling or Brawling. Bract. lib. 3. tract. 2. cap. 35.

Medespp, A Harvest Supper, or Entertainment, given to the Labourers at Home Harvest. Placit. 9 Ed. 1.

Meer, (*Meta*) A Mark or Boundary of Land. Litt. Dict.

Meere, (*Merus*) Signifies very, and though an Adjective is used substantively for *meer Right*; as to join the *Mise* upon the *Meer*, in the great Assise, &c. Old Nat. Br. 2. See *Mise*.

Meigne, Is the same with *Maisnada*. Mon. Angl. Tom. 2. pag. 219.

Meiny, (*Menagium*, Fr. *Mesnie*) As the King's *Meiny*, the King's Family, or Household Servants. 1 R. 2. cap. 4.

Meldfee, (Sax. *Meldfesh*) Was the Recompence due and given to him that made the Discovery of any Breach of *Penal Laws*, committed by another Person; called the Promoter or Informer's Fee. *Leg. Inr.* c. 20.

Melius Inquirendum, Is a Writ that lieth for a second Enquiry, where partial Dealing is suspected; and particularly of what Lands or Tenements a Man died seised, on finding an Office for the King. *F. N. B.* 255. It had been held, that where an Office is found against the King, and a *Melius Inquirendum* is awarded, and upon that *Melius*, &c. 'tis found for the King, if the Writ be void for Repugnancy, or otherwise, a new *Melius Inquirendum* shall be had: But if upon the first *Melius*, it had been found against the King, in such Case he could not have a new *Melius*, &c. for then there would be no End of these Writs: And if an Office be found for the King, the Party grieved may traverse it; and if the Traverse be found against him, there is an End of that Cause; and if for him, it is conclusive. *8 Rep.* 169. *2 Nelf. Abr.* 1008. If there is any Defect in the Points which are found in an Inquisition, there may not be a *Melius Inquirendum*; but if the Inquisition finds some Parts well, and nothing is found as to others, that may be supplied by a *Melius Inquirend.* *2 Salk.* 469. A *Melius Inquirendum* shall be awarded out of B. R. where a Coroner is guilty of corrupt Practices; directed to special Commissioners. *1 Vent.* 181.

Memozies, Used for certain Obsequies or Remembrances for the Dead, in Injunctions to the Clergy. *1 Ed.* 6.

Menials, (from *Mœnia*, the Walls of a Castle, House, or other Place) Are Household Servants, that is such as live under their Lord or Master's Roof; mentioned in the Stat. *2 Hen.* 4. c. 21.

Mensa, Comprehends all Patrimony, or Goods and Necessaries for Livelihood. — *Dominicum est proprie Terra ad Mensam assignata.*

Mensalia, Such Parsonages or spiritual Livings, as were united to the Tables of Religious Houses, and called *Mensal Benefices* among the *Canonists*: And in this Sense it is taken, where Mention is made of Appropriations *ad Mensam suam.* *Blount.*

Mer or **Here**, Where Places begin or end with these Syllables, they signify a Fenny Country.

Mercennarius, A Hireling or Servant. *Cartular. Abbat. Glaston.* p. 115.

Merchant, (*Mercator*) Is one that buys and trades in any Thing: And as *Merchandise* includes all Goods and Wares exposed to Sale in Fairs or Markets; so the Word *Merchant* formerly extended to all Sorts of Traders, Buyers and Sellers: But every one that buys and sells is not at this Day under the Denomination of a *Merchant*; only those who traffick in the Way of Commerce, by Importation or Exportation, or carry on Business by Way of Emption, Vendition, Barter, Permutation, or Exchange, and which make it their Living to buy and sell, by a continued Assiduity, or frequent Negotiation, in the Mystery of Merchandizing, are esteemed *Merchants*: Those that buy Goods, to reduce them by their own Art or Industry, into other Forms than they are of, and then to sell them, are Artificers and not Merchants: Bankers, and such as deal by Exchange, are properly called Merchants. *Lex Mercat.* or *Merch. Comp.* 23. Merchants were always particularly regarded by the Common Law; tho' the municipal Laws of England, or indeed of any

one Realm, are not sufficient for the Ordering and Determining the Affairs of Traffick, and Matters relating to Commerce, Merchandize being so universal and extensive that it is impossible; therefore the *Law Merchant*, (so called from its universal Concern) all Nations take special Knowledge of; and the Common and Statute Laws of this Kingdom leave the Causes of *Merchants* in many Cases to their own peculiar Law. *Ibid.* In the Reign of King *Ed.* 4. a *Merchant Stranger* made Suit before the King's Privy Council, for several Bales of Silk feloniously taken from him, wherein it was moved, that this Matter should be determined at Common Law; but it was answered by the Lord Chancellor, that as this Suit was brought by a *Merchant*, he was not bound to sue according to the Law of the Land. *13 Ed.* 4. In former Times it was conceived, that those Laws which were prohibitory against Foreign Goods, did not bind a *Merchant Stranger*: But it has been a long Time since ruled otherwise; for in the Leagues that are now established, between Nation and Nation, the Laws of either Kingdom are excepted; so that as the *English* in *France*, or any other Foreign Country in Amity, are subject to the Laws of that Country where they reside; so must the People of *France*, or any other Kingdom, be subject to the Laws of *England* when resident here. *19 Hen.* 7. *English Merchants* are not restrained to depart the Kingdom, without Licence, as all other Subjects are; they may depart and live out of the Realm, and the King's Obedience, and the same is no Contempt, they being excepted out of the Statute *5 R.* 2. cap. 2. And by the Common Law, they might pass the Seas without Licence, tho' not to merchandize. *Mich.* 12 & 13 *Eliz.* *Dyer* 206. By *Magna Charta* it is enacted, that all *Merchant Strangers* in Amity, not publickly prohibited, shall have safe Conduet to come into, depart out of, and remain in *England*, and to travel by Water or Land in and through the same, to buy and sell, &c. *9 Hen.* 3. c. 30. But such *Merchants* may be prohibited to trade into this Realm, be they in Amity or otherwise. *Ibid.* All *Merchants* (except Enemies) may safely come into *England* with their Goods and Merchandize. *14 Ed.* 3. *Merchant Strangers* may come into this Realm, and depart at their Pleasure; and they are to be friendly entertained. *5 R.* 2. c. 1. And *Merchants* alien shall be used in this Kingdom, as *Denizens* are in others, by the Statute *5 Hen.* 4. cap. 7. *Merchant Strangers* are to find Sureties, that they shall not carry out the Merchandize which they bring into *England.* *18 Ed.* 2. cap. 21. And when they bring in any Merchandize into the Realm, and sell the same for Money, they are to bestow it upon other Merchandizes of *England*, without exporting any Gold or Silver in Coin, Plate, &c. on Pain of Forfeiture. *4 Hen.* 4. cap. 15. *5 Hen.* 4. cap. 9. The same extends as well to *Denizens* as *Strangers*; and in Strictness of Law, they ought not to receive any Gold in Payment. *3 Hen.* 7. c. 8. And the Reasons of these Laws were, to preserve and keep the Gold and Silver within the Realm; and at the same Time increase our Manufactures, by encouraging their Exportation abroad: Any *Merchant* may deal in more Merchandizes than one. *38 Ed.* 3. cap. 2. Foreign *Merchants* are to sell their Merchandize at the Port where they land, in Gross and not by Retail. *1 R.* 3. cap. 9. And Merchandize is to be laden and unladen at certain

certain Ports, and in the Day-time, under Penalties. 1 *Eliz. cap. 11.* All the King's Subjects are to have a free Trade to and from *France, Spain and Portugal.* 3 *Jac. 1. c. 6.* Merchants, &c. selling adulterated Wine, are liable to Penalties and Forfeitures, by 1 *W. & M. Sess. 1. cap. 34.* Vide *Custom of Merchants.*

There are Companies of Merchants in London for carrying on considerable Joint Trades to foreign Parts, viz. The Merchant Adventurers, the first Company established in England for the Improvement of Commerce; which was erected by Patent by King *Ed. 1.* merely for the Transportation of Wool, &c. before we knew the Value of that Commodity, and at a Time we were in a great Measure Strangers to Trade. The next Company was that of the Barbary Merchants, incorporated in the Reign of King *Hen. 7.* A Company of Merchants trading to the North, called the Muscovy Company, was established by King *Ed. 6.* and encouraged with additional Privileges, by Queen *Mary, Queen Elizabeth, &c.* The Barbary Merchants decaying towards the latter End of Queen *Elizabeth's* Reign, out of their Ruins arose the Levant or Turkey Company; who first trading with *Venice,* and then with *Turkey,* furnished England that Way with the East-India Commodities: This Company hath very considerable Factories, at *Constantinople, Smyrna, Aleppo, &c.* From the flourishing State of the Levant or Turkey Company, in the Reign likewise of Queen *Eliz.* sprung the Old East-India Company, who having fitted out Ships of Force, brought from thence at the best hand, the Indian Commodities, formerly sold to England by distant Europeans; and they having obtained divers Charters and Grants from the Crown, in their Favour, were sole Masters of that advantageous Traffick; until at last a New Company was incorporated by King *William,* they having lent the Government Two Millions of Money; and both these Companies, after the Expiration of a certain Term, were by Articles united. In the 21st Year of Queen *Elizabeth,* the Eastland Company of Merchants was erected; and in King *Charles* the Second's Time that Company was confirmed, with full Power to trade in *Norway, Sweden, Poland,* and other Eastland Countries. The Royal African Company had their Charter granted them in the 14th Year of King *Car. 2.* And by 9 & 10 *W. 3.* they are to maintain all Forts, &c. King *Car. 2.* also by Commission under the Great Seal of England, constituted his Royal Highness *James Duke of York,* (afterwards King *Jam. 2.*) *Edward Earl of Clarendon,* and others, to be a Council for the Royal Fishery of England, and declared himself to be the Protector of it; and in the 29th Year of his Reign, he incorporated them into a Company. King *Will. 3.* in the 4th Year of his Reign established a Greenland Company. By Stat. 9 *Ann.* to pay the Debts of the Army and Navy, &c. amounting to near Ten Millions, the South-Sea Company of Merchants was erected; who having advanced that Money, the Duties upon Wines, Vinegar, Tobacco, &c. were appropriated as a Fund for Payment of the Interest, after the Rate of 6 l. per Cent. &c. And this Company had granted to them great Immunities by King *Geo. 1.* in the 1st and 6th Years of his Reign, who was their Governor and Protector.

This short History of our Companies of Merchants, which have ever had many and great Privileges, and are at length become of double Use, i. e.

to enlarge Commerce, and supply the Necessities of the State, sufficiently shews the Progress and Increase of our Trade, and the Wealth of the Nation; But I must nevertheless observe, that they are a Kind of Monopolies, erected by Law; and when the Power granted them is abused, are of fatal Consequence, for which I need only instance the ever memorable Year 1720. Over and above these Companies, there are the Dutch Merchants, those that trade to the West-Indies; the Canary Merchants; Italian Merchants, which trade to *Leghorn, Venice, Sicily, &c.* The French and Spanish Merchants, &c.

Merchenlage, (Merciorum Lex) Was the Law of the People here called the Mercians. *Camden* in his *Britannia* says, That in the Year 1016. this Kingdom was divided into three Parts; whereof the West Saxons had one, governing it by the Laws called West Saxonlage, which contained these nine Shires, viz. Kent, Sussex, Surrey, Berks, Hampshire, Wilts, Somerset, Dorset and Devon: The Danes had the Second, containing fifteen Shires, i. e. York, Derby, Nottingham, Leicester, Lincoln, Northampton, Bedford, Bucks, Hertford, Essex, Middlesex, Norfolk, Suffolk, Cambridge and Huntingdon; which was governed by the Laws called Danelage: And the Third was in the Possession of the Mercians, whose Law was called Merchenlage; and contained eight Shires, Gloucester, Worcester, Hereford, Warwick, Oxford, Chester, Salop and Stafford: From which Three, King *Will. 1.* chose the Best, and with other Laws ordained them to be the Laws of the Kingdom. *Camd. Brit. pag. 94.* See *Molmutian Laws.*

Mercimoniatus Angliæ, Was of old Time used for the Impost of England upon Merchandize.

Mercy, The Arbitrament of the King or Judge, in punishing Offences, not directly censured by the Law. 11 *Hen. 6. cap. 2.* See *Miseri-cordia.*

Merger, Is where a lesser Estate in Lands, &c. is drowned in the greater: As if the Fee comes to Tenant for Years, or Life, the particular Estates are merged in the Fee: But an Estate-tail cannot be merged in an Estate in Fee; for no Estate in Tail can be extinct, by the Accession of a greater Estate to it. 2 *Co. Rep. 60, 61.* If a Lessor, who hath the Fee, marries with the Lessee for Years; this is no Merger, because he hath the Inheritance in his own, and the Lease in Right of his Wife. 2 *Plowd. 418.* And where a Man hath a Term in his own Right, and the Inheritance descends to his Wife, so as he hath a Freehold in her Right; the Term is not merged or drowned. *Cro. Car. 275.*

Mercum. *Maneria, Molendina, Mercia & Marisca.* *Ingulph. p. 861.*

Mertlage, A Corruption of the Word *Martyrologe*; being a Church Kalendar. 9 *H. 7.*

Mesne or **Mesne,** Fr. *Maisne.* See *Mean.*

Mesnalty, (Fr. *Maisnete,* i. e. Youngership) Signifies the Right or Condition of the *Mesne.* Old *Nat. Br. 44.*

Messarius; (From *Messe*) The chief Servant in Husbandry, now called a Bailiff in some Places. *Mon. Ang. Tom. 2. pag. 832.* Also this Word is used for a Mower or Reaper; one that works Harvest-work. *Fleta, lib. 2. c. 75.*

Messenger, Is a Carrier of Letters or Messages, particularly employed by the Secretaries of State, &c. and to these, Commitments may be made of State Prisoners; for though regularly no one can justify the Detaining a Person in Custody

body out of the Common Gaol, unless there be some particular Reason for it; as if the Party be so dangerously sick, that it would hazard his Life to send him thither, &c. yet it is the constant Practice to make Commitments to Messengers; but it is said, it shall be intended only in Order to the Carrying the Offenders to Gaol. 1 Salk. 347. 2 Hawk. P. C. 118.

Messengers of the Exchequer, Are Officers attending that Court; they are four in Number, and in Nature of Pursuivants to the Lord Treasurer.

Messuage, (*Messuagium*) Is a Dwelling-house, with some Land adjoining, assigned to the Use thereof. *West's Symb. par. 2.* And by the Name of a *Messuage*, may pass a Curtilage, Garden, Orchard, a Dovehouse, Mill, Cottage, Toft, Chamber, Cellar, &c. *Bract. lib. 5. c. 28. Plowd. 169.* One *Messuage* cannot be appurtenant to another *Messuage*; because a *Messuage* is an intire Thing of it self, and therefore may not be appurtenant to another Thing. *Mich. 24 Car. 1. B. R.* But by the Grant of a *Messuage cum pertinentiis*, the Stables, Barns, Out-houses, Gardens and Curtilages do pass: 2 Lill. Abr. 197. A *Præcipe* lies not *de Domo*; but it doth *de Messuagio*. Co. Lit.

Messuagium in Scotland, Signifies the principal Place or Dwelling-house within a Barony; which we call a *Manor House*, or the *Site of a Manor*. Skene:

Mestilo, *Mesline*, or rather *Mesellane*, Wheat and Rye mix'd together;—*Et nonam garbam Frumenti*, *Mestilonis*, & *omnis generis Bladi*, &c. Pat. 1. Ed. 3.

Metegavel, (*Sax. Cibi gablum seu vestigal*) A Tribute or Rent paid in Victuals; which was a Thing usual in this Kingdom, as well with the King's Tenants as others, till the Reign of King Hen. 1.

Meter Of Coals in London, &c. See *Measurer*.

Metheglin, (*Brit. Meddiglin*) An old British Drink made of Honey, &c. and still continues in Repute in England; it is mentioned in the Stat. 15 Car. 2. c. 9.

Mettelshap, *Mettenschep*, Was an Acknowledgment paid in a certain Measure of Corn; or a Fine or Penalty imposed on Tenants, for their Defaults in not doing their customary Services of cutting the Lord's Corn. *Paroch. Antiq. 495.*

Mey, A *Mey* or *Mow* of Corn in a Barn, as anciently used; and in some Parts of England, they still say *mey* the Corn, i. e. put it on an Heap in the Barn.—*Cariabunt Bladum per unum Diem cum una Carecta & invenient unum Hominem ad faciendum Meyas in grangia*. Blount Ten. 130.

Micel Gemotes. The great Councils and general Assemblies, in the Times of the Saxons, of the King and Noblemen, &c. were first called *Wittena Gemotes*, and afterwards *Micel Gemotes*.

Mile, (*Milliare*) In the Measure of a Country, is the Distance or Length of one thousand Paces; otherwise described to contain eight Furlongs, every Furlong being forty Poles, and every Pole sixteen Foot and a Half. Stat. 35 Eliz. c. 6.

Miles, A Knight; and *Militare*, to be knighted. Mat. Westm. pag. 118.

Militia, (*Lat.*) The being a Soldier, and applied to the *Train'd Bands*, under the Direction of the Lieutenancy. The Stat. 13 Car. 2. cap. 6. is declarative of the King's Right to the supream Government of the *Militia*, and of all Forces by Sea and Land, &c. And by the 13 & 14 Car. 2. c. 3. the King may issue Commissions of Lieute-

nancy for the several Counties and Cities, &c. And such Lieutenants have Power to give Commissions to Colonels, Captains, and other inferior Officers; and to call Persons together, and arm and form them into Companies, and command them to Places to suppress Rebellions, or resist Invasions; and upon Invasions or Rebellions, the Person charged shall provide a Month's Pay, &c. which is to be paid out of the publick Revenue; and the Officers shall likewise be paid out of the publick Revenue at such Times. And by this Act, Persons having an Estate of 50 l. a Year in Lands, or a personal Estate in Goods, &c. to the Value of 600 l. shall be charged by the Lieutenants of Counties, or Deputy Lieutenants, to provide a Man in the Foot-Service, and allow him 1 s. *per Diem*; and he which hath 100 l. *per Annum*, or under 200 l. *per Ann.* or who is worth 1200 l. in personal Estate, and under 2400 l. may be charged with either Foot or Horse: But a Person ought to have in Possession 500 l. *per Annum*, or a personal Estate to the Value of 6000 l. to furnish a Horse; and none is to contribute towards a Horse who hath not 100 l. a Year, or a personal Estate of 1200 l. A Horseman shall be allowed 2 s. 6 d. *per Diem*, and must carry with him Powder and Bullet, of each a Quarter of a Pound. The Arms of Horsemen by this Statute, were to be Sword, and Case of Pistols 14 Inches in the Barrel, a great Saddle with Burs and Straps, a Bit-Bridle, &c. And the Foot or Musqueteers were to have a Musket three Foot in Barrel, the Bore whereof to bear a Bullet of 12 or 14 to the Pound, a Collar of Bandaleers, and a Sword; and to carry with them Powder and Ball, of each Half a Pound. If any Person liable to furnish Horse, &c. shall not send out such Horse, or shall neglect to pay the Money towards the Provision of Man and Horse; the Lord Lieutenant of the County, or three Deputies, may fine him not exceeding 20 l. to be levied by Warrant under their Hands and Seals; but Officers of Foot are not obliged to find Soldiers or Arms, in Respect of their Estates. And the Lieutenants or Deputies may inflict a Penalty of 5 l. on Persons refusing to provide a Foot Soldier; and if they live out of the County, their Tenants are to do it on Notice: On whose Neglect, the Lieutenant, &c. may appoint Constables to provide for them: And by the 8 W. 3. the Lieutenancy are to find Persons for Papists, charging them with 8 l. a Year for a Horseman, and 30 s. a Foot Soldier, to be levied by Distress, &c. If a Soldier neglects to appear, two Deputy Lieutenants may commit him for five Days, or fine him; if a Horseman 20 s. if a Footman 10 s. &c. None are obliged to serve in Person; but the Persons provided by others are to be approved by the Captain, and their Names and Places of Abode must be given in to two Deputy Lieutenants at the next Muster, when they are listed; and if they desert after Listing, they shall forfeit 20 l. and shall not be discharged without Leave of two Deputy Lieutenants or the Captain, under the like Penalty, to be levied by Distress; and if no Distress, to be committed not exceeding three Months. And the Lieutenancy may imprison Mutineers; charge Carriages at 6 d. *per Mile*, &c. There shall be a general Muster of the *Militia* but once a Year; and then not to continue above four Days, without special Direction: For Training single Companies, Musters may be four Times a Year;

Year : And once a Year every Horseman is to pay to the Muster-Master 1 s. and every Footman 6 d. by the Order of three Deputy Lieutenants ; and if the same be not paid, it may be levied on the Goods of the Persons charged. 13 & 14 Car. 2. cap. 3. and 15 Car. 2. cap. 4. In the Year 1660. the Lords and Commons passed an Ordinance for Assessing 70,000 l. per Month, for three Months, on the several Counties in England and Wales, towards Payment of the Army and Militia, &c. In Pursuance of which Ordinance, the Counties were assessed as follows, viz.

	l.	s.	d.
The County of Bedford, per Month	0933	6	8
—Berks	1088	17	10
—Buckingham	1283	6	8
—Cambridge	1102	10	0
Isle of Ely	0367	10	0
County of Chester and City	0855	11	2
—Cornwall	1633	6	8
—Cumberland	0108	0	0
—Derby	0933	6	8
—Devon	3003	15	6
City of Exeter	0107	6	8
County of Dorset	1311	10	6
—Durham	0153	14	4
—Essex	3500	0	0
—Gloucester	1626	6	8
City of Gloucester	0162	11	2
County of Hereford	1166	13	4
—Hertford	1400	0	0
—Huntingdon	0622	4	6
—Kent	3655	11	2
—Lancaster	0933	6	8
—Leicester	1088	17	8
—Lincoln	2722	4	10
City of London	4666	13	4
County of Middlesex	1788	17	10
—Monmouth	0466	13	4
—Northampton	1400	0	0
—Nottingham	0903	4	4
—Norfolk	3624	8	10
—Norwich	0186	13	4
—Northumberland	0179	19	10
Town of Newcastle	0035	11	8
County of Oxford	1127	11	0
—Rutland	0272	4	6
—Salop	1322	4	4
—Stafford	0919	6	8
—Somerset	2722	4	6
City of Bristol	0171	2	2
County of Southampton	2022	4	4
—Suffolk	3655	11	2
—Surrey	1565	5	6
—Suffex	1905	11	2
—Warwick	1244	8	10
—Worcester	1244	8	10
—Wilts	1944	8	10
—Westmorland	0073	19	4
County of York, and City	3044	8	10
Town of Kinston upon Hall	0067	13	4
Isle of Anglesey	0135	13	4
County of Brecknock	0361	14	4
—Cardigan	0213	10	0
—Carmarthen	0352	6	8
—Carnarvon	0202	4	4
—Denbigh	0272	4	6
—Flint	0135	14	6
—Glamorgan	0458	17	8
—Merioneth	0124	8	10
—Montgomery	0295	11	0

—Pembroke	l.	s.	d.
—Radnor	0406	0	0
Town of Haverford-West	0254	6	8
Town of Berwick upon Tweed	0014	11	8
	0005	16	8

The fourth Part of every of these Sums may be raised yearly for Trophy Money, and no more ; except in the City of London, where the whole Month's Assessment may be annually collected. And Money levied for Trophy Money, is to be accounted for by Collectors before Justices of the Peace at the Quarter-Sessions, within one Year after received ; and the Balance to be paid to the Treasurers appointed to receive the same, or the Collectors shall forfeit treble the Sum unaccounted for, by Stat. 1 Geo. The 10 Ann. requires Persons in Dorsetshire to account for Money received for raising the Militia, on King William's Landing in the West, undisposed of. During the Reigns of King Will. 3. Queen Anne, and King George, Acts were annually made for raising the Militia, although the Month's Pay formerly advanced by the Country be not repaid ; and by the 1 Geo. c. 14. Lords Lieutenants, &c. of Counties, when necessary and signified by the King, are to draw out the Militia into actual Service ; and Persons charged must provide each Soldier with Pay in Hand, not exceeding one Month ; and also furnish every Horseman with a Broad-Sword, a Case of Pistols twelve Inches in the Barrel, and a Carabine, with Belt and Bucket, a great Saddle or Pad, with Burs and Straps, a Bit and Bridle with Pectoral and Crupper ; and for every Footman, a Musker five Foot long in the Barrel, the Gage of the Bore for Bullets of Twelve to the Pound, with a Bayonet to fix on the Muzzle, a Cartouch-Box and a Sword ; under the same Penalties as by any former Acts : But this Statute shall not extend to make any Person chargeable to the Militia, not chargeable by Law ; or to enlarge the Power of the Lieutenancy beyond the Authority given them by the Acts of the 13, 14 & 15 Car. 2. but only in Cases expressly provided for by this Act : And these Statutes shall not be construed to give any Power for the Transporting any of the Subjects of this Realm, or the Compelling them to march out of this Kingdom ; otherwise than according to the Laws of England. The Militia of Horse and Foot are computed to be about the Number of two hundred Thousand, in England and Wales.

Mill, (Molendinum) Is a House or Engine to grind Corn ; and either a Water-mill, Wind-mill, Horse-mill, Hand-mill, &c. and besides Corn and Grift-mills, there are Paper-mills, Fulling or Tucking-mills, Iron-mills, Oil-mills, &c. 2 Inst. 621.

Mill-leat, A Trench of Water by a Mill. See Leat.

Millet, (Miliun) A small Grain so termed from its Multitude. Litt. Dist.

Minna, A Corn-Measure, of different Quantity, according to the Things measured by it : And Minage was a Toll or Duty paid for selling Corn by this Measure. Cowel. According to Littleton, it is a Measure of Ground, containing one hundred and twenty Foot in Length, and as many in Breadth ; also it is taken both for a Coin and a Weight. Litt. Dist.

Mineral Courts, (*Curia Minerales*) Are Courts peculiar for regulating the Concerns of *Lead-Mines*; as *Stannary Courts* are for Tin. See *Bergh-note*.

Mines (*Mineria*) Quarries or Places where-out any Thing is digged; and are likewise the hidden Treasures dug out of the Earth. The King by his Prerogative hath all *Mines* of Gold and Silver to make Money; and where the Gold and Silver in *Mines* is of the greater Value, which are called *Royal Mines*. *Plowd. Com.* But by Statute, no *Mine* of Copper or Tin shall be adjudg'd a *Royal Mine*, though Silver be extracted. 1 *W. & M. c. 6.* And Persons having *Mines* of Copper, Tin, Lead, &c. shall enjoy the same, although claimed to be *Royal Mines*; but the King may have the Oar, (except in *Devon* and *Cornwall*) paying to the Owners of the *Mines*, within thirty Days after it shall be raised; and before removed, 16 *l. per Tun* for Copper Oar, wash'd and made merchantable; for Lead Oar, 9 *l. per Tun*; Tin or Iron 40 *s. &c.* If a Man hath Land where there are some *Mines* open, and others not, and he lets the Land with the *Mines* therein, for Life or Years, the Lessee may dig in the open *Mines* only, which is sufficient to satisfy the Words in the Lease: But if there be no open *Mine*, and the Lease is made of the Lands, together with all *Mines* therein, there the Lessee may dig for *Mines* and enjoy the Benefit thereof; otherwise those Words would be void. 1 *Inst. 54. 5 Co. Rep. 12. 2 Lev. 184.* To dig *Mines* is Waste, where Lessees are not authoriz'd by their Leases.

Muniments or Muniments, (*Munimenta*; from *Munio*, to defend) Are the Evidences and Writings concerning a Man's Possession or Inheritance, whereby he is enabled to defend the Title of his Estate: And this Word includes all Manner of Evidences, Deeds, Charters, &c. *Terms de Ley 451. Stat. 5 R. 2. c. 8. and 35 H. 6. c. 37.*

Ministers. If a *Minister* is disturb'd in the Execution of his Office in the Church; the Punishment upon Conviction is a Fine of 10 *l.* And upon Non-payment three Months Imprisonment, &c. 2 & 3 *Ed. 6. c. 1.* And Disturbing a licensed *Minister*, incurs a Forfeiture of 20 *l.* by 1 *W. & M. c. 18.*

Ministri Regis, Extend to the Judges of the Realm; as well as to those that have *Ministerial* Offices in the Government. 2 *Inst. 208.*

Minor, One under Age; and more properly an Heir Male or Female, before they come to the Age of twenty-one Years; during which *Minority* they are generally incapable to act for themselves.

Monks, *Friars Minorites*, of the Order of *St. Francis*, that had no Prior; they washed each other's Feet, and increas'd very much in the Year 1207. *Matt. Westm.*

Minstrel, (*Minstrellus*, from the *Fr. Menestrier*) A Musician, Fidler, or Piper; mentioned in the *Stat. 4 H. 4. c. 27.* There was formerly a *King* of *Minstrels*; and it was usual for these *Minstrels*, not only to divert Princes and the Nobility, with musical Instruments and flattering Songs in Praise of them and their Ancestors, but also with various Sports, &c. In the County of *Chester*, the ancient Family of the *Duttons* have the Licensing of *Minstrels*; and those are excepted out of the Vagrant Act, 39 *Eliz. c. 4, &c.*

Mint, (*Officina Monetaria*, *Monetarium*) Is the Place where the King's Money is coined; which

is at present, and long hath been in the *Tower of London*, though it appears by divers Statutes, that in ancient Times the *Mint* has also been at *Calis*, and other Places. 2 *R. 2. c. 16. and 9 H. 5. c. 5.* The *Mint-Master* is to keep his Allay, and receive Silver at the true Value, &c. 2 *H. 6. c. 12.* And Gold and Silver delivered into the *Mint* is to be assay'd, coin'd, and given out, according to the Order and Time of bringing in. 18 *Car. 2. c. 5.* By the last mentioned Statute 3000 *l.* a Year was granted out of certain Duties on Wine, Beer, &c. imported, to defray the Expence of the *Mint*: But this was increas'd by the *Stat. 4 & 5 Ann. c. 22.* and very much augmented by 1 *Geo. c. 43.* by which Statute it may be a Sum not exceeding 15000 *l.* a Year, &c. The Officers belonging to the *Mint* have not always been alike: They are now the following, viz. *The Warden*, who is the Chief of the Rest, and is by his Office to receive the Silver and Bullion of the Goldsmiths to be coined, and take Care thereof, and he hath the Overseeing of all the other Officers. *The Master Worker* receives the Silver from the *Warden*, and causes it to be melted, when he delivers it to the *Moniers*, and taketh it from them again after made into Money. *The Comptroller*, who is to see that the Money be made to the just Assise, and control the Officers, if the Money be not made as it ought. *The Master of Assay*, that weigheth the Silver, and examineth whether it be according to the Standard: *The Auditor* takes Accounts of the Silver, &c. *The Surveyor of the Melting*, who is to see the Silver cast out, and that it be not altered after the Assay-Master hath made Trial of it, and it is delivered to the *Melters*. *The Clerk of the Irons*, that seeth that the Irons be clean and fit for Working. *The Graver*, whose Office is to engrave the Stamps for the Money. *The Melters*, that melt down the Bullion, &c. *The Blanchers* do anneal and cleanse the Money. *The Moniers*, who are some to shear the Money, others to beat it broad, some to round, and some to stamp or coin it. *The Provost* to provide for all the *Moniers*, and to oversee them, &c. *Vide Coin.*

Mint, A pretended Place of Privilege in *Southwark*, near the *King's Bench*. If any Person within the Limits of the *Mint* shall obstruct any Officer in the serving of any Writ or Process, &c. or assault any Person therein, so as he receive any bodily Hurt, the Offender shall be guilty of Felony, and be transported to the Plantations, &c. *Stat. 9 Geo. c. 28.* See *Privileged Places*.

Minute Tithes, (*Minores Decime*) Small Tithes of Wool, Lamb, Pigs, Butter, Cheese, &c. 2 *Inst. 649.*

Minutio, Blood-letting; which was a common old Practice among the Regulars and Secular Priests or Canons of Churches, who were the most confined and sedentary Men. *Stat. Cathed. Eccl. St. Paul. London.*

Miracula, A superstitious Play, practised by the Popish Clergy. *Cowel.*

Mis. This Syllable added to another Word, signifies some Fault or Defect: As *Misprison*; *Misdicere*, to scandalize any one; *Misdocere*, to teach amiss. — *Si Presbyter populum suum misdoceat.*

Misadventure, (*Fr. Mesadventure*, i. e. *Infortunium*) Has an especial Signification for the Killing a Man, partly by Negligence and partly by Chance. *S. P. C. lib. 1. c. 8.* And Briton distinguishes between *Adventure* and *Misadventure*; the

First

First he makes to be meer Chance; as if a Man, being upon or near the Water, be taken with some sudden Sickness, and so fall in and is drown'd; or into the Fire, and is burnt: *Misadventure* he says is, where a Person comes to his Death by some outward Violence, as the Fall of a Tree, the Running of a Cart-wheel, Stroke of a Horse, or such like. *Brit. c. 7. Staunford* construes *Misadventure* more largely than *Britton* understands it; and says, it is where one thinking no Harm carelessly throws a Stone, wherewith he kills another, &c. *West* defines *Misadventure* to be, when a Man is slain by meer Fortune, against the Mind of the Killer; and he calls it *Homicide by Chance mix'd*, when the Killer's Ignorance or Negligence is join'd with the Chance. *West. Symb. Sect. 48, 49. See Chancemedley.*

Miscognisant, Ignorant, or not knowing. In the Stat. 32 Hen. 8. c. 9. against Champerty and Maintenance, it is ordain'd, that Proclamation shall be made twice in the Year of that Act, to the Intent no Person should be ignorant or *miscognisant* of the Penalties therein contain'd, &c.

Misccontinuance, Signifies the same with *Discontinuance*. *Kitch. 231.*

Mise, (A French Word, written in Latin *Missum*, and sometimes *Misa*) Is a Law Term signifying Expences, and it is so commonly used in the Entries of Judgments in Personal Actions; as when the Plaintiff recovers, that *Recuperet damna sua* to such a Value, and *pro Mis & Custagiis*, for Costs and Charges, so much, &c. This Word hath also another Signification in the Use made of it by Law; which is where it is taken for a Word of Art, appropriated to a Writ of Right, so called, because both Parties have put themselves upon the meer Right, to be tried upon the Grand Assise; so as that which in all other Actions is called an Issue, in a Writ of Right is termed a *Mise*: But if in the Writ of Right a collateral Point be tried, there it is called an Issue. To join the *Mise* upon the Meer is as much as to say, to join the *Mise* upon the clear Right; i. e. to join upon this Point, whether has the more Right, the Tenant or Demandant. 1 *Inst. 294. 37 Ed. 3. c. 16.*

Mises are taken for Taxes or Tallages, &c. An honorary Gift or customary Present, from the People of *Wales* to every new King and Prince of *Wales*, antiently given in Cattle, Wine and Corn, but now in Money, being 5000*l.* or more, is denominated a *Mise*: So was the usual Tribute or Fine of 3000 Marks, paid by the Inhabitants of the County Palatine of *Chester*, at the Change of every Owner of the said Earldom, for the Enjoying of their Liberties. And at *Chester* they have a *Mise-book*, wherein every Town and Village in the County is rated what to pay towards the *Mise*. The 27 H. 8. c. 26. ordains, that Lords shall have all such *Mises* and Profits of their Lands as they have had in Times past, &c. And *Mise* is sometimes corruptly used for *Mease*, in Law French *Mees*, a Messuage; as a *Mise Place* in some Manors is such a Messuage or Tenement as answers the Lord a Heriot at the Death of its Owner. 2 *Inst. 528.*

Mise-Money, Was Money given by Way of Contract or Composition to purchase any Liberty, &c. *Blount Ten. 162.*

Miserere, The Name and first Word of one of the Penitential Psalms, and is most commonly that which the Ordinary gives to such guilty

Malefactors as are admitted to the Benefit of the Clergy; being therefore called the Psalm of Mercy.

Misericordia, Is in Law used for an arbitrary or discretionary Amerciament impos'd on any Person for an Offence; and where the Plaintiff or Defendant in any Action is amerced, the Entry is *Ideo in Misericordia*, &c. *Bract. lib. 4. tract. 5. cap. 6. Kitch. 78.* It is called *Misericordia*, because it ought to be but small, and rather less than the Offence, according to *Magna Charta, c. 14.* Sometimes *Misericordia* is to be quit of all Manner of Amerciaments. *Crompt. Jurisd. 196. See Amerciament.*

Misericordia communis, Signifies where a Fine is set on the whole County or Hundred. — *Ac de communi Misericordia quando contigerit, videlicet Comitatus & Hundredi coram nobis vel aliquibus Justiciariis nostris, &c.*

Misericordia in Cibis & potu, Is used for any gratuitous Portion of Meat and Drink, given to the Religious in Convents beyond their ordinary Allowance. *Matt. Paris.* And in some Convents they had a stated Allowance of these Overcommons upon extraordinary Days; which were called *Misericordie Regulares*. *Mon. Angl. Tom. 1. pag. 149.*

Misevenire, Is where a Man accused of a Crime, fails in his Defence or Purgation. *Leg. Canut. 78.*

Misfeasance, A Misdeed or Trespas. — The Jury shall inquire of all Purprestures and *Misfeasances*. *Cro. Car. 498.*

Misfeasor, Is a Trespasser. 2 *Inst. 200.*

Miskennung, (*Miskennunga*) Is derived from *Mis*, and *Sax. Cennan*, i. e. *citare*. *Leg. H. 1. c. 12. Iniqua vel injusta in jus vocatio; inconstanter Loqui in Curia, vel invariare.* It is mentioned among the Privileges granted and confirmed to the Monastery of *Ramsay* by *S. Edward the Confessor*. *Mon. Angl. Tom. 1. pag. 237. Et in Civitate London. in nullo Placito Miskennagium. Chart. H. 2.*

Miskering. *Hoc est quietus pro querelis coram quibuscunque in transumptione probata. MS. LL. in Bibl. Cotton. fol. 262.*

Misnomer, (Compounded of the Fr. *Mes*, signifying *amiss*, and *Nomer*, i. e. *Nominare*) Is the Using of one Name for another, a Misnaming. *Nomen est quasi rei notamen*, and was invented to make a Distinction between Person and Person; and where a Person is described, that he may with Certainty be distinguished from other Persons, the Omission or in any Case the Mistake of the Name shall not avoid the Grant. 11 *Rep. 20, 21.* But the Christian Name ought always to be perfect; and the Law is not so precise as to Surnames, as it is of Christian Names. *Popb. 57. 2 Lill. Abr. 199.* Misprisions of Clerks in Names are amendable: And *Peter* and *Piers* have been adjudged one and the same Name. 2 *Cro. 67, 425. 1 Leon. 146.* But where a Christian Name is quite mistaken, as *John* for *Thomas*, &c. it may be pleaded, that there was no such Man in *rerum Natura*. *Dyer 349.* If a Person pleads, that he was never called by such a Name, it is ill; for this may be true, and yet he might be of that Name of Baptism. 1 *Salk. 6.* One whose Name is *Edmund* is bound in a Bond by the Name of *Edward*; though he subscribes his true Name, that is no Part of the Bond. 2 *Cro. 640. Dyer 279.* A Man cannot have two Names of Baptism: But if a Person be bound by the Name of *W. R.* he may

may be sued by the Name of *W. R.* alias dictus *W. B.* his true Name; not *W. B.* alias dict. *W. R.* 3 *Salk.* 238. A Lady, Wife to a private Person, ought to be named according to the Name of her Husband, or the Writ shall abate; so if the Son of an Earl, &c. be sued as Lord, and not as a private Person, by the Name of his Family. *Dyer* 76. 2 *Salk.* 451. Where a Man's Title is mistaken in a Writ, &c. it shall abate, and he must be arrested again. 1 *Vent.* 154. And the Plaintiff is to confess the *Misnomer*, and pray an Abatement of his Writ, before he proceeds to a new one. *Trin.* 2 *Ann.* 1 *Salk.* 129. But if a Person's Title of Lord, &c. be mistaken in a Lease or Demise, on Not guilty pleaded, the Issue is not, whether the Person making the Lease is a Lord, or not; so that it is sufficient if 'tis the same Person who demised, though misnamed. *Allen* 58. 2 *Nelf. Abr.* 1172. *Misnomer* of Corporations may be pleaded in Abatement. 1 *Leon.* 159. 5 *Mod.* 327. 2 *Salk.* 451. A Defendant may avoid an Outlawry, by Pleading a *Misnomer* of Name of Baptism or Surname; *Misnomer* as to Additions of Estate, of Town, &c. 2 *Hawk. P. C.* 460. Though *Misnomer* of a Surname may not be pleaded on an Indictment; in Appeal it may: And any other *Misnomers*, and defective Additions, are as fatal in an Indictment as an Appeal. *Ibid.* 130. A *Misnomer* must be pleaded by the Party himself who is misnamed. 1 *Lutw.* 35. If a Man is taken upon a *Cap. Excom.* who is not of the Name in the Writ, he has no Day in Court to plead this Matter to be discharged; but must bring an Action of False Imprisonment. 1 *Mod.* 70. See *Addition*.

Misprision, (*Mispriso*, from the Fr. *Mespris*, Contemptus) Signifies a Neglect or Oversight: As for Example; *Misprision* of Treason is a Negligence in not revealing Treason where a Person knows it to be committed. *Staundf. P. C. lib. 1. cap. 19.* If a Man knoweth of any Treason or Felony, and conceals the same, it is *Misprision*: In a larger Sense, *Misprision* is taken for many great Offences, which are neither Treason nor Felony, or Capital, but very near them; and every great Misdemeanor, which hath no certain Name appointed by the Law, is sometimes called *Misprision*. 3 *Inst.* 36. *H. P. C.* 127. *Wood* 406, 408. There is also a *Misprision* of Clerks, as to their Neglects in Writing or keeping Records: And *Misprision* signifies a Mistaking. 14 *Ed. 3. c. 6.* When one knows that another hath committed Treason, and doth not reveal it to the King or his Privy Council, or some Magistrate, that the Offender may be secured and brought to Justice, it is High Treason by the antient Common Law; for the Delay in Discovering the Treason was deem'd an Assent to it, and consequently High Treason: But there must now be an actual Assent to some outward Act to make it Treason. *Bracton* 118. *S. P. C.* 37. 3 *Inst.* 138, 140. And by Stat. 1 & 2 P. & M. c. 10. a bare Concealment of any High Treason, shall be only *Misprision* of Treason. A Person having Notice of a Meeting of Conspirators against the Government, goes into their Company and hears their treasonable Consultation, and conceals it, this is Treason; and so where one has been accidentally in such Company, and heard such Discourse, if he meets the same Company a second Time; for in these Cases the Concealment is attended with Circumstances which shew an Approbation thereof. *H. P. C.* 127. *Kel.* 17, 21. And a Man that

hath Knowledge of a Treason cannot secure himself by Discovering that there will be a Rising in general, without disclosing the Persons intending to rise; nor can he do it by Discovering these to a private Person, who is no Magistrate. *S. P. C. H. P. C.* 127. But where one is told in general, that there will be a Rising or Rebellion, and doth not know the Persons concerned in it, or the Place where, &c. this uncertain Knowledge may be concealed, and it shall not be Treason or *Misprision*. *Kel.* 22. 1 *Hawk. P. C.* 36. If High Treason is discover'd to a Clergyman in Confession, he ought to reveal it; but not in Case of Felony. 2 *Inst.* 629. Concealers of Bulls of Absolution from Rome are guilty of *Misprision* of Treason. 13 *Eliz. c. 2.* There is a *Misprision* of Treason in counterfeiting the Great Seal; forging and uttering counterfeit Money brought from another Kingdom, &c. 14 *Eliz. c. 3.* And *Misprision* being included in every Treason or Felony, where a Man hath committed Treason or Felony, the King may cause him to be indicted and arraigned of *Misprision* only, if he please. *S. P. C.* 32. Information will not lie for *Misprision* of Treason, &c. but Indictment, as for Capital Crimes: And there must be two Witnesses upon Indictments, as well as Trials of *Misprision* of Treason, by the Statute 7 W. 3. 2 *Hawk. P. C.* 258, 260. In all Cases of *Misprision* of Treason, the Offender shall be imprisoned for Life; and forfeit his Goods, and the Profits of his Lands during Life. *H. P. C.* 128. 3 *Inst.* 36, 218.

Misprision of Felony, Is not only where a Man knows of any Felony committed, and concealeth or procures the Concealment thereof; but under this Title of *Misprision*, that of *Theftbote* may be reduced; which is where one knowing of a Felony, takes his own Goods again, or rather Amends. 3 *Inst.* 134, 139. *H. P. C.* 130. Tho' the bare Taking one's own Goods again which have been stolen is no Offence, unless some Favour be shewn the Thief. 1 *Hawk. P. C.* 125. The Stat. 3 H. 7. c. 1. provides against Concealments of Felonies by Sheriffs, Coroners and Bailiffs, &c. And for *Misprision of Felony*, the Offenders shall be punished by Fine and Imprisonment, and remain in Prison 'till the Fines are paid. *S. P. C.*

Misprisions at large, Are when Persons contemn the King's Prerogative, by refusing to assist the King according to Law; or by Speaking or Writing against his Person or Government; receiving a Pension from a foreign Prince, without his Leave; refusing to take the Oaths of Allegiance and Supremacy; and Contempts against the King's Palace; or the Courts of Justice, &c. *H. P. C.* 3 *Inst.* 139, 149.

Miscritical Of Deeds or Conveyances. See *Lease*.

Missal, The *Mass*, at first used for the Dismissal or sending away of the People: Hence it came to signify the whole Church Service, or Common Prayer; but more particularly the Communion Service, and the Office of the Sacrament, after those who did not receive it were dismissed. *Litt. Dist.*

Missal, *Missale*, The *Mass*-Book, containing all Things to be daily said in the *Mass*. *Lindw. Provincial. lib. 3. cap. 2.*

Missus Presbyter, Signifies a Priest in Orders. *Blount.*

Missura, Singing the *Nunc Dimittis*, and performing the many other Ceremonies to recommend

mend and dismiss a dying Person. And in the Statutes of the Church of St. Paul's in London, collected by Ralph Baldock, Dean about the Year 1295. in the Chapter *de Frateria*, of the Fraternity or Brotherhood, who were obliged to a mutual Communication of all Religious Offices, it is ordained — *Ut fiat commendatio & Misura & sepultura omnibus sociis coadunantibus & assistantibus*. Liber Statut. Eccles. Paulinæ, M.S. fol. 25.

Mistrial, A false or erroneous Trial, where a Trial is in a wrong County, &c. 3 Cro. 284. See Trial.

Misuser, Is an Abuse of any Liberty or Benefit; as he shall make Fine for his *Misuser*. Old Nat. Br. 149. By *Misuser*, a Charter of a Corporation may be forfeited. So also an Office, &c.

Mitred Abbots, Were those Governors of Religious Houses who had obtained from the Pope the Privilege of wearing the *Mitre*, Ring, Gloves, and Crozier of a Bishop. The *Mitred Abbots*, says Cowel, were not the same with the *conventual Prelates*, who were summoned to Parliament as Spiritual Lords, tho' it hath been commonly so held; for the Summons to Parliament did not any Way depend on their *Mitres*, but upon their receiving their Temporals from the Hands of the King. See Abbot.

Mitta, (From the Sax. *Mitten*, *Mensura*) An ancient Saxon Measure; its Quantity doth not certainly appear, but it is said to be *Mensura decem Modiorum*, a Measure of ten Bushels. *Domesday*. Tit. *Wirec scire*. Mon. Angl. Tom. 2. p. 262. And *Mitta*, or *Mitcha*, besides being a Sort of Measure for Salt and Corn, is used for the Place where the Caldrons were put to boil Salt — *Calderias quoque ad Sal conficiendum cum propriis sedibus quæ vulgo Mitchæ vocantur*. Gale's Hist. Brit. 767.

Mittendo manuscriptum pedis finis, Was a Writ judicial, directed to the Treasurer and Chamberlains of the *Exchequer*, to search for and transmit the *Foot of a Fine*, acknowledged before Justices in *Eyre*, into the *Common Pleas*, &c. Reg. Orig. 14.

Mittimus, Is a Writ for removing and transferring of Records, from one Court to another; as out of the *King's Bench* into the *Exchequer*, and sometimes by *Certiorari* into the *Chancery*, and from thence into another Court: But the Lord Chancellor may deliver such Record with his own Hands. Stat. 5 R. 2. c. 15. 28 & 29 H. 8. Dyer 29, 32. *Mittimus* is also a Precept in Writing, under the Hand and Seal of a Justice of Peace, directed to the Gaoler, for the Receiving and safe Keeping of an Offender, until he is delivered by Law. 2 Inst. 590. One must be committed by lawful *Mittimus*; or Breach of Prison will not be Felony, &c.

Mockadoes, Stuffs made in *England*, and other Countries; mentioned in the Stat. 23 Eliz. cap. 9.

Moderata misericordia, A Writ that lies for him who is amerced in a Court-Baron, or other Court not of Record, for any Transgression, beyond the Quality or Quantity of the Offence: It is directed to the Lord of the Court or his Bailiff, commanding them to take a *moderate Amerciament* of the Party, and is founded upon *Magna Charta*. If a Man be amerced in a Court-Baron, on Presentment by the Jury, where he did not any Trespas, he shall not have this Writ, unless the Amerciament be excessive and outra-

geous: And if the Steward of the Court, of his own Head, will amerce any Tenant or other Person without Cause, the Party ought not to sue for his Writ of *Moderata Misericordia*, if he be distrained for that Amerciament; but he shall have Action of Trespas. New Nat. Br. 167. When the Amercement which is set on a Person is affected by his Peers, this Writ of *Moderata Misericordia* doth not lie; for then it is according to the Statute. 10 Ed. 2.

Modiatio, Was a certain Duty paid for every Tierce of Wine. Mon. Angl. Tom. 2. p. 994.

Modius, A Measure, usually a Bushel; but various according to the Customs of several Countries.

Modius Terræ vel Agri. This Phrase was much used in the ancient Charters of the British Kings, and probably signified the same Quantity of Ground as with the Romans, viz. One hundred Foot long, and as many broad. — *Sciendum est quod dedit Ilias pedum quatuor Mediorum Agri circa se, cum omni censu suo*, &c. Mon. Angl. Tom. 3. p. 200.

Modo & forma, Are Words of Art in Pleadings, &c. in a Cause; and particularly used in the Answer of the Defendant, whereby he denies to have done the Thing laid to his Charge, *Modo & forma declarata*. Kitch. 232. And *Modo & forma* are of the Substance of the Issue, as well as Words of Course. Co. Lit. 281.

Modus Decimandi, Is when Lands, Tenements, or some annual certain Sum, or other Profit, hath been given Time out of Mind to a Parson and his Successors, in full Satisfaction and Discharge of all Tithes in Kind, in such a Place. 2 Co. Rep. 47. And it may be paid in Cities and Towns, as in *London*, for Houses, in lieu of the Tithe of the Lands on which the Houses were built: And there may be a *Modus Decimandi* for Personal Tithes. 2 Inst. 657, 659. A *Modus* ought to be for the Benefit and Advantage of the Parson; and is supposed to be of the full Value of the Tithes, at the Time of the original Composition; and if it doth not now come up to that Value, it shall be intended that the Tithes are improved, or that Money is become of less Value than it was at the Time of the *Modus* agreed on. 13 Rep. 152. Hob. 40. But one Tithe must not be paid in Consideration of another; it is to be something different from the Thing that is due, where the Tithes are due of common Right, and not by Custom only; and it must be something as certain and durable as the Tithe: All which are necessary to make a good Prescription. 1 Roll. Abr. 650. 1 Cro. 276, 446, 475. Hob. 40. A *Modus* arises either by Composition, Custom or Prescription; a Composition is an Agreement entered into by Deed, executed under Hand and Seal, that such and such Lands shall be discharged of Tithes, paying some annual Payment, or doing something for the Benefit and Advantage of the Parson, &c. which is a legal Exemption from Payment of Tithes for ever, if made before the Stat. 13 Eliz. c. 10. Custom and Prescription differ in this; that Custom is what gives a Right to a whole County, City, Town or Parish, and must be common to all within the Limits where it is averred to be; but Prescription is that which gives a Right to some particular Person, with respect to some particular House, Farm, &c. And the Ecclesiastical Laws allow forty Years to make a good Custom and Prescription; but by the Common Law, it must be

beyond the Memory of Man. 1 *Roll Abr.* 653. *Count. Parf. Compan.* 159. A Layman, Lord of a Manor, may prescribe *De modo Decimandi*, for himself and Tenants; also a private Person, for his own Lands, or Part thereof, &c. But in Cases of Prescription, 'tis only to be discharged of a particular Sort of Tithes; for a Prescription *De non Decimando* generally, would undo the Clergy, and therefore it is not good where there is not sufficient left for their Maintenance; as it may be where there is a competent Livelihood for the Parson. 2 *Rep.* 47. 1 *Cro.* 784. 1 *Roll Abr.* 653. A Layman cannot prescribe by the Common Law *De non Decimando*; but he may be discharged of Tithes for Lands in his own Hands, by Grant from Parson, Patron and Ordinary. 2 *Rep.* 44. A Parish, &c. may not prescribe *De non Decimando*, though it may prescribe *De modo Decimandi*. 1 *Roll Abr.* 653. But Tithes due by Custom only are not within the Rule against Prescription in *non Decimando* by Laymen; for by the like Custom Persons may be discharged from the Payment of such Tithes. *Wood's Inst.* 179. And spiritual Persons and Corporations may prescribe *De non Decimando*, to be discharged absolutely of Tithes, and pay nothing in lieu thereof; so also may their Tenants. 2 *Rep.* 44. 1 *Roll Abr.* 653, 654. 1 *Cro.* 512. A Parson may sue in the Spiritual Court for a *Modus Decimandi*, or Rate Tithe: But if the *Modus* is denied, or a Custom is to be tried, it must be tried in the Common Law Courts: And where a *Modus* is pleaded in the Spiritual Court to a Demand of Tithes in Kind, a Prohibition lies upon Supposition that the Spiritual Court will not admit of any Plea against Tithes. 2 & 3 *Ed.* 6. c. 13. *Wood* 178. Where Land is converted to other Uses, as Hay Ground to Tillage, &c. or where the Thing is altered or destroyed; as when a Fulling Mill is made a Corn Mill, or a Corn Mill is come to Ruin, &c. a *Modus* made on good Consideration may be discharged, and then Tithes be paid in Kind. 1 *Danv. Abr.* 607, 608. so by Nonpayment of the Consideration, or by Payment of Tithes in Kind, for so long Time, that the Prescription for a *Modus Decimandi* cannot be proved: But a short Interruption 'tis said shall not destroy it. 1 *Roll* 932. *Hob.* 43. A Payment of different Sums is Evidence that there is no *Modus*.

Moiety, (*Medietas*, Fr. *Moitie*, i. e. *coequa vel Media pars*) Is the Half of any Thing; and to hold by *Moieties*, is mentioned in our Books, in Case of Jointenants, &c. *Lit.* 125.

Molendinum, A Mill of divers Kinds. See *Mill*.

Molendum, Signifies Corn sent to a Mill, a Grift. *Chart. Abbat. de Rading*, M.S. fol. 116.

Molitura, Commonly taken for the Toll paid or taken for grinding Corn at a Mill; and sometimes called *Molta*, Fr. *Moulta*. *Molitura libera*, free Grinding or Liberty of a Mill, without paying Toll; a Privilege which the Lord generally reserved to his own Family — *Salva mihi & heredibus meis Molitura libera familie nostre queta in dicto Molendino*. *Paroch. Antiq.* 236.

Molman, A Man subject to do Service; applied to the Servants of a Monastery. *Prior. Lewes*, p. 21. *Spelm. Gloss.* 63.

Molmutian, or **Molmutin Laws**. These were the Laws of *Dunawallo Molmutius*, sixteenth King of the Britains, who began his Reign above four hundred Years before the Birth of our Sa-

viour; and they were famous in this Land till the Time of *William the 1st*, called the *Conqueror*. This King was the first who published Laws in *Britain*; and his Laws, with those of *Q. Mercia*, were translated by *Gildas* out of the *British* into the *Latin Tongue*. *Usher's Primord.* 126.

Monasteries and Abbeys, &c. dissolved by K. H. 8. See 27 H. 8. c. 28. and *Abbot*.

Monetarium, Signified a certain Tribute paid by Tenants to their Lord every third Year, that he should not change the Money which he had coined, formerly when it was lawful for great Men to coin Money current in their Territories; but not of Silver and Gold: It was abrogated by the Stat. 1 Hen. 1. c. 1. The Word *Monetarium* is likewise used for a *Mintage*, and the Right of coining or minting Money: *Fus & Artificium cudendi Monetas*.

Money, (*Moneta*) Is that Metal, be it Gold or Silver, that receives Authority by the Prince's Impress to be current; for as Wax is not a Seal without Print, so Metal is not Money without Impression. *Co. Lit.* 207. It belongs to the King only to put a Value, as well as the Impression on Money; which being done, the Money is current for so much as the King hath limited, 2 *Inst.* 575. Any Piece of Money coined is of Value as it bears a Proportion to other current Money, and that without Proclamation: And though there is no Act of Parliament, or Order of State for *Guineas*, as they are taken; yet being coined at the Mint, and having the King's *Insignia* on them, they are lawful Money, and current at the Value they were coined and uttered at the Mint. 2 *Salk.* 446. Gold and Silver Coin, &c. is not to be exported without License, on Pain of Forfeiture. Stat. 9 Ed. 3. c. 10. And Money of Silver melted down, is to be forfeited, and double Value. 13 & 14 Car. 2. c. 31. But by old Statutes, foreign Money may be melted down; and no Money shall be current but the King's own, &c. 27 Ed. 3. c. 14. 17 R. 2. c. 1. See *Coin* and *Exchange*.

Money in Court. In Law Proceedings, Money demanded is oftentimes brought into Court, either by a Rule of Court, or by pleading a *Profert in Curiam* of the Money, and then if the Money is not paid into Court, the Plea will not be received. The Money must be brought into Court, upon the Plea of a Tender: And the Defendant may at any Time, pending an Action on Bond with a Penalty, bring the Money and Costs into Court, and it shall be a good Satisfaction and Discharge, by Stat. 4 & 5 Ann. c. 16. If a Defendant pay Money, or Part, into Court, and it is struck out of the Declaration, though the Plaintiff is Nonsuit, he shall take the Money out of Court, for by paying it into Court, the Defendant admitted that so much was due; but if the Defendant brings Money into Court upon a Tender, and *unore prist*, and the Plaintiff takes Issue upon the Tender, and 'tis found against him, then the Defendant shall have the Money out of Court, 2 *Salk.* 597. Money may be brought into Court upon an Action of Debt for Rent: In *Replevin*, when the Defendant avows for so much Rent arrear, the Plaintiff hath been admitted to bring it into Court: And in *Covenant*, &c. where the Breach is assigned for Nonpayment of Rent, the Defendant may bring the Money due into Court. *Ibid.* In a *Quantum Meruit* it hath been denied; though it was granted in such Case, *Pasch.* 5 Ann. And it is said, where an Action

is brought by an Executor or Administrator, the Defendant cannot bring the *Money into Court*. 2 *Salk.* 596.

Monetarii, (*Monetarii*) Are taken for Bankers, or those that make it their Trade and Business to turn and return Money; also Officers of the *Mint*, mentioned in the Stat. 1 *Ed.* 6. c. 15.

Monger, A little Sea Vessel which Fishermen use. Stat. 13 *Eliz.* c. 11. And when a Word ends with *Monger*, as *Ironmonger*, &c. it signifies Merchant, from the Sax. *Manger*, i. e. *Mercator*.

Monk, (*Monachus*) From the Gr. *μοναχ*, *solus*, *qu. soli*, i. e. *Separati ab aliorum consortio vivant*, because the first Monks lived alone in the Wilderness. They were divided into three Ranks; *Cœnobitarum*, i. e. a Society living in Common in a Monastery, &c. under the Government of a single Person; and these were under certain Rules, and afterwards called *Regulars*. *Anachoreta* or *Eremita*, those Monks who lived in the Wilderness on Bread and Water. And *Sarabaita*, Monks living under no Rule, that wandered in the World. St. *Ferome* tells us, that of the *Anachoreta*, *Paulus fuit Auctor*, *Antonius Illustrator*, *Johannes Baptista princeps*.

Monopoly, (From *Μονο*, *unus*, & *πωλέω*, *vendo*) Is an Allowance of the King by his Grant, Commission, or otherwise, to any Person or Persons, for the sole Buying, Selling, Making, Working or Using of any Thing, by which any other Persons are restrained of any Freedom or Liberty that they had before, or hindered in their lawful Trade. 3 *Inst.* 181. All *Monopolies* are against the ancient and fundamental Laws of the Realm: A By-Law, which makes a *Monopoly*, is void; and so is a Prescription for a sole Trade to any one Person or Persons, exclusive of all others. *Moor* 591. *Monopolies* by the Common Law are void, as being against the Freedom of Trade, and discouraging Labour and Industry, and putting it in the Power of particular Persons to set what Prices they please on a Commodity. 1 *Hawk. P. C.* 231. Upon this Ground it hath been held, that the King's Grant to any Corporation, of the sole Importation of any Merchandize, is void. 2 *Roll. Abr.* 214. 3 *Inst.* 182. The Grant of the sole Making, Importing and Selling of Playing Cards, was adjudged void. 11 *Rep.* 84. *Moor* 671. And the King's Grant of the sole Making and Writing of Bills, Pleas, and Writs in a Court of Law, to any particular Person, hath been resolved to be void. 1 *Jones* 231. 3 *Mod.* 75. The King may grant to particular Persons the sole Printing of the Holy Scriptures, and Law Books, &c. 1 *Hawk.* 231. All Matters of this Nature ought to be tried by the Common Law, and not at the Council-Table, or any other Court of that Kind; and the Making use of or Procuring any unlawful *Monopoly*, is punishable by Fine and Imprisonment at Common Law. 3 *Inst.* 181, 182. By Statute, all *Monopolies*, Grants, Letters Patent and Licenses, for the sole Buying, Selling, and Making of Goods and Manufactures, are declared void, except in some particular Cases; and Persons grieved by putting them in use, shall recover treble Damages and double Costs, by Action on the Statute; and Delaying such Action, before Judgment, by Colour of any Order, Warrant, &c. or Delaying Execution after, incurs a *Premunire*: But this doth not extend to any Grant or Privilege granted by Act of Parliament; nor to any Grant or Charter to Corporations or Cities, &c. Grants to Com-

panies or Societies of Merchants, for Enlargement of Trade; or to Inventors of New Manufactures, who have Patents for the Term of fourteen Years; Grants or Privileges for Printing; Making Gunpowder; Casting Ordnance, &c. 21 *Fac.* 1. c. 3. As to Inventors of New Manufactures, &c. it has been adjudged on this Statute, that a Manufacture must be substantially new, and not barely an additional Improvement of any old one, to be within the Statute; it must be such as none other used at the Granting the Letters Patent; and no old Manufacture in Use before, can be prohibited in any Grant of the sole Use of any such new Invention. 3 *Inst.* 184. Yet a Grant of a *Monopoly* may be to the first Inventor by the Stat. 21 *Fac.* notwithstanding the same Thing was practised before beyond Sea; because the Statute mentions new Manufactures within the Realm, and intended to encourage new Devices useful here, and it is the same Thing whether acquired by Experience or Travel abroad; or by Study at home. 2 *Salk.* 447. It is said, a new Invention to do as much Work in a Day by an Engine as formerly used to employ many Hands, is contrary to the Statute; by Reason it is inconvenient, in turning so many Men to Idleness. 3 *Inst.* 184.

Monstrans de Droit, Is a Shewing of Right, and signifies a Writ out of the Chancery to be restored to Lands and Tenements that are a Man's in Right, tho' by some Office found to be in the Possession of another lately dead; by which Office the King would be intitled to the said Lands, &c. It is given by the Stat. 34 *Ed.* 3. c. 14. and 36 *Ed.* 3. 13 *Staundf. Prærog.* c. 21. 4 *Co. Rep.* 54.

Monstrans de Faits, Shewing or Producing of the Deed in open Court, when an Action is brought upon any Deed; and the Difference between *Monstrans de faits* and *Oyer de faits*, is this: He that pleads any Deed or Record, or Declares upon it, ought to shew the same; and the other, against whom such Deed or Record is pleaded, may demand *Oyer* thereof. Where a Man pleads a Deed, which is the Substance of his Plea or Declaration, if he doth not plead it with a *Profert in Curia*, his Plea or Declaration is naught, upon a special Demurrer, shewing it for Cause: And if he doth plead it with a *Profert in Curia*, if the other Party demands a Sight, of it, he cannot proceed till he hath shewn it; and when the Defendant hath had a Sight of it if he demands a Copy of the same, the Plaintiff may not proceed until a Copy is delivered unto him. Stat. 4 & 5 *Ann.* c. 16. 2 *Lill. Abr.* 201, 202. Vide *Profert in Curia*.

Monstraverunt, Is a Writ that lies for Tenants in *ancient Demesne*, who hold by free Charter, when they are distrained to do unto their Lords other Services and Customs than they or their Ancestors used to do: Also it lieth where such Tenants are distrained for the Payment of Toll, &c. contrary to their Liberty, which they do or should enjoy. *F. N.* 14. 4 *Inst.* 269. This Writ is directed to the Sheriff to charge the Lord that he do not distrain them for such unusual Services, &c. And if the Lord nevertheless distrains his Tenants for other Services than of Right they ought to do, the Sheriff may command the Neighbours who dwell next the Manor, or take the Power of the County, to resist the Lord, &c. And the Tenants in such Case may likewise sue an *Attachment* against their Lord, returnable in C. B. or B. R. to answer the Com-

tempt, and recover Damages. *New Nat. Br.* 32. But the Lord shall not be put to answer the Writ of Attachment sued against him upon the *Monstraverunt*, before the Court is certified by the Treasurer and Chamberlains of the *Exchequer*, from the Book of *Domesday*, whether the Manor be ancient Demesne; so that it is requisite that the Plaintiff in the *Monstraverunt* do sue forth a special Writ for the certifying of the same. *Ibid.* 35. The Writ of *Monstraverunt* may be sued by many of the Tenants, without naming any of their proper Names, but generally *Monstraverunt nobis homines de, &c.* But in the *Attachment* against the Lord, the Tenants ought to be named; though one Tenant may sue it in his own Name, and the Name of the other Tenants by general Words, *Et homines, &c.* 2 H. 6. 26.

Monstrum, Is sometimes taken for the Box in which Relicks are kept: *Item unum Monstrum cum Ossibus S. Petri, &c.* *Mon. Angl. Tom.* 3. pag. 173.

Month, or **Moneth**, Sax. **Monath**, (*Mensis, à Mensione, Luna cursus*) Signifies the Time the Sun goes through one Sign of the Zodiack, and the Moon through all twelve; properly the Time from the New Moon to its Change, or the Course or Period of the Moon, whence 'tis called *Month* from the Moon. *Litt. Dist.* A *Month* is a Space of Time containing by the Week twenty-eight Days; by the Kalendar sometimes thirty, and sometimes thirty-one Days: And *Julius Caesar* divided the Year into twelve *Months*, each *Month* into four Weeks, and each Week into seven Days, according to the Number of the seven Planets. The *Month* by the Common Law is but twenty-eight Days; and in Case of a Condition for Rent, the *Month* shall be computed at twenty-eight Days; so in the Case of Inrollments of Deeds, and generally in all Cases where a Statute speaks of *Months*: But when the Statute accounteth by the Year, Half-Year or Quarter of a Year, then it is to be reckoned according to the Kalendar. 1 *Inst.* 135. 6 *Rep.* 62. *Cro. Jac.* 167. A *Twelvemonth*, in the singular Number, includes the whole Year, according to the Kalendar: But twelve *Months*, six *Months, &c.* in the plural Number, shall be accounted after twenty-eight Days to every *Month*; except in Case of Presentations to Benefices to avoid Lapse, &c. which shall be in six Kalendar *Months*. 6 *Rep.* 61. *Cro. Jac.* 141. And if an Agreement is to pay 50 s. for the Interest of 100 l. at the End of six *Months*, it is said the Computation must be by Kalendar *Months*; because if it was by Lunar *Months* the Interest would exceed the Rate allowed by the Statute. *Wood's Inst.* 433. Though in common Cases of Loans and Forbearance of Money, the *Months* according to some shall be reckoned at twenty-eight Days, and according to others by the Kalendar. 1 *Leon.* 96.

Monument. An Heir may bring an Action against one that injures the Monument, &c. of his Ancestor: And the Coffin and Shroud of a deceased Person belong to the Executors or Administrators; but the dead Body belongeth to none. 3 *Inst.* 202, 203.

Moots, In the Isle of Man, who summon the Courts for the several Sheadings, are the Lord's Bailiffs, called by that Name; and every Moor has the like Office with our Bailiff of the Hundred. *King's Descript. Isle of Man.*

Moot, (From the Sax. *Motian, placitare*, to treat or handle) Is a Term well understood in the *Inns of Court*, and signifies that Exercise or Arguing of Cases which young Barristers and Students perform at certain Times, the better to enable them for Practice and Defence of Clients Causes. The Place where *Moot-Cases* were argued, was anciently called the *Moot-Hall*: And in the *Inns of Court*, there is a *Bailiff of the Moots* yearly chosen by the Benchers, to appoint the *Mootmen* for the *Inns of Chancery*; and keep Accounts of the Performances of Exercises, both there and in the House. *Orig. Juridical.* 212.

Mootmen, Are those that argue the Readers Cases, called *Moot-Cases*, in the *Inns of Chancery*, in Term-Time, and in Vacations. 3 *Rep.*

Moor, A Moor, or barren and unprofitable Ground, derived from the Sax. *Mor*, signifying also Marshland. *Mon. Angl. Tom.* 2. pag. 50. 1 *Inst.* 5. and, according to *Fleta*, it is used for Heath. *Flet. lib.* 2. cap. 71.

Moor, A watery or boggy Moor; and such in Lancashire they call *Mosses*: *Moressa* is used in the same Sense. *Mon. Angl. Tom.* 2. p. 306.

Mozatur in Lege, Is the same with *Demoratur*, and signifies as much as *he demurs*; because the Party goes not forward in pleading, but rests or abides upon the Judgment of the Court in a certain Point, as to the Sufficiency in Law of the Declaration or Plea of the adverse Party, who deliberate and take Time to argue and advise thereupon, and then determine it. *Co. Lit.* 71. See *Demurrer*.

Mozetum, A Sort of brown Cloth, with which Caps were formerly made. *Matt. Paris. An.* 1258.

Mozgangina, (From the Sax. *Morgen*, i. e. *Aurora*, and *Gifan* or *Givan*, dare) Is that Gift which the Husband presents to his Wife on the Wedding Day, which we now call *Dowry Money*, and was usually among the *Lombards* the fourth Part of his personal Estate. It signifies literally *Donum Matutinale*; and in some Books it is writ *Morganegiba*; in others *Morgangiva*, *Morgagifa*. *Leg. Hen.* 1. c. 70. *Leg. Canut.* c. 99.

Moziam, (Fr. *Morion*, Itah *Morione*, i. e. *Casque*) A Head-piece, now called a Pot. *Stat.* 4 & 5 P. & M. c. 2.

Mozina, The Wool of Sheep dead with the Murrain. — *Lana per se vendatur cum pellibus, Morina mortuarum.* *Fleta lib.* 2. c. 79.

Mozling, or **Moztling**, Signifies that *Wool* which is taken from the Skin of dead Sheep, whether being killed or dying of the Rot. 4 *Ed.* 4. c. 2 & 3. 27 H. 6. c. 2. 3 *Jac.* 1. c. 18. 14 *Car.* 2. c. 18. Vide *Shorling*.

Mozofus, and **Mozessa**. See *Mora* and *Mora mussa*.

Mozellum terræ, A small Parcel of Land. *Et unum Mozellum terra juxta borreum suum.* *Chart.* 11 Hen. 3.

Moztarium, A Light or Taper set in Churches to burn over the Graves or Shrines of the Dead. — *Tenet duas acras terra, &c. ad invenendum unum Mortarium ardentem in Ecclesia de Cheping.* *Faringdon.* *Consuetud. Dom. de Farendon, M.S.* fol. 48.

Moztdancelloz, A Writ. See *Assise of Mortdancelloz*.

Moztgage, (*Mortgagium, vel Mortuum vadium*, From the Fr. *Mort*, i. e. *Mors* and *Gage*, *Pignus*) Is a Pawn of Lands or Tenements, &c. for Money borrowed, to be the Creditors for ever, if the Money be not repaid on the Day agreed: And

And it is called a *Mortgage*, because it is a *dead Pledge*, until the Money is paid; or for that if the Money is not paid at the Day, the Land *Mortitur* to the Debtor, and is forfeited to the Creditor. *Litt.* 332. It is usually made by Lease for a long Term of Years, Lease and Release, Assignment, &c. And the Creditor holding the Land upon this Agreement, is in the mean Time called *Tenant in Mortgage*, and holdeth the Estate upon the Condition in the Deed: But generally till Failure is made of Payment, the *Mortgagor* holds the Land; and if Failure is made, and the *Mortgagee* doth enter into the Lands, the *Mortgagor* hath an *Equity of Redemption* in the Court of Chancery, and may call the *Mortgagee* to an Account for the Profits, &c. *Litt.* 332. 1 *Inst.* 205. In a *Mortgage* is contained a *Proviso*, that if the Money be paid at the Day, the Deed to be void: And on the *Mortgagor's* Paying the Interest of the Money, *Mortgages* are continued a long Time without disturbing the Possession or Parties. *Law Securit.* 103. A Feoffment in Fee, or a Lease for Life or Years, &c. may be made with a *Proviso* or Condition, that if the Feoffor or Grantor, or their Heirs or Executors, pay to the Feoffee or Grantee, &c. such Sum of Money at a certain Day, then the Feoffor, &c. may re-enter; and this hath been a common Condition in a *Mortgage*, or of an Estate upon Condition in Deed: In the former Case of *Mortgages*, the *Mortgagor* keeps Possession till Failure; but here the *Mortgagee* has the Possession presently, and till Payment. *Litt.* 332, 333. An old *Mortgage* assigned to another, ought to be taken as a new *Mortgage* from the Time of the Assignment: And as a *Mortgagee*, where the *Mortgage* is forfeited, shall have Interest for his Interest; so shall an Assignee for all Interest due from the Time the *Mortgage* was assigned. 1 *Chanc. Rep.* 218, 258. For where a *Mortgagor* assigns the *Mortgage*, all Money paid by the Assignee, if due at that Time, shall be accounted Principal as to the *Mortgagor*, whenever he comes to redeem. *Ibid.* 68. But an Agreement made at the Time of a *Mortgage*, will not make future Interest Principal, before any Interest is grown due; the Interest must be first due before an Agreement concerning it may make the same Principal. 2 *Salk.* 449. Not only the *Mortgagor*, but his Heir, being interested in the Condition, may pay the *Mortgage* Money to prevent the Forfeiture; and so may the Executors or Administrators of the *Mortgagor*: But if no Time be limited for Payment of the Money, and the *Mortgagor* having Time during Life to pay it do not pay the same; his Heirs or Executors, &c. shall not in such Case be received to pay the Money after his Death. 1 *Inst.* 206. Executors of the *Mortgagee* shall have Money due on *Mortgages*, where a *Mortgagee* in Fee dies before the Day of Payment, unless the Heir be particularly named: And where the Heir is named, if the Day of Payment be past, it is as much as if no Person had been appointed, and then the Law appoints it to the Executor; as the Money first came out of the Personal Estate, and the Executor more represents the Testator than the Heir. 1 *Inst.* 210. 2 *Ventr.* 348. *Chanc. Rep.* 284. If Heirs and Executors are named, it may be paid to either. A Man mortgaged Lands for Payment of such a Sum to the *Mortgagee*, his Heirs, Executors or Assigns, the *Mortgagee* died, and made the Heir within Age his Executor, and the *Mortgagor* paid the Money at the Day to the

Heir; it was held, that the Heir had not the Money as Heir, but that it should be Asssets in his Hands as Executor. 3 *Leon.* 59. But it hath been adjudged, that upon a *Mortgage* of Land in Fee, with Condition to pay to the Heirs or Assigns of the *Mortgagee*, the Heirs and not the Executors shall have the Money. *Chanc. Rep.* 88. When the Heir of the *Mortgagee* is to reconvey the Estate mortgaged, and there is no Defect of Asssets in the Hands of the Executors, the *Mortgage* Money for Redemption shall be paid to the Heir, if the Condition was to pay it to him; or if it was to pay it to the *Mortgagee*, his Heirs or Assigns, or to his Heirs or Executors: But it is otherwise if it was to be paid to the Executor only. *Chanc. Rep.* 83. 3 *Salk.* 241. *Mortgages* have been looked upon as Part of the personal Estate, except a *Mortgagee* in Fee otherwise declare the same. *Chanc. Rep.* 286. And personal Estate of a *Mortgagor* shall, in Favour of the Heir, be applied to discharge the *Mortgage*; if there be personal Asssets, to pay all Legacies. 2 *Salk.* 450. It has been decreed, that where a *Mortgagee* lends more Money upon Bond to the *Mortgagor*, he shall not redeem, unless he pay the Money due on the Bond as well as on the *Mortgage*: Though if he mortgage the Equity of Redemption to another, the second *Mortgagee* shall not be affected by this Bond, because 'tis but a personal Charge upon the *Mortgagor*. 3 *Salk.* 240. In Equity it is allowed, that if Lands are thrice mortgaged the third *Mortgagee* may buy in the first Incumbrance to protect his own *Mortgage*; and he shall hold against the second *Mortgagee*, if such second *Mortgagee* do not satisfy him the Money he paid on the first, and also his own Money which he lent on the last *Mortgage*. 2 *Ventr.* 338. And a Purchaser upon valuable Consideration, purchasing a precedent Incumbrance, shall protect his Estate against any Person that hath a *Mortgage* subsequent, &c. A *Mortgagee*, without Notice of a former Incumbrance, buys in an Incumbrance precedent to that Incumbrance, which precedes his *Mortgage*; he shall not be impeached in Equity, but upon Payment of all that is due to him on both Estates. *Chanc. Rep.* 149. 2 *Lill. Abr.* 206. If a *Mortgagor* retaining the Possession levies a Fine to another *Mortgagee*, this shall not bar the first *Mortgagee*. 1 *Lev.* 272. But in a late Case, a second *Mortgage*, with the Title Deeds, may be paid in Equity before a first *Mortgagee*, without the Deeds: And by Stat. 4 & 5 *W. & M. c.* 16. where *Mortgagors* make second *Mortgages*, and do not discover the first, the second *Mortgagee* may redeem, &c. A Jointress of mortgaged Lands was decreed to pay the *Mortgage* Money for Redemption, and hold over, till she and her Executors should be paid with Interest. *Chanc. Rep.* 27. And where a Devise of Land mortgaged, was to one for Life, and Remainder to another in Fee; it was adjudged, that Tenants for Life should pay one third, and he in Remainder two thirds, to redeem. *Ibid.* The Interest in Lands mortgaged is in Law in the *Mortgagee* before Forfeiture; he hath purchased the Land as it were upon valuable Consideration, as the Law will intend: And though the *Mortgagor* may redeem, yet it is not certainly known whether he will or no; and if he do not, the Estate is absolute in the *Mortgagee*. A *Mortgagee* is esteemed in Possession on executing the *Mortgage*; and if the *Mortgage* Money be not paid, whereby the Land is forfeited, he may

may bring Ejectment without actual Entry; but where a Condition is to be defeated, it must be by actual Entry. 2 Lill. Abr. 203. After twenty Years, (the Time of Entry limited by Stat. 21 Jac. 1.) where no Demand has been made of the Money, or Interest paid, &c. Mortgages are not relievable in Chancery, unless there be particular Circumstances to induce it, as in Case of Feme Coverts, Infants, &c. 2 Vent. 340. Infants seized of Estates in Fee, in Mortgage, &c. may make Conveyances of such Estates, by Order of the Court of Chancery. Stat. 7 Ann. c. 19. See Equity of Redemption.

Form of a common Mortgage of Lands.

THIS Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, that the said A. B. for and in Consideration of the Sum of, &c. to him in hand paid by the said C. D. the Receipt whereof he doth hereby confess and acknowledge, he the said A. B. hath granted, bargained and sold, and by these Presents doth grant, bargain, and sell unto the said C. D. All that Messuage or Tenement, and all those Lands, &c. situate, lying and being in, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises, and of every Part and Parcel thereof, with the Appurtenances, To have and to hold the said Messuage or Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Executors, Administrators and Assigns, for and during the Term of Five hundred Years next and immediately ensuing and following, and fully to be compleat and ended, Yielding and Paying therefore yearly, during the said Term, one Pepper-Corn in and upon the Feast of St. Michael the Archangel, if demanded. Provided always and upon Condition, that if the said A. B. his Heirs or Assigns, do and shall well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the full Sum of, &c. in and upon the Day, &c. next coming, (or which will be in the Year, &c.) without any Deduction or Abatement for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, that then and from thenceforth these Presents, and every Thing herein contained, shall cease, determine and be void, any Thing herein contained to the contrary notwithstanding. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that he the said A. B. his Heirs or Assigns, shall and will well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon the said, &c. without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents. And also that he the said C. D. his Executors, Administrators and Assigns, shall and may at all Times, after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Messuage or Tenement, Lands and Premises above mentioned, and every Part and Parcel thereof, with the Appurtenances, for and during the Residue and Remainder of the said Term of Five hundred Years hereby granted, which shall be then to come and unexpired, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said A. B. his Heirs and Assigns, and of all and every other Person and Persons whatsoever. And further, that he the said A. B. and his Heirs, and all and

every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Messuage or Tenement and Premises above-mentioned; or any Part thereof, shall and will at any Time or Times, after Default shall be made in Performance of the Proviso or Condition herein contained, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better and more perfect Granting and Assuring of All and singular the said Premises above-mentioned, with the Appurtenances unto the said C. D. To hold to him, his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of Five hundred Years above granted, which shall be then to come and unexpired, as by the said C. D. his Executors, Administrators or Assigns, or his or their Counsel learned in the Law shall be reasonably devised or advised and required. And lastly, it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that until Default shall be made in Performance of the Proviso or Condition herein contained, he the said A. B. his Heirs and Assigns, shall and may hold and enjoy All and singular the said Premises above-mentioned, and receive and take the Rents, Issues and Profits thereof, to his and their own proper Use and Benefit; any Thing herein contained to the contrary thereof notwithstanding. In Witness, &c.

Mortgago, Is he that mortgages or pawns the Lands; and he to whom the Mortgage is made is called the Mortgagee.

Morth, (Sax.) Signifies Murder, *Morthlaga* a Murderer or Manslayer.

Mortmain, (*Manus Mortua*, i. e. Dead Hand, from the Fr. *Mort*, viz. *Mors* and *Main*, *Manus*) Is where Lands and Tenements are given or aliened to any House of Religion or Corporation, sole or aggregate, Ecclesiastical and Temporal, and their Successors, &c. which may not be done without Licence from the King: And the Reason of the Name proceeds from this, that the Services and other Profits due for such Lands, should not without such Licence come into Hands as it were dead, and be so dedicated to pious Uses as to be abstractedly different from other Lands, and never to revert to the Donor, or any temporal or common Use. And because the Lords had nothing from the Alienees; for by Alienation in Mortmain they lost their Escheats, and many Services which were heretofore due to them, as Bodies Politick never die, nor can perform personal Service, commit Treason or Felony, &c. This occasioned the Statutes of Mortmain, by Virtue whereof the King, or other Lord of whom the Land is holden, may enter into Lands so aliened. 1 Inf. 2. 2 Inf. 75. The Foundation of all the Statutes of Mortmain was *Magna Charta*. By the 9 H. 3. c. 36. it is declared, that it shall not be lawful for any to give his Lands to any Religious House, and to take the same Land again to hold of the same House, &c. upon Pain that the Gift shall be void, and the Land shall accrue to the Lord of the Fee. This Statute is interpreted to extend to Lands which a Religious House kept in their own Hands, though they gave them not back again to hold of the same House. 2 Inf. 75. But Ecclesiastical Persons found Means to creep out of the Statute, by purchasing Lands holden of themselves, or by taking Leases for a long Term of Years,

Years, &c. wherefore by 7 Ed. 1. commonly called the *Statute of Mortmain*, or *de Religiosis*, no Persons religious, or others whatsoever, shall buy or sell any Lands or Tenements, or under the Colour of any Gift or Lease, or by Reason of any other Title receive the same, or by any other Craft shall appropriate Lands in any wise to come into *Mortmain*, on Pain of Forfeiture; and within a Year after the Alienation, the next Lord of the Fee may enter; and if he do not, then the next immediate Lord, from Time to Time, is to have Half a Year; and for Default of all the Lords entering, the King shall have the Lands so alienated for ever, and may enfeoff others by certain Services, &c. As this Statute extended only to Gifts, Alienations, &c. made between Ecclesiasticks and others, they found out an Evasion also of this Statute; for pretending a Title to the Land which they meant to gain, they brought a feigned Action against the Tenant of the Land, and he by Consent and Collusion was to make Default, and thereupon they recovered the Land, and entered by Judgment of Law: So that the Stat. *Westm.* 2. 13 Ed. 1. c. 32. was thought necessary; by which it is to be inquired by the Country whether the Demandant had a just Title to the Land; and if so, then he shall recover Seisin; but if otherwise, the Lord of the Fee shall enter, &c. Notwithstanding all these Statutes, Ecclesiastical Persons (not being able to get Lands by Purchase, Gift, Lease or Recovery) procured Lands to be conveyed by Feoffment, or in other Manner, to divers Persons and their Heirs, to the Use of them and their Successors, whereby they took the Profits. 2 *Inst.* 75. To bar this, the Stat. 15 R. 2. c. 5. was made, which Statute enacts, that no Feoffment, &c. of any Lands and Tenements, Advowsons or other Possessions, to the Use of any Spiritual Persons, or whereof they shall take the Profits, shall be made without Licence of the King, and of the Lords, &c. upon Pain of Forfeiture. And by 23 H. 8. c. 10. against superstitious Uses, Feoffments, Fines, Recoveries, Grants, Devises, &c. of Lands, in Trust to the Use of any Parish-Church, &c. or to have perpetual *Obits* or continual Service of a Priest for ever, or for sixty Years, &c. to the Prejudice of the King and other Lords, as in Case of Lands aliened in *Mortmain*, shall be void: Though this last Statute extends not to Corporations, where there is a Custom to devise Lands in *Mortmain*; as in *London*, a Freeman that pays Scot and Lot may devise all his Lands in the City in *Mortmain*, without Licence. 1 *Roll. Abr.* 556. And notwithstanding this, or any of the aforesaid Statutes, any Man at this Day may give Lands, Tenements, &c. to any Persons and their Heirs, for finding a Preacher, Maintenance of a School, Reparation of Churches, Relief of the Poor, &c. or for any like charitable Uses: Though it is good Policy on every such Estate to reserve a small Rent to the Feoffor and his Heirs, when the Feoffees shall be seised to their own Use, and not to the Use of the Feoffor; or if a Consideration of a small Sum be expressed, the 23 H. 8. cannot by any Pretence make void the Use. 1 *Rep.* 24. 11 *Rep.* 70. *Wood's Inst.* 303. By the Stat. 39 Eliz. c. 5. the Gift of Lands, &c. to Hospitals is permitted, without obtaining Licence of *Mortmain*. Owners of Improvements may annex them to the Parsonage or Vicarage where they lie, or settle them in Trust for the Curates,

where the Parsonage is impropriate and no Vicarage endowed, without Licence of *Mortmain*: And if the settled Maintenance of any Benefice with Cure shall not amount to 100 l. *per Annum*, the Incumbent may purchase to him and his Successors, &c. without Licence in *Mortmain*. 17 *Car.* 2. c. 3. By an antient Statute the King's Licence may be had for Amortizing of Lands, and the Writ of *Ad quod Damnum* is to issue out of *Chancery* to inquire concerning the same. 27 E. 1. Prelates, Clerks, &c. shall not be impeached for purchasing Lands in *Mortmain*, on producing the King's Charter of Licence. 18 E. 3. And it is declared lawful for the King to grant to any Person, Body Politick or Corporate, their Heirs and Successors, License to alien in *Mortmain*; and purchase and hold in *Mortmain* in Perpetuity, &c. without incurring any Forfeiture, by Stat. 7 & 8 W. 3. c. 37. A Grant of an Advowson in Fee, or an Appropriation of an Advowson, hath been adjudged a *Mortmain*; but an Appropriation of Tithes, which are Things merely Spiritual, or a Grant of an Annuity, that chargeth the Person only, cannot be *Mortmain*, to be forfeited. 1 *Inst.* 2, 374. 2 *Inst.* 361. 5 *Rep.* 56. 9 *Rep.* 96.

Mortuary, (*Mortuarium*) Is defined to be a Gift left by a Man at his Death to his Parish-Church, in Recompence of personal Tithes and Offerings omitted to be paid in his Life time: Or it is that Beast or other Chattel moveable, which, after the Death of the Owner, by the Custom of some Place is due to the Parson, Vicar, or Priest of the Parish, in lieu of Tithes or Offerings forgot, or not well and truly paid by him that is dead. *Terms de Ley* 449. Mr. *Selden* tells us, that the Usage anciently was to bring the *Mortuary* along with the Corpse when it came to be buried, and to offer it to the Church as a Satisfaction for the supposed Negligence and Omission the deceased had been guilty of in not paying his personal Tithes; and from thence it was called a *Corse-present*. *Seld. Hist. Tithes* 287. A *Mortuary* is not properly due to an Ecclesiastical Incumbent from any but those only of his own Parish, to whom he ministers spiritual Instruction, and hath Right to their Tithes; but by Custom in some Places they are paid to the Incumbent of other Parishes, when the Corpses of dead Bodies pass through them: And the Bishops of *Bangor*, *Landaff*, *St. David's*, &c. formerly had *Mortuaries* of Priests, till taken away by a late Statute. 12 Ann. c. 6. In the Diocese of *Chester* there is said to be a Custom for the Bishop to have a *Mortuary* on the Death of every Priest dying within the Archdeaconry of *Chester*, of his best Beast, Saddle and Bridle, and best Gown or Cloak, Hat, and upper Garment under the Gown, &c. *Cro. Car.* 172. Before the Stat. 21 H. 8. *Mortuaries* were payable in Beasts; the best to the Lord for a Heriot, the second best for a *Mortuary*; nor was it only *De meliori Averno*, sed *de meliori re*: And *Mortuarium* (says *Lindwood*) sic dictum est quia relinquitur Ecclesie pro Anima Defuncti. It hath been held, that such a Right was vested in the Parson to have the second best Beast for a *Mortuary*, (where by Custom it was due) that he might seise it wherever he could find it; but they are now settled to be paid in Money. 2 *Inst.* 491. *Clergym. Law* 474. No *Mortuary* is originally due by Law but by Custom only: And Custom did so prevail, that *Mortuaries* were held as due Debts, and the Payment of them was enjoined

as well by the Statute *De Circumspecte agatis*. 13 Ed. 1. as by several Constitutions, &c. And by the 21 H. 8. c. 6. *Mortuaries* are to be paid as follows, viz. He that dies possessed of moveable Goods to the Value of 40 l. or above, (his Debts first paid) is to pay 10 s. He that dieth possessed of Goods of 30 l. Value and under 40 l. is to pay 6 s. 8 d. And dying possessed of Goods to the Value of 6 l. 13 s. 4 d. and under 30 l. to pay 3 s. 4 d. But if the Goods are under 6 l. 13 s. 4 d. Value, no *Mortuary* is to be paid; and no *Mortuary* is to be paid by any Feme Covert or Child, Persons not keeping House, &c. If one happens to die in a Place where he does not reside, by this Statute the *Mortuary* shall be paid in the Place where he had his most Abode; no Person shall pay *Mortuaries* in more Places than one, or more than one *Mortuary*; and no *Mortuary* shall be demanded of any but in such Places where *Mortuaries* are due by Custom, and have used to have been paid: Also there is a Proviso in the Statute, that in Places where *Mortuaries* have been of less Value than as aforesaid, no Person shall pay any more than has been accustomed. If a Parson, Vicar, &c. take or demand more than is allowed by the Statute for a *Mortuary*, he shall forfeit all he takes beyond it, and 40 s. more to the Party grieved, to be recovered by Action of Debt, &c. Stat. *Ibid*. Since this Statute, whereby *Mortuaries* are reduced to a Certainty, an Action of Debt will lie upon the said Statute in the Courts of Common Law, for Recovery of the Sum due for a *Mortuary*, being due by Custom as aforesaid, although before that Statute they were recoverable only in the Spiritual Court: But as such Actions have never been brought, it is said they are still recoverable in that Court only. *Watf. Clergym. Law* 475. *Count. Parf. Compan.* 140. Where by Custom a *Mortuary* hath not been usually paid, if a Person be libelled in the Spiritual Court, he shall have a *Prohibition* by Virtue of the Statute 21 H. 8. And upon a *Prohibition* the Custom may be tried, &c. 2 *Lutw.* 1066. 3 *Mod.* 268.

Mortuarium, Hath been sometimes used in a Civil as well as Ecclesiastical Sense, being payable to the Lord of the Fee. — *Debentur Domino Maner. de Wrechwyke nominibus Heriotti & Mortuarii dua Vacca pret. xii. sol.* Paroch: *Antiq.* 470.

Mosaic Law. This Law inflicts not a Capital Punishment for bare Thefts, agreeable to which is the *Civil Law*; but our Law doth, as in strict Justice for the Welfare of the Society it may. *Exod.* 22. *S. P. C.* 25. 1 *Hawk. P. C.* 89.

Moss-Troopers, A rebellious Sort of People in the North of England, that lived by Robbery and Rapine, not unlike the *Tories* of Ireland, the *Buckaneers* in Jamaica, or *Banditti* of Italy: They were suppressed by the Statutes of 4 *Fac.* 1. c. 1. 7 *Fac.* 1. & 14 *Car.* 2.

Mote, (*Mota*, Sax. *Gemote*, *Curia*) A Court or Convention: As *Mota* de Hereford, i. e. *Curia vel Placita Comitatus de Hereford*. Hence *Burgemote*, *Curia vel Conventus Burgi*; *Swaingemote*, *Curia Ministror. Forestæ*, &c. And from this we draw our Word *Moot*, to plead in the Inns of Court and Chancery: Also *Mota* was sometimes taken for a Fortress; as *Turris de London*, & *Mota de Windsor*, the Tower of London and Fortrefs of Windsor. *Chart. K. Stephen*. It likewise signifies a standing Water to keep Fish; or a great Ditch encompassing a Castle or Dwelling-House. — *Hec Indentura, &c. testatur quod predict. Rogerus tradidit præ-*

fato Thomæ tria Stagna & unam Motam Piscariam existens infra Manerium, &c. Habend. &c. cum tota Piscatione in eisdem & cum incremento Piscium in eisdem cum libero ingressu & egressu, &c. *Chart. dat.* 18 Feb. 11 Ed. 4.

Mote-bell, or *Mot-bell*, the Bell so called, which was used by the English Saxons to call People together to the Court. *Leg. Edw. Confess.* c. 35. See *Folcmote*.

Moteer, A customary Service at the *Mote* or Court of the Lord: From which some Persons were exempted by Charter of Privilege. *Rot. Cart.* 5 *Joh. m.* 9.

Mothering, Is a Custom of visiting Parents on *Mid-lent Sunday*. See *Letare Jerusalem*.

Motibilibis, One that may be removed or displaced, or rather a Vagrant. — *In Carcere detenti, Canonici, vel alii Religiosi, Motibiles, Furiosi, &c. convenire non poterunt, i. e. in Jure convenire non possunt.* *Fleta lib.* 6. cap. 6.

Motion in Court. In the Courts of Chancery, King's Bench, &c. *Motions* are made by Barristers and Counsellors at Law, for what concerns their Clients Causes: And where any *Motion* is made in Chancery, that is not of Course, generally an Affidavit of the Facts alledged must be read in Court; and if *Motions* are founded on the general Rules or Usage of the Court, and are not of Course, but granted or denied as the Court thinks fit, on hearing Counsel on both Sides, Notice is to be given in Writing to the Solicitor of the other Party, or his Clerk in Court, expressing every Thing moved for, which must be served two Days at least before the Day on which the *Motion* is to be made, whereof Affidavit must also be made. *Pract. Solic.* 17. In *B. R.* one ought not to move the Court for a Rule for a Thing to be done, which by the common Rules of Practice may be done without moving the Court for it: Nor shall the Court be moved for the doing what is against the Practice of the Court: One ought not to move for several Things in one *Motion*; and where a *Motion* hath been denied, the same Matter may not be moved again by another Counsel, without acquainting the Court thereof, and having their Leave for the same: But every Person who makes a solemn Argument at the Bar, is allowed by the Court a *Motion*. 2 *Lill. Abr.* 209, 210. If there be divers Rules of Court made in a Cause, and the Party intends to move thereon, he must produce the Rule that was last made in the Cause, and move upon that: But it is necessary to have all the Rules and Copies of the Affidavits, to satisfy the Court how the Cause hath been proceeded in, and how it stands in Court; though the last Rule is the most material: And where a *Motion* is made to set aside a Rule grounded on an Affidavit, a Copy of the Affidavit must be produced, that the Court may be informed upon what Grounds the Rule was made, and judge whether there be Cause shewn upon the *Motion* sufficient to set aside the Rule. *Pasch.* 13 *Car.* *B. R. Hill.* 1649. If any Thing be moved to the Court upon a Record, the Record is to be in Court, or the Court will make no Rule upon such *Motion*. *Hill.* 22 *Car.* *B. R.* One Party ought not to surprise another by a *Motion in Court*, but to move in convenient Time, that the other Party may have Time to be heard. *Pasch.* 23 *Car.* It is against the Practice of the Court to move for an Attachment, or any Matters in Law, upon the last Day of the Term, except the Case is peremptory.

remptory. *Monday* is a special Day for *Motions* in *B. K.* by the ancient Course, but they are made upon any Day, as the Business of the Court will permit: The three or two last Days of the Term, are Days appointed to hear *Motions*, and Crown-Office Causes; and the last Day chiefly for *Motions*, to prepare Business against the next Term or Assises. 2 *Lill.* 208, 210. In the *Chancery*, during the Term, every *Thursday* is a Day for Sealing, and *Motions*; and *Tuesdays* and *Saturdays* are Days for *Motions*, as are the first and last Days of the Term: In Vacation, only Seal-Days appointed by the Lord Chancellor, are Days of *Motion*. *Practis. Sol.* 17.

Moult, An old English Word for a Mow of Corn, or Hay; *Mullo fœni*, &c. *Paroch. Antiq.* 401.

Mowntee, An Alarm or Outcry, to mount and make some speedy Expedition, mentioned in the Statutes *Hen.* 5.

Multa, (*Multa*) A Fine of Money set upon one, for some Fault or Misdemeanor; and Fines laid on Ships or Goods, by a Company of Trade, to raise Money for the Maintenance of Consuls, &c. are called *Multas*. *Merch. Dict.*

Mulier, As used in our Law, seems to be a Word corrupted from *Melior*, or the *Fr. Melieur*; and signifies the lawful Issue, born in Wedlock, (though begotten before) preferred before an elder Brother born out of Matrimony. 9 *Hen.* 6. cap. 11. *Smith's Republ. Angl. lib.* 3. cap. 6. But by *Glanvil*, the lawful Issue are said to be *Mulier*, not from *Melior*, but because begotten of *Muliere*, and not *ex Concubina*; for he calls such Issue *Filius Mulieratus*, opposing them to *Bastards*. *Glanv. lib.* 7. cap. 1. It appears to be thus used in *Scotland* also; *Skene* saying; *Mulieratus filius* is a lawful Son, begotten of a lawful Wife. If a Man hath a Son by a Woman, before Marriage, which is a *Bastard* and unlawful, and after he marries the Mother of the *Bastard*, and they have another Son, this second Son is *Mulier* and lawful, and shall be Heir to his Father, but the other cannot be Heir to any Man; and they are distinguished in our old Books with this Addition, *Bastard eigne*, and *Mulier puisne*. *Co. Lit.* 170, 243. Where a Man has Issue by a Woman, if he afterwards marries her, the Issue is *Mulier* by the *Civil Law*, though not by the Laws of *England*. 2 *Inst.* 96. 5 *Rep.* 416. Of ancient Time, *Mulier* was taken for a Wife, as it is commonly used for a Woman, particularly one that is not a Maid; and some Times for a Widow; but it has been held, that a Virgin is included under the Name of *Mulier*. 1 *Inst.* 243.

Mulierity, (*Fr. Mulerie*) The Being or Condition of a *Mulier*, or lawful Issue. *Co. Lit.* 352.

Multa Episcopi, (From *Multa*) A Fine or Satisfaction given to the King by the Bishops, that they might have Power to make their Last Wills and Testaments, and also to have the *Probation* of other Men's, and the Granting of Administration. 2 *Inst.* 491.

Multiplication of Gold and Silver, Was prohibited and declared to be Felony by Statute 5 *Hen.* 4. cap. 4. Which Statute was made on a Presumption that Persons skilful in Chymistry, could multiply or augment these Metals, by changing other Metals into Gold or Silver; and the Endeavours of some Persons in making use of extraordinary Methods for the Producing of Gold and Silver, and finding out the Philosopher's Stone, were found to be so prejudicial to

the Publick, from the lavish Waste of many valuable Materials, and the Ruin of many Families, by such useless Expences, that they occasioned the Statute 5 *Hen.* 4. But the Restrain thereby, having no other Effect, from the unaccountable Vanity of those who fancied those Attempts practicable, than to send them beyond Sea to try their Experiments with Impunity in other Countries, the 5 *Hen.* 4. was at last repealed by 1 *W. & M.* cap. 30. *Dyer* 88. 8 *Hawk.* P. C. 47.

Multitude, (*Multitudo*) According to some Authors, must be ten Persons or more; but Sir *Edw. Coke* says, he could never find it restrained by the Common Law to any certain Number. *Co. Lit.* 257.

Multo fortiori, Or a *Minore ad Majus*. See *Fortiori*.

Multo, **Molto** or **Mutto**, A Mutton or Sheep; a Wether. *Brit. Cartular. Glasg.* 39.

Multones Auri, An old obsolete Coin of Gold, having an *Agnus Dei*, Sheep or Lamb on the one Side, and from that Impression called *Multones*: This Coin was most common in *France*, and some Times current in *England*. *Patent* 33 *Edw.* 1. cited by the learned *Spelman*.

Multure, **Multura**, The same with *Molitura*.

Mumming, (From the Teuton. *Mummen*, to mimick) Antick Diversions in the *Christmas* Holidays, to get Money or good Cheer.

Mundbrech, (Is derived from the Sax. *Mund*, i. e. *Munitio*, *Defensio*, & *Brice*, *fractio*) And is mentioned among divers Crimes, as *Pacis fractio*, *Lasio Majestatis*, &c. *Spelm. Gloss.* Some would have *Mundbrech* to signify an Infringement of Privileges; though of later Times it is expounded *Clausarum fractionem*, a Breach of Mounds, by which Name Ditches and Fences are called in many Parts of *England*: And we say, when Lands are fenced in and hedged, that they are *mounded*.

Munde, Is Peace, and *Mundebreche* a Breach of it. *Leg. H.* 1. cap. 37.

Muniments, (*Munimenta*) *Episcopus itaque cum Munimentorum inspectionem habere non potuit.* *Matt. Paris.* fol. 311. See *Miniments*.

Muniment House. In Cathedral and Collegiate Churches, Colleges, or such like, is a House or little Room of Strength, purposely made for keeping the Seal, Evidences Charters, &c. of the Church or College, called by the Name of *Muniment House*; such Evidences being termed *Muniments*, corruptly *Miniments*, 3 *Inst.* 170.

Munimina, Are the Grants or Charters of Kings to Churches; so called, because *cum eis muniantur* against all those who would deprive them of those Privileges. *Blount*.

Munus Ecclesiasticum, Signifies the consecrated Bread, out of which a little Piece is taken for a Communicant. — *Insuper & omne sacrificium quod nos dicimus Munus Ecclesiasticum*, &c. *Mon. Angl. Tom.* 2. pag. 838.

Murage, (*Muragium*) Is a reasonable Toll, to be taken of every Cart and Horse coming laden through a City or Town, for the Building or Repairing the publick Walls thereof, due either by Grant, or Prescription: And it seems to be a Liberty granted to a Town by the King, for the Collecting of Money towards the Walling of the Same. 3 *Edw.* 1. c. 30. 2 *Inst.* 222. The Service of Work and Labour done by Inhabitants and adjoining Tenants in Building or Repairing the Walls of a City or Castle, was called *Murorum operatio*; and when this personal Duty was commuted

muted into Money, the Tax so gathered was called *Murage*. *Paroch. Antiq.* 114. And in the City of *Chester*, there are two ancient Officers called *Murengers*, being two of the principal Aldermen yearly chosen to see the *Walls* kept in good Repair; for the Maintenance of which they receive certain Tolls and Customs.

Murale, The City Wall. — *Resonant Colles, resonant turbis Muralia. Huntingd. lib. 8. pag. 392.*

Muratio, A Town or Borough, surrounded with Walls. *Brompt. Vit. K. Steph.*

Murder, *Murdrum*, from the Sax. *Morth*, whence comes the barbarous Latin *Mordrum* & *Murdrum*; in French *Meurdre*) Is a Word in use long before the Reign of King *Canutus*, which some would have to signify a violent Death; and sometimes the Saxons expressed it by *Morthdæd* & *Morthweorc*, a deadly Work: But I cannot find that the Sax. *Morth* relates to a violent Death, but generally *Mors*. Anciently Murder signified only the private Killing of a Man, as appears by the Laws of King *Hen. 1.* And it was not *Murder*, except the Party slain was an *Englishman*, and no Foreigner; though by the Stat. 14 *Edw. 3. c. 4.* the Killing of any *Englishman* or Foreigner, living under the King's Protection, through Malice prepense, and whether committed openly or secretly, is declared to be *Murder*. *S. P. C. lib. 1. cap. 2.* And doubtless the Makers of the Statute of 23 *H. 8. c. 1.* which excludes all wilful *Murder* from the Benefit of the Clergy, intended to include open, as well as private Homicide within the Word *Murder*. 1 *Hawk. P. C. 78.* By *Murder* at this Day, we understand the wilful and felonious Killing of any Man whatsoever, upon Malice fore-thought; so as the Party wounded or hurt die within a Year and a Day after the Fact: And if one dies in that Time, through disorderly Living, it shall be no Excuse, the Wounds will be judged the principal Cause of his Death; but if one wounded die after that Time, the Law will presume he died a natural Death. 3 *Inst. 53. H. P. C. 55. Kel. 26.* *Murder* may be committed in divers Manners; as by Weapon, Poison, Crushing, Bruising, Smothering, Strangling, Starving, &c. And where a Person having Malice to another, strikes or shoots at him, but misseeth him and kills one not intended; or if one lays Poison to kill a Person, and another takes it and dies; these are *Murder*: Also if a sick Man be laid in the Cold, whereof he dieth; or an Infant is laid under Leaves or Trees, &c. and suffered to be destroyed by Vermin, they are a Killing. 3 *Inst. 51. 9 Rep. 81.* If a Person stir up a Dog accustomed to bite, knowing it to be such, and it kill a Person; or if a Man have an Ox, or Horse, which he knows to be mischievous, by being used to gore or strike at those who come near them, and do not tie them up, if they kill a Man, according to some Opinions, the Owner may be indicted, as having himself feloniously killed him. *Pult. 122. H. P. C. 53. 1 Hawk. P. C. 79.* Anciently it was holden, that the Causing an Abortion, by giving a Potion to, or striking a Woman big with Child, was *Murder*: But now it is said to be a great Misprision only, and not *Murder*, unless the Child be born alive, and die thereof. 1 *Hawk. 80.* If the Death of a Bastard Child newly born be concealed, it shall be supposed to be murdered; if the Mother doth not prove it was born dead. Stat. 21 *Jac. 1. cap. 27.* If one by Duress of Im-

prisonment compel a Man to accuse an innocent Person, who on his Evidence is condemned and executed; in Judgment of Law it is the Killing of the Compeller, &c. *S. P. C. 36. 3 Inst. 91.* All the above Cases shew Malice; so where a Prisoner, by the Duress of the Gaoler, comes to an untimely End; if one is executed contrary to the Direction of the Law; or if a Person sentenced to be whipped, is whipped with that Rigour that he dieth of it, &c. But one under the Age of Discretion, or *non Compos Mentis*, cannot be guilty of *Murder*; tho' if it appears by Circumstances that the Infant did hide the Body, &c. it is Felony. *H. P. C. 43. 3 Inst. 4, 6, 54.* It is Malice makes the Crime of *Murder*, which is either express, or implied; it is express, when it may be evidently proved there was formerly some ill Will, and the Killing is with a sedate Mind, and form'd Design of doing it: And implied, where one kills another suddenly, having nothing to defend himself; as going over a Stile, or the Like. 3 *Inst. 51. H. P. C. 47.* Such *Murder* as is occasioned through an express Purpose to do some principal Injury to him who is slain, is properly said to be of express Malice: And such as happens in the Execution of an unlawful Action, principally intended for some other Purpose, and not to do a personal Injury to him in particular that is killed, is most properly Malice implied. *Kel. 129, 130.* He that doth a cruel and voluntary Act, whereby Death ensues, doth it of Malice prepensed in the Esteem of the Law: And if a Person in cool Blood, maliciously and deliberately beats another in such a Manner, beyond any apparent Intent of Chastisement, that he dieth, it is *Murder* by express Malice, although he did not design to kill him. *H. P. C. 49, 50. Kel. 64, 127, 135.* But if a Person on any Provocation beat another so, that it might plainly appear he meant not to kill, but only to chastise him; or if he restrains himself till the other hath put himself on his Guard, and then in fighting with him he killeth him, he will not be guilty of *Murder* but Manslaughter. 1 *Hawk. P. C. 82.* When one executes his Revenge, upon a sudden Provocation, in such a cruel Manner, with a dangerous Weapon, as shews a malicious Intention to do Mischief; and Death ensues, it is express Malice and *Murder* from the Nature of the Fact. *Kel. 55, 61, 65, 130.* A Man chided his Servant, and upon some cross Answer given, he having a hot Iron in his Hand, ran it into the Servant's Belly, of which he died; this was adjudged *Murder*. *Kel. 64.* If a Person is trespassing upon another, by breaking his Hedges, &c. and the Owner upon Sight thereof take up an Hedge-Stake and give him a Stroke on the Head, whereof he dies; this is *Murder*, because it is a violent Act beyond the Proportion of the Provocation. *H. P. C.* And where a Boy was upon a Tree in a Park cutting of Wood, and the Keeper bid him come down, which he did; and then the Keeper struck him several Blows with a Cudgel, and afterwards with a Rope tied him to his Horse's Tail, and the Horse ran away with him and killed him; this was held to be *Murder* out of Malice, the Boy having come down at the Keeper's Command. *Cro. Car. 139. H. P. C.* A Man's Son was beaten, and complaining of it to his Father, the Father in Anger beat the other Boy with a Cudgel whereof he died; the Law shall adjudge it to be upon that sudden Occasion, and stirring of Blood, that he made the Assault, and

and not upon Malice, unless it be found; and if the Distance of the Place where his Son complained was a Mile, it is not material, being all upon one Passion. *Cro. Jac.* 296. And it is the same in Case of a Brother, Cousin, Servant, &c. it is only Manslaughter, not *Murder*. 2 *Lill.* 211. If two having Malice fight, and the Servant of one of them, not knowing of the Malice, killeth the other, this is *Murder* in the Master, and but Manslaughter in the Servant: Though if there be a Conspiracy to kill a Man, but no Malice against his Servant; if the Servant be slain, the Malice against the Master shall be construed to extend to his Servant, and the Killing the Servant is *Murder*. *Dyer* 128. 1 *Mar.* If two Persons meet and fight in cool Blood, on a precedent Quarrel, and one is killed: Or if a Person in a sudden Quarrel appears to be Master of his Temper, and kills another, it is *Murder*. 1 *Hawk.* P. C. 81. for where two Persons fight after a former Quarrel, it shall be presumed to be out of Malice; and where two Men fall out in the Morning, and meet and fight in the Afternoon, if one of them is killed, this is *Murder*; their after Meeting is of Malice. *Plowd.* 474. If a Man upon a Quarrel with another, tells such other that he will not strike him, but will give him a Pot of Ale to strike first, and thereupon the other strikes him, and he kills the other, he is guilty of *Murder*; this being only a Cover to his malicious Intention. *H. P. C.* 48. And where a Person kills another, it shall be intended of Malice; if he prove not the contrary. *Kel.* 27. A Man assaults another Person with Malice, although he be afterwards driven by the other to the Wall, and kill him there in his own Defence, he is guilty of *Murder*, in Respect of his first Intention. *H. P. C.* 47. *Kel.* 58, 129. But if the Party assaulted flee to the Wall, and being still pursued kills the other, it is only Manslaughter in his own Defence. *Bract.* 3 *Ed.* 3. If one resolves to kill the next Man he meets, and doth kill him, it is *Murder*; here Malice is implied against all Mankind. *Kel.* 27. By poisoning, and where one killeth another without Provocation, Malice is implied; as where any Magistrate or Minister of Justice is killed in the Execution of his Office; a Sheriff, Constable or Watchman, doing their Duty; or any other that comes in Aid of the King's Officer; and if a Watchman be killed in slaying of Night-walkers, it is said to be *Murder*. 3 *Inst.* 51. *Cro. Jac.* 280. *Kel.* 60, 128. In these Cases, it is a very high Contempt of the Laws, for a Person to execute his Revenge against those who have no Way offended him but by doing their Duty; and he cannot come off by alledging that what he did was in a sudden Affray, &c. 1 *Hawk.* P. C. 84. And where a Bailiff is killed in executing a lawful Warrant, &c. it is *Murder*: Nor is it any Excuse to the Person that the Process was erroneous; or that the Arrest was in the Night; that the Officer did not tell him for what Cause he arrested him; or that he did not shew his Warrant, &c. being a Bailiff commonly known. 9 *Rep.* 68, 69. *Cro. Jac.* 280, 486. But if a Bailiff who is not executing his Office is killed, it is not *Murder*; for he ought to be duly executing his Office, by serving the Process of the Law, wherein he is assisted *cum Potestate Regis & Legis*. *Cro. Car.* 537. 2 *Lill. Abr.* 212. Therefore where the Warrant by which he acts gives him no Authority to arrest the Party; as where a Bailiff arrests a wrong Person, or J. S.

a Baronet, by Force of a Warrant to arrest J. S. Knight; or if a good Warrant is executed in an unlawful Manner; as if a Bailiff be killed in breaking open a Door, or Window, to arrest a Man; or perhaps if he arrest one on a Sunday; since the Stat. 29 *Car.* 2. c. 7. by which all such Arrests are made unlawful, and he is slain; Malice shall not be implied to make it *Murder*, but the same shall be Manslaughter only. *H. P. C.* 46. *Cro. Car.* 372. 12 *Rep.* 49. 1 *Hawk.* 86. If Bailiffs come to a House to arrest a Person, and the House being locked they attempt to break in, whereupon the Son of the Person intended to be arrested, shoots and kills one of them, it is not *Murder*. *Jones* 429. A Person was arrested, and another not knowing the Cause of the Struggle, but seeing Swords drawn, and to prevent Mischief, came and defended the Party arrested, and in the Scuffle the Bailiff was killed; it was resolved to be no *Murder* in the Person doing it, but that all that were present and assisting, knowing of the Arrest, were principal *Murderers*. *Kel.* 86. Though it has been held in such a Case, that the Person offending is guilty of *Murder*, whether he knew that the Person slain were an Officer or not; for all Fighting is unlawful, and he who seeing Persons engaged in it, takes Part with one Side, and fights in the Quarrel without knowing the Cause of it, especially where the Fight is begun in Opposition to the Justice of the Nation, shews a Readiness to break through the Laws on a small Occasion, and must at his Peril take Heed what he doth. 1 *Sid.* 160. *Noy* 50. 1 *Hawk.* 85. If one attack another to rob him, and by the Resistance of the Party kills him, this is *Murder*. 3 *Inst.* 52. *Dalt.* 344. And if two or more Persons come together to do an unlawful Act, as to beat a Man, rob a Park, &c. and one of them kills a Person, this is *Murder* in all that are present, aiding or assisting, or that were ready to Aid and Assist: All will be said to intend the *Murder*. 3 *Inst.* 56. *Dalt.* 347. *H. P. C.* 31. And such Persons will be judged to be present that are in the same House, though in another Room, or in the same Park, although Half a Mile off, &c. *H. P. C.* 47. *Kel.* 87, 116, 127. Several Persons having conspired to enter the King's Park, and to hunt and carry away Deer, with Design of killing any one that should oppose them; although the Keeper's Servant began the Assault, and required them first to stand, whereupon they fled, and one of the Keeper's Men discharged a Piece at them, and they continued their Flight until he laid violent Hands upon one of the Offenders, and then, and not before, they killed one of the Keeper's Servants, this was held to be *Murder*; as they were doing an unlawful Act, the Law implies Malice, and they ought not to have fled, but to have surrendered themselves. *Roll. Rep.* 20. By Statute, *Murder* shall not be adjudged where it is found by Misadventure, but when it is done with a felonious Intent. 52 *H.* 3. c. 25. Offenders for *Murder*, and Accessories being indicted, may be arraigned at any Time within the Year, at the King's Suit; and if the Principal or Accessary be acquit, yet the Justices shall not suffer them to go at large, but either remand them to Prison, or let them be bailed, until the Year and Day be out, allowed for an Appeal. 3 *H.* 7. c. 1. All Trials for *Murder* must be in the County where the Fact was committed, by the Common Law. *Cro. Car.* 247. But if a Person be wounded

by a Stroke given in one County, and he dieth in another County, the Indictment may be found in the County where the Party dies, which shall be as well as if the Stroke had been given in the same County. Stat. 2 & 3 Edw. 6. c. 24. The Killing must be in some County; for if the Murder be done out of the Realm, it cannot be determined by the Common Law, but must be determined by the Constable and Marshal, &c. 3 Inst. 48. H. P. C. 54. When one is murdered in the Day-Time, and the Murderer escapes untaken, the Township that suffers it, shall be amerced. 3 H. 7. If one who sees a Murder done, doth not his best Endeavours to apprehend the Murderer: Or if where two are fighting, and others looking on do not endeavour to part them, if one is killed, the Lookers on may be indicted and fined. 3 Inst. 53. Noy 50. And Killing any Person endeavouring to part others fighting; though without any evil Intention against him, is Murder. See *Duelling*, *Manslaughter*, &c.

Form of an Indictment for Murder.

JUR', &c. quod A. B. nuper de, &c. in Com. prad. Deum pra oculis non habens sed Instigatione Diaboli motus & seductus die, &c. circa horam decimam post meridiem in nocte ejusdem diei apud, &c. prad. in Com prad. Vi & armis in & super quendam C. D. in pace Dei & Domini Regis adtunc & ibidem existen. insultum fecit & pradiet' A. B. cum Gladio, &c. ad valenc. &c. quem idem A. B. in manu sua dextra adtunc & ibidem extract. habuit & tenuit Felonice voluntarie & ex malitia sua praecogitata pradiet' C. D. apud, &c. prad. in Com. prad. percussit & vulneravit & eidem C. D. apud, &c. prad. in Com. prad. felonice & ex malitia sua praecogitata cum Gladio, &c. prad. unum vulnus mortale in & super dexteram partem dedit longitudinis, &c. & profunditatis, &c. quo quidem vulnere mortali idem C. D. instanter obiit, Et sic fur. prad. super Sacrament. suum prad. dicunt quod prad. A. B. prad. die, &c. anno supradict. apud, &c. prad. in Com. prad. prafat. C. D. modo & forma prad. ex malitia sua praecogitat. felonice & voluntarie interfecit & Murdravit, contra pacem dist. Dom. Regis Coron. &c.

Murder or Homicide justifiable. There is a Killing that is justifiable; as if a Person attempts to commit Murder, Robbery, or other Felony, a Man or any of his Servants, may lawfully kill him. 2 Inst. 316. See Stat. 24 H. 8. c. 5. If a Person in Defence of the Possession of a Room in a publick House, kill another who attempts to turn him out of it, the Killing the Assailant hath been holden to be justifiable. Kel. 51. 1 Hawk. 83. In the Defence of the Possession of a Man's Goods, against him that would wrongfully take them away, Killing cannot be justified, except he be a Thief. Wood's Inst. 361. If a Woman kills a Man attempting to ravish her, it is justifiable. H. P. C. 39. Those who are engaged in a Riot, or forcible Entry, &c. standing in Opposition to a Justice's Command, or lawful Warrant: Or if Trespassers in a Forest, or Park, will not surrender, but defend themselves: If a Felon will not suffer himself to be arrested, and refusing to obey an Arrest on lawful Warrant, defends himself; or if one either with or without a Warrant, pursues a Felon upon Hue and Cry, and he flies for it: If a Prisoner assaults those that conduct him to Gaol, or his Gaoler in endeavouring to Escape; or a Person arrested, resist the Sheriff, &c. the

Killing these is justifiable; but a Sheriff cannot kill one that flies from the Execution of a Civil Process: And as no private Person hath this Authority, upon an Arrest in a Civil Matter, as he hath upon an Arrest for Felony; so neither hath the Sheriff this Power in Criminal Cases, but upon a Necessity; as when an Offender cannot be taken without killing, &c. for if he might be taken without killing him, it will be esteemed Murder. 3 Inst. 56, 221. H. P. C. 37. Dalt. 150; 355. Kel. 28. When one in Danger of drowning, thrusts another from a Plank, whereby he is drowned; this is justifiable. Bac. Max. 25. And there is a *Homicide or Killing excusable*, where a Man kills another merely in his own Defence; called *se Defendendo*.

A Person indicted for intending to Murder the Master of the Rolls, Term. Mich. 16 Car. 2. and for offering a Sum of Money to another Person to do it, saying at the same Time, that if he would not perpetrate the Crime, he would do it himself; upon Conviction, the Court declared that this was a heinous Offence, and not only indictable but fineable, and the Offender was fined one Thousand Marks, committed to Prison for three Months, and ordered to find Sureties for his good Behaviour during Life. 1 Lev. 146.

Musicians. The Musicians of England, were incorporated by King Charles 2. Anno 1670. And of late Years all foreign Musick, Operas, &c. have very much increased upon us, through the Management of this Corporation, and the Softness and Politeness of our modern Gentry. See *Minstrels*.

Muster, (From the Fr. *Moustre*) Faire Moustre generale de tout son Armie, is as much as *Lustrare exercitum*, the Signification being well known to Muster an Army: And mustered of Record is to be inrolled in the Number of the King's Soldiers. Stat. 18 H. 6. c. 19.

Muster-Master general, Mentioned in the 35 Eliz. c. 4. See *Master of the King's Musters*.

Muta Canum, (Fr. *Mente de Chiens*) Signifies a Kennel of Hounds, in ancient Records: And the King at a Bishop's and Abbot's Decease, had six Things. 1. Optimum Equum sive Palefridum ipsius Episcopi, &c. 2. Unam Chlamydem sive Cloacam cum Capella. 3. Unum Ciphum cum co-opertorio. 4. Unum pelvem cum lavatorio. 5. Unum Annulum aureum. 6. Necnon Mutam Canum; qua ad Dom. Regem, ratione Prærogative sua spectant & pertinent. Hill. 2 Edw. 2. in Stat. post mortem Episc. Bath. & Wellens. & Claus. 30 Edw. 1. M. 16. Vide *Mortuary*.

Mutare, To mew up Hawks, in the Time of their Molting, or Casting their Plumes. In the Reign of King Edw. 2. the Manor of Broughton in Com. Oxon. was held, ——— Per Serjantiam Mutandi unum Hosticum Domini Regis, &c. Paroch. Antiq. 569. *Mutatus accipiter* is a mew'd Hawk: And hence the *Mews*, (*Muta Regia*) near *Chairing Cross* London, now the King's Stables, was formerly the Falconry, or Place for the King's Hawks.

Mute, (*Mutus*) One Dumb, that cannot speak, or who refuses to speak. And by our Law a Prisoner may stand *Mute* two Manner of Ways: 1. When he speaks not at all, and it shall be inquired whether he stands *Mute* out of Malice, or by the Act of God; and if by the later, then the Judge ought to inquire whether he be the same Person, and of all Pleas which he might have pleaded in his Defence, if he had not been

Mute.

Mute. 2. When the Prisoner pleads not directly, or will not put himself upon the Inquest to be tried; and a Person feigning himself Mad, and refusing to answer, shall be taken as one who stands *Mute*. 2 *Inst.* H. P. C. 226. Also if a Prisoner on his Trial peremptorily challenge above the Number of Jurors allowed by Law, this being an implied Refusal of a legal Trial, he shall be dealt with as one that stands *Mute*, and according to some Opinions be hanged. H. P. C. 259. *Kel.* 36. 2 *Hawk.* 327. A Person obstinately standing *Mute* is to be put to the Penance of *Paine forte & Dure*: In Case of High Treason where the Offender stands *Mute*, he shall have Judgment and forfeit Lands and Goods, as if he had been attainted; likewise in the Case of Felony and Petit Treason, if a Person by standing *Mute* do not avoid being attainted for such Crimes, he shall forfeit his Land and Goods in the same Manner as on other Attainders: Though whenever a Person standing *Mute* is adjudged to his Penance for Felony, and thereby prevents that Attainder, which otherwise he might have incurred, he forfeits his Chattels only, and not his Lands. 2 *Hawk.* P. C. 330, 331. It is said by Sir *Matth. Hale*, that an Appellee of Felony standing *Mute* shall be executed, and not have Judgment of Penance; but the Contrary hath been held by others. H. P. C. 226. S. P. C. 150. 2 *Inst.* 178. *Kel.* 37. One who stands *Mute* shall have the Benefit of his Clergy: And although it be enacted by the Stat. 3 & 4 *W. & M.* c. 9. That if any Person shall be indicted of any Offence, for which by Virtue of any former Statute, he is excluded from the Benefit of his Clergy, if he had been thereof convicted by Verdict or Confession, if he stand *Mute* he shall not be admitted to the same; yet Appeals, and Offences excluded from the Benefit of the Clergy, by subsequent Statutes, seem not within that Act: And a Statute taking away the Benefit of Clergy generally from those who are convicted of a Crime, doth not take it away from those who stand *Mute* on an Indictment or Appeal. 2 *Hawk.* 332. See *Felony*.

Mutual Promise, Is where one Man promises to pay Money to another, and the other in Consideration thereof promises to do such an Act, &c. And on *mutual Promises* and Covenants, equal Remedies are on both Sides. 3 *Salk.* 15, 108.

Mutuatus. If a Man oweth another Person 10 *l.* and hath a Note for the same, without Seal, Action of Debt lies upon a *Mutuatus*; but in this there may be Wager of Law, which there may not be in Action upon the Case, on an implied Promise of Payment, &c. *Comp. Attorn.* 6, 111.

Nynchen, (Sax. *Mynecene*) Signifies a Nun, or veiled Virgin; whence our *Minnekin Las*, &c.

Nyffery, (*Mysterium*, from the Fr. *Meistier*, i. e. *Ars, Artificium*) An Art, Trade, or Occupation.

N.

N A B, To Nab a Person — In *ipso Articulo* aliquem opprimere. *Litt. Di.*

Nacella, A Skiff or Boat. *Transitum per Nacellas & alia vasa preparavit.* *Mat. Paris.*

Nacka, Nacta, A small Ship, Yacht, or Transport Vessel. *Chartular. Abbat. Rading. M.S.* fol. 51.

Nam, or Naam, (*Namium*, from the Sax. *Niman*, i. e. *capere*) Signifies the Taking or Distraining another Man's moveable Goods. And *lawful Naam*, which is a reasonable Distress, proportionable to the Value of the Thing distrained for, was anciently called either *Vif* or *Mort*, quick or dead, as it consisted of dead or quick Chattels; and it is when one takes another Man's Beasts *Damage feasant*, in his Ground, or by a Person's particular Fact, by Reason of some Contract made; as for Default of Payment of an Annuity, it shall be lawful to distrain in such or such Lands, &c. And there is a *Naam unlawful*; mentioned in our Books. *Horn's Mirror*, lib. 2. — *Nemo Namium capiat in Comitatu vel extra Comitatum, priusquam ter in Hundredo suo rectum sibi perquisierit.* *Leg. Canut. c. 18.* *Non libet Namium sumere vel vadiumonium, nec Averia sua imparchiare.* *Spelm. Gloss.*

Namation, (Namatio) A Taking or Distraining; and in Scotland it is used for Impounding: *Namatus*, distrained. *Charta Hen. 2.* See *Vetitum Namium*, and *Withernam*.

Name, (Nomen) By which any Person is known, or called. *Vide Misnomer.*

Napery, (From the Ital. *Napperia*, i. e. *Lintamina Domestica*) Linen Cloth, or Household Linen. *Stat. 2 R. 2. c. 1.*

Narr, An Abbreviation of *Narratio*, used to signify a Declaration in a Cause.

Narrator, (Lat.) A Pleader, or Reporter; and formerly *Serviens Narrator*, was a Serjeant at Law. — *Et ulterius in Curia Regis pro aliquo Narrare non audietur, nisi pro semetipso.* *Si Narrator fuerit.* *Fleta*, lib. 2. cap. 37.

Nasse, or Nesse, (From the Sax. *Nase*, i. e. *Promontorium*) The Name of the Port or Haven of Orford in Suffolk, mentioned in the Stat. 4 H. 7. cap. 21.

Natale, The State, Condition and Quality of a Man. *Leg. H. 1. c. 64.*

Nathwyte, Seems to be derived from the Sax. *Nath*, i. e. *Lewdness*; and so to signify the same with *Lairwite*.

Nativi de Stipite. In the Survey of the *Dutchy of Cornwall*, there is Mention of *Nativi de Stipite*, and *Nativi Conventionarii*; the First were Villains or Bondmen, by Birth or Stock; the other by Contract or Agreement. *LL. Hen. 1. cap. 76.* And in *Cornwall*, it was a Custom, that a Freeman marrying *Nativam*, if he had two Daughters, one of them was Free, and the other Villain. *Bract. lib. 4. c. 21.*

Nativity, (Nativitas) Birth, or the being born in a Place: And *Casting the Nativity*, or by Calculation seeking to know how long the Queen should live, &c. was made Felony, by 23 *Eliz.* cap. 2. *Nativitas* was anciently taken for Servitude, Bondage, or Villainage. *Leg. Will. 1.*

Nativo habendo, Was a Writ that lay to the Sheriff, for a Lord who claimed Inheritance in any Villain, when his Villain was run away from him, for the Apprehending and Restoring him to the Lord: And the Sheriff might seise the Villain, and deliver him unto his Lord, if he confessed his Villenage; but if he alledged that he was a Freeman, then the Sheriff ought not to seise him, but the Lord was to sue forth a *Pone* to remove the Plea before the Justices of C. B. &c. And if the Villain purchased a Writ de *Libertate probanda* before the Lord had taken out the *Pone*, it was a *Superfedeas* to the Lord, that he proceeded not on the Writ of *Nativo habendo*.

Reg.

Reg. Orig. 8, 7. *F. N. B.* 77. *New Nat. Brev.* 171, 172. This Writ *Nativo habendo* was in Nature of a Writ of Right, to recover the Inheritance in the Villain, upon which, the Lord was to pursue his Plaint, and declare thereupon, and the Villain to make his Defence, so as the Freedom was to be tried. *New Nat. Br.* 171, 173.

Natibus, Is used in our ancient Law for a Servant: Of Servants there were three Kinds, *Bondmen*, *Natives*, and *Villains*; and *Natives* were such as were born Servants. *Spelm. Gloss.* See *Servi Nativa*, vide *Nief*.

Naturalization, (*Naturalizatio*) Is where a Person who is an *Alien*, is made the King's natural Subject by Act of Parliament, whereby one is a Subject to all Intents and Purposes, as much as if he were born so: For by *Naturalization*, a Person's Issue, before the *Naturalization*, shall inherit. 1 *Inst.* 8, 129. A Stranger *naturalized* by Act of Parliament, may have Lands by Discent, as Heir at Law, as well as have them by Purchase: But until *naturalized* or made Denizen, a Stranger is not generally under the King's Protection, to have the Benefit of the Laws; also no Person is to be *naturalized*, until he has received the Sacrament of the Church, and taken the Oaths of Allegiance and Supremacy, &c. And Strangers when *naturalized*, are disabled to be of the Privy Council, to hold Offices, &c. 7 *Jac.* 1. *cap.* 2. 12 *W.* 3. *cap.* 2. 1 *Geo.* *cap.* 4. By the Stat. 7 *Ann.* *cap.* 5. it was declared that all Persons born out of the King's Allegiance, taking the Oaths, &c. should be deemed natural-born; though this was repealed, but not to prejudice Persons *naturalized*, by 10 *Ann.* *cap.* 5. Protestant Families, being *Palatines*, settled in Ireland, are declared *naturalized*, on their taking the Oaths. 1 *Geo.* *cap.* 29. And great Numbers of Foreigners are every Year *naturalized*, by private Acts of Parliament.

Naturæ Pudenda, Privities. ——— *Pensandum autem est, per visum accusantibus visum concubitus propensius advertendum, at scilicet ipsas coeuntium Naturas viderint commisceri.* Leg. Hen. 1. c. 83.

Nabagium, A Duty which was incumbent on Tenants, to carry their Lord's Goods in a Ship: *Liberi sint ab omni Caviagio, Navagio, &c.* Mon. Angl. Tom. 1. pag. 922.

Nabal, Signifies any Thing belonging to the Sea, or Maritime Affairs. *Merch. Dict.*

Naval Stores. Persons stealing or imbezilling any of the King's *naval Stores*, to the Value of 20s. are guilty of Felony, without Benefit of Clergy. 22 *Car.* 2. *cap.* 5. And the Treasurer and Commissioners of the Navy are impowered to inquire of *Naval Stores* imbezilled, and appoint Persons to search for them, &c. who may go on board Ships, and seize such Stores; and the Commissioners, &c. may imprison the Offenders, and fine them double Value, the Stores being under the Value of 20s. 1 *Geo.* *cap.* 25. None but the Contractors with the Commissioners of the Navy, shall make any Stores of War, *naval Stores*, &c. with the Marks commonly used to his Majesty's Stores, upon Pain of forfeiting 200l. And Persons in whose Custody such Stores shall be found concealed, are liable to the same Penalty. 9 & 10 *W.* 3. *cap.* 41. The Stat. 3 *Ann.* *cap.* 10. was made for the Encouragement of the Importation of *naval Stores* from the Plantations in America, and for Preservation thereof in those Countries, inflicting Penalties for cutting down Pine or Pitch Trees under such and such Sizes,

&c. And to the like Purpose, and for making the same more effectual, is the Stat. 8 *Geo.* *cap.* 12. Also *naval Stores* are imported here from Scotland, under an Encouragement by Statute.

Naufrage, A Sea Term for Shipwreck. *Merch. Dict.*

Navigatio, Is the Art of Sailing at Sea, also the Manner of Trading: And a *Navigator* is one that understands *Navigation*, or imports Goods in foreign Bottoms.

Navis Ecclesiæ, The Nave or Body of the Church, as distinguished from the Choir, and Wings or Isles: It is that Part of the Church where the common People sit. *Du Cange*.

Navis fretata, A Ship freighted, or laden Vessel. *Placit. coram majore Villa Bristol Anno* 18 *Edw.* 2.

Navis, *Nabivula*, A small Dish to hold Frankincense, before put into the *Thuribulum*, Censer, or smoking Pot; and it seems to have its Name from the Shape, resembling a Boat or little Ship: We have several of the Boat-Cups in Silver, &c. for various Uses. *Paroch. Antiq.* 598.

Navy, A Fleet of Ships, or Armament at Sea. The *Navy of England*, it has been observed, excels all others for three Things; viz. Beauty, Strength, and Safety; for Beauty, our Ships of War are so many floating Palaces; for their Strength, so many moving Castles; and for Safety, they are the most defensive Walls of the Land: And as our *naval Power* gains us Authority in the most distant Climates, so the Superiority of our Fleet above other Nations, renders the *British Monarch* the Arbitrer of Europe. The King's of England in ancient Times commanded their Fleets in Person; and the renowned King Arthur, famous for his warlike Achievements, vindicated the Dominion of the Seas, making Ships of all Nations salute our Ships of War, by lowering the Top-sail and striking the Flag, as in like Manner they shall do the Forts upon Land; by which Submissions they are put in Mind, that they are come into a Territory, wherein they are to own a Sovereign Power and Jurisdiction, and receive Protection from it: And this Duty of the Flag, which hath been constantly paid to our Ancestors, serves to imprint Reverence in Foreigners, and adds new Courage to our Seamen; and Reputation Abroad is the principal Support of any Government at Home. King Edgar Successor to Arthur, stiled himself Sovereign of the narrow Seas; and having fitted out a Fleet of four Hundred Sail of Ships, in the Year 937, sailing about Britain with his mighty Navy, and arriving at Chester, was there met by eight Kings and Princes of foreign Nations, come to do him Homage; who as an Acknowledgment of his Sovereignty, rowed this Monarch in a Boat down the River Dee, himself steering the Boat; a marine Triumph, which is not to be paralleled in the Histories of Europe. Canutus, Edgar's Successor, laid the ancient Tribute called *Danegeld*, for the Guarding of the Seas, and Sovereignty of them, with the following Emblem expressed, viz. Himself sitting on the Shore in his Royal Chair, while the Sea was flowing, speaking, *Tu mee ditionis es, & Terra in qua sedes est, &c.* And Egbert, Althred, and Elthred, kept up the Dominion and Sovereignty of their Predecessors; nor did the succeeding Princes of the Norman Race wave this great Advantage, but maintained their Right

Right to the four adjacent Seas surrounding the British Shore: The Honour of the Flag King John challenged, not barely as a Civility, but as a Right to be paid *cum debita reverentia*, and the Persons refusing he commanded to be assaulted, and taken as Enemies: And the same was ordained not only to be paid to whole Fleets, bearing the Royal Standard, but to those Ships of Privilege that wear the Prince's Ensigns or Colours of Service; this Decree was confirmed and bravely asserted by a Fleet of five Hundred Sail, in a Royal Voyage to *Ireland*, wherein he made all the Vessels which he met with in his Way, in the eight circumfluent Seas, to pay that Duty and Acknowledgment, which has been maintained by our Kings to this Day, and was never contested by any Nation, unless by those who attempted the Conquest of the intire Empire. It was Trade that gave Occasion to the bringing of mighty Fleets of Ships to Sea; and upon the Increase of Trade, Ships of War were necessary in all Countries for the Preservation of it in the Hands of the just Proprietors: And in ancient Times the several Counties of *England* were liable to a particular Taxation for building Ships of War, and fitting out Fleets, every one in Proportion to their Extent and Riches, so that the largest Counties were each of them to furnish a First-Rate Man of War, and the others every one to build one in Proportion; but this Method has been long disused, and the Fitting out our Navy for many Ages has been always thrown into the publick Charge. King *Edw. 3.* in his Wars with *France*, had a Fleet of Ships before *Calais* so numerous, that they amounted to seven Hundred Sail: But King *Henry 8.* it is said, was the First that began to build a Navy Royal in *England*; he built a Ship called the *Great Henry* of one Thousand Tuns, the largest Ship that had been then seen in this Kingdom, (though now our First-Rate Ships of War, contain at least two Thousand Tuns, are mounted with above one Hundred Canon, and carry above one Thousand Men). He fitted out a Royal Fleet, constituted a Navy Office, &c. And in this King's Reign, and the Reign of Queen *Elizabeth*, our Navy Royal was in a most flourishing Condition, being mostly commanded by our valiant Nobility; and it is remarkable, that there are Lists of the Fleets of Queen *Elizabeth*, which make it appear there was but one private Gentleman a Captain, all the rest being Lords and Knights: So high was the Esteem for Service at Sea in those Days, when our Princes ruled with the most consummate Glory: But the Opinion of serving at Sea having been very much lessened, it has since been declined by the Nobility and Gentry. The Navy Royal of *England* is at this Time in a very flourishing State; for Number of Shipping, and Strength and Force of the Ships, it was never, perhaps, more formidable than now; and when compleat, it is divided into three Squadrons, distinguished by the different Colours of the several Flags, viz. *Red*, *White*, and *Blue*; the principal Commanders whereof bear the Title of *Admiral*, and each has under him a Vice-Admiral, and a Rear-Admiral, who are likewise Flag-Officers. There are belonging to his Majesty's Navy, six great Yards, viz. *Chatham*, *Deptford*, *Woolwich*, *Portsmouth*, *Sheerness*, and *Plymouth*; fitted with several Docks, and furnished with Stores of Timber, Masts, Anchors, Cables, &c. And for the Ma-

nagement of the Navy Royal, there are several Officers of Trust and Authority, besides the Commissioners of the Admiralty; as the Treasurer, Controllers, Surveyor, Commissioners of the Navy, Commissioners of Victualling Office, &c. the Principal whereof hold their Offices by Patent under the Great Seal. By Stat. 9 & 10 *W. 3.* the Sum of 570,000*l.* was appropriated for the Building of twenty-seven Ships of War, with their Guns, Rigging, &c. And the 6 *Ann.* Enacts, That over and above the Ships for the Line of Battle, Forty-three Ships of War shall be employed as Cruisers and Convoys, for the better preserving such Ships as shall be made use of in the Trade of *Great Britain*; four of these Ships are to be Third Rates, and sixteen Fourth Rates, and the rest of sufficient Force to guard our Commerce: They are to attend in certain Stations; and the Lords Commissioners of the Admiralty may direct the Commissioners of the Navy, or some one or more Persons resident at such Places as his Majesty shall appoint, to superintend and oversee every Thing relating to these Cruisers; also the Commissioners of the Admiralty have Power to order any of the said Ships to be employed in the Line of Battle, in Case of Necessity. This Statute likewise empowers the Commissioners of the Admiralty, during War, to grant Commissions to Privateers and Commanders of Ships, for the taking and seizing Ships and Goods of Enemies. And by 5 & 6 *W. & M.* Ships built by Merchants of three Decks, containing four Hundred and fifty Tuns, and mounted with Thirty-two Pieces of Ordnance, for the three first Voyages the Owners shall receive a tenth Part of the Tonage and Poundage Duties, &c. as an Encouragement to them to build Ships of Force, for the furnishing of *Mariners* for the Fleet; by 7 & 8 *W. 3.* it is Enacted, That all Seamen, Watermen, &c. above the Age of eighteen Years, and under fifty, capable of Sea Service, who shall register themselves voluntarily for the King's Service in the Navy Royal, to the Number of thirty Thousand, shall have paid to them the yearly Sum or Bounty of 40*s.* besides their Pay for actual Service, and that whether they be in Service or not; and none but such Mariners, &c. as are registred, shall be capable of Preferment to any Commission, or be Warrant-Officers in the Navy: And such registred Persons are exempted from serving on Juries, Parish Offices, &c. also from Service Abroad after the Age of Fifty-five Years, unless they go voluntarily; and when by Age, Wounds, or other Accidents, they are disabled for future Service at Sea, they shall be admitted into *Greenwich Hospital*, and there be provided for during Life: And the Widows of such Seamen as shall be slain or drowned, not of Ability to provide for themselves, shall be likewise admitted into the said Hospital, and their Children educated, &c. But if any registred Seamen shall withdraw himself from the King's Service, in his Ships or Navy; or if any such Mariner shall relinquish the Service, without the Consent of the Commissioners of the Admiralty, he shall for ever lose the Benefit of the Act, and be compelled to serve in his Majesty's Fleet for six Months without any Pay. By a subsequent Statute, Watermen plying on the *Thames* between *Gravesend* and *Windsor*, on Notice given by the Commissioners of the Admiralty to the Company of Watermen, are to appear before

before the said Company, to be sent to his Majesty's Fleet, or on Refusal, they shall suffer one Month's Imprisonment, and be disabled working on the *Thames* for two Years. Every Seaman whatsoever serving the King, or any other Person in any Ship belonging to the Subjects of *England*, or the Dominions thereof, shall allow out of his Wages six Pence *per* Month, for the better Support of *Greenwich Hospital*; and by the 1 *Fac.* 2. a Duty of five Shillings *per* Tun, was granted on all foreign Ships; one Moiety for the Chest at *Chatham*, and the other for *Greenwich Hospital*, to relieve decayed Seamen, &c. The Registering of Seamen is the grand Nursery for the Fleet; but there are other Ways and Means of supplying Mariners for the *Navy Royal*; and Training up of Persons in the Sea Service: For the Stat. 2 *Ann.* provides, that poor Boys, whose Parents are chargeable to the Parish, may by Churchwardens and Overseers of the Poor, with the Consent of two Justices of Peace, be placed out Apprentices to the Sea Service, until the Age of Twenty-one Years, they being thirteen Years old, at the Time of their Placing forth: Those at eighteen Years of Age, may be impressed for Service in the Fleet, when the Owners or Masters of such of them as shall prove qualified, shall have able Seaman's Wages; and all Masters or Owners of Ships, from thirty to fifty Tuns Burthen, are required to take one such Apprentice, one more for the next fifty Tun, and one more for every hundred Tun above the first Hundred, under the Penalty of 10*l.* Masters of Apprentices placed out by the Parish, may with the Consent of two Justices, turn over such Apprentices to Masters of Ships, for the Remainder of their Terms: Leud and disorderly Servants, Vagrants, &c. are to be taken up and sent to his Majesty's Fleet; and poor Prisoners for Debt, which were to have the Benefit of 4 & 5 *Ann.*, appearing on their Release to be able bodied Seamen, were to enter themselves in the Service. Thus is the *Navy* recruited with Mariners; not to mention particularly the Manner of Pressing in Cities, and populous Towns, on extraordinary Occasions. The Commissioners of the *Navy*, &c. have power to examine and punish all Persons who make any Disturbance, fighting or quarrelling in the Yards, Offices, &c. of the *Navy*: And in the 13th Year of King *Charles* 2. an Act passed for regulating the Government of the Fleet, which contains the particular excellent Articles and Orders following.

Articles and Orders for Government of the Navy, established by 13 *Car.* 2. *cap.* 9. 1. Officers shall cause the Worship of God, according to the Liturgy of the Church of *England*, to be performed in their Ships, and Prayers and Preaching by the Chaplains in Ordinary, and take Care that the Lord's Day be observed. 2. They that use unlawful Oaths, Cursings, Execrations, Drunkenness, or Uneleanness, &c. shall be fined, imprisoned, or otherwise punished as the Court Martial shall think fit. 3. If any give Intelligence to Enemies, &c. without Leave from the King, Admiral, Vice-Admiral or Commander in Chief of any Squadron, they shall suffer Death. 4. If any Letter or Message come from an Enemy to any inferior Officer, or other Person, and he acquaint not his Superior with it in twelve Hours, having Opportunity; or if a Superior Officer acquainted with, or receiving a Letter, &c. from such Enemy in Person, do

not in convenient Time, make it known to the Admiral, or Commander of the Squadron, such Persons shall suffer Death, or such Imprisonment as a Court Martial shall direct. 5. Relieving an Enemy, or Rebel, shall be punished with Death, or as a Court Martial shall think fit. 6. All Writings found aboard any Prize, are to be sent up to the Court of Admiralty; or Commissioners appointed for that Purpose, on Pain of Loss of the Takers Shares, and such farther Punishment as a Court Martial shall inflict. 7. None shall take any Goods out of any Ship seized as Prize, until Judgment in the Admiralty, on Pain of such Punishment as a Court Martial, or Court of Admiralty shall impose; except Goods upon and above the Gun-Deck, other than Arms, Ammunition, Furniture, &c. 8. None shall steal and imbezil any of the Ships Furniture, or Ammunition, on Pain of Death. 9. If Ships taken as Prize, make no Resistance, none of the Captains, Masters, or Mariners being Foreigners, shall be evil treated, on Pain of double Damages. 10. Commanders, who upon a Prospect of Engagement, do not put Things in a Posture for Fight, and encourage their Men, shall be cashiered; and if they yield, or crave Quarter, they are to suffer Death, or such Punishment as the Offence deserves. 11. All Persons shall observe the Commands of the Admiral, or other their Superiors, on Pain of Death. 12. Officers and others that in Time of Fight, do not their utmost to indamage the Enemy, and to relieve the King's Ships, shall suffer Death, or such other Punishment as a Court Martial shall think fit. 13. Captains, &c. appointed for Convoy, that shall not defend the Ships in their Convoy, or exacting Money from them belonging to Subjects, shall make Reparation as the Court of Admiralty shall judge, and suffer Death, or such other Punishment as the Court Martial shall order. 14. Whoever shall forbear to pursue an Enemy, Pirate, &c. flying or beaten, or to relieve a known Friend in View, shall suffer Death, or as a Court Martial, &c. 15. None shall put backward, or discourage Service and Action commanded, on any Pretence of Wages, upon Pain of Death. 16. All that turn to the Enemy, and either run away with their Ship, Ammunition, &c. or yield it up to the Enemy, shall suffer Death. 17. All Persons that desert their Employments, run away, or entice others so to do, are to suffer Death. 18. All Spies shall be punished with Death. 19. None shall utter Words of Sedition or Mutiny, nor make or endeavour any mutinous Assembly, on Pain of Death. 20. No Person shall conceal traiterous or mutinous Practices, or Words, to the Prejudice of the King or Government; nor Words or Practices tending to the Hindrance of the Service, but shall reveal them to their Superior, on Pain of such Punishment as a Court Martial shall inflict. 21. None shall quarrel with his Superior, on Pain of severe Punishment, nor strike any such, on Pain of Death, or as a Court Martial shall determine. 22. For Unwholsomeness of Victuals, or other just Cause, Complaint shall be made by each Man to his Superior; but none shall privately attempt to make Disturbance, on Pain of such Punishment as a Court Martial, &c. 23. None shall quarrel or fight, or use provoking Speeches, on Pain of Imprisonment. 24. There shall be no wasteful Expence, nor Imbezilment,

Imbezilment of any Stores in the Fleet; under such Penalties by Fine, Imprisonment, or otherwise, upon the Offenders, Buyers and Receivers, as a Court Martial shall think fit. 25. They through whose Default any of the King's Ships are stranded, split or hazarded, shall be fined and imprisoned; or otherwise punished at the Discretion of a Court Martial. 26. Those that wittingly set on Fire any Ship, or other Vessel, their Store or Furniture, not appertaining to an Enemy, shall suffer Death. 27. No Man shall sleep on the Watch, or forsake his Station, on Pain of Death, &c. 28. Murders and wilful Killing, shall be punished with Death. 29. Robbery and Theft shall be punished with Death, or as a Court Martial, &c. 30. Sodomy and Buggery shall be punished with Death without Mercy. 31. No Provost-Martial shall refuse to receive any Prisoner, nor suffer him to escape, on Pain of such Punishment as should have been inflicted on the Party, or as a Court Martial, &c. 32. All Persons shall endeavour to apprehend Offenders, and assist the Officers thereto appointed, on Pain of such Punishment as a Court Martial shall inflict. 33. All Misdemeanors not here mentioned, shall be punished according to the Laws and Customs used at Sea. 34. The Admiral may grant Commissions to Vice-Admirals, and Commanders of Squadrons, to call Courts Martial of Commanders and Captains, for Trial of Offences: No Court Martial shall inflict Death, that consists of less than five Captains; and the Admiral's Lieutenant shall be as Captain for this Purpose: Also no Execution of any Sentence of Death by Virtue of these Articles, (except in Case of Mutiny) shall be had without Leave of the Admiral, if the Offence be committed within the narrow Seas; and if elsewhere, not without Order of the Commander of that Squadron where the Sentence is passed. 35. The Judge Advocate, and in his Absence whom the Court Martial shall appoint, may administer an Oath in order to the Examination or Trial of these Offences. 36. This Act shall give Jurisdiction only for such of the Offences aforesaid as shall be committed on the Sea, or Streams of great Rivers beneath the Bridges near the Sea, within the Jurisdiction of the Admiralty, by Persons in Service and pay in the Fleet, or Ships of War. And by the 4 & 5 W. & M. all Offences committed contrary to the Stat. 13 Car. 2. may be tried and determined in the King's Bench Court at Westminster, or before Justices of Oyer and Terminer, according to the Common Law; and those Courts may inflict such Penalties as are appointed by the said Act: And where any of the said Offences are committed out of the Realm, the same may be alledged and laid in any County within this Realm. But no Person who shall be tried in a Court Martial, shall for the same Offence be again tried by Virtue of this Statute; nor shall any Person tried by Virtue of this Act, be tried again by a Court Martial. 4 & 5 W. & M. c. 25.

Ne admittas, Is a Writ directed to the Bishop, for the Plaintiff or Defendant, where a *Quare Impedit* or Affise of *Darrein Presentment* is depending, when either Party fears that the Bishop will admit the other's Clerk during the Suit between them: It ought to be brought within six Calendar Months after the Avoidance, before the Bishop may present by Lapse; for 'tis in vain to sue out this Writ when the Title to present is devolved unto the Bishop. *Reg. Orig.* 31. *F. N. B.*

37. Writ of *Ne admittas* doth not lie, if the Plea be not depending in the King's Court by *Quare Impedit* or *Darrein Presentment*; and therefore there is a Writ in the Register directed to the Chief Justice of C. B. to certify the King in the Chancery, if there be any Plea before him and the other Judges between the Parties, &c. So that this Writ should not be granted until that be done: But yet it may be had out of the Chancery before the King is certified that such Plea of *Quare Impedit* is depending; and then the Party grieved may require the Chief Justice to certify, &c. *New Nat. Br.* 83, 84. The Writ runs, *Prohibemus vobis, Ne admittas, &c.*

Net, Is the Weight of a pure Commodity alone, without the Cask, Bag, Dross, &c. *Merch. Dist.*

Necessity. If a Fire happen in a Street, a Person may justify the Pulling down a Wall or House of another Person, to prevent its Spreading; it being a Case of *Necessity*. *Staundf. P. C.* And we have a Maxim in Law; *Necessitas non habet Legem*. *Co. Lit.*

Ne exeat Regnum, Is a Writ to restrain a Person from going out of the Kingdom without the King's Licence. *F. N. B.* 85. It may be directed to the Sheriff, to make the Party find Surety that he will not depart the Realm; and on his Refusal, to commit him to Prison: Or it may be directed to the Party himself; and if he then goes, he may be fined. 3 *Inst.* 178. And this Writ is granted on a Suit's being commenced against a Man in the Chancery, when the Plaintiff fears the Defendant will fly to some other Country, and thereby avoid the Justice and Equity of the Court; which hath been sometimes practis'd: And when thus granted, the Party must give Bond to the Master of the Rolls in the Penalty of 1000*l.* or some other large Sum, for yielding Obedience to it; or satisfy the Court by Answer, Affidavit, or otherwise, that he hath no Design of leaving the Kingdom, and give Security therefore. *Practif. Solic.* 129. A *Ne exeat Regnum* has been granted to stay a Defendant from going to Scotland; for though 'tis not out of the Kingdom, yet it is out of the Process of the Court, and within the same Mischief. 2 *Salk.* 702. 3 *Mod.* 127, 169. 4 *Mod.* 179. If the Writ be sued for the King, the Party against whom sued may plead Licence by Letters Patent, &c. which shall discharge him: But where any Subject goes beyond Sea with the King's Licence, and continues longer than his appointed Time, it hath been held he loses the Benefit of a Subject. 4 *Leon.* 29. And if a Subject beyond Sea, refuse to return on the King's Letters under his Privy Seal, commanding him to return upon Pain of his Allegiance, being certified into the Chancery, a Commission may be awarded to seize his Lands, &c. 3 *Nelf. Abr.* 211.

Negative. A *Negative* cannot be testified by Witnesses, only an Affirmative. 2 *Inst.* 622.

Negative pregnant, (*Negativa Pregnans*) Is a *Negative*, which implies or brings forth an *Affirmative*; and is said to be where a *Negative* carries an Affirmative in his Belly. *Litt. Rep.* 65. Where an Action is brought against a Man, and he pleads in Bar of the Action a *Negative* Plea, which is not so special an Answer to the Action, but it includes also an Affirmative; this is a *Negative Pregnant*: As for Instance; he in Reversion brings a Writ of Entry *in casu Provisio*, upon an Alienation made by Tenant for Life, supposing

sing that he has aliened in Fee, which is a Forfeiture of his Estate: If the Tenant comes and pleads that he hath not aliened in Fee; this is a *Negative*, wherein is included an Affirmative; for though it be true, that he hath not aliened in Fee, yet it may be he hath aliened in Tail, which is also a Forfeiture of his Estate. 2 *Lill. Abr.* 212. If a Breach be assign'd that a Man was not seised of an Estate in Fee; and the Bar is, that he was seised, &c. notwithstanding any Act done by him; this is *Pregnant* and uncertain. *Litt. Rep.* 64. And if a Person being impleaded to have done a Thing on such a Day, or in such a Place, denieth generally, without saying any Thing more, that he did it on the Day, &c. it is a *Negative Pregnant*, as it implieth nevertheless that in some Sort he did it. *Dyer* 17. A *Negative Pregnant* is a Fault in Pleading; and there must be a Special Demurrer to a *Negative Pregnant* Plea, &c. for the Court will intend every Pleading to be good, till the contrary doth appear. *Mich.* 23 *Car.* 1. *B. R.* See 2 *Leon.* 248.

Reggildare, Signifies to claim Kindred. *Leg. H.* 1. c. 70. *LL. Ine.* Sect. 7, 8.

Negligence. A Right may be lost by *Negligence*; as where an Action is not brought in the Time appointed by the Statute of Limitations, &c.

Negro. By the Laws of *Virginia*, *Negro* Servants are saleable; and where a *Negro* is sold here, in Action *Indebitatus Assumpsit* for the Money, the Declaration ought to be, that the Defendant was indebted to the Plaintiff for the *Negro* sold here at *London*, but the said *Negro* at the Time of Sale was in *Virginia*, and that by the Laws and Statutes of *Virginia*, *Negroes* are saleable as Chattels. *Per Holt Ch. Just.* 2 *Salk. Rep.* 666. In Action of *Trover* for a *Negro*, and Verdict and Damages for the Plaintiff; it was moved in Arrest of Judgment, that *Trover* lay not for a *Negro*, for the Owner had not an absolute Property in him: But the Court seem'd to think that in *Trespass Quare Captivum suum cepit*, the Plaintiff might give in Evidence that the Party was his *Negro*, and he bought him. *Ibid.*

Neif, (*Fr. Naif*, i. e. *Naturalis*, *Nativa*) Was a Bond-Woman or the Villain, born in one's House, mentioned in the Stat. 9 *R. 2.* c. 2. If a Bond-Woman married a Free-man, she was thereby made free; and being once free, and discharged of Bondage, she could not be *Neif* after, without some special Act done by her, as by Divorce, Confession in Court, &c. And a free Woman taking a Villain to her Husband, was not thereby Bond; but their Issue were Villains as their Father was, though this is contrary to the Civil Law, which says, *Partus sequitur Ventrem*. *Terms de Ley* 454. Antiently Lords of Manors sold, gave, or assigned their Bondmen and *Neifs*, as appears by the following Deed of Gift. — *Sciant quod Ego Radulphus de C. Miles Dominus de L. Dedi Domino Roberto de D. Beatricem filiam Will. H. de L. quondam Nativam meam, cum tota sequela sua & omnibus Catallis suis perquisitis & perquirendis; Habend. & Tenend. predictam Beatricem cum tota sequela sua & omnibus Catallis suis & omnibus rebus suis perquisitis & perquirendis predicto Domino Roberto vel suis assignatis libere quiete bene & in pace imperpetuum, &c. In cujus, &c. hiis Testibus.* — *Dar. apud L. in die Sancti Laurentii Martyris, Anno* 13 *Ed.* 3. See *Nativi*.

Neifty. There was an antient Writ called *Writ of Neifty*, whereby the Lord claimed such a Woman for his *Neif*; but it is now out of Use.

Neighbour, (*Vicinus*) One that dwells near another. See *Vicinage*.

Ne injuste Vexes, A Writ founded on the Statute of *Magna Charta*, c. 10. that lies for a Tenant distrained by his Lord, for more Services than he ought to perform; and is a Prohibition to the Lord not to distrain or vex his Tenant: In a special Use, it is where the Tenant hath prejudiced himself, by doing greater Services, or paying more Rent, without Constraint, than he needed; for in this Case, by Reason of the Lord's Seisin, the Tenant cannot avoid it by *Avowry*, but is driven to this Writ for Remedy. *Reg. Orig.* 4. *F. N. B.* 10. And if the Lord distrains to do other Services, or to pay other Rent than due, after the Prohibition delivered unto him, the Tenant shall have an Attachment against the Lord, &c. *New Nat. Br.* 22. This Writ is always *Ancestral*, where the Tenant and his Ancestors have holden of the Lord and his Ancestors; and the Lord hath incroached any Rent, &c. A Feoffee shall not avoid Seisin of Rent had by Incroachment of his Feoffor, nor have the Writ *Ne injuste Vexes*; also a Man shall not have a Writ of *Ne injuste Vexes* against the Grantee of the Seignior. *Mich.* 18 *E.* 2. 10 *Ed.* 3. And Tenant in Tail may not have this Writ; but shall plead and shew the Matter, and not be copped by the Payment of his Ancestors, &c. *Trin.* 20 *Ed.* 3.

Remine contradicente, Words used to signify the unanimous Consent of the Members of the House of Commons, to a Vote or Resolution of that House.

Re Vicecomes, *Colore Mandati Regis, quoniam amoveat a possessione Ecclesia minus juste*. *Reg. O.* rig. 61.

Newfound-Land. Persons trading to *Newfound-land* shall have Freedom of Fishing, &c. And every Fishing Ship as first enters any Harbour or Creek in *Newfound-land*, shall be Admiral of the said Harbour for that Season, and determine Differences between the Masters of Fishing Vessels, and the Inhabitants there, &c. *Stat.* 10 & 11 *W.* 3. c. 25.

Niderling, **Nidering**, or **Nithing**, A vile base Person, a Sluggard. *Will. of Malmsb.* pag. 121. *Mat. Paris.* Ann. 1088.

Nient comprise, Is an Exception taken to a Petition, because the Thing desired is not contained in that Deed or Proceeding whereon the the Petition is founded: For Example; One desires of the Court wherein a Recovery is had of Lands, &c. to be put in Possession of a House, formerly among the Lands adjudged unto him; to which the adverse Party pleads, that this is not to be granted, by Reason this House is not comprised amongst the Lands and Houses, for which he had Judgment. *New Book Entries*.

Nient dedire, Signifies to suffer Judgment to be had against one, by not denying or opposing it, i. e. by Default. 29 *Car.* 2.

Riger Liber, The Black Book or Register in the Exchequer is called by this Name.

Night. Is when it is so dark that the Countenance of a Man cannot be discerned; and by some Opinions Burglary in the Night may be committed at any Time after Sun-set, and before Rising. *H. P. C.* 79. 3 *Inst.* 63. 1 *Hawk.* 101. See *Noctanter*.

Nightwalkers. Constables are authorized by the Common Law to arrest *Nightwalkers* and suspicious Persons, &c. Watchmen may also arrest

Night-

Nightwalkers, and hold them until the Morning: And it is said, that a private Person may arrest any suspicious *Nightwalker*, and detain him till he give a good Account of himself. 2 *Hawk. P. C.* 61, 80. One may be bound to the Good Behaviour for being a *Nightwalker*; and common *Nightwalkers* and Haunters of Bawdy-houses are to be indicted before Justices of Peace, &c. 1 *Hawk.* 132. 2 *Hawk.* 40. *Latch.* 173. *Poph.* 208.

Nihil capiat per Breve, or *per Billam*, Is the Judgment given against a Plaintiff in Bar of his Action, or in Abatement of his Writ or Bill, &c. *Co. Litt.* 363.

Nihil dicit, Is a Failing by the Defendant to put in an Answer to the Plaintiff's Plea by the Day assigned; which being omitted, Judgment is had against him of Course, as *saying nothing*, why it should not: These Words are generally writ short *Nil dicit*, &c.

Nihil or *Nichils*, Are Issues which the Sheriff that is *appos'd* in the Exchequer says, are *Nothing worth*, and illeivable, for the Insufficiency of the Parties from whom due. *Practice Excheq. pag.* 101. *Accounts of Nihil* shall be put out of the Exchequer. *Stat. 5 R. 2. c. 13.*

Nil Debet, Is a common Plea to an Action of Debt, when the Money is paid: But 'tis no Plea in Covenant; on Breach assign'd for Non-payment of Rent, &c. 3 *Lev.* 170. It is entered thus: *Et prad. A. B. per, &c. Attorn. suum ven. & defend. vim & injur. quando, &c. Et dicit quod ipse Non Debet prefat. A. B. vigint. libr. nec aliqu. denar. sum. in forma prout prad. A. B. superius vers. eum narravit. &c.*

Nil habuit in Tenementis, A Plea to be pleaded in an Action of Debt only, brought by a Lessor against Lessee for Years, or at Will, without Deed. 2 *Lill. Abr.* 214. In Debt for Rent upon an Indenture of Lease, *Nil habuit in Tenementis* may not be pleaded; because it is an Estoppel, and a general Demurrer will serve. 3 *Lev.* 146. But if Debt is brought for Rent upon a Deed-Poll, the Defendant may plead this Plea: And where a Defendant pleaded *Nil habuit in Tenementis tempore Dimissionis*; the Plaintiff replied, *Quod habuit in Tenementis*, &c. and Verdict and Judgment was had for the Plaintiff; whereupon Writ of Error being brought, it was assign'd for Error, that the Replication was not good, for he ought to have shewn what Estate he then had; and of that Opinion was the Court; and it had been naught upon a Demurrer, but being after a Verdict, it is good. *Cro. Jac.* 312. If a less Estate is found than the Plaintiff pleads in his Reply to a *Nil habuit*, &c. So as it be sufficient to intitle the Plaintiff to make a Lease, it is good enough. 10 *W.* 3.

Nisi prius, Is a Commission to Justices of *Nisi prius*; so called from a judicial Writ of *Distingas*, whereby the Sheriff is commanded to distrain the impanelled Jury to appear at *Westminster* before the Justices at a certain Day in the following Term, to try some Cause, *Nisi prius Justic. Domini Regis ad Assisas capiend. venerint*, viz. unless the Justices come before that Day to such a Place, &c. 2 *Inst.* 424. 4 *Inst.* 159. A Writ of *Nisi prius* is where an Issue is joined, then there goes a *Venire* to summon the Jury to appear at a Day in Court; and upon the Return of the *Venire*, with the Panel of the Jurors Names, the Record of *Nisi prius* is made up and sealed, and there goes forth the Writ of *Distin-*

gas to have the Jurors in Court, *Nisi prius Justic. venerint*, &c. such a Day in such a County, to try the Issue joined between the Parties. 2 *Lill.* 215. A Record of *Nisi prius* ought to contain a Transcript of the whole Issue-Roll; and no Record of *Nisi prius*, for the Trying an Issue at the Assizes, shall be sealed after a Month next following the End of the Term; which Time is by a late Order of Court altered to three Weeks. *Ibid.* All Civil Causes grown to Issue in the Courts at *Westminster* are brought down in the Vacation before the Day of Appearance appointed for the Jury above, into the County where the Action was laid, to be tried there; which is usually done in two or three Days: And then upon the Return of the Verdict given by the Jury to the Court above, the Judges there give Judgment for the Party for whom the Verdict is found: And these Trials by *Nisi prius* are for the Ease of the Country, the Parties, Jurors, and Witnesses, by saving them the Charge and Trouble of coming to *Westminster*; but in Matters of great Weight and Difficulty, the Judges above, upon Motion and Information, will often retain Causes to be try'd there, though laid in the Country, and then the Juries and Witnesses in such Causes must come up to the Courts at *Westminster* for Trial at Bar: And the King hath his Election to try his Suits at the Bar, or in the Country, &c. *Wood's Inst.* 479. The Statute of *Westm.* 2. 13 Ed. 1. c. 30. having ordained, that all Pleas in either Bench, which require only an easy Examination, shall be determined in the Country before Justices of Assize, by Virtue of the Writ appointed by that Statute, commonly called the Writ of *Nisi prius*; it has been held, that an Issue joined in the King's Bench upon an Indictment or Appeal, whether for Treason or Felony, or a Crime of an inferior Nature, committed in a different County from that wherein the Court sits, may be tried in the proper County by Writ of *Nisi prius*: But as the King is not expressly named in this Statute; and it is a general Rule, that he shall not be bound except named, it is said where the King is Party a *Nisi prius* ought not to be granted, without his special Warrant, or the Assent of his Attorney; though the Court may grant it in Appeals in the same Manner as any other Actions. 2 *Inst.* 424. 4 *Inst.* 160. *Dyer* 46. 2 *Hawk. P. C.* 411. Justices of *Nisi prius* have Power to record Nonsuits and Defaults in the Country at the Days assigned, and are to report them at the Bench, &c. And are to hear and determine Conspiracy, Confederacy, Champerty, &c. by 12 Ed. 2. c. 4. 4 Ed. 3. c. 11. *Nisi prius* shall be granted in Atraints; but that which cannot be determined before the Justices upon the *Nisi prius* shall be adjourned to the King's Bench where they are Justices: And the Justices before whom Inquisitions, Inquests, and Juries, shall be taken by the King's Writ of *Nisi prius*, are impowered to give Judgment in Felony and Treason, &c. and to award Execution by Force of their Judgments. 5 Ed. 5. 14 Hen. 6. c. 1. The Chief Justice of the King's Bench, Chief Justice of the Common Pleas, and Chief Baron of the Exchequer, and in their Absence two other of the Judges, &c. as Justices of *Nisi prius* for the County of *Middlesex*, shall try Causes upon Writs of *Nisi prius* on Issues joined in B. R. and C. B. and the Exchequer, which were formerly only triable at Bar, in the Term-time, or four

Days after each Term. 18 Eliz. c. 12. And the Time is enlarged to eight Days after the End of any Term; also any one Judge or Baron may try Issues, &c. according to the Statute 18 Eliz. in the Absence of the Chiefs, by the 12 Geo. The Authority of Justices of *Nisi prius* in the Country is annexed to the Justices of Assize: And the Court above will take judicial Notice of what is done at *Nisi prius*; being entered on Record. 2 Hawk. 409. See *Assize*.

Nivicolini Britones, Is used for *Welshmen*; because in *Carmarthenshire* and other Northern Countries of *Wales*, they lived near high Mountains covered with Snow. — *Cum adversus Nivicolinos Britones Regia esset Expeditio*. Du Cange.

Nobility, (*Nobilitas*) Signifies a Nobleness of Birth, a Generosity or Greatness of Mind; Excellence of Virtue: According to *Juvenal*,

— *Nobilitas sola est, atque unica Virtus*.

The *Nobility* with us compriseth all Dignities above a Knight; and all Degrees of *Nobility* are derived from the King, who may grant it in Fee, or for Life, &c. See *Peers of the Realm*.

Noble, Was an antient Kind of English Money, in Use in the Reign of K. Edw. 3. And *Knigh-ton* tells us, the *Rose Noble* was a Gold Coin current in England about the Year 1344. At this Day there is no peculiar Coin of that Name; but a *Noble* is Six Shillings and eight Pence Value, being a third Part of twenty Shillings. *Merch. Dict.*

Noctanter, Is the Name of a Writ issuing out of the *Chancery*, and returnable in the *King's Bench*, given by the Statute *Westm. 2. 13 Ed. 1. c. 46*. By Virtue of which Statute, where any one having Right to approve Waste Ground, &c. makes and erects a Ditch for an Hedge, and it is thrown down in the *Night-time*, and it cannot be known by a Verdict of Assize or a Jury, by whom; if the neighbouring Villages will not indict such as are guilty, they shall be distrained to make again the Hedge or Ditch at their own Costs, and to answer Damages. 2 Inst. 476. And the *Noctanter* Writ thereupon is directed to the Sheriff of the County, commanding him by the Oath *Proborum & legalium hominum Com. predicti*. Inquire. qui Malefactores & pacis Dom. Regis perturbatores apud, &c. Sepes & Fossata A. B. ibidem per ipsum nuper levat' Noctanter aut tali tempore quo facta eorum sciri non credebant prostraver. ad dampnum prad. A. B. & contra Pacem Dom. Regis, &c. And on the Return of this Writ by the Sheriff, that the same is found by Inquisition, and the Jury are ignorant who did it; the Return being filed in the Crown-Office, there goes out a Writ of Inquiry of the Damages, and a *Distingas* to the Sheriff to distrain *Propinquas Villatas sepes & Fensuras prad. circumadjacentes sepes, &c. prostrat*. *Le-ware ad Custos suos proprios*, and also to restore the Damages, &c. The circumadjacent Villages intended by the Statute, are the contiguous Villages round the Place; and if they are not contiguous, they are not guilty, and may plead so: And when other Villages near of as great Value, by Favour or Negligence of the Sheriff are not summoned, &c. they may plead as *Tertenants* do, where all are not summoned. As to the Pleadings to this Writ, where more Damages are found than there ought to be; the Defendants may by Protestation deny the Fact, or confess and aver that the Damages were but small; and traverse that the Party sustinuit dampna to the Sum found, or any o-

ther Sum beyond what they admit; or may plead Not guilty, and in their Defence any Matter which will be a Bar to the Prosecutor, but Satisfaction. 2 Lill. Abr. 217. Also if the Villages repair, Damages ought not to be given to the Value of the Repairs; and if the Villages have repaired, it ought so far to help them in the Trial of the *Quantum dampnificatus*, that the other Damages ought only to be considered. *Ibid*. The Charges of the Defence for the several Villages must be raised by Agreement; and if they cannot agree, each Village is to bear their own Charges, as in Case of a Suit against a Hundred, till Execution; and then the Statute of 27 Eliz. hath provided a Remedy: The Writ of *Noctanter*, by the better Opinion, lies for the Prostration as well of all Inclosures as those improved out of Commons; but if it be not in the Night, this Writ will not lie: And there ought to be a convenient Time (which the Court is to judge of) before the Writ is brought, for the Country to inquire of and indict the Offenders; which Sir Edw. Coke says should be a Year and a Day. 2 Inst. 476. Cro. Car. 440. 1 Keb. 545. And if any one of the Offenders be indicted, the Defendants must plead it, &c.

The Word *Noctanter* is so necessary in an Indictment of *Burglary*, that it hath been adjudged insufficient without it. Cro. El. 483.

Noctes & Noctem de firma. In the Book of *Domesday* we often meet with *Tot Noctes de firma*, or *firma tot Noctium*; which is understood of Entertainment of Meat and Drink for so many Nights: For in the Time of the English Saxons, Time was computed not by Days, but *Nights*; and so it continued till the Reign of King Hen. 1. as appears by his Laws, cap. 66, 76. And from thence it is still usual to say a *Sevennight*, i. e. *Septem Noctes*, for a Week; and a *Fortnight* for two Weeks, i. e. *Quatuordecem Noctes*.

Nocturnus or *Nocturni*, (Sax.) The learned *Spelman* says is derived from the old Saxon *Noed*, obsequium & *Fry*, Ignis, and signified Fires made in Honour of the Heathen Deities. But by others it is said to come from the Saxon *Neb*, that is necessary; and was used for necessary Fire.

Nolle Prosequi, Is used in the Law, where a Plaintiff in any Action will proceed no further, and may be before or after a Verdict; though it is usually before: And it is then stronger against the Plaintiff than a *Nonsuit*, which is only a Default in Appearance; but this is a voluntary Acknowledgment, that he hath no Cause of Action. 2 Lill. 218. A Plaintiff comes by his Attorney *hic in Curia & fatetur se ulterius Nolle Prosequi*; whereupon Judgment was given, That the Defendant eat *sine Die*, and no Amercement upon the Plaintiff: This was held erroneous; for the Plaintiff ought also to be amerced 8 Rep. 58. Where there are two Defendants, and one pleads *Non Cul.* and the other another Plea; if upon a Demurrer there is a Judgment for the Plaintiff against one on the Demurrer, and a *Nolle Prosequi* for the other, there it ought to be eat *sine Die*, or it is ill; and the Entry of *Quod eat sine Die* is a Discharge to the Defendant. Cro. Fac. 439. Hob. 180. In Action brought against three Persons, one of them pleads the General Issue, and the other Specially; the Plaintiff demurs to the Special Plea, and tries the General Issue, on which he hath a Verdict and Judgment; but before Judgment on the Demurrer he enters a *Nolle Prosequi* as to the Demurrer: And it was adjudg'd, that if the *Nolle Prosequi*

had

had been entered before the Verdict and Judgment, it had discharged the whole Action; being in Nature of a Release in Law to the others: So also if Judgment had been against all the Defendants, and the Plaintiff had entered the *Nolle Prosequi* for Two; for Nonsuit or Release, or other Discharge of one, discharges all the Rest. *Hob. 70.* But in Action of Trespass against Two, one pleaded Not guilty, and the other justified; and both Issues being found for the Plaintiff, and several Damages and joint Costs assessed; the Plaintiff then entered a *Nolle Prosequi* against one, and took Judgment against the other for Damages found against him, and the Costs; upon which it was insisted on for Error, that the Entry of a *Nolle Prosequi* before Judgment as to one, is a Release to him, and *quasi* a Release to both: *Per Cur.* It is not an absolute Release, but as it were an Agreement that the Plaintiff will not proceed against the one; and as to him it is a Bar, but he may proceed against the other; and where they sever by Pleas, there may be Proceedings against one, and a *Nolle Prosequi* against the other. *Cro. Car. 239, 243. 2 Lill. 220.* On two Promises, the Plaintiff may demur as to one Promise, and enter a *Nolle Prosequi* as to the other; and if Judgment is had on the first Promise, it will be well enough, though the *Nolle Prosequi* be not entered before such Judgment. *2 Lev. 33.* And if there are divers Issues, or an Issue and Demurrer in one Cause, against one Person, joined between the Parties, the Plaintiff may enter on the Roll a *Nolle Prosequi*, that he will not proceed on one or more of the Issues, or Demurrer joined; and may notwithstanding go to Trial upon the Rest of the Issues, or argue the Demurrer. *Hill. 23 Car. B. R.* The King may enter a *Nolle Prosequi* on an Information; but it shall not stop the Proceedings of the Informer. *1 Leon. 119.* And if an Informer cause a *Nolle Prosequi* to be entered, the Defendant shall have Costs, &c. by Stat. 4 & 5 W. & M. *Kemble* mentions a *Nolle Prosequi* on *Retraxit* by Attorney. *3 Keb. 332.*

Nomination, (Nominatio) Is a Power that a Man hath of Appointing a Clerk to a Patron of a Benefice, by him to be presented to the Ordinary. The Right of *Nomination* a Man may have by Deed; and in such Case, if the Patron refuse to present the *Nominee*, or presents another, he may bring a *Quare Impedit*; for he who is to present is only an Instrument to him who *nominates*, and the Person that hath the *Nomination* is in Effect the Patron of the Church. *Plowd. 529. Moor 47.* A *Nominator* must appoint his Clerk within Six Months after the Avoidance; if he doth not, and the Patron presents his Clerk before the Bishop hath taken any Benefit of the Lapse, he is obliged to admit that Clerk: But where one hath the *Nomination*, and another the Presentation, if the Right of Presentation should afterwards come to the King, it is said he that hath the *Nomination* will be intitled to the Presentation also; because the King who should present cannot be subservient to the *Nominator*, it being contrary to his Dignity. *Hughes's Parsl. Law 76, 77.* Right of *Nomination* may be forfeited to the Crown as well as Presentation; where the *Nominator* corruptly agrees to *nominate* within the Statute of Symony, &c.

Nomina Villarum. King *Edw. 2.* sent his Letters to every Sheriff in England, requiring an exact Account and Return into the Exchequer of the Names of all the Villages, and Possessors

thereof in every County; which being done accordingly, the Returns of the Sheriffs all joined together, are called *Nomina Villarum*, still remaining in the Exchequer. Anno 9 Ed. 2.

Nomine Pœne, Is a Penalty incurred for not Paying of a Rent, &c. at the Day appointed by the Lease or Agreement for Payment thereof. *2 Lill. 221.* If Rent is reserved, and there is a *Nomine Pœne* on the Non-payment of it, and the Rent be behind and unpaid, there must be an actual Demand thereof made, before the Grantee of the Rent can distrain for it; the *Nomine Pœne* being of the same Nature as the Rent, and issuing out of the Land out of which the Rent doth issue. *Hob. 82, 133.* And where a Rent-Charge was granted for Years, with a *Nomine Pœne* and Clause of Distress, if it was not paid on the Day; on the Rents being behind, and the Term expired, the Court was moved that the Grantee might distrain for the *Nomine Pœne*, but it was held that he could not, because the *Nomine Pœne* depended on the Rent, and the Distress was gone for that, and by Consequence for the other. *2 Nels. Abr. 1182.* When any Sum is to be forfeited *Nomine Pœne* for Non-payment of Rent at the Time, &c. the Demand of the Rent ought to be precisely at the Day, in Respect of the Penalty: And Debt will not lie on a *Nomine Pœne*, without a Demand. *7 Rep. 28. Cro. Eliz. 383. Style 4.* If there is a *Nomine Pœne* of such a Sum for every Day, after Rent becomes due, it has been a Question whether there must be a Demand for every Day's *Nomine Pœne*, or one Demand for many Days: And by the better Opinion it hath been holden, that for every Day there ought to be a Demand; and that one will not be sufficient for the Whole: But where a *Nomine Pœne* of 40 s. was limited *quolibet die proximo* the Feast-Day on which the Rent ought to be paid, it was adjudged that there was but one 40 s. forfeited, because the Word *Proximo* must relate to the very next Day following the Rent-Day; and so likewise when the Rent became due and unpaid at the next Rent-Day after that, and so on. *Palm. 207. 2 Nels. 1182.* An Assignee is chargeable with a *Nomine Pœne* incurred after the Assignment, but not before. *Moor 357. 2 Lill. Abr. 221.* Though a Forfeiture is mentioned to be *Nomine Pœne*, on not paying of a collateral Sum; it is no *Nomine Pœne*, if it be not of a Rent. *Lutw. 1156.*

Nonability, Is an Exception taken against the Plaintiff in a Cause, upon some just Ground, why he cannot commence any just Suit in Law; as *Premunire*, *Outlawry*, being a *Stranger born*, &c. *F. N. B. 35, 65. Vide Disability.*

Nonæ & Decimæ, Payments made to the Church by those who were Tenants of Church Farms; where *Nonæ* was a Rent or Duty for Things belonging to Husbandry, and *Decimæ* were claimed in Right of the Church. Formerly a ninth Part of moveable Goods was paid to the Clergy on the Death of Persons in their Parish, which was called *Noragium*; and claimed on Pretence of being distributed to pious Uses. *Blount.*

Nonage, In general Understanding, is all the Time of a Person's being under the Age of One and twenty; and in a special Sense, where one is under Fourteen, as to Marriage, &c.

Non Assumit, A Plea in personal Actions, whereby a Man denies any Promise made, &c. See *Assumit*.

Non-

Non-claim, Is an Omission or Neglect of one that claims not within the Time limited by Law; as within a Year and Day, where *continual Claim* ought to be made, or in five Years after a *Fine* levied, &c. By which a Man may be barred of his Right or Entry. *Stat. 4 H. 7. c. 24. 32 H. 8. c. 33. See Claim.*

Non compos Mentis, Is where a Person is not of sound Mind, Memory, and Understanding. And there are four Sorts of *Non compos Mentis*; 1st, An Idiot or natural Fool. 2^{dly}, A Madman, or one who was of *Sane* Memory, but hath lost his Understanding by Sickness, Accident or Misfortune. 3^{dly}, A Lunatick, sometimes of *Sane* Memory, and at other Times not so. 4^{thly}, A Drunkard that deprives himself of his Memory and Understanding for a Time. But though a drunken Person is *Non compos Mentis*, it shall give no Privilege or Benefit to him or his Heirs, as to Acts done, &c. And his Drunkenness shall not extenuate, but rather aggravate his Offence, as well touching his Life as his Lands or Goods. 1 *Inst.* 264. 4 *Rep.* 125. A Deed of Feoffment, Grant, &c. made by a Person *Non compos Mentis* is voidable; his Heir, as privy in Blood, may shew the Disability of his Ancestor, and avoid his Grants; and his Executors, &c. as Privies in Representation may do the same, by setting forth the Infirmary of the Testator or Intestate. 4 *Rep.* 126. It is no good Plea for a Man himself to say, that he was *Non sane* Memory at the Time of Making a Bond. *Cro. Eliz.* 398. But where a Person of *Sane* Memory becomes *Non compos Mentis*, and afterwards aliens his Lands or Goods; if he be found *Non Compos*, and that he had aliened, the King may protect him, and take the Profits of his Lands, &c. to maintain him and his Family. 4 *Rep.* 127. And he that hath the Custody of a Man of *Non sane* Memory is accountable as Bailiff to the *Non Compos*, his Executors or Administrators. *Ibid.* A Man *Non compos Mentis* shall not lose his Life for Felony or Murder; for he cannot be guilty of the Murder of another. 3 *Rep.* 124. 3 *Inst.* 4, 54. Though if one who wants Discretion or Understanding, does any corporal Hurt to, or Trespas against another; he may be compelled by Action to render Damages. 35 *H. 6.* 1 *Inst.* 247. 1 *Hawk. P. C.* 2. Vide *Lunatick.*

Non-conformists. The Statutes 1 *Eliz.* and 13 *Car. 2.* were made for the Uniformity of Common Prayer, and Service in the Church; and Persons *not conforming* thereto are subject to divers Penalties.

Non Damnificatus, Is a Plea to an Action of Debt upon a Bond, with Condition to save the Plaintiff harmless. 2 *Lill. Abr.* 224. If the Condition of a Bond be to save harmless only, *Non Damnificatus* generally is a good Plea; but if it be to discharge the Plaintiff, &c. then the Manner of the Discharge is to be shewn. 1 *Leon.* 72. When one pleads a Discharge, and that he saved another harmless, he ought to shew it that the Court may judge thereof: Though a Defendant may plead *Non Damnificatus*, without shewing of it. *Cro. Jac.* 363. 2 *Rep.* 3, 4. *March.* 121. It has been adjudg'd, where a Condition of a Bond is to save harmless from all Suits in general; *Non Damnificatus* may be pleaded: And if it is in a particular Suit or Thing, there the Defendant must shew how he hath saved harmless and discharged; but where a Suit is upon a Counter-

Bond, the Plea of *Non Damnificatus* is good. 8 *W. 3. B. R.* 5 *Mod.* 243.

Non Decimando. A Custom or Prescription *De non Decimando* is to be discharged of all Tithes, &c. See *Modus Decimandi.*

Non Distringendo, Is a Writ not to distrain, used in divers Cases. Table of *Reg. of Writs.*

Nones, (*Nona*) Of every Month is the seventh Day of *March, May, July, and October*; and the Fifth of all the other Months. By the *Roman* Account, the *Nones* in the afore-mentioned Months are the six Days next following the first Day, or the *Calends*; and of others the four Days next after the First, according to these Verses,

*Sex Nonas Maius, October, Julius, & Mars,
Quatuor at reliqui, &c.*

Though the last of these Days is properly called *Nones*; for the others are reckon'd backward as distant from them, and accounted the Third, Fourth, or Fifth *Nones*, &c. And *Nones* had their Name from their Beginning, the Ninth Day before the *Ides*. See *Ides.*

Non est Culpabilis, Short *Non Cul.* is the general Plea to an Action of *Trespas*, whereby the Defendant absolutely denies the Fact charged on him by the Plaintiff; whereas in other Special Pleas, the Defendant grants the Fact to be done, but alledges some Reasons why he lawfully might do it. And as the Plea of *Non Culp.* is the general Answer in Actions of *Trespas*, being Actions criminal civilly prosecuted; so it is likewise in all Actions criminally followed, either at the Suit of the King or any other, where the Defendant denies the Crime for which he is brought to Trial. *S. P. C. lib. 2. c. 62.*

Non est factum, A Plea where an Action is brought upon a Bond, or any other Deed, and the Defendant denieth that to be his Deed whereon he is impleaded. *Broke.* In every Case where a Bond is void, the Defendant may plead *Non est factum*: But when a Bond is voidable only, he must shew the special Matter, and conclude Judgment *Si Action*, &c. 2 *Lill.* 226. If a Deed is raised in a material Part, by which it becomes void, the Person bound by it may plead *Non est factum*, and give the Matter in Evidence; because it was not his Deed at the Time of the Plea. 11 *Rep.* 27. A Bond was dated *November* the 10th, and so set forth in the Plaintiff's Declaration; the Defendant pleaded *Non est factum*, and though it was found that it was not delivered till the eighteenth, the Issue being upon a *Non est factum*, it appeared to be his Deed: But it is said the Defendant might have helped himself by Pleading. *Cro. Jac.* 126. The Defendant pleads *Quod factum prædict.* was made and delivered without a Date, and that the Plaintiff put a Date to it, and so *Non est factum*; this was held naught upon a Demurrer, for the Defendant confesses the Deed, by saying *Factum prædict.* and afterwards denies it; though he might have said generally, *Non est factum.* *Cro. Eliz.* 800. None but the Party, his Heirs, Executors, &c. can plead *Non est factum.* *Lutw.* 662.

Nonfeasance, Is an Offence of Omission of what ought to be done; as in not coming to Church, &c. Which need not be alledged in any certain Place. *Hob.* 251. 1 *Hawk.* 13. *Nonfeasance* will not make a Man a Trespasser; and a Person cannot be guilty of Forgery, by a bare *Nonfeasance.* 8 *Rep.* 146. *Moor* 760. Vide *Forgery.*

Non

Non implacitando aliquem de Libero Tenemento sine Breve, Is a Writ to prohibit Bailiffs, &c. from Distraining any Man touching his Freehold, without the King's Writ. *Reg. Orig.* 171.

Non intromittendo, quando Breve Præcipe in Capite subdole impetratur, Was a Writ directed to the Justices of the Bench or in Eyre, commanding them not to give one, that had, under Colour of intitling the King to Land, &c. as holding of him in Capite, deceitfully obtained the Writ called *Præcipe in Capite*, any Benefit thereof, but to put him to this Writ of Right. *Reg. Orig.* 4. This Writ having Dependence on the Court of Wards, since taken away, is now disused.

Nonjurors, Are Persons who refuse to take the Oaths to the Government: And Persons refusing the Oaths enjoined by Law, &c. are liable to certain Penalties; and for a third Offence to abjure the Realm, by 13 & 14 Car. 2. c. 1. Ecclesiastical Persons not taking the Oaths on the Revolution, were rendered incapable to hold their Livings: But the King was impowered to grant such of the Nonjuring Clergy as he thought fit, not above Twelve, an Allowance out of their Ecclesiastical Benefices for their Subsistence, not exceeding a third Part. 1 W. & M. Sess. 1. c. 8. Those Persons as refuse the Oaths shall incur, forfeit, and suffer the Penalties inflicted on Popish Recusants convicted; and the Court of Exchequer may issue out Process against their Lands and Goods, &c. 7 & 8 W. 3. c. 27. See the Stat. 1 Geo. c. 55. and Oaths.

Non Merchandizando victualia, Is a Writ to Justices of Assize, to inquire whether the Magistrates of such a Town do sell Victuals in Gross, or by Retail, during the Time of their being in Office, which is contrary to an antient Statute; and to punish them if they do. *Reg. Orig.* 184.

Non Molestando, A Writ that lies for a Person who is molested contrary to the King's Protection granted him. *Reg. Writs* 184.

Non Obstante, (Notwithstanding) Is a Clause frequent in Statutes and Letters Patent, and is a Licence from the King to do a Thing which at the Common Law might be lawfully done; but being restrained by Act of Parliament, cannot be done without such Licence. *Vaugh.* 347. *Plowd.* 501. The Stat. 18 Eliz. c. 2. confirmed all Grants of the Queen by Letters Patent, of any Honours, Castles, Manors, Lands, Tenements, &c. and that they should stand and be good in Law, against the Queen, her Heirs and Successors, *Non obstante* any Misnaming, Mis-recital, Want of Certainty, finding Offices or Inquisitions, Livery of Seisin, &c. By 14 Car. 2. c. 11. it was declared, that all Grants of Pensions, &c. and every *Non Obstante* therein contained, should be void. And the 1 W. & M. c. 2. makes Dispensations, *Non Obstante* to Statutes, void; unless allowed therein. See *Dispensation*, and *Grants of the King*.

Non omittas, Is a Writ directed to the Sheriff, where the Bailiff of a Liberty or Franchise who hath the Return of Writs refuses or neglects to serve a Process, for the Sheriff to enter into the Franchise and execute the King's Writ himself, or by his Officer: Before this Writ is granted, the Sheriff ought to return, that he hath sent to the Bailiff, and that he hath not served the Writ; but for Dispatch, the usual Practice is to send a *Non omittas* with a *Capias* or *Latitat*. F. N. B. 68, 74. 2 Inst. 453. If a Sheriff return, that he sent the Process to the Bailiff of a Li-

bertry, who hath given him no Answer; a *Non omittas* shall be awarded to the Sheriff: And if he returns, that he sent the Process to such Bailiff, who hath returned a *Cepi Corpus*, or such like Matter; and the Bailiff bring not in the Body, or Money, &c. at the Day, the Bailiff shall be amerced, and a Writ issue to the Sheriff to distrain the Bailiff to bring in the Body. 2 Hawk. 143. Writs of *Capias Utlagatum*, and of *Quo Minus* out of the Exchequer, and it is said all Writs whatsoever at the King's Suit, are of the same Effect as a *Non omittas*; and the Sheriff may by Virtue of them enter into a Liberty and execute them. 2 Lill. Abr. 229. The *Reg. of Writs* mentions three Sorts of this Writ; which was given to prevent Liberties being privileged to hinder or delay the general Execution of Justice: And the Clause of the *Non omittas* is, *Quod Non omittas propter aliquam Libertatem*, (viz. of the Liberty to which the Sheriff hath made a *Mandavi Ballivo*, *qui nullum dedit Responsum*) *quin in eam ingrediaris & Capias A. B. Si, &c.*

Non-plevin, (*Non plevina*) Is defined to be *Defalta post Defaltam*; and in *Hengham Magna*, cap. 8. 'tis said, that the Defendant is to replevy his Lands seized by the King within fifteen Days; and if he neglects then at the Instance of the Plaintiff at the next Court-Day, he shall lose his Seisin, *Sicut per Defaltam post Defaltam*: But by Statute it was enacted, that none should lose his Land, because of *Non-plevin*, i. e. where the Land was not replevied in due Time. 9 Ed. 3. cap. 2.

Non ponendis in Assis & Juratis, Is a Writ granted for freeing Persons from serving on Assises and Juries; and when one hath a Charter of Exemption, he may sue the Sheriff for returning him. This Writ is founded on the Stat. of *Westm.* 2. c. 38. And the Stat. *Articuli super Chartas*, c. 9. F. N. B. 165. 2 Inst. 127, 447.

Non procedendo ad Assisam Rege inconsulto, A Writ to stop the Trial of a Cause appertaining to one who is in the King's Service, &c. until the King's Pleasure be farther known. *Reg. Orig.* 220.

Non Pros. If a Plaintiff in an Action, doth not declare against the Defendant within reasonable Time, a Rule may be enter'd against him by the Defendant's Attorney, to declare; and thereupon a *Non Prof.* &c. *Pract. Solic.* 232. And a Plaintiff may enter a *Non Prof.* before the Record of the Cause is sent down by *Nisi prius* to be tried at the Assises: But it is said there cannot be a *Non Prof.* in a Cause at the Trial at the Assises. 3 Salk. 246. Though in Actions against several Defendants, it has been ruled otherwise. 2 Salk. 456. *Non Pros.* have been frequent upon Informations; but never upon Indictments, 'till the Reign of King Charles 2. *Ibid.* See *Nolle Prosequi*, and *Non suit*.

Non Residence, Is applied to those *Spiritual Persons* that are not *Resident*, but do absent themselves wilfully by the Space of one Month together, or two Months at several Times in one Year, from their Dignities or Benefices, which is liable to Penalties by the Statute against *Non Residency*. 21 H. 8. c. 13. But Chaplains to the King, or other great Persons mentioned in this Statute, and the 25 H. 8. c. 16. may be *Non resident* on their Livings; for they are excused from *Residence* whilst they attend those that retain them: And Bishops are not punishable by Statute for *Non-Residency*; but if a Bishop hold a Deanery,

Deanery, Parsonage, &c. in *Commendam* with his Bishoprick, he is punishable by the Stat. 21 H. 8. for *Non-Residence* on the same. Also where Bishops are *Non-resident* on their Bishopricks, they are liable to Ecclesiastical Censure; and the King may issue a mandatory Writ for their Attendance thereon, and compel them to it by Seising their Temporalities, a notable Precedent whereof we have in the Case of the Bishop of Hereford, in the Reign of K. Hen. 3. 2 Inst. 625. See *Residence*.

Non Residentia pro Clericis Regis, Is a Writ directed to the Bishop, charging him not to molest a Clerk employ'd in the King's Service, by Reason of his *Non-Residence*; in which Case he is to be discharged. Reg. Orig. 58.

Non sane Memory, (*Non sana Memoria*) Is used in Law for an Exception to any Act, declared to be done by another; and the Effect of it is, that the Party that did that Act, was not well in his Senses when he did it, or when he made his Last Will and Testament. *New Book Entries*. And *Sane Memory* for the Making of a Will is not always where the Testator can answer Yes or No, or in some Things with Sense; but he ought to have Judgment to discern, and be of perfect Memory, or the Will shall be void. *Moor, c. 1051*. See *Non compos Mentis*.

Nonsuit, (*Tergiversatio, Litis renunciatio*) Is the letting a Suit or Action fall; or a Renunciation of it by the Plaintiff or Demandant, most commonly upon the Discovery of some Error or Defect, when the Matter is so far proceeded in, as the Jury is ready at the Bar to deliver their Verdict. 2 H. 4. c. 7. Where a Man brings a Personal Action, and doth not prosecute it with Effect, or if upon the Trial, he refuses to stand a Verdict; then he becomes nonsuited: If the Plaintiff be not ready at the Trial when the Jury is called and sworn, the Court may call him *Nonsuit*; it shall be intended he will not proceed in his Cause, though sometimes the Court hath staid a While in Expectation of his Coming, and making good his Action: And on a Trial, when the Jury comes to deliver in their Verdict, and the Plaintiff is called upon to hear their Verdict; if he do not appear after thrice called, by the Cryer of the Court, he is *nonsuited*, and the *Nonsuit* is to be recorded by the Secondary, by the Direction of the Court, at the Prayer of the Defendant's Counsel; for the Court will not order it to be recorded, except the Counsel pray it. *Hill. 21 Car. B. R. 2 Lill. Abr. 231*. But where a Plaintiff doth not appear to hear the Verdict when he is called, and thereupon the Court direct the Secondary to record the *Nonsuit*; if afterwards he do appear before the *Nonsuit* is actually recorded, the Court may proceed to take the Verdict; it not being a *Nonsuit* until recorded by the Secondary, and then it is made Part of the Record, and is in the Nature of a Judgment against the Plaintiff. 2 Lill. 232. The Court cannot compel the Plaintiff to appear, and stand a Verdict; but if he appears, or his Counsel or Attorney appear for him, he cannot be afterwards *Nonsuit*, but the Jury must deliver in their Verdict. A Plaintiff in Ejectment not appearing at the Assises, he was *nonsuited*, and this was recorded; but as there was no *Venire* or *Habeas Corpora* put in, the *Nonsuit* was discharged, because the Judge of *Nisi prius* hath no Power to *nonsuit* without an *Habeas Corpora* or *Distingas*. *Sid. 164*. After a Demurrer join'd, if the Court

gives a Day over, the Plaintiff may be *nonsuit*; for the Plaintiff is then demandable: And after a Judgment *quod computet*, the Plaintiff may be *nonsuited*, because it is but an interlocutory Judgment; though after any Verdict, whereupon a final Judgment is to be given, he cannot. 1 Inst. 140. 2 Lill. 231. At Common Law, upon every Continuance or Day given, the Plaintiff might be *nonsuit*; so that even after a Verdict, if the Court took Time to consider of it, the Plaintiff was demandable and might be *nonsuit*; but this is now remedied by the Stat. 2 Hen. 4. Yet after a privy Verdict, the Plaintiff might still be *nonsuit*; and so he may after a Special Verdict found; and after a Demurrer, though the Matter was argued, if the Court give a Day over. 1 Inst. 139. *Dyer 53. 3 Salk. 249*. In Real or Mix'd Actions, the *Nonsuit* of one of the Plaintiffs or Demandants is not the *Nonsuit* of both; in this Case, he which makes Default shall be summoned and severed: But regularly in personal Actions, the *Nonsuit* of one Plaintiff is the *Nonsuit* of the others, unless in some particulars. 1 Inst. 138, 139. If an Action of Debt, &c. is brought against several Defendants, a *Nonsuit* as to one is a *Nonsuit* as to the Rest; but it is otherwise in a Discontinuance. 3 Salk. 244. And where there is but one Defendant, who pleads to issue as to Part, and demurs to the other Part; the Plaintiff may be *nonsuit* as to one, and proceed for the other. *Hob. 180*. The King cannot be *nonsuited*, because in Judgment of Law he is always present in Court; though the Attorney General may enter a *Nolle Prosequi*: And the King's Suit may be discontinued, upon the Prayer of the Party, after a Year; where it is delay'd to be prosecuted. 1 Inst. 139. *Goldsb. 53*. Also notwithstanding the King cannot be *nonsuit* in any Information or Action, wherein he himself is the sole Plaintiff, an Informer *Qui tam*, or Plaintiff in a Popular Action, may be *nonsuit*; and thereby wholly determine the Suit as well in Respect of the King as of himself. 1 Inst. 139. *Bro. 68. Fitzherb. 13*. A foreign King seeking to take the Benefit of the national Laws here, may be *nonsuit* in England; which was the Case of the King of Spain. *Mich. 22 Car. B. R.* A *Nonsuit* after Appearance, in Appeals of Murder, Writs of *Quare Impedit*, Attaints, &c. is peremptory. 1 Inst. 139. In other Cases, when a Plaintiff is *nonsuit*, he may proceed again on a new Declaration; but not on that wherein he became *nonsuit*, that Declaration being void, and he hath no Day in Court. A *Nonsuit* is not generally a Bar to Actions of the like Nature, for the same Cause or Duty; yet a *Retrahit* is a Bar to all other Actions. 2 Lill. 231. On *nonsuit* of the Plaintiff, &c. Costs are given the Defendant in all Cases where the Plaintiff would have had Costs, if Judgment had been for him. *Stat. 4 Jac. 1. c. 3*. And on Appearance entered at the Return of the Writ, if the Plaintiff neglects to deliver a Declaration against the Defendant, in personal Action or Ejectment; before the End of the next Term following, a *Nonsuit* shall be entered against the Plaintiff; and he is to pay Costs to the Defendant. 13 Car. 2. cap. 2.

Non sum Informatus, Is a formal Answer made of Course by an Attorney, who is not instructed or informed to say any Thing material in Defence of his Client's Cause; by which he is deem'd to leave it undefended, and so Judgment passeth against his Client. *New Book Entries*.

Non

Non-tenure, Is a Plea in Bar to a Real Action, by saying, that he, the Defendant, holdeth not the Land mentioned in the Plaintiff's Count or Declaration, or at least some Part thereof. 25 Ed. 3. c. 16. 1 Mod. Rep. 250. And our Books mention *Non-tenure* general and special: General, where one denies ever to have been Tenant to the Land in Question; and special is an Exception, alledging that he was not Tenant the Day whereon the Writ was purchased. *West. Symb. par. 2.* When the Tenant or Defendant pleads *Non-tenure* of the Whole, he need not say who is Tenant; but if he pleads *Non-tenure* to Part, he must set forth who is the Tenant. 1 Mod. 181. *Non-tenure* in Part or in the Whole is not pleadable after Imparance. 3 Lev. 55.

Non-term, (*Non-terminus*) Is the Vacation between *Term* and *Term*: And it was formerly called the Time or Days of the King's Peace. *Lamb. Archa. 126.*

Non-user, Of Offices concerning the Publick, is Cause of Forfeiture. 9 Rep. 50. See *Office*.

Nook of Land, (*Nocata terra*) In an old Deed of Sir Walter de Pedwardyn, twelve Acres and a Half of Land were called a *Nook of Land*; but the Quantity is generally uncertain. — *Illi qui tenuerunt dimidiam Virgatam terre, vel Nocatam terræ, vel Cottagium de Bondagii tenura.* Dugd. Warw. pag. 665.

Nozroy, *Quasi North-Roy*, the Northern King at Arms, mentioned in the Statute 14 Car. 2. c. 33. See *Herald*.

Notary, (*Notarius*) Is a Person, generally a Scrivener, who takes Notes, or makes a short Draught of Contracts, Obligations, or other Writings and Instruments. Stat. 27 Ed. 3. c. 1. At this Time we call him a *Notary Publick*, that publickly attests Deeds or Writings; to make them Authentick in another Country; but principally in Business relating to Merchants: They make Protests of Foreign Bills of Exchange, &c. And Noting a Bill is the *Notary's* going as a Witness, to take Notice of a Merchant's Refusal to accept or pay the same. *Merch. Diff.*

Note of a Fine, Is a Brief of the Fine made by the *Chirographer*, before it is ingrossed. *West. Symb. par. 2.*

Notes Promissory, For Payment of Money. See *Bill of Exchange*.

Not guilty, Is the General Issue or Plea of the Defendant in any criminal Action; and *Not guilty* is a good Issue in Actions of Trespas on the Case, and upon the Case for Deceits or Wrongs; but not on a Promise, &c. *Palm. 393.* If one hath Cause of Justification and Excuse in Trespas, and he pleads the General Issue *Not guilty*; he cannot give the Special Matter in Evidence, but must confess the Fact, and plead the Special Matter, &c. 5 Rep. 119. Vide *Non est Culpabilis*.

Notice, Is required to be given in many Cases by Law, to justify the Proceedings in a Cause where any Thing is demanded, &c. But none is bound by the Law to give Notice to another Person of that which such other may otherwise inform himself of. 22 Car. B. R. If one be bound by an *Assumpsit* generally to do a Thing to another, he to whom the Promise is made must give Notice when he will have him to do it; but if he promise that another Person shall do it, there he to whom the Thing is to be done is not obliged to give Notice to that third Person when he will have it done, but the Party must procure

it at his Peril: For it may be he may not know that other Person, and there is no Privy of Contract between them Two, as there is betwixt the other Two. 2 Lill. Abr. 239. And in Case of a Promise it has been adjudg'd, that where a Penalty is to be recovered, Notice is requisite; but 'tis not so where Damages are to be recovered, in which Case the Party hath sufficient Notice by the Action brought. 1 Bulst. 12. If a Person promise to pay so much to another at his Day of Marriage; the Party at his Peril is to take Notice of the Marriage. *Cro. Car. 34, 35.* And it is a necessary Intendment, that when after the Marriage the Plaintiff requested Payment of the Money, that Notice was given of the Marriage. *Cro. Jac. 228.* It is held, that where a collateral Thing is to be done at or after Marriage, there Notice is to be given of it; though where Money is to be paid, 'tis a Debt due to the Party by the Marriage, and may be recovered without any Notice given. 2 Bulst. 254. Notice must be given to an Heir at Law, of a Condition annexed to his Estate; or he is not bound to take Notice of the Condition. 1 Lutw. 809. 4 Rep. 82. 3 Mod. 28. Yet it is said, that the Heir is bound to take Notice of a Proviso in a Feoffment, without any Notice; and this Difference has been taken; that where Notice is required to be given by the original Deed or Agreement, it is hereditary, and descends to the Heir; but if 'tis collateral to the Father, it shall not bind his Heir without express Notice. *Winch. 108.* 2 Nelf. Abr. 1186. A Man who is a Stranger to a Deed, that hath an Estate by Way of Remainder, or otherwise; shall not forfeit or determine his Estate by Virtue of any Proviso in such Deed, unless he hath Notice of it. 8 Rep. 92. Where one is bound to another to make such an Assurance as A. B. shall advise, the Obligor is bound to make the Assurance, without Notice that A. B. had advised it; but if he had been bound to make such Assurance as the Counsel of the Obligee should advise, Notice ought to be given the Obligor, that the Counsel of the Obligee had advised it. 1 Leon. 115. If I am bound to enfeoff such Persons as the Obligee shall name; he is to give Notice of those which he names, otherwise I am not bound to enfeoff them. 2 Danv. Abr. 105. And if the Condition of an Obligation be to account before such Auditors as the Obligee shall assign, and the Obligee assigns Auditors; he is to give Notice thereof to the Obligor, or he will not be bound to account. *Ibid.* Notice is not to be given so strictly upon a Covenant, as upon a Bond; which is Point of Forfeiture. *Cro. Jac. 391.* If the Agreement be that a Person shall pay so much as A. B. hath paid, the Defendant is to inquire of him, and the Plaintiff is not bound to give Notice: But if the Person is altogether uncertain, the Plaintiff to intitle himself to an Action must give Notice. *Cro. Jac. 432, 433.* If an Act is to be done by a Stranger, and not by the Plaintiff, the Cognisance thereof lies as well in the Notice of the Defendant as of the Plaintiff; and therefore the Plaintiff need not lay a Notice. *Cro. Jac. 492.* *Cro. Car. 132.* When one may take Notice, and not the other; Notice is necessary. *Latch. 15.* A Thing lies in the Knowledge of the Plaintiff, there ought to be Notice given to the Defendant. *March. 156.* *Mod. 230.* It has been holden, that a Defendant having undertaken to do a Thing, undertakes to do all Circumstances incident to the Doing it, and that without Notice; but if he

had been ignorant of the Thing to be done, then *Notice* must be given. 2 *Bulst.* 143. Want of *Notice* upon various Occasions, has been often the Cause of Arrest of Judgment in Actions, &c.

Notice is also to be given of *Trials* and *Motions*; of a *Robbery* committed, to recover against the Hundred; of a prior *Mortgage*, on making a second; of an *Assignment* of a *Lease*, to charge the Assignee only on Acceptance of Rent; in Cases of *Distress* for Rent, according to the Statute; and of *Avoidances* of Churches, to the Patron that he may present, &c.

Novat, Signifies Land newly ploughed or converted into Tillage, that without Memory of Man had not been tilled: And sometimes it is taken for Ground which hath been ploughed for two Years, and afterwards lies Fallow for one Year; or that which lies Fallow every other Year: It is called *Novat*, because the Earth *Novat cultura profcinditur*. Cartular. Abbat. de Furnesse in Com. Lanc. in Officio Ducat. Lanc. fol. 41.

Novat Oblata, mentioned in *Claus.* 12 Ed. 1. m. 7. See *Oblata*.

Novel Assignment, (*Nova Assignatio*) Is an *Assignment* of Time, Place, or such like, in Action of *Trespass*, otherwise than as it was before assigned; or where it is more particularly in a Declaration than in the Writ, &c. Bro. *Trespass* 122. And if the Defendant justifies in a Place where no *Trespass* was done, then the Plaintiff is to assign the Close where, to which the Defendant is to plead, &c. *Terms de Ley* 459. Vide *Trespass*.

Novel Disseisin, (*Nova Disseisina*.) See *Affise of Novel Disseisin*.

Novellæ. Those Constitutions of the *Civil Law*, which were made after the Publication of the *Theodosian Code*, were called *Novellæ*, by the Emperors who ordained them: But some Writers call the *Julian Edition* only by that Name. Blount.

Noyles. No Person shall put any Flocks, *Noyles*, Thrums, &c. or other deceivable Thing, into any broad Woollen Cloth, by Stat. 21 Jac. 1. c. 18.

Nuces colligere, To gather Hazle-Nuts, which was formerly one of the Works or Services imposed by Lords upon their inferior Tenants. *Paroch. Antiq.* 495.

Nude Contract, (*Nudum Pactum*) Is a bare naked Contract, without any Consideration had therefore. If a Man bargains or sells Goods, &c. and there is no Recompence made or given for the doing thereof; as if one say to another, I sell you all my Lands or Goods, but nothing is agreed upon what the other shall give or pay for them, so that there is not a *Quid pro quo* of one Thing for another; this is a *Nude Contract*, and void in Law, and for the Nonperformance thereof no Action will lie; *Ex nudo pacto, non oritur Actio*. *Terms de Ley* 459, 460. The Law supposes Error in making these Contracts; they being as it were of one Side only.

Nude Matter, Is a naked Matter, or bare Allegation of a Thing done, &c. Vide *Matter*.

Nul tiel Record, Is the Plea of a Plaintiff that there is no such Record, on the Defendant's Alleging Matter of Record in Bar of the Plaintiff's Action. See *Failure of Record*.

Numerum. *Civitas Cant.* *Reddit* 24 l. ad numerum, i. e. by Number or Tale, as we call it. *Domesday*.

Nummata, Signifies the Price of any Thing generally by Money; as *Denariata* doth the Price of a Thing by Computation of Pence, and *Librata* by Computation of Pounds.

Nummus, A Piece of Money or Coin among the Romans; and it is a Penny according to *Matt. Westm. sub Ann.* 1095.

Nun, (*Nonna*) Is a consecrated Virgin or Woman that by Vow hath bound herself to a single and chaste Life, in some Place or Company of other Women, separated from the World, and devoted to an especial Service of God by Prayer, Fasting, and such like holy Exercises: It is an Egyptian Word, as we are told by St. Hierome.

Nuncius, A Nuncio or Messenger, &c. And the Pope's Nuncio is his Legate, *Legatus Pontificis*.

Nuncupative Will, (*Testamentum Nuncupatum*) Is a Will by Word of Mouth; it is a verbal Declaration of the Testator's Mind before a sufficient Number of Witnesses, which being reduced into Writing either before or after the Death of the Testator, is good to dispose of his personal Estate, but not his Lands. 2 *Nelf. Abr.* 1191. Before the Stat. 29 Car. 2. it was necessary not only to put a *Nuncupative Will* in Writing, but to Prove it likewise by Witnesses in the Spiritual Court, and to have it under the Seal of the Ordinary; until which it hath been decreed in Equity, that such Will was not pleadable against an Administrator. 1 *Chanc. Rep.* 122. And by that Statute, no *Nuncupative Will* shall be good, wherein the Estate bequeathed exceeds 30 l. unless proved by three Witnesses who were present at the Making thereof, and bid by the Testator to bear Witness; nor except it be made in the Time of the last Sickness of the Deceased, and in his House, or where he hath been Resident for ten Days before, unless surprised with Sickness from home: And no Evidence shall be received to prove such Will, after six Months after the speaking of the Testamentary Words; if the same or the Substance of it be not committed to Writing within six Days after the Making. Nor shall any Probate of such *Nuncupative Will* pass the Seals till fourteen Days after the Death of the Testator, and until Process hath issued to call in the Widow or next of Kin to the Deceased, to contest it if they think fit. 29 Car. 2. c. 3. And by the same Act, no Will in Writing concerning personal Estate shall be repealed by any Words or Will by Word of Mouth, except the same be put into Writing in the Life-time of the Testator, and read to and approved of by him, and proved to be so done by three Witnesses, &c. All Witnesses as are allowed to be good Witnesses upon Trials at Law, shall be good Witnesses to prove any *Nuncupative Will*, by Stat. 4 & 5 Anna.

Nuper obiit, Is a Writ that lies for a Sister and Coheir, deforced by her Coparcener of Lands or Tenements, whereof their Father, Brother, or any other common Ancestor, died seised of an Estate in Fee-Simple: For if one Sister do deforce another of Land held in Fee-Tail, her Sister and Coheir shall have a *Formedon* against her, &c. and not a *Nuper Obiit*; and where the Ancestor being once seised, died not seised of the Possession, but the Reversion, in such a Case a Writ of *Rationali parte* lies. *Reg. Orig.* 226. F. N. B. 197. *Terms de Ley* 460. If one Coparcener be deforced by another and a Stranger, she shall have a *Nuper obiit* against her Coparcener: And if two Coparceners after the Death

Death of their Ancestor enter and deforce a third Sister, and afterwards they make Partition betwixt them, and then one of the two alieneth her Part to a Stranger in Fee; yet the third shall have the Writ *Nuper obiit* against her two Sisters, notwithstanding that Alienation, and shall recover the third Part of what the Coparcener who aliened not was seised, &c. And may sue an Affise of *Mortdancesthor*, or Writ of *Aiel* as the Case is, in the Name of the other Coparcener, to recover her third Part in the Hands of the Stranger. *New Nat. Br.* 437, 438. A *Nuper obiit* ought to be brought by that Coparcener who is deforced, against all the other Coparceners; and although some of them have nothing in the Tenancy. *Ibid.* And this Writ lieth between Sisters of the half Blood; and likewise between Coheirs in *Gavelkind*, as well as between Women Parceners, &c.

Nusance, (*Nocumentum*, from the Fr. *Nuire*, i. e. *Nocere*) Particularly so called, is where one makes any Encroachment on the King's Lands, or the Highways; common Rivers, &c. 2 *Inst.* 272. And where a Man doth any Thing upon his own Ground, to the particular Damage of his Neighbour, &c. it is accounted a *Nusance*. *Nusance* signifies not only a Thing done to the Annoyance of another, in his Lands or Tenements, but the Affise or Writ lying for the same. *F. N. B.* 183. And *Nusances* are Publick and Common, or Private: A Common *Nusance* is defined to be an Offence against the Publick, either by doing a Thing which tends to the Annoying of all the King's Subjects, and is common against all; or by neglecting to do any Thing which the common Good requires. 2 *Roll. Abr.* 83. And Annoyances in Highways, as where a Gate, Hedge, &c. or Ditches are made therein; of Bridges and publick Rivers, disorderly Alehouses, Bawdy-Houses, Gaming-Houses, Stages for Rope-Dancers, Mountebanks, &c. Brewing-Houses erected in Places not convenient, Cottages with Inmates, common Scolds, Eves-Droppers, &c. are generally Common *Nusances*. 2 *Inst.* 406. If a Man stops up the Light of another's House, or builds so near to and hanging over mine, that the Rain which falleth from his House falls upon mine; Turning or Diverting Water, running to a Man's House, Mill, Meadow, &c. or Stopping up a Way, leading from Houses to Lands; Suffering the next House to decay to the Damage of my House; and Setting up or making a House of Office, Lime-pit, Dye-house, Tan-house or Butcher's Shop, &c. and using them so near my House, that the Smell thereof doth annoy me or is infectious; or if they hurt my Grass, or Trees, or the Corruption of the Water of Lime-pits spoils my Water, or destroys Fish in a River, &c. These are in general Private *Nusances*. 3 *Inst.* 231. 9 *Rep.* 54. 5 *Rep.* 101. 1 *Roll. Abr.* 88. 2 *Roll.* 140. 1 *Danv. Abr.* 173. For a common *Nusance*, Indictment lies at the Suit of the King; and the Party shall be fined and imprisoned, &c. No Action lieth in this Case, for if one Man might have an Action, all Men might have the like: And the Indictment must be *ad Commune Nocumentum omnium Ligeorum*, &c. 5 *Rep.* 73. 1 *Inst.* 56. 1 *Ventr.* 208. But though Action may not be brought for a common *Nusance*, but Indictment or Presentment; yet where the Inhabitants of a Town had by Custom a watering Place for their Cattle which was stopped by another, it has been held, that any Inhabitant might have an Action

against him, otherwise they would be without Remedy, because such a *Nusance* is not common to all the King's Subjects, and Presentable in the Leet, or to be redressed by Presentment or Indictment in the Quarter-Sessions. 5 *Rep.* 73. 9 *Rep.* 103. And if any one Person hath more particular Damage by a common *Nusance* than another; as if by Reason of a Pit dug in a Highway, a Man for whose Life I held Lands is drowned; or my Servant falling into it receives Injury, whereby I lose his Service, &c. for this special Damage, which is not common to other Persons, Action lies. 5 *Rep.* 73. 4 *Rep.* 18. *Cro. Car.* 446. *Vaugh.* 341. 4 *Bull.* 344. For private *Nusances*, Action on the Case lieth, or Affise of *Nusance* by the Party grieved; and on Action for a private *Nusance*, Judgment shall be given that the *Nusance* shall be removed, and the Party injured recover Damages for the Injury sustained. 1 *Roll. Abr.* 391. 1 *Ventr.* 208. There is a Difference between an Affise for a *Nusance* and an Action on the Case; for the first is to abate the *Nusance*, but the last is not to abate it but to recover Damages; if the *Nusance* be removed, the Plaintiff is intitled to his Damages which accrued before; and though 'tis laid with a *Continuando* for a longer Time than the Plaintiff can prove, he shall have Damages for no more than he can make Proof of before the *Nusance* was abated. 2 *Mod.* 253. It is said both of a common and private *Nusance*, that they may be abated or removed by those Persons that are prejudiced by them; and they need not stay to prosecute for their Removal. 2 *Lill. Abr.* 244. *Wood's Inst.* 443. It has been adjudged, that every Person may remove a *Nusance*; and that the Cutting a Gate set cross an Highway is lawful. *Cro. Car.* 184, 185. Also if a House be on the Highway, or a House hang over the Ground of another, they may be pulled down; but no Man can justify the Doing more Damage than is necessary, or Removing the Materials. 1 *Hawk.* 199. A Man builds a House so near mine that it is a *Nusance*, I may enter and pull it down; and a Man indicted for a Riot in such a Case, had only a small Fine set on him. 2 *Salk.* 459. If a Ship be sunk in a Port or Haven, and it is not removed by the Owner, he may be indicted for it as a common *Nusance*, because it is prejudicial to the Commonwealth in hindering Navigation and Trade. 2 *Lill.* 244. Indictment lies for laying Logs, &c. in the Stream of a publick navigable River: It is a common *Nusance* to divert Part of a publick Navigable River, whereby the Current of it is weakened, and made unable to carry Vessels of the same Burthen as it could before: And if a River be stopped to the *Nusance* of the Country, and none appear bound by Prescription to cleanse it; those who have the Piscary, and the neighbouring Towns, that have a common Passage and Easement therein, may be compelled to do the same. 1 *Hawk. P. C.* 198, 199, 200. It is a common *Nusance* indictable, to divide a House in a Town for poor People to inhabit in, by reason whereof it will be more dangerous in the Time of Sickness and Infection of the Plague. 2 *Roll. Abr.* 139. A common Play-house, if it draws together such Numbers of Coaches and People as incommode and disturb the Neighbourhood, may be a *Nusance*; but those Places are not naturally *Nusances*, but become so by Accident. 1 *Roll. Rep.* 109. 1 *Hawk.* 191. A prohibitory Writ was issued out of B. R. against *Betterton*, and other

Actors, for erecting a New Play-house in *Little Lincoln's Inn Fields*, reciting that it was a *Nuisance* to the Neighbourhood; and they not obeying the Writ, an Attachment was granted against them: But it was objected, that an Attachment could not be issued, and that the most proper Method was to proceed by Indictment, and then the Jury would consider whether it were a *Nuisance* or not; and this was the better Opinion. 5 *Mod.* 142. 2. *Nelf. Abr.* 1192. One *Hall* having begun to build a Booth near *Charing-Cross* for Rope-dancing, which drew together a great many idle People, was ordered by the Lord Chief Justice not to proceed; he proceeded notwithstanding, affirming that he had the King's Warrant and Promise to bear him harmless; but being required to give a Recognizance in 300 *l.* that he would not go on with the Building, and he refusing, he was committed, and a Record was made of this *Nuisance*, as upon the Judge's own View, and a Writ issued to the Sheriff of *Middlesex* to prostrate it. 1 *Vent.* 169. 1 *Mod.* 96. Erecting a Dove-cote is not a common *Nuisance*; the Action of the Case will lie at the Suit of the Lord of the Manor, for erecting it without his Licence. 1 *Hawk.* 199. It was anciently held, that if a Man erected a Dove-cote, he was punishable in the Leet; but it has been since adjudged not to be punishable in the Leet as a common *Nuisance*, but that the Lord for this particular *Nuisance* should have an Action on the Case, or an Affise of *Nuisance*, as he may for building an House to the *Nuisance* of his Mill. 5 *Rep.* 104. 3 *Salk.* 248. A Brewhouse erected in such an inconvenient Place, wherein the Business cannot be carried on without greatly incommoding the Neighbourhood, may be indicted as a common *Nuisance*; and so in the like Case may a Glass-house, &c. 1 *Hawk.* 199. Where there hath been an ancient Brewhouse Time out of Mind, although in *Fleetstreet*, &c. this is not any *Nuisance*, because it shall be supposed to be erected when there were no Buildings near: Tho' if a Brewhouse should be now built in any of the high Streets of *London*, or trading Places, it will be a *Nuisance*, and Action on the Case lies for whomsoever receives any Damage thereby; and accordingly in an Action brought against a Brewer in the last Case, where a Person's Goods were injured in his Shop, the Jury gave the Plaintiff for two Years Damages sixty Pounds. 2 *Lill. Abr.* 246. *Palm.* 536. A Plaintiff was possessed of an House wherein he dwelled, and the Defendant built a Brewhouse, &c. in which he burnt Coal so near the House, that by the Stink and Smoak he could not dwell there without Danger of his Health; and it was adjudged, that the Action lay, though a Brewhouse is necessary, and so is Burning Coal in it. *Hutton* 135. If a Person melt Lead so near the Close of another Person that it spoils his Grass there, whereby Cattle are lost; notwithstanding this is a lawful Trade, and for the Benefit of the Nation, Action lies against him; for he ought to use his Trade in waste Places, so as no Damage may happen to the Proprietors of the Land next adjoining. 2 *Roll. Abr.* 140. Building a Smith's Forge near a Man's House, and making Noise with Hammers so that he could not sleep, was held a *Nuisance*, for which Action lies; although the Smith pleaded that he and his Servants worked at seasonable Times, that he had been a *Blacksmith* and used the Trade above twenty Years in that Place, and set up his Forge in an old Room, &c. For

though a *Smith* is a necessary Trade, and so is a Lime-burner, and a Hog-Merchant, yet these Trades must be used not to be injurious to the Neighbours. 1 *Lutw.* 69. But if a Schoolmaster keeps a School so near the Study of a Lawyer by Profession, that it is a Disturbance to him; this is not a *Nuisance* for which Action may be brought. *Wood's Inst.* 538. An Innkeeper brought an Action on the Case against a Person for erecting a Tallow Furnace, and melting stinking Tallow so near his House that it annoyed his Guests, and his Family became unhealthful; and adjudged that the Action lay. *Cro. Car.* 367. So where a Person kept a Hogsty near a Man's Parlour, whereby he lost the Benefit of it. 2 *Roll. Abr.* 140. And in Trespass for a *Nuisance*, in causing stinking Water in the Defendant's Yard to run to the Walls of the Plaintiff's House, and piercing them so that it run into his Cellar, &c. Judgment was given for the Plaintiff. *Hardres* 60. An Action lies for hindering of the wholesome Air, and also for corrupting of the Air. 9 *Rep.* 58. And none shall cast any Garbage, Dung or Filth into Ditches, Waters, or other Places, within or near any City or Town, on Pain of Punishment by the Lord Chancellor at Discretion, as a *Nuisance*. Stat. 12 R. 2. c. 13. The Continuation of a *Nuisance* is as it were a new *Nuisance*: Where a *Nuisance* is erected in the Time of the Devisor, and continued afterwards by the Devisee, it is as the new Erecting of such a *Nuisance*. 2 *Leon.* 129. *Cro. Car.* 231. A Man erects a *Nuisance*, and then lets it; the Continuance by the Lessee has been held a *Nuisance*, against whom Action lies. *Cro. Jac.* 373. *Moor* 353. But it is said in another Case of this Nature, that admitting the Plaintiff might have an Affise of *Nuisance* against the Builder, the Lessor, he cannot have an Action against his Lessee, because it would be Waste in him to pull it down; but the Plaintiff may abate the *Nuisance*, standing on his own Ground: Yet where the Thing done is a *Nuisance per intervalla*, as a Pipe or Gutter, Action lies against the Lessee, because every fresh Running is a fresh *Nuisance*; and if a Man have a Way over the Ground of another, and such other stops that Way, and then demises the Ground, an Action lies against the Lessee for continuing this *Nuisance*. 1 *Mod.* 54. 3 *Salk.* 248. If a Person assigns his Lease with a *Nuisance*, Action lies against him for continuing it, because the Lease was transferred with the original Wrong, and his Assignment affirms the Continuance; besides he hath a Rent as a Consideration for the Continuance, and therefore he ought to answer the Damages occasioned by it. 2 *Salk.* 460. 2 *Cro.* 272, 555. If a *Nuisance* is levied in an House, &c. to the Prejudice of another, and then the House is aliened; Action of the Case lies against him that levied it, and also against the Alience for continuing it, by Stat. 13 Ed. 1. c. 24. If a Fair or Market be set up to the *Nuisance* of another, the Party grieved may have his Writ or Action. *F. N. B.* 184. 2 *Saund.* 173. *Lutw.* 69, 91. And no special *Nuisance* need be assigned, when a Matter appears to the Court to be a *Nuisance*. 9 *Rep.* 54. When a Man hath but a Term of Years in a House or Lands, and not a Freehold, he shall not have an Affise of *Nuisance*; but Action upon the Case. *New Nat. Br.* 10. Writs of *Nuisance*, called *Vicintiel*, are to be made at the Election of the Plaintiff, determinable before the Justices of either Bench, or the Justices of Assise of the County, being in Nature

ture of Affises, &c. 6 R. 2. c. 3. And the Writ of Nufance runs thus: — *Questus est nobis A. quod B. injuste, &c. levavit Domum, Murum, &c. & alia que sunt ad Nocumentum, &c.* See Highway.

Nutritimentum, Nourishment, particularly applied to Breed of Cattle. — *Quilibet Custumarius Domina non debet vendere Equum masculum neque Bovem de proprio Nutrimeto suo.* Paroch. Antiq. 401.

Nypas, (*Nidarius, accipiter*) A Hawk or Bird of Prey. *Litt. Dist.*

O.

O, Is an *Adverb* of Calling, or *Interjection* of Sorrow: And the seven *Antiphones* or alternate Hymn of seven Verses, &c. sung by the Quire in the Time of *Advent* was called O, from beginning with such Exclamation: In the Statutes of St. Paul's Church in London, there is one Chapter *De faciendo O.* Liber. Statut. M.S. fol. 86.

Oath, (*Sax. Eoth Lat. Furamentum*) Is an Affirmation or Denial of any Thing, before one or more who have Authority to administer the same, for the Discovery and Advancement of Truth and Right, calling God to Witness that the Testimony is true; therefore it is termed *Sacramentum*, a Holy Band or Tie: And it is called a *Corporal Oath*, because the Witness when he swears lays his Right-hand upon and toucheth the Holy Evangelists, or Book of the New Testament. 3 *Inst.* 165. There are several Sorts of Oaths in our Law, viz. *Furamentum promissionis*, where Oath is made either to do or not to do such a Thing. *Furamentum purgationis*, when a Person is charged with any Matter by Bill in Chancery, &c. *Furamentum probationis*, where any one is produced as a Witness, to prove or disprove a Thing. And *Furamentum triationis*, when any Persons are sworn to try an Issue, &c. 2 *Nelf.* 1181. All Oaths must be lawful, allowed by the Common Law, or some Statute; if they are administered by Persons in a private Capacity, or not duly authorized, they are *Coram non Judice*, and void; and those administering them are guilty of a high Contempt, for doing it without Warrant of Law, and punishable by Fine and Imprisonment. 3 *Inst.* 165. 4 *Inst.* 278. 2 *Roll. Abr.* 257. One that was to testify on the Behalf of a Felon or Person indicted of Treason, or other Capital Offence, upon an Indictment at the King's Suit, could not formerly be examined upon his Oath for the Prisoner against the King, though he might be examined without giving him his Oath: But by a late Statute, Witnesses on the Behalf of the Prisoner upon Indictments are to be sworn to depose the Truth in such Manner as Witnesses for the King; and if convicted of wilful Perjury, shall suffer the Punishment inflicted for such Offences. 1 *Ann.* c. 9. And the Evidence for the Defendant in an Appeal, whether Capital or not, or on Indictment or Information for a Misdemeanor, was to be upon Oath before this Statute. 2 *Hawk. P. C.* 434. A Person that is to be a Witness in a Cause may have two Oaths given him, one to speak the Truth to such Things as the Court shall ask him concerning himself, or other Things which are not Evidence in the Cause; and the other to give Testimony in the Cause in which he is produced as a Witness: The former is called the Oath upon a *Voyer dire*.

Pasch. 23 *Car. B. R.* If Oath be made against Oath in a Cause, it is a *Non liquet* to the Court which Oath is true; and in such Case the Court will take that Oath to be true, which is to affirm a Verdict, Judgment, &c. as it tends to the expediting of Justice. 2 *Lill. Abr.* 247. And the Court will rather believe the Oath of the Plaintiff than the Oath of the Defendant, if there be Oath against Oath; because it is supposed that the Plaintiff hath Wrong done him, and that he is forced to fly to the Law to obtain his Right. *Ibid.* A voluntary Oath, by the Consent and Agreement of the Parties, is lawful as well as a compulsory Oath; and in such Case, if it is to do a Spiritual Thing, and the Party fail, he is suable in the Ecclesiastical Court, *pro lensione Fidei*; and if to do a temporal Thing, and he fail therein, he may be punished in B. R. Adjudged on *Assumpsit* where if the Defendant would make Oath before such a Person, the Plaintiff promised, &c. *Cro. Car.* 486. 3 *Salk.* 248. By the Common Law, Officers of Justice are bound to take an Oath for the due Execution of Justice. *Trin.* 22 *Car.* 1. B. R. Though if *Promissory Oaths* of Officers are broken, they are not punished as Perjuries, like unto the Breach of *Affertory Oaths*; but their Offences ought to be punished with a severe Fine, &c. *Wood's Inst.* 412. Anciently at the End of a legal Oath, was added, *So help me God at his holy Dome*, i. e. Judgment; and our Ancestors did believe, that a Man could not be so wicked to call God to witness any Thing which was not true; but that if any one should be perjured, he must continually expect that God would be the Revenger: And thence probably *Purgations* of Criminals, by their own Oaths, and for great Offences by the Oaths of others, were allowed. *Malmsh. lib.* 2. c. 6. *Leg. H.* 1. c. 64.

Oaths to the Government. By *Magna Charta*, the Oaths of the King, the Bishops, the King's Counsellors, Sheriffs, Mayors, Bailiffs, &c. were appointed. 9 *H.* 3. The Oaths of the Judges of both Benches; and of the Clerks in Chancery, and of the Curfitors, were ordained by 18 *Ed.* 3. Ecclesiastical Persons are required to take the Oaths of Supremacy, &c. And Clergymen not taking the Oaths, on their Refusal being certified into B. R. &c. incur a *Pramunire*. 1 *Eliz.* c. 1. Officers and Ecclesiastical Persons, Members of Parliament, Lawyers, &c. are to take the Oath of Allegiance, or be liable to Penalties and Disabilities. 7 *Jac.* 1. c. 6. Persons shall take the Oaths, and receive the Sacrament, to qualify them to hear any Office of Magistracy in Corporations. 13 *Car.* 2. c. 1. And Officers of the Lieutenantancy and Militia are required to take the Oaths by 13 *Car.* 2. c. 6. All Persons that bear any Office, Civil or Military, or receive any Salary, &c. from the King, are to take the Oaths of Allegiance and Supremacy; and Persons refusing are disabled, &c. 25 *Car.* 2. c. 2. By the 1 *W. & M. Sess.* 1. c. 6. the Coronation Oath was altered and regulated for future Kings and Queens: And the Oaths of Allegiance and Supremacy abrogated, and others appointed to be taken and enforced, on Pain of Disability, &c. by 1 *W. & M.* c. 8. and 7 & 8 *W.* 3. c. 27. All that bear Offices in the Government, Peers, and Members of the House of Commons, Ecclesiastical Persons, Members of Colleges, Schoolmasters, Preachers, Serjeants at Law, Counsellors, Attornies, Solicitors, Advocates, Proctors, &c. are enjoined to take the Oath of Abjuration; and Persons

Persons neglecting or refusing are declared incapable to execute their Offices and Employments, disabled to sue in Law or Equity, or to be Guardian, Executor, &c. and to forfeit 500*l*. This extends not to Constables, and other Parish Officers, nor to Bailiffs of Manors, &c. 13 *W.* 3. c. 6. The Stat. 1 *Ann.* c. 22. obliges the receiving the Abjuration Oath with Alterations: And by 4 *Ann.* c. 8. the Oath of Abjuration is settled after the Death of Queen Anne. Also the Oath of Abjuration, with further Alterations relating to the *Protestant Succession*, is required to be taken by the 1 *Geo.* c. 55. And by a late Statute, all Persons whatsoever are to take the Oaths to the Government, or register their Estates, upon Pain of Forfeiture, &c. 9 *Geo.* c. 24. See *Papists*.

Persons maintaining an Oath to be unlawful, incur Forfeitures by Stat. 13 & 14 *Car.* 2. Two Justices of Peace have Power to tender the Oaths to suspected Persons; and if they refuse them, it is to be certified into the *Chancery*, &c. But it hath been held, that a Person cannot be said to refuse the Oaths unless they are read or offered to be read to him. Oaths must be taken in the very Words expressed in the Acts, and cannot be qualified; yet using the Words in Conscience, instead of *my* Conscience, or *Sea of Rome*, instead of *See of Rome*, is not material. 1 *Bulst.* 197.

Form of the Oaths of Allegiance and Supremacy.

I A. B. do sincerely promise and swear, that I will be Faithful and bear true Allegiance to his Majesty King George.

So help me God.

And I do swear, that I do from my Heart abhor, detest and abjure, as impious and heretical, that damnable Doctrine and Position, that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever: And I do declare, that no Foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Prebeminence or Authority, Ecclesiastical or Spiritual, within this Realm.

So help me God.

Form of the Oath of Abjuration required by Law.

I A. B. do truly and sincerely acknowledge, profess, testify and declare, in my Conscience, before God and the World, that our Sovereign Lord King George is lawful and rightful King of this Realm, and all other the Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my Conscience that the Person pretended to be Prince of Wales, during the Life of the late K. James 2. and since his Decease pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James 3. or of Scotland by the Name of James 8. or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereunto belonging. And I do Renounce, Refuse and Abjure any Allegiance or Obedience to him; and I do swear, that I will bear Faith and true Allegiance to his Majesty K. George, and him will Defend to the utmost of my Power against all traitorous Conspiracies and Attempts whatsoever, which shall be made against his Person, Crown or Dignity. And I will do my utmost Endeavours to disclose and make known to his Majesty and his Successors, all

Treasons and Traiterous Conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my Power, to support, maintain and defend the Succession of the Crown against him the said James, and all other Persons whatsoever; which Succession by an Act entitled, An Act for the further Limitation of the Crown, and better Securing the Rights and Liberties of the Subject, is and stands limited to the late Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body, being Protestants. And all these Things I do plainly and sincerely acknowledge and swear, according to the express Words by me spoken, and according to the plain and common Sense and Understanding of the said Words; without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation and Promise, heartily, willingly and truly, upon the true Faith of a Christian.

Vid. Affirmation.

So help me God.

Obedientia, In the Canon Law is used for an Office, or the Administration of it: Whereupon the Word *Obedientiales*, in the Provincial Constitutions, is taken for Officers under their Superiors. *Can. Law. cap.* 1. And as some of these Offices consisted in the Collection of Rents or Pensions, Rents were called *Obedientia*; *Quia colligebantur ab Obedientialibus*. But though *Obedientia* was a Rent, as appears by *Hoveden*, in a general Acceptation of this Word, it extended to whatever was enjoined the Monks by the Abbot; and in a more restrained Sense was the Cells or Farms which belonged to the Abbey to which the Monks were sent, *Vi ejusdem Obedientie*, either to look after the Farms, or to collect the Rents, &c. — *Prohibemus ne Redditus quos Obedientias vocant ad firmam teneant.* *Matt. Paris. Ann.* 1213.

Obit, (Lat.) Signifies a Funeral Solemnity or Office for the Dead, most commonly performed when the Corpse lies in the Church uninterred: Also the Anniversary Office. 2 *Cro.* 51. *Dyer* 313. The Anniversary of any Person's Death was called the *Obit*; and to observe such Day with Prayers and Alms, or other Commemoration, was the Keeping of the *Obit*: And in Religious Houses they had a Register, wherein they entered the *Obits* or *Obitual* Days of their Founders and Benefactors, which was thence termed the *Obituary*. The Tenure of *Obit* or *Chantry* Lands is taken away and extinct, by the Stat. 1 *Ed.* 6. c. 14. and 15 *Car.* 2. c. 9.

Oburgatrices, Are Scolds or unquiet Women, punished with the *Cucking-stool*. *M.S. LL. Lib. Burg.* Villæ de Montgomery temp. Hen. 2.

Oblata, Gifts or Offerings made to the King by any of his Subjects, which in the Reigns of K. John and K. Hen. 3. were so carefully heeded, that they were entered into the *Fine-Rolls* under the Title of *Oblata*; and if not paid, esteemed a Duty, and put in Charge to the Sheriff. *Philips of Purveyance*. In the *Exchequer* it signifies old Debts, brought as it were together from precedent Years, and put on the present Sheriff's Charge. *Pract. Excheq.* 78.

Oblations, (*Oblationes*) Are thus defined in the Canon Law: *Dicuntur quæcumque à piis fidelibusque Christianis offeruntur Deo & Ecclesiæ, sive res solidæ sive mobiles sunt.* *Spelm. de Concil.* Tom. 1. p. 393. The Word is often mentioned in our Law Books; and formerly there were several Sorts of *Oblations*, viz. *Oblationes Altaris*, which the Priest had for saying Mass; *Oblationes Defunctorum*, which were

were given by the Last Wills and Testaments of Persons dying to the Church; *Oblationes Mortuorum*, or *Funerales*, given at Burials; *Oblationes Penitentium*, which were given by Persons penitent; and *Oblationes Pentecostales*, &c. The Chief or Principal Feasts for the Oblations of the Altar, are *All Saints*, *Christmas*, *Candlemas* and *Easter*; which were called *Oblationes quatuor principales*; and of the customary Offerings from the Parishioners to the Parish-Priest, solemnly laid on the Altar, the Mass or Sacrament Offerings were usually Threepence at *Christmas*, Twopence at *Easter*, and a Penny at the two other principal Feasts: Under this Title of Oblations were comprehended all the accustomed Dues for *Sacramentalia* or Christian Offices; and also the little Sums paid for saying Masses and Prayers for the Deceased. *Kennet's Gloss.* *Oblationes funerales* were often the best Horse of the Defunct, delivered at the Church-Gate or Grave to the Priest of the Parish; to which old Custom we owe the Original of *Mortuaries*, &c. And at the Burial of the Dead, it was usual for the surviving Friends to offer liberally at the Altar for the pious Use of the Priest, and the good Estate of the Soul deceased, being called the *Soul-Seat*: In *North Wales* this Usage still prevails, where at the Rails of the Communion Table in Churches, is a Tablet conveniently fixt, to receive the Money offered at Funerals, according to the Quality of the Deceased; which has been observed to be a providential Augmentation to some of those poor Churches. *Kennet's Gloss.* At first the Church had no other Revenues beside these Oblations, till in the fourth Century it was enriched with Lands, and other Possessions. *Blount.* Oblations, &c. are in the Nature of Tithes; and 'tis said are included in the Act 7 & 8 W. 3. for Recovery of small Tithes under 40 s. by the Determination of Justices of Peace, &c. *Countr. Pars. Compan.* 137, 138. *Vid. Obventions.*

Obligation, (*Obligatio*) Is a Bond, containing a Penalty, with a Condition annexed for Payment of Money, Performance of Covenants, or the like; and it differs from a Bill, which is generally without a Penalty or Condition, tho' a Bill may be *Obligatory*. *Co. Lit.* 172. See *Bond*.

Obligor, Is the Party that enters into or makes such Obligation; and the *Obligee* is the Person to whom made.

Oblolata terra, Is, according to some Accounts, Half an Acre of Land; but others hold it to be only Half a Perch. *Spelm. Gloss.*

Obventions, (*Obventiones*) Are Offerings or Tithes; and Oblations, Obventions and Offerings, are generally one and the same Thing, though *Obvention* is esteemed the most comprehensive. The Profits of the Churches in *London* were formerly the Oblations and Obventions; for which a Remedy is given by Law: But the Tithes and Profits arising to the *London* Clergy are now settled and appointed by Act of Parliament. *Countr. Pars. Compan.* 138. Rents and Revenues of Spiritual Livings are called Obventions. 12 Car. 2. c. 11. — *Margeria Comitissa de Warwick Universi Sanctæ Matris Ecclesiæ filii*, &c. dedi omnes Obventiones tam in Decimis Majoribus & Minoribus, quam in aliis rebus de Affartis de W. & Decimam pannagii, &c. M.S. penes Will. Dugdale, Mil. See *Oblations*.

Occassio, Is taken for a Tribute which the Lord imposed on his Vassals or Tenants; *propter occasiones Bellerum vel aliarum Necessitatum*. And

Occasionare signified to be charged or loaded with Payments, or *occasional* Penalties. *Meta*, lib. 1. cap. 24.

Occationes, Derived *ab occando*, viz. Harrowing or Breaking Clods are Affarts: *Affarta vulgo dicuntur quæ apud Isidorum Occationes nominantur*. *Lib. niger Scacc. par. 1. cap. 13. Spelm.*

Occupant, (*Occupans*) Is he that first seizes or gets Possession of a Thing. An Island in the Sea, precious Stones on the Sea-shore, and Treasure discovered in a Ground that has no particular Owner, by the Laws of Nations belong to him who finds them, and gets the first Occupation of them. *Treat. Laws* 342. Where a Man findeth a Piece of Land that no other possesses or hath Title unto, and he that so finds it doth enter upon the same, this gains a Property, and a Title by *Occupancy*: But this Manner of gaining Property in Lands has long since been of no Use in *England*; for Lands now possessed without any Title are in the Crown, and not in him that first enters. *Ibid.* 218. Though an Estate for another Person's Life, by our antient Laws, may be gotten by *Occupancy*: As for Example; A. having Lands granted to him for the Life of B. dieth without making any Estate of it; in this Case whosoever first enters into the Land after the Death of A. it is said getteth the Property for the Remainder of the Estate granted to A. for the Life of B. For to the Heir of A. it cannot go, not being an Estate of Inheritance, but only an Estate for another Man's Life; which is not descendable to the Heir, unless he be specially named in the Grant: And the Executors of A. cannot have it, as it is not an Estate Testamentary, that it should go to the Executors as Goods and Chattles; so that in Truth no Man can intitle himself unto those Lands: And therefore the Law preferreth him that first enters, and he is called *Occupans*, and shall hold the Land during the Life of B. paying the Rent, and performing the Covenants, &c. *Bac. Elem.* 1. And not only if Tenant *per terme d'antier Vie* dies, living *cestuy que Vie*; but if Tenant for his own Life grant over his Estate to another, and the Grantee dies before him, there shall be an *Occupant*. *Co. Lit.* 41. 388. A Man cannot be an *Occupant* but of a void Possession; and it is not every Possession of a Person entering that can make an *Occupancy*, for it must be such as will maintain Trespass without farther Entry. *Vaugh.* 191, 192. *Carter* 65. 2 *Keb.* 250. There can be no *Occupancy* by any Person of what another hath a present Right to possess: *Occupancy* by Law must be of Things which have natural Existence, as of Land, &c. and not of Rents, Advowsons, Fairs, Markets, Tithes, &c. which lie in Grant, and are incorporeal Rights and Estates; and there cannot be an *Occupant* of a Copyhold Estate. *Vaugh.* 195. *Mod. cap.* 66. And *Occupancy* of Land in our Law now seldom happens; Leases and Grants being generally made to the Lessees or Grantees, and their Heirs, during the Life of *Cestuy que Vie*, whereby the Lands for the Remainder of the Term descend to the Heir, &c. *Wood's Inst.* 216. By Statute, any Estate *pur antier Vie* shall be devisable by Will in Writing; and if no Devise thereof be made, but the Heir become special *Occupant*, it shall be Affets in his Hands by Descent to pay Debts; and if there be no special *Occupant*, it shall go to the Executors or Administrators of the Party that had the Estate, and be Affets in their Hands. 29 Car. 2. c. 3.

It hath been adjudged, that an Heir, Executor, &c. shall be charged on this Statute with Payment of Debts only, not Legacies, except devised particularly out of the Estate; and an Estate *pur auter Vie* of an Intestate, is not distributable. *Mich. 8 W. 3. B. R. 2 Salk. 464.*

Occupation, (Occupatio) Signifies in our Law Use or Tenure, as we say such Land is in the Tenure or Occupation of such a Man, that is in his Possession or Management: Also it is used for a Trade or Mystery. *12 Car. c. 18. 249.* And Occupations at large are taken for Purprestures, Intrusions and Usurpations, and particularly for Usurpations upon the King, by the Stat. *de Bigamis, c. 4. 2 Inst. 272.*

Occupabit, Is a Writ that lies for him who is ejected out of his Freehold in Time of War; as the Writ *Novel Disseisin* lies for one disseised in Time of Peace. *Ingham.*

Octave, The eighth Day after any Feast inclusively. See *Utas.*

Odio & Mita, Was a Writ, anciently called *Breve de Bono & Malo*, directed to the Sheriff to inquire whether a Man committed to Prison upon Suspicion of Murder, were committed on just Cause of Suspicion, or only upon Malice and Ill-will: And if upon the Inquisition it were found that he was Not guilty, then there issued another Writ to the Sheriff to bail him. *Reg. Orig. 133. Bract. lib. 3. cap. 20. Stat. 3 Ed. 1. cap. 11.* But now that Courte is taken away, by the Stat. *28 Ed. 3. c. 9. S. P. C. 77. 2 Inst. 42. 9 Rep. 506.*

Oeconomus, Is sometimes taken for an Advocate or Defender; as, *Summus secularium Oeconomus & Protector Ecclesiarum.* *Matt. Paris. Anno 1245.*

Oeconomicus, A Word used for the Executor of a Last Will and Testament, as the Person who had the Oeconomy or fiduciary Disposal of the Goods of the Party deceased. *Hist. Dunelm. apud Wharton Angl. Sacr. par. 1. pag. 784.*

Offence, (Delictum) Is an Act committed against a Law, or omitted where the Law requires it, and punishable by it. *West. Symb.* And all Offences are Capital, or not so; Capital, those for which the Offender shall lose his Life: And not Capital, where the Offender may forfeit his Lands and Goods, be fined, or suffer corporal Punishment, or both; but not Loss of Life. *H. P. C. 2, 126, 134.* Capital Offences are comprehended under *High Treason, Petit Treason,* and Felony: And Offences not Capital include the remaining Part of the Pleas of the Crown, and come under the Title of Misdemeanors. Some Offences are by the Common Law; but most of them are by Statutes.

Offerings, Which are reckoned among personal Tithes, are payable by Custom to the Parson or Vicar of the Parish, either occasionally, as at Sacraments, Marriages, Christnings, Churching of Women, Burials, &c. or at constant Times, as at *Easter, Christmas, &c.* *Count. Pars Compan. 137.* Offerings, and all personal Tithes, may be sued for in the Ecclesiastical Courts. *Stat. 2 & 3 Ed. 6. Vide Oblations.*

Offerings of the King, All Offerings made at the Holy Altar by the King and Queen, are distributed amongst the Poor by the Dean of the Chapel: And there are twelve Days in the Year, called *Offering Days*, as to these Offerings, viz. *Christmas, Easter, Whitsunday, All Saints, New Year's Day, Twelfth-Day, Candlemas, Annunciation, Ascension, Trinity Sunday, St. John Baptist,* and

Michaelmas-Day: All which are high Festivals. *Lex Constitution. 184.* The Offering commonly made by King James 1. was a Piece of Gold, having on one Side the Portrait of the King kneeling before the Altar, with four Crowns before him, and circumscribed with this Motto, *Quid retribuam Domino pro omnibus quae tribuit mihi?* And on the other Side, a Lamb lying near a Lion, with this Inscription, *Cor contritum & humilium non despiciet Deus.* *Ibid.*

Offerozium, Is used for a Piece of Silk, or fine Linen, to receive and wrap up the Offerings or occasional Oblations in the Church. *Statut. Eccl. S. Paul. London. M. S. fol. 39.* — *Offertorium esse Sindonem sericeam, seu Linteamen, in quo fidelium Oblationes reponebantur.* —

Sometimes it is taken for the *Antiphona*, or Singing at the Time when the Sacrament is administered: And other Times for the Offerings of the Faithful.

Office, (Officium) Is a Function, by Virtue whereof a Man hath some Employment in the Affairs of another, as of the King, or any common Person: An Office in Fee is that which one hath to him and his Heirs. *Kitch. 152.* And Offices may be granted in Fee-simple, Fee-tail, for Life, Years, &c. But Offices which concern the Administration of Justice, cannot be granted for Years, to go to Executors, &c. *9 Rep. 97.* Every Subject is capable of an Office generally by Grant; but if an Office that concerns the Administering or Execution of Justice, &c. be granted to one who is not skilled to execute it, the Grant is void. *Cro. Jac. 605.* And no Man, though never so skilful, is capable of a judicial Office in Reversion; for notwithstanding a Person may be of Ability to execute the Place at the Time of the Grant of the Reversion, yet before the Office falls, he may become unable and insufficient to perform it: But ministerial Offices may be granted in Reversion, in Fee, for Life, &c. as the Office of *Marshal of England, Chamberlain of the Exchequer, Warden of the Fleet, &c.* *1 Inst. 3. 11 Rep. 4. 2 Roll. Abr. 286.* Officers of the King's Courts are to be sworn to appoint such Ministers under them, for whom they will answer shall be faithful, and such as are sufficient, and attending to the Performance of their respective Businesses. *Stat. 2 H. 6. cap. 10. By 12 R. 2. cap. 2.* It is Enacted, That no Officer or Minister of the King shall be ordained or made for any Gift, Favour, or Affection, nor shall any be put into Office, but such as are sufficient, a Law (said Sir Edward Coke) worthy to be writ in Letters of Gold, but more worthy to be put in Execution: For certainly Justice will never be duly administered, but when the Officers and Ministers of Justice are of such Quality, and come to their Places in such Manner as by this Law is required. *Co. Litt.* And by the Stat. *5 & 6 Edw. 6. cap. 16.* if any Officers touching the Administration of Justice, or concerning the King's Treasure, &c. shall bargain or sell any of the said Offices, or take any Money, Profit, Reward, &c. for the same, they shall not only forfeit their Estates therein, but every Person so buying, giving or assuring, shall be adjudged disabled to hold the same Office, and all Contracts shall be void, &c. But the two Chief Justices, or Justices of Assize, may grant Offices as before this Act. Sir Robert Vernon Confeſſer in the Reign of King James 1. for a certain Sum of Money did bargain and sell his Place to Sir A. J. and agreed to surrender the same

same to the King, to the Intent a Grant might be made to Sir A. J. and he accordingly surrendered, and thereupon Sir A. was by the King's Appointment admitted and sworn Cofferer; and yet it was adjudged by the Lord Chancellor Egerton, and other Justices, that the said Office was void, whereupon Sir A. J. was removed, and another sworn in his Place. *Co. Litt.* 234. Queen Elizabeth granted the Office of Exigenter of London to one, when there was no Lord Chief Justice of the Common Pleas; and it was held, that the Grant was void, because the Office was incident to that of Chief Justice, &c. *Dyer* 257. 4 *Rep.* 33. The King may not grant an Office to the Prejudice of the Freehold of others in their Offices, which is contrary to Law; and the Judges in such a Case refused to admit an Officer, tho' commanded to do it by Sign Manual. 1 *And.* 152. A Person who was Remembrancer of the Exchequer, and held that Office by Patent for Life, was made a Baron of that Court; adjudged that the Office of Remembrancer was *ipso facto* void and determined, because a Man cannot be Judge and Minister in one and the same Court. *Dyer* 198. Several Offices were never instituted to be used by one Man: And no new Office can be erected with new Fees, or old Offices established with new Fees, without an Act of Parliament; as the Fees amount to a Taxation upon the Subject, who may not be so charged but by Parliament. 2 *Inst.* 533. 12 *Rep.* 117. Ancient Offices are to be granted in such Manner as they used to be, unless an Alteration is made by Act of Parliament: If an Officer is constituted by Statute, he hath no greater Authority than the Statute gives him; he cannot prescribe as an Officer at Common Law may. 4 *Inst.* 75, 146, 267. 4 *Rep.* 75. If a Man prescribes to an Office, and the Profits thereof, he ought to shew it to be *Antiquum Officium*. *Cro. Jac.* 605. And a Fee may belong to an ancient Office, and Debt will lie for it. *Lutw.* 381. If a Person usurps an Office, the Acts of the Officer are void; but if he comes in by Colour of Election, &c. his Acts shall be binding, though he is only an Officer *de facto*; for all ministerial and judicial Acts done by an Officer *de facto* are good. 1 *Lutw.* 508. Offices of Trust must be personally executed, except granted to be executed by Deputy; and Offices of personal Trust cannot be assigned. *Vaugh.* 181. There shall be no Survivorship of an Office of Trust, if it be not granted to two Officers, &c. and the Survivor. 2 *Mod.* 260. Where an Office of Trust is granted to two for their Lives, by the Death of one the Grant is void: But if it were *et eorum diutius viventis*, the Survivor shall hold, to whom another may be added. 11 *Rep.* 3, 4. A Man having an Office granted him, to enjoy so long as he behaves well, *Quamdiu se bene gesserit*, hath an Estate in it for Life. *Show.* 523, 531. 4 *Mod.* 167. An Estate in an Office, *durante beneplacito*, is at the Will of the King only, and may be surrendered, forfeited, &c. 2 *Salk.* 465. Publick Officers by Patent, cannot be removed at Pleasure; nor may any Officer be thus removed, where he hath any other Fees and Profits belonging to his Office, besides a collateral certain Fee. But private Officers by Grant may be turned out at Pleasure; and so may an Officer for Life, &c. where he hath no other Profit but a collateral certain Fee; as a Bailiff, Receiver, Auditor, &c. yet it is said he must have his Fee. 1 *Inst.* 233. *Litt.*

378. 9 *Rep.* 50. 3 *Cro.* 59, 60. Non-user of publick Offices, which concern the Administration of Justice, or the Commonwealth, is a Cause of Forfeiture: Though Non-user of it self, without some special Damage, is no Forfeiture of a private Office; and the same may be said of a Refusal to execute the Office upon Request. 9 *Rep.* 50. 1 *Inst.* 233. for Mis-user an Office is liable to be forfeited; as if a Steward of a Court, burns the Court-Rolls, takes a Bribe, &c. *Wood's Inst.* 204. And where a Condition in Law requires Skill and Confidence in Cases of Offices; an Infant or Feme Covert not observing it, forfeit their Interest, whether they come to the Office by Grant, or Discent: But if an Infant or Feme Covert break a Condition in Law, that requires no Skill or Confidence, this is no absolute Forfeiture. 1 *Inst.* 233. 8 *Rep.* 44. Officers entrusted with a particular Administration of Justice; as Sheriffs, Coroners, Gaolers, Keepers of Houses of Correction, Constables, &c. neglecting any Part of their Duties, may be fined and imprisoned. *Wood* 421. All Officers Civil and Military are to take the Oaths, and receive the Sacrament, &c. *Stat.* 25 *Car.* 2. and 12 *Ann.* And no such Office shall be void on the Death of the King, but shall continue six Months, unless superseded, or made void by the next Successor. 1 *Ann.* c. 8.

Offices of the Government. The Parliament in former Times had a Right in nominating, placing, and displacing of the Great Officers of the Kingdom, when they corrupted or mis-counselled the King, of which many Instances may be given. *Pryn.*

Office found. Is where an Inquisition is made to the King's Use of any Thing by Virtue of his Office who inquireth, and it is found by the Inquisition. In this Signification it is used in the *Stat.* 33 *Hen.* 8. *cap.* 20. and *Stauford's Prerog.* pag. 60. where to traverse an Office, is to traverse an Inquisition taken of Office: And to return an Office, is to return that which is found by Virtue of the Office. *Kitch.* 177. There are two Kinds of Offices issuing out of the Exchequer by Commission, viz. an Office to intitle the King, in the Thing enquired of; and an Office of Instruction. 6 *Rep.* 52. And the King by the Common Law is not in Possession of Lands, forfeited for Treason, during the Life of the Offender, without an Office found: But the Lands, whereof a Person attainted of High Treason dies seised of an Estate in Fee, are actually vested in the King, without any Office, because they cannot descend, the Blood being corrupted, and the Freehold shall not be in Abeyance. 2 *Hawk. P. C.* 448. There may be an Office, and *Scire facias*, and Seizure on such Office, &c. See *Inquisition*.

Official, (Officialis) By the ancient Civil Law, signifies him that is the Minister of, or Attendant upon a Magistrate. In the Canon Law, it is he to whom any Bishop doth generally commit the Charge of his Spiritual Jurisdiction; and in this Sense there is one in every Diocese called *Officialis Principalis*, whom the Laws and Statutes of this Kingdom stile Chancellor; and the Rest, if there are more, are by the Canonists termed *Officiales foranei*, but by us *Commissaries*. In our Statutes this Word signifieth properly him whom the Archdeacon substitutes for the Executing his Jurisdiction, as appears by the *Stat.* 32 *Hen.* 8. *cap.* 15. The Archdeacon hath an Official, or Church Lawyer to assist him, and who is Judge

of the Archdeacon's Court. *Wood's Inst.* 30, 505.

Officiarius non faciendis vel amovendis, Is a Writ directed to the Magistrates of a Corporation, requiring them not to make such a Man an Officer, or to put one out of the Office he hath, until Inquiry is made of his Manners, &c. *Reg. Orig.* 126.

Officium curtarii Pannorum, Granted to William Osborn, Anno 2 Edw. 2. *Extract. Fin. Cancell.*

Oil, The Lord Mayor of London, and the Master and Wardens of the Tallow Chandlers Company, are to search all Oils brought to London; and if any is deceitfully mixed, they may throw it away, and punish the Offenders: And Head Officers in Corporations have like Power. *Stat. 3 H. 8. c. 14.*

Old Jury, (*Vetus Judicium*) The Place or Street where the Jews lived in London. See *Jews*.

Oleron Laws, (*Uliavenses Leges*), Are the Laws of King Rich. 1. relating to Maritime Affairs, so called, because made by him when he was at Oleron, which is an Island lying in the Bay of Aquitaine, at the Mouth of the River Charent, and now belongs to the French King. *Co. Lit.* 260. These Laws are recorded in the Black Book of the Admiralty, and are accounted the most excellent Composition of Sea Laws in the World. See *Selden's Mare Clausum*, 222, 254.

Olympiad, (*Olympias*) An Account of Time among the Greeks, consisting of five complete Years, (or according to some a Space of four Years) having its Name from the Olympick Games, which were kept every fifth Year in Honour of Jupiter Olympias, near the City of Olympia; when they entered the Names of the Conquerors on publick Records: The first Olympiad fell in the Year of the World 3174. *Ethelred*, King of the English Saxons, computed his Reign by Olympiads. *Spelm.*

Omer, A Measure made Use of by the Jews, of three Pints and an Half. *Merch. Dict.*

Omissions, Are placed amongst Crimes and Offences; and Omission to hold a Court-Leet, or not swearing Officers therein, &c. are Causes of Forfeiture. *2 Hawk. P. C.* 73.

Oncunne, (*Sax. On-cunnen*) Signifies as much as accused; *Accusatus. Leg. Alfred.* c. 29.

Onerando pro Rata portione, Is a Writ that lies for a Jointenant, or Tenant in Common, who is distrained for more Rent than his Proportion of the Land comes to. *Reg. Orig.* 182.

O. Ni. It is the Course of the Exchequer, that as soon as the Sheriff enters into and makes up his Account for Issues, Amerciaments, and mean Profits, to mark upon his Head, O. Ni. which denotes *Oneratur, nisi habeat sufficientem Exonerationem*, and presently he becomes the King's Debtor, and a Debet is set upon his Head; whereupon the Parties paravaile become Debtors to the Sheriff, &c. *4 Inst.* 116.

Onus Episcopate, Were customary Payments from the Clergy to their Diocesan Bishop, of Synodals, Pentecostals, &c. See *Episcopalia*.

Onus importandi, The Charge or Burden of importing Merchandize, mentioned in the Stat. *12 Car. 2.*

Onus probandi, i. e. The Burden of Proving *14 Car. 2. c. 11.*

Open Law, (*Lex Manifesta*) Is the Making of Law; which Bailiffs may not put Men to, upon

their bare Assertion, except they have Witnesses to prove the Truth of it. *Magn. Chart. c. 21.*

Open Theft, (*Sax. Openetheof*) Is a Theft that Is manifest. *Leg. Hen. cap. 13.*

Operarii, Were such Tenants who had some little Portions of Land by the Duty of performing many bodily Labours, and servile Works for their Lord, being no other than the *Servi*, and *Bondmen*: They are mentioned in several ancient Surveys of Manors.

Operativ, One Day's Work performed by a Tenant to his Lord. *Paroch. Antiq.* 320.

Oppofer, An Officer belonging to the Green Wax in the Exchequer. See *Exchequer*.

Opton, When a new Suffragan Bishop is consecrated, the Archbishop of the Province by a customary Prerogative doth claim the Collation of the first vacant Benefice in that See, at his own Choice; which is called the Archbishop's Option. *Cowel.*

Q2a. This was Saxon Money or Coin, valued at sixteen Pence, and sometimes according to Variation of the Standard at twenty Pence. It is a Word which often occurs in *Domesday*, and the Laws of King Canutus.

Quando pro Rege & Regno, An ancient Writ. Before the Reformation, while there was no standing Collect for a sitting Parliament, when the Houses of Parliament were met, they petitioned the King that he would require the Bishops and Clergy to pray for the Peace and good Government of the Realm, and for a Continuance of the good Understanding between his Majesty and the Estates of the Kingdom; and accordingly the Writ *De Orando pro Rege & Regno* was issued, which was common in the Time of King Edw. 3. *Nichol. Engl. Hist. par. 3. pag. 66.*

Qychel, Qychal, A Kind of Cork; or rather a Sort of Stone like Allum, which Dyers use in their Colours. *Stat. 1 R. 3. c. 8. 24 H. 8. c. 2 3 & 4 Ed. 6. c. 2.*

Qdelf, or Qdeldelf, (From the Sax. *Ore*, i. e. Metallum, & *Delfan*, effodere) Is used in old Charters of Privileges, being taken for a Liberty, whereby a Man claims the Ore found in his own Ground, and also Coal, as a Delfe of Coal is that which lies in Veins under Ground, before it is digged up.

Qdeal, (Ordalium) Is a Saxon Word compounded of *Or*, Magnum, & *Dele*, Judicium; and was used for a Kind of Purgation, practised in ancient Times, in the Canon Law called *Purgatio vulgaris*, whereby the Party purged was judged *expers Criminis*, or Not guilty. *Leg. Edw. Confess. cap. 9.* Anciently when an Offender being arraigned pleaded Not guilty, he might chuse whether he would put himself for Trial upon God and the Country, by twelve Men, as they are at this Day, or upon God only; and then it was called the Judgment of God, presuming that he would deliver the Innocent. *Terms de Ley* 462. *9 Rep.* 32. This Trial was two Ways, one by Water, and another by Fire: The Water Ordeal was performed either in hot or cold; in cold Water, the Parties suspected were adjudged innocent, if their Bodies were not born up by the Water contrary to the Course of Nature; in hot Water, they were to put their bare Arms or Legs into scalding Water, which if they brought out without Hurt, they were taken to be innocent of the Crime. They that were tried by the Fire Ordeal, passed bare-footed and blindfold over

over nine hot glowing Plough-shares; or were to carry burning Irons in their Hands, usually of one Pound Weight, which was called *Simple Ordeal*, or of two Pounds which was *duplex*, or of three Pounds Weight which was *triplex Ordaliū*; and accordingly as they escaped, they were judged innocent or nocent, acquitted or condemned: this Fire Ordeal was for Freeman, and Persons of better Condition; and the Water Ordeal for Bondmen and Rusticks. — *Homo Liber per ferrum candens, Rusticus per Aquam*. Glanv. lib. 14. cap. 1. And the horrible Trial by Fire Ordeal, in the first Degree, Queen Emma, Mother of Edward the Confessor, underwent on a Suspicion of her Chastity: Also an Example of the second Kind is mentioned in our Books of a Company of Persons suspected to be Stealers of the King's Deer. in the Reign of King Will. 2. who having carried burning Irons without Injury, on its being reported to the King, he received it with a remarkable Indignation; and replied,

Quid est id? Deus est justus Judex: Pereat qui deinceps hoc crediderit.

The Saxons, besides the Trial by Combat, commonly used their Fire and Water Ordeals; but this Ordalian Law was condemned by Pope Stephen 2. and afterwards here totally abolished by Parliament, so as to be no Trials but by Jury. *Rot. Pat. Anno 3 Hen. 3.*

Orders, Are of several Sorts, and by divers Courts; as of the *Chancery*, *King's Bench*, &c. *Orders of the Court of Chancery*, either of Course or otherwise, are obtained on the Petition or Motion of one of the Parties in a Cause, or of some other interested in or affected by it; and they are sometimes made upon Hearings, and sometimes by Consent of Parties. *Pract. Solic. 26.* They are to be pronounced in open Court, and drawn up by the *Register* from his Notes; and if there be any Difficulty in adjusting the Notes, a Summons is given by the Register for the Clerk or Solicitor of the other Side to attend, whereupon they are settled, or the Court is applied to, if it cannot be otherwise done: And before the *Orders* are entred and passed by the Register, the other Side hath four Days allowed to object against them, for which Purpose Copies are delivered; and when they are perfected, they are to be served on the Parties, or the Clerk or Solicitor employed by them. *Ibid.* If an *Order* is of Course, the Solicitor usually draws up the Notes or Minutes, and gives them to the Register's Clerk, to draw up the *Order* from; and when the *Order* is drawn up, it is to be entred by the Entering Clerk, which must be within eight Days from the Pronouncing; and then the Register passes and signs it, after which is the Service, &c. For not obeying an *Order*, personally served, a Party may be committed.

Orders of the King's Bench, Are *Rules* made by the Court in Causes there depending; and when they are drawn up and entred by the Clerk of the Rules, they become *Orders* of the Court. 2 *Litt.* 261. This Court doth not take Notice of *Orders* made in *Chancery*, nor in any other Court, so as to be bound by them; but will proceed according to their own Rules and *Orders*. *Trin. 23 Car. B. R.* And if a Cause be put in the Paper of Causes, that it may be spoke unto in Matter of Law, by the *Order* of the Court; and

the Attorney in the Cause doth not attend at the Day, the Cause is to be put out of the Paper, and not be put in again that Term; except very good Cause be shewed. *Mich. 22 Car. B. R. 2 Litt.* 261. The Court of *King's Bench* may quash any *Orders* made at the publick or private Sessions of the Peace; or by any other Commissioners, if they find good Reason for it. *Ibid.*

Orders of Justices of Peace. *Justices of Peace* that make *Orders*, must be said in such *Orders* to be Justices of the County, for residing in the County is not sufficient; but they need not be of the Division: It must also appear that one of the Justices was of the *Quorum*. 2 *Salk.* 474, 480. The Sessions of the Peace, during all their Sessions, may alter or revoke their *Orders*, and make a new *Order* to vacate the former, though it be drawn up; as Judgments in *B. R.* may be altered during the same Term, the Sessions as well as the Term being in Law accounted as one Day. *Ibid.* 606. And the Quarter Sessions is not bound to set forth the Reason of their *Orders* and Judgments, no more than other Courts. *Ibid.* 607. See *Poor*.

Ordinale, Is a Book which contains the Manner of performing Divine Offices: *In quo Ordinatur modus, &c.*

Ordinance, (*Ordinatio*) Is a Law, Decree, or Statute, variously used. *Litt. Dist.*

Ordinance of the Forest, (*Ordinatio Foreste*) Is a Statute made touching Matters and Causes of the Forest, *Anno 34 Edw. 1.*

Ordinance of Parliament, Is said to be the same with *Act of Parliament*; for in the Parliament Rolls, Acts of Parliament are often called *Ordinances*, and *Ordinances Acts*. But originally there seems to be this Difference between them; that an *Ordinance* was but a temporary Act, by Way of Prohibition, which the Commons might alter or amend at their Pleasure; and an Act of Parliament is a perpetual Law, not to be altered but by King, Lords and Commons. *Rot. Parl. 37 Edw. 3. Pryn's Animadver. on 4 Inst. 13.* And Sir Edward Coke says, that an *Ordinance of Parliament* is to be distinguished from an Act; in as much as the later can be only made by the King and the three Estates, whereas the former is by one or two of them. *Co. Litt.*

Ordinary, (*Ordinarius*) Is a Civil Law Term for any Judge that hath Authority to take Cognizance of Causes in his own Right, and not by Deputation; but by the Common Law, it is taken for him that hath ordinary or exempt and immediate Jurisdiction in Causes Ecclesiastical. *Co. Lit. 344. Stat. Westm. 2. cap. 19. 31 Edw. 3. cap. 11. and 21 H. 8. cap. 5.* This Name is applied to a Bishop, that hath original Jurisdiction; and an Archbishop is the ordinary of the whole Province, to visit and receive Appeals from inferiour Jurisdictions, &c. 2 *Inst.* 398. 9 *Rep.* 41. *Wood's Inst.* 25. An Archdeacon is an Ordinary; and Ordinaries are empowered to grant Administration of Intestate's Estates, &c. by Stat. 31 Edw. 3. cap. 11. Anciently Clerks accused of Crimes were delivered to the Ordinary, and the Bodies of such Clerks kept in the Ordinary's Prison, until they had been tried before him by a Jury of twelve Clerks; and if condemned, they were liable to no greater Punishment than Degradation, Loss of Goods, and the Profits of their Lands; unless they had been guilty of Apostacy, &c. This was when they had the Privilege of being tried only by Ecclesiastical Judges; which was so far

indulged them, that after they had been once delivered to the *Ordinary*, they could not be re-
manded to any Temporal Court, until the Stat.
8 *Eliz. cap. 4. 2 Hawk. P. C. 361.*

Ordinary of Newgate, Is one who is Atten-
dant in *ordinary* upon the condemned Malefactors
in that Prison, to prepare them for Death; and
he records the Behaviour of such Persons.

Ordination of Clergy. No Man is capable of
taking any Parsonage, Vicarage, Benefice, or
other Ecclesiastical Promotion, or Dignity
whatsoever, but must be ordained a Priest, to
qualify him for the same. A Clerk is to be
Twenty-three Years old, and have *Deacons* Or-
ders, before he can be admitted into any Share
of the Ministry: And a Priest must be Twenty-
four Years of Age, before he shall be admitted
into Orders to preach, or to administer the Sa-
craments; but the Archbishop may dispense
with one to be made Deacon at what Age he
pleases, though he cannot with one that is to be
made a Priest. 13 *Eliz. Deacons and Priests*
are to be ordained only upon the four *Sundays* im-
mediately following the *Ember-Weeks*, except
upon urgent Occasions; and it is to be done in
the Cathedral or Parish Church where the Bishop
resides, in Time of Divine Service, and in the
Presence of the Archdeacon, Dean, and two
Prebendaries, or of four other grave Divines.
And no Bishop shall admit any Person into Or-
ders, without a *Title*, or Assurance of being pro-
vided for; and before any are admitted, the Bi-
shop shall examine them in the Presence of the
Ministers, that assist him at the Imposition of
Hands; on Pain, if he admits any not qualified,
&c. of being suspended by the Archbishop from
making either Deacons or Priests for two Years.
Can. 31, 34. If any Impediment or Crime be
objected against one that is to be made either
Priest or Deacon, at the Time that he is to be
ordained, the Bishop is bound to surcease from or-
daining him, until he shall be found clear of
that Impediment or Crime; and it is generally
held, that whatever are good Causes of Depri-
vation, are also sufficient Causes to deny Admis-
sion to Orders; as Incontinency, Illiterature,
Perjury, Forgery, Simony, Heresy, Outlawry,
Bastardy, &c. 2 *Inst. 631, 5 Rep.* A Person to
be ordained Priest, must bring a Testimonial of
four Persons, known to the Bishop, of his Life
and Doctrine; and be able to give an Account
of his Faith in *Latine*: And a Deacon is not to
be made a Priest, unless he produce to the Bi-
shop such a Testimonial of his Life, &c. and that
he hath been found faithful and diligent in ex-
ecuting the Office of a Deacon. A Bishop shall
not make any one a Deacon and Minister, both
together upon one Day; for there must be some
Time of Trial of the Behaviour of a Deacon in
his Office, before he is admitted to the Order of
Priesthood; which Time is generally the Space
of a Year, or it may be a shorter Time on rea-
sonable Cause allowed by the Bishop: And Priests
and Deacons are not only to subscribe the Thirty-
nine Articles of Religion, but take the Oath of
the King's Supremacy, &c. as directed and al-
tered by Stat. 1 *W. & M.* A Priest by his Or-
dination receives Authority to preach the Word,
and administer the holy Sacraments, &c. (but
he may not preach without Licence from the
Bishop, Archbishop, or one of the Universities):
And Ordination of a Priest is thus performed;
After *Veni Creator* is sung, and some Prayers are

read, the Bishop with the Divines present, lay-
ing their Hands severally on the Priest's Head,
the Bishop pronounces the Words following.

Form of the Ordination of a Priest.

Recieve the Holy Ghost for the Office and Work of
a Priest in the Church of God, now committed
to Thee by the Imposition of our Hands; whose Sins
Thou dost forgive, are forgiven, and whose Sins Thou
dost retain, are retained; and be Thou a faithful
Dispenser of the Word of God, and of his Holy Sacra-
ment, in the Name of the Father, and of the Son,
and of the Holy Ghost. — Then the Bishop
delivers a Bible to him with these Words, viz.
Take Thou Authority to preach the Word of God, and
to minister the Sacraments in the Congregation, where
Thou shalt be lawfully appointed.

The Stat. 31 *Eliz. cap. 6.* punishes corrupt Or-
dination of Priests, &c.

Ordines Majores & Minores. The Holy
Orders of Priest, Deacon, and Subdeacon, any
of which were a Qualification for Admission to
an Ecclesiastical Benefice, were called *Ordines*
Majores; and the inferior Orders of Reader,
Chantor, Psalmist, &c. termed *Ordines Minores*;
for which the Persons so ordained, had their
Prima Tonsura, different from the *Tonsura Cleri-*
calis.

Ordinum fug tibi, Signified those of the Reli-
gious who deserted their Houses, and throwing off
the Habits, renounced their particular Order, in
Contempt of their Oath and other Obligations.
Paroch. Antiq. 388.

Ordo, Is taken for that Rule which the
Monks were obliged to observe. In *Eadmer. vita*
S. Anselmi, cap. 37.

Ordo Albus, The White Friars, or *Augustines*;
and the *Cistercians* also wore White.

Ordo Niger, Were the Black Friars. *Sub nor-*
mâ Benedicte famulantes; as *Ingulphus* tells us, pag.
851. The *Cluniacs* likewise wore Black. *Matt.*
Parif. 321, 514.

Orgild, (From the Sax. Orf, i. e. Pecus, &
Gild, Solutio, vel Redditio) Signifies a Payment
or Delivery of Cattle: But it seems rather a
Penalty for taking away Cattle. *La. bard.*

Orfraies, (*Aurifrisium*) A Sort of Cloth of Gold
frizled or embroidered, anciently made and
used in England, worn by our Kings and Nobility:
And the Cloaths of the King's Guards were cal-
led *Orfraies*, because adorned with such Works
of Gold. Mention is made of those *Orfraies* in
the *Records of the Tower.*

Orgallous, (From the Fr. *Orgueil*, i. e. Pride)
Haughty and High-minded. 4 *Inst. 89.*

Orgis, Is the greatest Sort of North Sea Fish,
now called *Organ Ling*, which is a Corruption
from *Orkney*; the best being taken near that
Island. 31 *Ed. 3. Stat. 3. cap. 2.*

Orgild, (*Sine Compensatione*) Without Recom-
pense; as where no Satisfaction was to be made
for the Death of a Man killed, so that he was
judged lawfully slain. *Spelm.*

Original. In the Court of King's Bench, the
usual *Original* Writ issued in Actions, is for Action
of Trespass upon the Case; and this Court doth
not issue *Originals* in Actions of Debt, Covenant,
or Account, &c. Whereas the Court of *Common*
Pleas, proceeds by *Original* in all Kinds of Ac-
tions: But to arrest and sue a Party to Outlawry,
it is made Use of by both Courts. And for *Originals*
in

in Trespas on the Case, there is a Fine payable to the Crown, where the Damages are laid above forty Pounds in Proportion to the Damage. *Practif. Solic.* 254, 255. The *Original* is the Foundation of the *Capias*, and all subsequent Process; the Return whereof is generally the *Teste* of the *Capias*: Though the *Capias* may be taken out before the *Original*, by leaving the *Præcipe* with the Filizer, who will make out a *Capias* upon it, and afterwards carry it to the Curfitor to make an *Original*; and the Filizer when it is returned, is to file it with the *Custos Brevium*. Proceedings on *Original* are thus, — When the Defendant is arrested and appears, the Plaintiff's Attorney is to deliver a Copy of his Declaration to the Defendant's Attorney; and the Term he declares, after Rules given to plead, he calls upon him for his Plea, and draws his Replication, &c. He also makes up the Paper-Book, and delivers a Copy of it to the Defendant's Attorney: Then if it be an Issue, he gives Notice of Trial, signs his *Venire Distr. fur*, &c. and seals the Record of *Nisi prius*; when he summoneth his Witnesses, prepares Breviates, and goes to Trial as in Actions by *Bill*: After the Trial is over, the Issue must be entered in due Time on the Filizer's Roll; and Rules given to sign Judgment, whereupon Judgment is entered, and Execution made out for the Party recovering. *Pract. Solic.* 256. There are new *Originals* to warrant Judgment, and in Cases of Outlawry, Writs of Error, &c. And if a new *Original* be returned any Time before Judgment is signed, it is soon enough. *Ibid.* 319. An *Original* in Case, &c. sets forth the whole Declaration of the Plaintiff; and the Writ runs thus: *Georgius Dei Gra. &c. Vic. S. Salutem. Si A. B. fecer. te securum de Clam. suo prof. tunc pone per vad. & Salv. pleg. &c. quod sit coram nob. apud Westm. die, &c. Quare cum prædict A. Die & Anno apud Paroch. &c. Indebitat. fuisset C. D. &c. in &c. libr. pro, &c. eidem A. ad spial. Instanc. & requisit. ipsius, &c. ante Tempus illud vendit. & deliberat. Et sic inde Indebitat. existen. &c. fidel. promisit, &c. (as in the Declaration to the End) Et habeas nomina pleg. & hoc Breve. Teste, &c. See Writ.*

Originalia. In the Treasurer's Remembrancer's Office in the Exchequer, the Transcripts, &c. sent thither out of the Chancery are called by this Name, and distinguished from *Records*; which contain the Judgments and Pleadings in Suits tried before the Barons.

Orped, Some orped Knight, i. e. a Knight whose Clothes shined with Gold. *Blount*.

Orphan, (*Orphanus*) Is a Fatherless Child; and in the City of London there is a Court of Record established for the Care and Government of Orphans. 4 *Inst.* 248. The Lord Mayor and Aldermen of London have the Custody of Orphans, under Age and unmarried, of Freemen that die; and the Keeping of all their Lands and Goods: And if they commit the Custody of an Orphan to any Man, he shall have the Writ of Ravishment of Ward, if the Orphan be taken away; or the Mayor and Aldermen may imprison the Offender until he produces the Infant. 2 *Danv. Abr.* 311. If any one without the Consent of the Court of Aldermen, marries such an Orphan under the Age of Twenty-one Years, though out of the City, they may fine and imprison him, until paid. 1 *Lev.* 32. 1 *Ventr.* 178. Executors and Administrators of Freemen dying, are to exhibit true Inventories of their Estates before the Lord Mayor and Al-

dermen in the Court of Orphans, and must give Security to the Chamberlain of London and his Successors by Recognisance for the Orphan's Part; which if they refuse to do, they may be committed to Prison until they obey. *Wood's Inst.* 522. If an Orphan, who by the Custom of London is under the Government of the Lord Mayor and Aldermen, sue in the Spiritual Court for any Legacy, &c. a Prohibition shall be granted, because the Lord Mayor and Aldermen only have Jurisdiction of them. 5 *Rep.* 73. But an Orphan may waive the Benefit of suing in the Court of Orphans, and file a *Bill in Equity* against any one for Discovery of the personal Estate, &c. The Lord Mayor and Commonalty of London being answerable for the Orphans Money paid into the Chamber of the City, and by some Accidents become indebted to the Orphans and their Creditors, in a greater Sum than they could pay; by Stat. 5 & 6 *W. & M. cap.* 10. it is Enacted, that the Lands, Markets, Fairs, &c. belonging to the City of London, shall be chargeable for raising eight Thousand Pounds *per Ann.* to be appropriated for a perpetual Fund for Orphans; and towards Raising such a Fund, the Mayor and Commonalty may assess two Thousand Pounds yearly upon the personal Estates of Inhabitants of the City, and levy the same by Distress, &c. Also a Duty is granted of four Shillings *per Tun* on Wines imported, and on Coals; and every Apprentice shall pay 2 s. 6 d. when he is bound; and 5 s. when he is admitted a Freeman; for raising of the said Fund: The Fund is to be applied for Payment of the Debts due to Orphans, by Interest after the Rate of 4 l. *per Cent.* &c. And no Person shall be compelled by Virtue of any Custom of the City, to pay into the Chamber of London any Sum of Money or personal Estate belonging to an Orphan of any Freeman for the future. 5 & 6 *W. & M.*

Oryolagium, A Garden Plot, or Hortilage. *Mon. Angl. Tom.* 1.

Oryal, (*Oriolum*) Is a Room, or Cloister, of a Monastery, Priory, &c. whence it is presumed that *Oriel* or *Oryal College* in Oxford took Name. *Mat. Paris. in vit. Abb. S. Alban.*

Osculum Pacis. A Custom formerly of the Church, that in the Celebration of the Mass, after the Priest had spoke these Words, *viz. Pax Domini vobiscum*, the People kissed each other, was called *Osculum Pacis*: Afterwards when this Custom was abrogated, another was introduced; which was whilst the Priest spoke the aforementioned Words, a Deacon offered the People an Image to kiss, which was commonly called *Pacem*. *Mat. Paris. Anno* 1100.

Osmonds, A Kind of Ore, of which Iron is made; anciently brought into England. Stat. 32 *H. 8. c.* 14.

Ostenio, Was a Tribute paid by Merchants for Leave to expose their Goods to Sale in Markets. — *Qui per terras ibant Ostensionem dabant & Teloneum.* Leg. Ethelred. cap. 23.

Oswald's Law, (*Lex Oswaldi*) The Law by which was understood the Ejecting married Priests, and Introducing Monks into Churches, by Oswald Bishop of Worcester, about the Year 964.

Oswald's Law Hundred, Is an ancient Hundred in Worcestershire, so called of the said Bishop Oswald, who obtained it of King Edgar, to be given to St. Mary's Church in Worcester; it is exempt from the Jurisdiction of the Sheriff, and comprehends 300 Hides of Land. *Camd. Britan.*

Duch,

Ouch, A Collar of Gold, or such like Ornament, worn by Women about their Necks. Stat. 24 H. 8. c. 13.

Ober, (Sax. *Ofer*, Ripa) In the Beginning or Ending of the Names of Places, signifies a Situation near the Bank of some River; as St. Maryover in Southwark, Andover in Hampshire, &c.

Oberfeyted, (From the Sax. *Ofer*, i. e. super, & *Cythan*, offendere) Is used where a Person is convicted of any Crime; that it is found upon the Offender: This Word is mentioned in the Laws of Edw. apud Brompton pag. 836.

Oberhernissa, Contumacy, or Contempt of the Court. In the Laws of Adelftan, cap. 25. it is used for Contumacy: But in a Council held at Winchester, Anno 1027, it signifies a Forfeiture; So Leg. Æthelred. cap. 27.

Oberfamella, Seems to have been an ancient Fine, before the Statute for Hue and Cry, laid upon those, who, hearing of a Murder or Robbery, did not pursue the Malefactor. 3 Inst. 116.

Si quis furi obviamerit, & sine vociferatione gratis eum dimiserit, emendet secundum Weram ipsius furis, vel plena lada se adlegiet, quod cum eo falsum nesciuit: Si quis audito clamore supersedit, reddat Oberfamella Regis, aut plene se laudiet. Lib. Rub. cap. 36.

Overseers of the Poor, Are publick Officers created by the Stat. 43 Eliz. cap. 2. to provide for the Poor of every Parish; and are sometimes two, three, or four, according to the Largeness of Parishes. Churchwardens by this Statute are called *Overseers of the Poor*, and they join with the *Overseers* in making a Poors Rate, &c. But the Churchwardens having distinct Business of their own, usually leave the Care of the Poor to the *Overseers* only; though anciently they were the sole *Overseers of the Poor*. Dalt. ch. 27. Wood's Inst. 95. See Poor.

Overt-Act, (*Apertum factum*) An open Act, which by Law must be manifestly proved. 3 Inst. 12. Some *Overt-act* is to be alledged in every Indictment for *High Treason*: Such as for Treason in compassing the Death of the King, the Providing Arms to effect it, &c. 3 Inst. 6, 12. H. P. C. 11. And no Evidence shall be admitted of any *Overt-act*, that is not expressly laid in the Indictment, by Stat. 7 W. 3. Vide Treason.

Overt-Word, Is an open plain Word, not to be mistaken. Stat. 1 Mar. Sess. 2. c. 3.

Ousted, (From the Fr. *Oster*, to put out) As ousted of Possession, is where one is removed or put out of Possession. 3 Cro. Rep. 349.

Ouster le Main, (*Amovere manum*) Signifies a Livery of Land out of the King's Hands, or a Judgment given for him that sued a *Monstrans de droit*; and when it appeared upon the Matter, that the King had no Title to the Land he seized, Judgment was given in the Chancery that the King's Hands be removed, and thereupon an *Amoveas manum* was awarded to the Escheator, to restore the Land; it being as much as if the Judgment were given that the Party should have his Land again. Staundf. Prærog. cap. 24. 28 Ed. 1. cap. 19. It was also taken for the Writ granted upon a Petition for this Purpose. F. N. B. 256. And is written *Ouster le Maine*, in the 25 Hen. 8. cap. 22. But all Wardships, Liveries, and *Ouster le mains*, &c. are taken away by Stat. 12 Car. 2. cap. 24.

Ouster le Mer, (Fr. *Oultre*, i. e. Ultra, & *le Mer*, Mare) Is a Cause of Essoin or Excuse, if

a Man appear not in Court on Summons, for that he was then beyond the Seas.

Outfangtheft, (From the Sax. *Ut*, i. e. Extra, *fang*, captus, & *Theof*, fur) *Eur extra Captus, quem Dominus, quanquam in alieno fundo comprehensum, in Curiam tamen suam revocat, ibique judicat.* Litt. It is a Liberty or Privilege, as used in the ancient Common Law, whereby a Lord was enabled to call any Man dwelling in his Manor, and taken for Felony in another Place out of his Fee, to Judgment in his own Court. Rastal. Stat. 1 & 2 P. & M. c. 15.

Outhest, Is the same with *Outborn*; which is a Calling Men out to the Army, by the Sound of an Horn.

Out-houses, Are those belonging and adjoining to Dwelling-houses; and Taking away any Money, Goods, &c. from such *Out-houses*, in the Day-time of 5 s. Value, is Felony without Benefit of Clergy. Dalt. c. 99. Stat. 39 Eliz. c. 15. 3 & 4 W. & M. c. 9. See Burglary.

Outland. The Saxon *Thanes* divided their hereditary Lands into *Inland*, such as lay nearest to their own Dwelling, and which they kept to their own Use; and *Outland*, which lay beyond the Demeans, and was granted out to Tenants, but merely at the Will and Pleasure of the Lord, like to Copyhold Estates. This *Outland* they subdivided into two Parts, whereof one Part they disposed among such as attended on their Persons, called *Theodens* or lesser *Thanes*; and the other Part they allotted to their Husbandmen, or Churls. Spelm. de Feud. cap. 5.

Outlaw, (Sax. *Utlaghe*, Lat. *Utlagatus*) One deprived of the Benefit of the Law, and out of the King's Protection. Fleta, lib. 1. cap. 47. If where a Person is called into the Law, after an original Writ, and three Writs of *Capias*, *Alias*, and *Pluries*, returned by the Sheriff *Non est inventus*, and Proclamation made for him to appear, &c. he contemptuously refuses to appear, he is then *outlawed*: And in former Times no Person was *outlawed* but for Felony, the Punishment whereof being Death, any Man might kill an *Outlaw* as a Wolf; but this was prohibited by Statute, and none but the Sheriff by lawful Warrant, may put any Man *outlawed* for Felony to Death, on Pain to suffer the like Punishment, as if he had killed any other Person. Braff. lib. 5. 2 Aff. pl. 3. 1 Inst. 128. A Woman cannot be an *Outlaw*, because Women are not sworn to the King as Men are, to be ever *within* the Law; therefore they are said to be *waived*, as not regarded but forsaken of the Law. F. N. B. 161. And an Infant under Twenty-one Years old, his Age to take the Oath of Allegiance, cannot be *outlawed*. When a Person is restored to the King's Protection, he is *Inlawed* again.

Outlawry, (*Utlagaria*) Is where a Person is *outlawed*, that he loses the Benefit of a Subject. Process of *Outlawry* lies in all Appeals, whether of Felony or Maihem, and in Indictments of Treason, or Felony; and also Indictments of Trespass *Vi & Armis*, Conspiracy, or Deceit; but not on any Indictment for a Crime of an inferior Nature: And it lies not in any Action on a Statute, unless it is given by such Statute, either expressly or impliedly: But by divers Statutes, *Outlawry* lies in many Civil Actions, as in Debt, Case, Account, Covenant, &c. And *Outlawries* are become frequent in personal Actions. Finch 346, 355. 1 Inst. 128. 2 Hawk. P. C. 302, 303.

As by committing Felony, by the Common Law, a Man forfeited all his Lands, Goods, and Chattels; so by an *Outlawry* for Felony, at this Time he forfeits the same, 1 *Inst.* 128. *Outlawry* in personal Actions is by Statute only, in which Case the Goods and Chattels of the Person are only liable, as those alone were chargeable in personal Actions, and they are forfeited to the King, who shall likewise have the Pernancy of the Profits of the Chattels Real; tho' this seems by a Consequence only, for that the Party being *extra Legem*, is therefore incapable to take the Profits himself. 3 *Salk.* 263. Upon an *Outlawry* on a Judgment in Debt, &c. the Person immediately forfeits his Goods and Chattels to the King; but not the Profits of his Lands or his Chattels Real until Inquisition taken: And Alienation after an *Outlawry*, and before Inquisition, is a good Bar to the King, as to the Perception of the Profits. *Raym.* 17. *Hardr.* 101. 1 *Salk.* 395. If after *Outlawry* in a personal Action, and before Seizure, the Party *outlawed* levy a Fine, the Cognisee shall hold against the King: But if the Seizure be before the Fine levied, it is good for the King. 1 *Lev.* 33. By a Feoffment made before a Seizure, upon an *Outlawry*, the King is ousted of the Pernancy of the Profits. *Ibid.* An *outlawed* Person was sued in the *Exchequer* by Bill, to discover his real and personal Estate, for the Benefit of the King; and upon a Demurrer to the Bill, because the Defendant is not bound to accuse himself, it was over-ruled, the King having a Title by the *Outlawry*, which is *quasi* a Judgment for him. *Hardr.* 22. And the King may dispose of the Land it self of a Person *outlawed*, by the Course of the *Exchequer*. *Raym.* 17. In Ejectment, Lessee for Years was indicted, and *Outlawry* had against him; and it being found by Inquisition that he was possessed of his Term at the Time of the *Outlawry*, the Treasurer and Barons of the *Exchequer* sold the Lease for a valuable Consideration: Then the *Outlawry* was reversed; and Judgment given that he should be restored to all which he had lost by Reason of the *Outlawry*; and though the Term was lawfully sold, and the Possession in another, yet it was held that the Lessee shall have his Term again, for otherwise the Judgment upon the Reversal would be in vain, as by that he is to be restored to all which he lost, &c. which cannot be unless he have his Lease again. 1 *And.* 277. A Lessee was *outlawed* for Felony; he assigned his Term, and then the *Outlawry* was reversed, and the Assignee brought Trespass for the Profits taken between the *Outlawry* and the Assignment; and it was adjudged good, because the *Outlawry* being reversed, it was as if there was none, and there is no Record of it. *Cro. Eliz.* 270, 278. The King on Reversal of an *Outlawry*, may grant Restitution *de Omnibus quibus nobis non est Responsum*: And if there be Lands, there must be a *Scire facias* to the Lords mediate and immediate, to shew Cause why the Party should not have Restitution. 2 *Lev.* 49. 2 *Salk.* 495. 2 *Nelf. Abr.* 1217, 1218. A. B. was a Bankrupt, and sometime afterwards being *outlawed*, the King made a Lease of the Profits of his Lands, and granted his Goods; afterwards a Commission of Bankruptcy was taken out against him, but it was five Years after he had committed the Act of Bankruptcy; resolved, that by the *Outlawry* he forfeits his Goods and Chattels, his Leases for Years, and his Trust in

such Leases, and the Profits of his Freehold Lands; but that this *Outlawry* cannot defeat any Interest which his Creditors had acquired in the Estate, because he voluntarily suffered himself to be *outlawed*. 1 *Salk.* 108. *Sid.* 115. A Man was indebted to one by Judgment, and to another on Bond, and was *outlawed* upon the Bond, and his Lands seized; and the Question being, whether the Judgment Creditor could extend those Lands, it was held that the *Outlawry* shall be preferred, except the Judgment Creditor could shew any Practice between the Obligor and Oblige. 2 *Salk.* 495. A Person cannot be fined, upon an *Outlawry*; but is punishable by Forfeiture of his Goods and Chattels. *Ibid.* 494. By *Outlawry*, a Man is disabled to sue; of which all Men may take Advantage by Pleading, until the *Outlawry* is reversed. *Litt.* 197. 1 *Inst.* 122, 128. One *outlawed* cannot prosecute in any Court, unless it be to reverse his *Outlawry*. *Cro. Jac.* 425. But he may make a Will, and have Executors, or an Administrator. *Cro. Eliz.* 575, 150. And an Executor may reverse an *Outlawry* of the Testator, where he was not lawfully *outlawed*. 1 *Leon.* 325. An Executor or Administrator *outlawed* is not disabled to sue Actions in Right of the Testator or Intestate: Also a Mayor and Commonalty may sue for a Corporation, notwithstanding the *Outlawry* of the Mayor. 6 *Rep.* 53. On a Writ of Error to reverse an *Outlawry*, the *Outlawry* is no good Plea in Disability of the Person: But *Outlawry* may be pleaded in Bar to *Audita querela*. *Sid.* 43. In *Assumpsit* upon a Bill of Exchange, &c. the Defendant pleaded an *Outlawry* in Bar; and on Demurrer to this Plea it was objected, that it ought to be pleaded in Abatement, because in this Action Damages are to be recovered, which are uncertain, and therefore not forfeitable by *Outlawry*; But it was adjudged, that it is pleadable in Bar, for the Debt is certain, though it is to be recovered in Damages. 3 *Lev.* 29. And in *Indebitatus Assumpsit* and *Quantum meruit*, for Meat, Drink, &c. Plea of *Outlawry* by the Defendant is good; though in this Action Damages are only recovered, which are uncertain; but it is the Consideration which creates the Debt or Duty, notwithstanding the Recompence is to be had by Way of Damages. 2 *Ventr.* 232. A Defendant pleaded an *Outlawry* in Bar to Action of Trover, and held good, though the Plaintiff in such Action could only recover uncertain Damages; for the Action is founded on the Property of the Goods, and these being forfeited by the *Outlawry*, the Plea is good. 3 *Leon.* 205. In Action of Assault and Battery, the Plaintiff recovered in C. B. and upon Writ of Error in B. R. the Judgment was affirmed; and thereupon the Plaintiff brought a *Scire facias* to shew Cause *Quare Executionem non haberet*, to which the Defendant after an Imparlance pleaded an *Outlawry* before the Judgment had, in Bar to the Execution; and it was ruled a good Plea; in this Case, though before the Judgment nothing is forfeited, yet a certain Sum being recovered in the Action, that is forfeited by the *Outlawry* had against the Plaintiff. *W. Jones* 238. *Nelf. Abr.* 1219. A Plaintiff delivered his Declaration in *Trinity-Term*, the Defendant imparled to *Michaelmas-Term*, and in the long Vacation the Plaintiff was *outlawed*; and then in *Michaelmas-Term* the Defendant pleaded this *Outlawry* in Bar to the Action, but did not say, that it was after the last Continuance, for which

which Reason the Plaintiff demurred; but the Plea was adjudged good, since the Record of the Outlawry doth appear. 5 Mod. 11. Where an Outlawry is pleaded, it must be *Sub pede Sigilli*, otherwise the Plaintiff may refuse it; but if he accepts the Plea, he shall not afterwards demur for that Cause. 1 Salk. 217. And how to plead an Outlawry in the same Court, or in another; and before, or after Judgment. *Lutw.* 40, 110, 111. An Attorney brought an Action of Debt by Bill of Privilege, and after Judgment the Defendant was outlawed, who brought a Writ of Error to reverse it; and it was adjudged that Process of Outlawry did not lie upon such Judgment, because there was no *Capias* in the original Action. 1 Leon. 229. A Judgment in Debt was had against two Defendants, and a *Capias ad satisfaciendum* sued forth against one of them, upon which he was outlawed; and afterwards he brought a Writ of Error to reverse the Outlawry, and assigned for Error that it ought to have been awarded against both; and so it was held. *Cro. Eliz.* 648. Two Persons were outlawed, one of them moved, that upon filing common Bail he might have Leave to reverse the Outlawry; and adjudged, that the Writ of Error to reverse it, must be brought in the Name of both the Defendants, and where one appears, the other is to be summoned and severed, and then it may be reversed as to him who appears, but he must give Bail to appear and answer the Action. 2 Salk. 496. An Outlawry grounded upon an Indictment on the Statute against Forcible Entry, preferred against several Persons, may be reversed as to some of the Parties, and stand good as to others that are outlawed, upon the same Indictment: For the Outlawries against them are several and not entire, and the Proceedings to the Outlawry may be good as to some of them, and as to the others may be not good. *Hill.* 22 Car. B. R. 2 Lill. Abr. 263. If a Party outlawed comes in *gratis* upon the Return of the Exigent, Alias, or Pluries he may be admitted by Motion to reverse the Outlawry, without putting in Bail: If he comes in by *Cepi Corpus*, he shall not be admitted to reverse the Outlawry without appearing in Person, as in such Case he was obliged to do at Common Law; or putting in Bail with the Sheriff for his Appearance upon the Return of the *Cepi Corpus*, and for doing what the Court shall order: Appearing by Attorney is an Indulgence by the Stat. 4 & 5 W. & M. cap. 18. And the Bail is to be special or common, in this as in other Cases; but Treason and Felony are excepted out of the Act. 2 Salk. 496. It is said that on Outlawry the Party ought to appear in Person, and submit himself to his Trial; and it must be *ex gratia*; if he is admitted to assign Errors before. 3 Salk. 263. Persons outlawed for Felony cannot be bailed, being attainted in Law; they may appear in Person, and plead Error in Avoidance of the Outlawry, &c. 2 Inst. 187. *H. P. C.* 101, 105. Upon Outlawry in Treason or Felony, it may be reversed by Writ of Error, or Plea; and it has been observed, that few Outlawries for Treason, Felony or Trespas, are valid, because the Statutes relating to the same are not pursued, as the Statutes. 1 H. 5. cap. 5. 6 H. 6. cap. 1. 8 H. 6. cap. 10. By the Stat. 5 Edw. 6. cap. 11. Outlawry against one for Treason, being out of the Realm, or beyond Sea, shall be good in Law: And if the Party within one Year after the Outlawry, or Judgment thereon, shall yield

himself to the Chief Justice of England, and traverse the Indictment whereupon he was outlawed, he shall be admitted to such Traverse, and being acquit shall be discharged of such Outlawry. Since this Statute, and the 26 H. 8. c. 13. In Case of Treason, one is barred of his Writ of Error, if he does not come in within a Year after the Outlawry, while he was out of the Realm, or beyond Sea: And when an Outlawry of Treason or Felony is reversed, the Party must plead to the Indictment. *Wood's Inst.* 659. It hath been adjudged that if a Man commits a Murder, and after the Exigent awarded against him he flieth out of the Realm, and then is outlawed, he shall not reverse it for that Cause, because he fled on Purpose to avoid the Law, and therefore by his Absence he shall not have the Benefit of the Law; but if the Attorney General, &c. confess that he was beyond Sea both before and after he was outlawed, the Outlawry may be reversed. 2 Cro. 464. 2 Nelf. Abr. 1222, 1223. In a Civil Cause, if one appears before he is returned outlawed, he may supersede the Exigent, &c. And where a Defendant is beyond Sea, in Prison, &c. the Award of the Exigent may be reversed. As Suing to the Outlawry is practised only where a Defendant is not easy to be taken, or hath not sufficient Estate in the County to be summoned; if where the Party is well known, is sufficient, and may be arrested, the Plaintiff outlaw him, he shall be ordered to reverse it at his own Expence. But where Motion was made upon Affidavit, that the Defendant lived publicly, and therefore to order the Plaintiff to reverse the Outlawry at his own Charge, it was not granted; because the Charge is small in C. B. to reverse an Outlawry, viz. but 16 s. 8 d. But in B. R. it is very chargeable. 2 Salk. 495. 2 Nelf. 1224. A Defendant was actually in Execution in the Fleet at the Suit of the Plaintiff in another Action, and yet he outlawed him; and upon Affidavit of this Matter the Plaintiff was ordered to reverse the Outlawry at his own Charge. *Ibid.* Where a Person would reverse an Outlawry, he must have an Attorney of Record to undertake an Appearance to a new Original; and put in special Bail, if the Debt or Damage amount to 10 l. or above: And if it be an Outlawry after Judgment, it cannot be reversed until Satisfaction is acknowledged by the Plaintiff on Record; or the Defendant hath brought the Money into Court. If an Outlawry be reversed, the Plaintiff may declare against the Defendant for the same Cause of Action in two Terms, upon a new Original, and in another County than that where the Action was first laid. 3 Lev. 245. But if the Plaintiff proceeds not in two Terms after Notice, the Defendant shall have Costs. In the Reversing of Outlawries, Proceedings may be by Motion to inform the Court of some Fault; or by Writ of Error, &c. And an Outlawry may be reversed, where the County-Court Days are mistaken in the Proclamations; if sufficient Time is not allowed between any of them; the Party is misnamed, or the Sheriff's Name omitted or mistaken; by any Error found in the Return of the Proclamation, or for Want of filing it; Want of Returns, and Mistakes in the Writs of *Capias*, Alias, &c. And so if the Exigent and Proclamation do not go forth to the County where the Party dwells; if there be no Warrant of Attorney filed for the Plaintiff the same Term sued forth, &c. 1 Inst. 128. 2 Inst. 670. When a

Defendant is *outlawed* in a Civil Action in B. R. if the Proclamation is not filed, the Defendant may reverse the *Outlawry* without any Writ of Error, by Pleading no Proclamation filed; and upon the *Custos Brevium's* Attending the Court with the File of Writs, whereby it appears that the Proclamation is not filed, the Court will reverse the *Outlawry*; but if the Proclamation be filed, then he must bring his Writ of Error to reverse it. 2 *Lill. Abr.* 263. If a Husband and Wife are returned *Utlagati fuerunt*, as the Wife ought to be waived, this Error may be avoided by Exception, on a Motion to the Court in the same Term in which they were *outlawed*; but not afterwards without Writ of Error. 2 *Bulst.* 213. If the Names of Coroners are not put to the Judgment of *Outlawry*; or it is not said *Coronatoris Comitatus*, &c. it is Error, for which the *Outlawry* may be reversed. 1 *Roll. Rep.* 266. 2 *Cro.* 528. 2 *Roll. Rep.* 82. The Court of B. R. will not reverse an *Outlawry*, though both Parties consent, except there be Error in the *Outlawry*; the King being concerned as well as the Parties. 2 *Lill.* 262. Judgment in *Outlawry* is given by the Coroners of the County; for after the Defendant is *quinto exactus*, and maketh Default, the Judgment is *Ideo utlagetur per Judicium Coronatorum*: In London it is pronounced by the Recorder; per *Judicium Recordatoris*, &c. 1 *Inst.* 238.

To sue a Person to *Outlawry*, in Debt, Trespass, &c. in B. R. the two Chief Terms for it are *Easter* and *Michaelmas*, and Care is to be taken not to begin in *Hilary-Term*, for then the Defendant will not be *outlawed* in less than four Terms, by Reason of the Shortness of *Easter Vacation*; but if you commence your Suit in any other Term, the *Outlawry* will be finished in three Terms, the Original being returnable the first Return of the Term: And in London, one may sue to the *Outlawry* three Times in the Year, because the *Hustings*, wherein Proclamation is to be made, are oftener held than the County-Court in the Country; for which Reason in suing to the *Outlawry*, most Actions are laid in London. In this Action, first a *Præcipe* is to be made out, if it be for Debt, or a *Pone* in Case, Trespass, &c. And having carried it to the Curfitor of the County wherein the Action is laid, he makes the Original thereupon; which you are to carry to the Filizer of the County, who will make out a *Capias*, *Alias*, and *Pluries*, or for Dispatch you may make them out your self; all of which must have fifteen Days between the Date and Return, and are return'd *Non est Invent.* of Course, and filed with the *Custos Brevium*. When the *Capias*, *Alias*, and *Pluries* are returned, the *Pluries* is to be carried to the *Exigent* of the County, who will make out your *Exigent* and Proclamation, which is to be sent down to the Sheriff of the County where the Defendant lives; and the *Exigent* being carried to the proper Sheriffs, you call for their Returns at the Time when returnable, allowing five County-Court Days between the Teste and Return of the *Exigent*, if the Action be laid in the Country, and five *Hustings* if it be laid in Town; and when your *Exigent* and Proclamation are return'd, the later is to be filed with the *Custos Brevium*, and the *Exigent* with the Filizer of the County; whereupon the Filizer will make out a *Capias Utlagatum* into any County you desire, where the Defendant hath any Estate. *Prattis. Solic.* 257. If Judgment be had against a Defendant, who to

evade the Law and Execution against him, lurks in several Counties, he may be sued to *Outlawry* after Judgment, and on issuing a *Capias ad satisfaciend.* for the Debt and Costs, and a *Non est Inventus* return'd, an *Exigent* is made and return'd by the Sheriff; upon which you may have a *Capias Utlagatum* into as many several Counties as you please, till the Defendant is taken; when he cannot be discharged without making Satisfaction to the Plaintiff, a Pardon of the *Outlawry*, or reversing the same for Error. *Ibid.* 322. And where a Plaintiff recovers Damages, and he against whom the Damages are recovered is *outlawed* at the King's Suit; no Pardon shall be granted, unless the Chancellor is certified that the Plaintiff is satisfied his Damages, by Statute 5 *Ed.* 3. See *Capias Utlagatum* and *Exigent*.

Out-Riders, Are Bailiffs errant employ'd by Sheriffs, to ride to the farthest Places of their Counties or Hundreds, with the more Speed to summon Persons into County-Courts, &c. 14 *Ed.* 3. *cap.* 9.

Owelry, Is when there is Lord *Mesne* and Tenant, and the Tenant holds of the *Mesne* by the same Service that the *Mesne* holds over of the Lord above him; this is called *Owelry* of Services. *F. N. B.* 136. And *Owelry* of Services is Equality of Services. *Co. Litt.* 169.

Oxlers, Are Persons that carry Wool, &c. to the Sea-side by Night, in order to be shipp'd off contrary to Law: And this is prohibited by Stat. 7 & 8 *W.* 3. *c.* 23.

Oxford. No Purveyor or Badger, &c. shall bargain for, and take away Victuals in the Markets of Oxford or Cambridge, or within five Miles, without Licence from the Chancellor, on Pain of Forfeiting four Times the Value, and three Months Imprisonment. 2 & 3 *P. & M.* *c.* 15. 13 *Eliz.* *c.* 21. See *University*.

Oxgang, (From Ox, i. e. Bos, and Gang or Gate, Iter) Is commonly taken for fifteen Acres of Land, or as much as one Ox can Plough in a Year; six *Oxgangs* of Land are such a Quantity of Ground as six Oxen will plough. *Crompt. Jurisd.* 220.

Oyer, Seems to have been antiently used for what we now call *Affises*. *Ann.* 13 *Edw.* 1.

Oyer of a Deed, Is where a Man brings an Action of Debt upon a Bond, or other Deed, and the Defendant appears, and prays that he may bear the Bond, &c. wherewith he is charged, which shall be allowed him. 2 *Lill. Abr.* 266. The Demand of *Oyer* is a Kind of Plea, and may be counterpleaded: Where there may be *Oyer*, the Party demanding it is not bound to plead without it; but the Defendant may plead without it if he will, on taking upon him to remember the Bond or Deed; though if he plead without *Oyer*, he cannot after waive his Plea, and demand *Oyer*. *Mod. Ca.* 28. 3 *Salk.* 119. In the Court of B. R. *Oyer* may be prayed after Imparlance; but not in C. B. 5 *Rep.* 74. After Imparlance, *Oyer* cannot be demanded, because Imparlance is always to another Term; also after a Plea in Abatement, *Oyer* may not be had the same Term to plead another dilatory Plea. *Mod. Ca.* 27. 2 *Lill.* 267. To demand *Oyer* of an Obligation is not only to desire the Plaintiff's Attorney to read the same; but to have a Copy thereof, that the Defendant may consider what to plead to the Action. *Hob.* 217. And when upon *Oyer* of a Deed it is entered, the whole Case appears to the Court, as if the Deed were in the

Plea, and the Deed is become Parcel of the Record: Though *Oyer* of a Deed cannot be demanded only during the Term it is produced in Court; and then it may be entered *in hac verba*, and there may be a Demurrer or Issue upon it, &c. 5 Rep. 76. *Lutw.* 1644. 3 Salk. 119. A Defendant ought to crave *Oyer* of the Plaintiff's Deed, on which he hath declared; and cannot set forth another to plead Performance thereof. *Mod. Ca.* 154. 2 Nelf. Abr. 1225. If there is *Misnomer* in a Bond, &c. The Defendant is to plead the *Misnomer*, and that he made no such Deed, without craving *Oyer*; for if he doth, he admits his Name to be Right. 1 Salk. 7. Executors bringing Action of Debt, the Defendant may demand *Oyer* of the Testament, &c. See *Monfrans de Faits*.

Oyer de Record, (*Audire Recordum*) Is a Petition made in Court, that the Judges, for better Proof-sake, will hear or look upon any Record. And it hath been adjudg'd, that the Craving *Oyer* of an original Writ is not like the Craving *Oyer* of a Deed; because the Deed is always produced by the Plaintiff, and 'tis the Act of the Party, wherefore he shall not be admitted to say, that it is not his Deed: But the Filing a Writ, and having it read on *Oyer* demanded is the Act of the Court. 2 *Lutw.* 1641. See 3 Salk. 119.

Oyer and Terminer, (*Fr. Ovir & Terminer*, Lat. *Audiendo & Terminando*) Is a Commission directed to the Judges, and other Gentlemen of the County to which issued, by Virtue whereof they have Power to hear and determine Treasons, and all Manner of Felonies and Trespases. *Crompt. Jurisd.* 121. 4 *Inst.* 162. 2 *Inst.* 419. It is the first and largest of the five Commissions by which our Judges of *Affise* do sit in their several Circuits: And is General, for trying all Offenders and Offences; or Special, to try only particular Persons or Offences: And in our Statutes it is often printed *Oyer and Determiner*. 4 *Inst.* 162. The usual Commission of *Oyer and Terminer* of Justices of *Affise* is general; and when any sudden Insurrection or Trespas is committed, which requires speedy Reformation, then a special Commission is immediately granted. *F. N. B.* 110. And this Commission was formerly issued only where some Insurrection was made, or heinous Misdemeanor was done in any Place; when the Manner and Usage was to grant a Commission of *Oyer and Terminer*, to hear and determine such Misbehaviours; and the Stat. 2 Ed. 3. c. 2. requireth, that no Commission of *Oyer and Terminer* be granted, but before the Justices of one Bench or other, or the Justices *itinerant*, and that for horrible Trespases. *New Nat. Br.* 243. A Man may have a special Commission of *Oyer and Terminer*, to inquire of Extortions and Oppressions of Under-Sheriffs, Bailiffs, Clerks of the Market, and all other Officers, &c. upon the Complaint and Suit of any one that will sue it out: And the King may make a Writ of *Association* unto the Justices of *Oyer and Terminer*, to admit those into their Company whom he hath associated unto them; also another Writ may be sent to the Justices to proceed, although that all the Justices do not come at the Day of the Sessions, and this Writ is called a Writ of *Si non omnes*, &c. *Ibid.* 245, 247. As to these Commissions it is said, that if a Commission of *Oyer and Terminer*, &c. be awarded to certain Persons to inquire at such a Place, they can neither open their Commission at another, nor adjourn it thi-

ther, or give Judgment there; if they do, all their Proceedings shall be esteemed as *coram non Judice*: But it is held, that Justices appointed *pro hac vice*, may adjourn their Commission from one Day to another, though there be no Words in their Commission to such Purpose; for a general Commission authorising Persons to do a Thing, doth implicitly allow them convenient Time for the Doing of it. 2 *Hawk.* P. C. 18. The same Justices at the same Time may execute the Commission of *Oyer and Terminer*, and also that of Gaol Delivery; and the same Persons being authorized by both these Commissions, may proceed by Virtue of the One in those Cases, where they have Jurisdiction by the other, and make up their Records accordingly. *Ibid.* 20. But Justices of *Oyer and Terminer* cannot proceed but upon Indictments taken before themselves, unless they have a Commission of Gaol-Delivery likewise, or a special Commission; for the Commission of *Oyer and Terminer* is, *Ad Inquirendum, Audiendum & Terminandum*, to inquire, hear and determine. *Wood's Inst.* 478. And though Justices of Gaol-Delivery have a more general Commission for Proceeding against and trying Malefactors than the Commissioners of *Oyer and Terminer* have; yet such Justices may not proceed but on Indictments found before other Justices, as Justices of Peace, &c. 2 *Hawk.* 24. On Indictments found before the Justices of *Oyer and Terminer*, they may proceed the same Day against the Party indicted.

Form of a Commission of Oyer and Terminer.

REX dilect. & fidel. suis A. B. C. D. E. F. &c. Salut. Ex gravi Querela G. H. &c. accepimus, quod J. K. L. M. N. O. ac quidam alii Malefactores & Pacis nostra Perturbatores ipsi. G. H. apud P. Vi & Armis insultum fecerunt, & ipsum verberaverunt, &c. ita quod de vita ejus desperabatur, & alia enormia ei intulerunt, ad grave damnum ipsius G. & contra Pacem nostram. Et quia Transgression. si aliter perpetrata fuerit, relinquere nolumus impunitam; Assignamus vos & duos vestrum Justic. nostros ad Inquirend. per Sacramentum proborum & legalium hominum de Com. &c. per quos rei Veritas melius sciri poterit, de nominibus Malefact. prad. quia una cum pref. J. K. L. M. & N. O. transgress. illam perpetrar. Et de Transgress. prad. plenius veritatem, & ad eandem Transgress. Audiendum & Terminandum secundum legem & cons. Regni nostri. Et ideo vobis Mandamus quod ad certos dies & loca, quos vos vel duo vestrum ad hoc provideritis, Inquisitionem illam faciatis, & Transgress. illam Audiatis & Terminetis in forma prad. fact. quod ad Justitiam pertinet secund. Legem & Cons. Regni nostri: Salvis nobis Amerciament. & aliis ad nos inde spectant. Mandamus enim Vic. nostro Com. prad. quod ad certos Dies & Loca, quos vos vel duo vestrum ei Sciri fac. venire faciat coram vobis vel duob. vestrum, tot & tales probos & legales homines de Ball. sua per quos rei veritas in pramiss. melius sciri poterit & Inquiri. In cujus rei Testimonium, &c.

This is a Special Commission of *Oyer and Terminer* granted upon urgent Occasion; and the Party suing it might thereupon take out a Writ to the Sheriff commanding him to arrest Goods wrongfully taken away, and keep them in safe Custody, 'till Order made concerning them by the Justices assigned to determine the Matter. *Reg. Orig.* 126. *F. N. B.* 112.

P *Res.* (From the Fr. *Oyez*, i. e. *Audite*, hear ye) Is well known to be used by *Cryers* in our Courts, &c. to injoin Silence and Attention, when they make Proclamation of any Thing.

P *ze.* Or *Oozy* Ground, (*Solum uliginosum*) Moist, wet and marshy Land. *Litt. Dist.*

P.

P *age, Paagium*, The same with *Passagium*. *Matt. Paris.* 769.

P *acabilis*, Payable or passable. — *Recipiet duodecim quarteria bona & pacabilis averia*, &c. *Ex Regist. Grenefeld. Archiep. Ebor. M.S.*

P *acare*, To pay; as *Tolnetum Pacare*, is to pay Toll. *Mon. Angl. Tom. 1. pag. 384.* Hence *Pacatio*, Payment. *Matt. Paris.*

P *ace*, (*Passus*) A Step in going, containing five Foot, a Thousand whereof make a Mile; but this is called *Passus major*.

P *acification*, (*Pacificatio*) A Peace-making, Quieting, or Appeasing; relating to the Wars betwixt England and Scotland, Anno 1638, mentioned in the Stat. 17 Car. 1. c. 17.

P *ack of Wool*, Is a Horse-load, which consists of seventeen Stone and two Pounds, or 240 Pounds Weight. *Merch. Dist.*

P *ackage*, A Duty set in a Table taken of Goods and Merchandizes; and all Goods not specified in the Table are to pay for *Package-Duties*, after the Rate of one Penny in the Pound, according as they are valued in the *Book of Rates*.

P *ackers*, Are Persons appointed to pack up Herrings; and sworn to do it pursuant to the Statute 15 Car. 2. c. 14.

P *agus*, A Word used in antient Records for a County: *Ælfred Rex Anglo-Saxonum natus est in Villa Regia quæ dicitur Wantage in illa Paga quæ nominatur Berksh. &c.*

P *ain Fort & Dure*, (Lat. *Pœna Fortis & Dura*, Fr. *Peine Forte & Dure*) Signifies an especial Punishment inflicted by Law, on those that being arraigned of Felony, refuse to put themselves upon the ordinary Trial, but stubbornly stand mute; and it is vulgarly called *Pressing to Death*. *Stat. Westm. 1. cap. 12.* If a Criminal doth not plead directly to the Fact, or put himself on Trial by the Country, he shall be put to the Penance of *Pain Fort & Dure*, in Cases of Petit Treason and Felony, and forfeit his Goods: And some Criminals have undergone this Punishment, to prevent Attainder, Corruption of Blood, and Forfeiture of Lands; but upon standing mute in High Treason, the highest Offence, and in Petit Larceny the lowest of all Felonies, the Offenders shall have the like Judgment as if they had been convicted by Confession or Verdict. 3 *Inst.* 217. *H. P. C.* 226. *Kel.* 27. Women standing mute in Felony are liable to Penance of *Pain Fort & Dure* as well as Men. 2 *Inst.* 177. The Judgment of *Pain Fort & Dure* is by the Common Law, and according to the usual Practice, as recorded in our Books, is as follows, viz. That the Criminal shall be remanded to the Prison from whence he came, and put in some low dark Room, and there laid on his Back, without any Manner of Covering, except for the Privy Parts, with his Legs and Arms extended with Cords to the four Quarters of the Room, and that as many Weights shall be laid on his Body as he can bear, and more, and that he shall have no Sustenance,

but of the worst Bread and Water, and shall not eat the same Day in which he drinks, nor drink the same Day he eats; and that he shall so continue till he die. *S. P. C.* 150. 2 *Inst.* 178. But antiently the Judgment was not, that he should so continue 'till he were dead, but 'till he should answer; and he might save himself from the Penance, by putting himself on his Trial. 2 *Hawk. P. C.* 331. Before Judgment passes of *Pain Fort & Dure*, the Court orders a Tasse to be given to the Criminal of the Pain to be endured, if he will not comply; and the Court will not proceed to this Judgment, before all Methods are used to persuade him to plead: This is the constant Practice of *Newgate-Sessions*. *Kel.* 27, 28. See *Mute*.

P *ains and Penalties*. An Act pass'd in the 10th Year of King Geo. 1. for inflicting Pains and Penalties on the late Bishop of Rochester, Mr. Kelly, and others, for being concern'd in *Laver's* Conspiracy; by Virtue of which Statute, the Bishop was depriv'd and banish'd, and the others imprisoned during Life: They were condemn'd by Parliament for Want of such Evidence as is strictly required in the Common Law Courts.

P *ainters*. The Price of *Painters* Work is limited by Statute; and *Plasterers* shall not use the Art of a *Painter*, unless they are Servants to *Painters*, &c. on Pain of 5 l. *Stat. 1 Jac. 1. c. 20.*

P *ais*, (Fr.) A Country or Region; *Trial per Pais* is Trial by the Country. *Spelm. Gloss.*

P *alagium*, A Duty to Lords of Manors for exporting and importing Vessels of Wine in any of their Ports. — *Quieti de omni Teloneo, & Passagio, cobuagio*, *Pallagio*, &c.

P *alatine*, Counties of, and their Privileges. See *County*.

P *alfrey*, (*Palfredus*, *Palafredus*, *Palefridus*) Is one of the better Sort of Horses used by Noblemen, or others for State: And sometimes taken for a Horse fit for a Woman to ride. *Camden* says, that *W. de Fauconberge* held the Manor of *Cukeny* in the County of *Nottingham* in Sergeanty, by the Service of Shooing the King's *Palfrey* when he came to *Mansfield*. *Co. Litt.* 149.

P *alingman*, Seems to be a Merchant Denizen, one born within the *English Pale*. *Stat.* 22 Ed. 4. c. 23. and 11 H. 7. c. 22.

P *alls*, A Canopy; also often used for an Altar-cloth. *Matt. Paris. sub Ann.* 1236. *Chartular. Glaston. M.S. fol.* 12.

P *allio cooperire*. It was antiently a Custom, where Children were born out of Wedlock, and their Parents afterwards intermarried, that those Children, together with the Father and Mother, stood under a Cloth extended while the Marriage was solemnizing, which was in the Nature of Adoption; and by such Custom the Children were taken to be legitimate. — *In signum Legitimationis Nati ante Matrimonium consueverunt poni sub Pallio super Parentes eorum extento in Matrimonii solemnizatione.* *Epist. Rob. Grosthead Episc. Lincoln.*

P *allium*, Is a Word often mentioned in our old Historians; and *Durandus* tells us, that 'tis a Garment made of White Wool, after the following Manner, viz. The Nuns of St. Agnes every Year, on the Feast-Day of their Saint, offer two White Lambs on the Altar of their Church, during the Time they sing *Agnus Dei* in a solemn Mass; which Lambs are afterwards taken by Two of the Canons of the *Lateran* Church, and by them given to the *Pope's* Subdeacons, who put

them to Pasture 'till Shearing-time, and then they are shorn, and the *Pall* is made with their Wool, mix'd with other White Wool: The *Pall* being thus made is carried to the *Lateran* Church, and there placed on the High Altar by the Deacons of that Church, on the Bodies of *St. Peter* and *St. Paul*; and after a usual Watching, it is carried away in the Night, and delivered to the Subdeacons, who lay it up safe. And because it was taken from the Body of *St. Peter*, it signifies the Plenitude of Ecclesiastical Power; and therefore it was the Prerogative of Popes, who pretend to be the immediate Successors of that Saint, to invest other Prelates with it, which at first was done no where but at *Rome*, but afterwards in other Places. *Durandus's Rationale*.

Palls, The Pontifical Vestures made of Lamb's Wool, in Breadth not exceeding three Fingers, cut round that they may cover the Shoulders; they have two Labels or Strings on each Side, before and behind, and likewise four purple Crosses on the Right and Left, fastened with Pins of Gold, whose Heads are *Saphire*: These Vestments the Pope gives or sends to Archbishops and Metropolitans, and upon extraordinary Occasions to other Bishops; who wear them about their Necks at the Altar, above their Ornaments. The *Pall* was first given to the Bishop of *Ostia* by Pope *Marcus* the Second, Anno 336. And the Preface to an antient *Synod* here in *England*, wherein *Odo*, Archbishop of *Canterbury* presided, begins thus:—*Ego Odo humilis & extremus, divina largiente Clementia, Almi Prasulis & Pallii honore ditatus, &c.* *Selden's Hist. Tithes* 217. *Cressey's Ch. Hist.* 972. Stat. 25 Hen. 8.

Palmata, A Handful of Corn, &c. *Chart. K. John. St. Egidii de Salopesbiria*.

Palmestry, A Kind of Divination, practis'd by Looking upon the Lines and Marks of the Hands and Fingers; being a deceitful Art used by *Egyptians*, prohibited by the Statute 1 & 2 P. & M. c. 4.

Pandects, Are the Books of the *Civil Law*, compiled by *Justinian*; mentioned in the *Histories* of this Nation. *Bede, cap. 5*.

Pandoxatrix, An Ale-wife, that both brews and sells Ale or Beer; from *Pandoxatorium*, a Brew-house. *Statut. & Consuetud. Burgi Ville de Mountgom.* Temp. Hen. 2.

Panel, (*Panella*, *Panelum*) According to Sir *Edward Coke* denotes a little Part; but the learned *Spelman* says, that it signifies *Schedula* vel *Pagina*, a Schedule or Page; as a *Panel* of Parchment, or a *Counterpane* of an Indenture: But it is used more particularly for a Schedule or Roll, containing the Names of such *Jurors* as the Sheriff returns to pass upon any Trial. *Kitch.* 226. *Reg. Orig.* 223. And the *Impanelling a Jury* is the Entering their Names by the Sheriff into a *Panel* or little Schedule of Parchment; in *Panello Assise*. 8 H. 6. c. 12. *Panels* of Juries are to be return'd into Court, on Writs of *Nisi prius*, &c. before Inquests can be taken upon them, by Stat. 42 Ed. 3. c. 11. And Persons indicted of High Treason shall have a Copy of the *Panel* of the Jurors, who are returned to try them, two Days at least before tried. 7 & 8 W. 3. c. 3. But it is said, that in Trials before Justices of Gaol-Delivery, the Prisoner has no Right to a Copy of the *Panel* before the Time of his Trial; except only in Cases within that Statute. 2 *Hawk.* P. C. 410.

Panis vocat' Blackwhytlof, Bread of a middle Sort, between White and Brown, such as in *Kent* is called *Ravel-bread*. In Religious Houses it was the Bread made for ordinary Guests; and distinguished from their Household-loaf, or *Panis Conventualis*, which was pure Manchet or White Bread. *Cowel*.

Panis Armigerorum, Signifies Bread distributed to Servants. *Mon. Angl. Tom. 1. pag. 420*.

Panis Militaris, Hard Bisket, or black coarse Camp-Bread. *Cartular. Eccl. Elyen. M.S. fol. 47*.

Pannage or *Pawnage*. (*Pannagium*, Fr. *Pafnage*) Is that Food which the Swine feed upon in the Woods, as Mast of Beech, Acorns, &c. *Alimentum, quod in Sylvis colligunt Pecora, ab Arboribus dilapsum*: Also it is the Money taken by the *Agistors* for the Food of Hogs in the King's *Forest*. *Crompt. Jurisd.* 155. Stat. Westm. 2. c. 25. *Manwood* says, *Pannage* signifies most properly the Mast of the Woods or Hedge-rows: And *Linwood* thus defines it; *Pannagium est pastus pecorum in Nemoribus & in Sylvis, utpote de glandibus & aliis fructibus arborum Sylvestrium, quarum fructus aliter non solent colligi*. It is mentioned in the Statute 20 Car. 2. c. 3. And in antient Charters this Word is variously written; as *Pannagium*, *Pasnagium*, *Pathnagium*, *Patnagium*, *Paunagium*, & *Pefsona*.

Pannus, A Garment made with Skins. — *Statutum fuit quod nullus habet Pannos decisos & laceratori*. *Fleta*, lib. 2. cap. 14.

Pape, *Papa*, from the old Gr. Word Παππας, signifying a Father. See *Pope*.

Paper-Books, Are the Issues in Law; or in Fact, upon Special Pleadings made by the Clerk of the *Papers*, who is an Officer for that Purpose. And the Clerks of the *Papers* of the Court of *King's Bench*, in all Copies of Pleas and *Paper-Books* by them made up, shall subscribe to such *Paper-Books*, the Names of the Counsel who have sign'd such Pleas, as well on the Behalf of the Plaintiff as of the Defendant; and in all *Paper-Books* delivered to the Judges of the Court, the Names of the Counsellors, who did sign those Pleas, are to be subscribed to the *Books*, by the Clerks or Attornies who deliver the same. *Pasch.* 18 Car. 2. 2 *Lill. Abr.* 268.

Paper Office, Is an antient Office within the Palace of *Whitehall*, wherein all the Publick *Papers*, Writings, Matters of State and Council, Letters, Intelligences, Negotiations of the King's Ministers abroad, and generally all the *Papers* and Dispatches that pass through the Offices of the Two Principal Secretaries of State, are lodged and transmitted, and there remain dispos'd in the Way of Library. Also an Office belonging to the Court of *King's Bench* so called.

Papists, Are those who profess the *Papish* Religion in this Kingdom: And since the Reformation there have been many Statutes concerning them. By the 35 *Eliz.* c. 2. *Papists* are to repair to their usual Place of Residence, and not remove above five Miles, without Licence, &c. The 3 *Jac.* 1. c. 5. enacts, That no *Papist*, or *Papish* Recusant convict, shall come to Court; practice the Common Law, Civil Law, Physick, &c. or bear any Publick Office or Charge, but shall be utterly disabled to exercise the same; and liable to a Penalty of 100 *l.* But Offices of Inheritance may be executed by Deputies taking the Oaths, by 1 *W. & M.* *Papists*, and Trustees for *Papists*, are incapable to present to any Benefice,

fice, School, Hospital, &c. or to grant any Avoidance of a Benefice, and the two Universities shall present; the Chancellor, &c. of Oxford to present to Benefices lying in such and such Counties, and the University of Cambridge to Benefices in others, particularly mentioned in the Statute; and a Bill may be brought in a Court of Equity to discover secret Trusts, &c. 3 Jac. 1. c. 5. It has been adjudged on this Statute, that the Person is only disabled to present; and that he continues Patron to all other Purposes. *Cawley* 230. That such a Person by being disabled to grant an Avoidance is not hindered from Granting the Advowson it self, in Fee, or for Life, *bona fide* for good Consideration. 1 Jon. 19, 20. And that if an Advowson or Avoidance belonging to a Papist come into the King's Hands, by Reason of any Outlawry, or Conviction of Recusancy, &c. the King, and not the Universities, shall present. 1 Jon. 20. *Hob.* 126. But where a Presentment is vested in the University, at the Time when the Church became void, it shall not be devested again, by the Patron's Conforming, &c. 10 Rep. 57. Papists, and Popish Recusants, married not according to the Orders of the Church of England, shall be disabled, the Husband to be Tenant by the Curtesy; and the Wife to have Dower, &c. and incur a Forfeiture of 100 l. Also not Baptising their Children by a lawful Minister, is liable to the like Penalty: And not being buried according to the Ecclesiastical Laws, the Executors shall forfeit 20 l. &c. And Papists are incapable to be Executors, Administrators, or Guardians; disabled to sue Actions, as Persons excommunicate till they conform, &c. 3 Jac. 1. And it is said that being convicted of Popish Recusancy, they may be taken up by the Writ *de Excom. capiend.* and shall not be admitted as competent Witnesses in a Cause: But this seems to be carried beyond the Intent of the Statute. 2 Bulstr. 155, 156. 1 Hawk. P. C. 23. Persons going beyond Sea to be trained up by Papists, shall forfeit their Goods and Chattels, if they do not conform within Six Months after their Return: And sending Children abroad to be thus trained up, is liable to a Penalty of 100 l. Stat. 3 Car. 1. c. 2. The Lord Mayor of the City of London, and Justices of Peace, &c. are to cause to be brought before them Papists within the said City, and ten Miles thereof, and tender them the Declaration 30 Car. 2. cap. 1. against Transubstantiation, and refusing to subscribe it, they shall suffer as Popish Recusants convicted: But such as use any Trade or manual Art; and foreign Merchants, Servants to Ambassadors, &c. are excepted. 1 W. & M. Sess. 1. c. 9. Papists refusing to appear and subscribe the said Declaration, are not to keep in their Houses any Arms, Weapons, Gunpowder, &c. And Justices of Peace may order any such to be seized: And they may not keep any Horse above the Value of 5 l. which may be also seized. And Persons concealing Arms or Horses, or hindering a Search after them, shall be committed, and forfeit treble Value. 1 W. & M. c. 15. If any Person refuse to repeat and subscribe the afore-mentioned Declaration, he shall be disabled to make any Presentation, &c. And presenting contrary to this Act, shall forfeit 500 l. 1 W. & M. c. 26. Papists, who keep Schools are to suffer perpetual Imprisonment: And Persons educated in the Popish Religion, not taking the Oaths and subscribing the Declaration in the 30 Car. 2. within six Months after they attain the

Age of eighteen Years, shall be disabled to take or inherit Lands, but not their Heirs or Posterity; and during their Lives or Refusal, the next Protestant Relation shall enjoy, &c. And where the Parents of Protestant Children are Papists, the Lord Chancellor may take Care of the Education of such Protestant Children, and make Order for their Maintenance suitable to the Ability of the Parent. 11 & 12 W. 3. c. 4. Every Trustee, &c. for Popish Children is disabled to present to any Benefice, &c. and Presentations by them shall be void; and the Chancellor and Scholars of the Universities shall present, as by the Act 3 Jac. 1. And Bishops are required to examine Persons presented on Oath, before Institution, whether the Person presenting be the real Patron, and made the Presentation in his own Right, or whether he be not a Trustee for a Papist, &c. And if the Person presented refuse to be examined, his Presentation shall be void. 12 Ann. Sess. 2. c. 14. Papists are to register their Estates, as by this Statute is directed, on Pain of Forfeiture; and Lands registred must be expressed in what Parishes they lie, who are the Possessors thereof, the Estate therein, and the yearly Rent, &c. Persons suing in Chancery for Forfeitures for Default of Registry, may demand all Discoveries as if Purchasers; and they may bring Ejectment on their own Demise, and give the Act and special Matter in Evidence. 1 Geo. c. 55. Sales of Lands by Papists (incurring the Disabilities 11 & 12 W. 3.) to Protestant Purchasers, are confirm'd notwithstanding the Disability of Persons joining in the Sale; unless before such Sales any Person who is to take Advantage of the Disability, has recovered, or entered his Claim, and given Notice, &c. No Lands shall pass from Papists, by Deed or Will, without Inrollment: And Papists are rendered incapable to purchase Lands. 3 Geo. c. 18. All Persons within England, of the Age of eighteen Years, not having taken the Oaths, and who refuse to take the same, shall register their Estates as Papists; or neglecting such Registry, are to forfeit the Inheritance of their Lands, two Thirds to the King, and the other Third to the Prosecutor. 9 Geo. c. 24. But by a subsequent Act, this shall not extend to oblige any Woman to take the Oaths, or to register her Estate, nor any Person that hath only an Interest in Lands in Reversion, or to Estates under 10 l. a Year, &c. And only one Year's Rent and Profits of Lands is forfeited for Default of Registering by this Statute, recoverable by Action in the Courts at Westminster, within six Months after the Offence: Persons in Prison, beyond Sea, Non Compos, &c. are to have six Months to take the Oaths, and register their Estates, after the Removal of their Disabilities; and Certificates of Taking the Oaths, by the proper Officers, shall be allowed as Evidence of Taking the Oaths, &c. 10 Geo. c. 4. See Oaths.

Papists taxed. Papists, or reputed Papists, who refuse to take the Oaths 1 W. & M. are to pay double to the Land-Tax, &c. Stat. 8 W. 3. c. 6. And a Tax of 100,000 l. for the Year 1723. was laid on the Lands of all Papists, over and above the double Taxes; charged by so much on every County, &c. and leviable by the Commissioners of the Land-Tax, by Stat. 9 Geo. c. 18.

Par, Is a Term in Exchange, where a Man to whom a Bill is payable receives of the Acceptor just so much in Value, &c. as was paid to the Drawer by the Remitter. *Merch. Dict.* And in

Exchange of Money, *Par* is defined to be a certain Number of Pieces of the Coin of one Country, containing in them an *equal* Quantity of Silver to that of another Number of Pieces of the Coin of some other Country; as where thirty-six Shillings of the Money of *Holland* have just as much Silver as twenty Shillings *English* Money: And *Bills of Exchange* drawn from *England* to *Holland*, at the Rate of thirty-six Shillings *Dutch* for each Pound *Sterling*, is according to the *Par*. Lock's *Confid. of Money*, pag. 18.

Parage, (*Paragium*) Signifies Equality of Name, Blood, or Dignity; but more especially of Land, in the Partition of an Inheritance between Coheirs: Hence comes to *disparage*, and *Disparagement*. Co. Litt. 166.

Paragium, Was commonly taken for the equal Condition betwixt two Parties to be contracted in Marriage: For the old Laws of *England* did strictly provide that young Heirs should be dispos'd in Matrimony *cum Paragio*, with Persons of equal Birth and Fortune, *Sine Disparagione*.

Paramount, (Compounded of two *French* Words, *Par*. i. e. *Per*, and *Monter*, ascendere) Signifies in our Law the highest Lord of the Fee, of Lands, Tenements, or Hereditaments. F. N. B. 135. As there may be a Lord Mesne, where Lands are held of an inferior Lord, who holds them of a Superior under certain Services; so this superior Lord is Lord *Paramount*: And all Honours, which have Manors under them, have Lords *Paramount*. Also the King is Chief Lord, or Lord *Paramount* of all the Lands in the Kingdom. Co. Litt. 1.

Paraphernalia, or *Paraphernalia*, (From the Gr. *Παρά*, *Præter*, and *Παρών*, *Dos*) Are those Goods which a Wife challengeth over and above her Dower or Jointure, after her Husband's Death; as Furniture for her Chamber, wearing Apparel, and Jewels, which are not to be put into the Inventory of her Husband. 1 Cro. Rep. A Wife, after the Death of her Husband, may claim her *Paraphernalia* or necessary Apparel for her Body, and Cloth given her to make a Garment, &c. besides her Dower; so that the Husband cannot give them away by Will: But she shall not have excessive Apparel, beyond her Rank. Pearl Necklaces, Chains of Diamonds, Gold Watches, &c. may be included under *Paraphernalia*, if they were usually worn by the Wife, and were suitable to her Quality, and the Fashion of the Times, and there are Assets to pay Debts and Legacies; provided the Husband does not give these away by Will. 1 Roll. Abr. 911. 3 Cro. 343. *Kitch.* 369. *Noy's Max.* 168. It was adjudg'd in the *Viscountess Bindon's* Case, that *Paraphernalia* ought to be allowed to a Widow, having Regard to her Quality and Degree; and that her Husband being a Viscount, she shall be allowed her Jewels to the Value of 500 Marks, &c. 2 Leon. 166. A Widow retain'd a Chain of Diamonds and Pearls, against the Devise of her Husband; and two Judges held, that she might detain them, because they were convenient for a Woman of her Quality; but Two other Judges were of a contrary Opinion, that *Paraphernalia* should be not only convenient, but necessary, otherwise the Widow shall not detain them against the express Devise of the Husband: Though it is said it was adjudg'd, that the Widow might detain necessary Apparel, and likewise Ornaments, against the Devise of her Husband; and that he

cannot dispose of them by Will, though he might have sold them in his Life-time, for immediately upon his Death the Property is vested in the Widow. Cro. Car. 347. 2 Nels. Abr. 1225.

Parasitus, A Word used for a Domestick Servant. Blount.

Paravail, (*Per-availe*) Signifies the lowest Tenant of the Fee, or he that is immediate Tenant to one who holdeth over of another; and he is called Tenant *Paravail*, because 'tis presumed he hath Profit and *Avail* by the Land. F. N. B. 135. 2 Inst. 296.

Parcella Terræ, A Parcel of Land, as used in some ancient Charters. — *Sciant, quod Ego Stephanus W. Dedi, &c. Roberto de D. Unam Parcellam Terræ cum pertinen. jacen', &c. Sine dat.*

Parcel-makers, Are two Officers in the *Exchequer*, that make the *Parcels* of the *Escheators* Accounts; wherein they charge them with every Thing they have levied for the King's Use, within the Time of their being in Office, and deliver the same to the *Auditors*, to make up their Accounts therewith. *Practice Excheq.* 99.

Parceners, (*Quasi* *Parcellers*, i. e. *Rem in Parcellas dividens*) Are of two Sorts, viz. *Parceners* according to the Course of the *Common Law*; and *Parceners* according to *Custom*. *Parceners* by the *Common Law*, are where a Man or Woman seised of Lands or Tenements in Fee-simple, or Fee-tail, hath no Issue but Daughters, and dieth, and the Tenements descend to such Daughters, who enter into the Lands descended to them, then they are called *Parceners*, and are but one Heir to their Ancestor: And they are termed *Parceners*, because by the Writ *de Partitione facienda* the Law will constrain them to make Partition; though they may make Partition by Consent, &c. Litt. 243. 1 Inst. 164. Also if a Man seised of Lands in Fee-simple, or in Tail, dieth without any Issue of his Body begotten, and the Lands descend to his Sisters, they are *Parceners*; and in the same Manner where he hath no Sisters, but the Lands descend to his Aunts, or other Females of Kin in equal Degree, they are also *Parceners*: But where a Person hath but one Daughter, she shall not be called *Parcener*, but Daughter and Heir, &c. Litt. Sect. 242. If a Man hath Issue two Daughters, and the eldest hath Issue divers Sons and divers Daughters, and the Youngest hath Issue divers Daughters; the eldest Son of the eldest Daughter shall not only inherit, but all the Daughters of the Youngest shall inherit, and the eldest Son is Coparcener with the Daughters of the youngest Sister, and shall have one Moiety, viz. his Mother's Part; so that Men, descending of Daughters, may be *Parceners* as well as Women, and shall jointly plead and be impleaded, &c. 1 Inst. 164. None are *Parceners* by the *Common Law*, but either Females, or the Heirs of Females, which come to Lands or Tenements by Descent. Litt. 254. *Parceners* by *Custom* is where a Person seised in Fee-simple, or in Fee-tail of Lands or Tenements of the Tenure called *Gavelkind*, within the County of *Kent*, &c. hath Issue divers Sons, and dies; such Lands shall descend to all the Sons as *Parceners* by the *Custom*, who shall equally inherit and make Partition as Females do, and a Writ of Partition lies in this Case, as between Females, &c. Litt. Sect. 265. Women *Parceners* make but one Heir, and have but one Freehold: But between themselves they have in Judgment of Law several Freeholds, to many

many Purposes; for one of them may infeoff the other of her Part; and the *Parcenary* is not severed by the Death of any of them; but if one dies, her Part shall descend to her Issue, &c. 1 *Inst.* 164, 165. If one *Parcener* make a Feoffment in Fee of her Part, this is a Severance of the Coparcenary, and several Writs of *Præcipe* shall lie against the other *Parceners* and the Feoffee. 1 *Inst.* 167. Though if two Coparceners by Deed alien both their Parts to another in Fee, rendring to them Two and their Heirs a Rent out of the Land, they shall have the Rent in Course of *Parcenary*; because their Right in the Land out of which the Rent is reserved was in *Parcenary*. *Ibid.* 160. If there be two *Parceners*, and each of them taketh Husband, and have Issue, and the Wives die; the *Parcenary* is divided; and here is a Partition in Law. *Ibid.* Partition of Lands held in Tail, by the Death of one Sister without Issue is made void, and the other Sister as Heir in Tail will be intitled to the whole Land; and may have Writ of *Formedon* where the other *Parcener* hath aliened, &c. *New Nat. Br.* 476. And a Writ of *nuper obiit* lies for one *Parcener* deforced by another, &c. *F. N. B.* 197. *Parceners* are to make Partition of the Lands descended; and Estates of Coparceners are applicable only to Inheritances: Partition may be made between *Parceners* of Inheritances, which are intire and dividable, as of an Advowson, Rent-charge, or such like; but tis otherwise of Inheritances which are intire and indivisible, as of a Piscary, Common without Number, or such uncertain Profits out of Lands; for in such Case the eldest *Parcener* shall have them, and the others have Contribution from her out of some other Inheritance, left by the Ancestor; but if there is no such Inheritance, then the Eldest shall have these uncertain Profits for one Time, and the Youngest for another Time. *Dyer* 153. *Parceners* cannot make Partition so as for one to have the Land for one Time, and another for another, &c. for each is to have her Part absolutely: But where there is an Advowson descended to them, they may present by Turns; and if there be a Common, &c. which may not be divided, one may have it for one Year, and another for another Year, &c. 1 *Inst.* 164. An Advowson is an intire Thing, and yet in Effect the same may be divided betwixt *Parceners*; for they may present by Turns: And if there be Coparceners of an Advowson appendant to a Manor, and they make Partition of the Manor without Mentioning the Advowson; the same is still appendant, and they may present by Turns. 8 *Rep.* 79. If two *Parceners* be of an Advowson, and they agree to present by Turns, this is a good Partition as to the Possession. 1 *Rep.* 87. And where there are Coparceners of an Advowson, the Eldest hath Privilege to present first; not in Respect of her Person, but Estate: And if one *Parcener* hath a Rent granted to her upon a Partition made, to make her Part equal with the other, she may distrain for the Arrears of such Rent of common Right, and so shall the Grantee of the Rent, because it is not annexed to her Person only, but to her Estate. 3 *Rep.* 32. If there are two *Parceners* of a Manor, and on Partition made, each of the 7 hath Demesnes and Services allotted; in this Case each of them is said to have a Manor. 1 *Leon.* 26. *Davis* 61. A Partition may not be of Franchises, as Goods of Felons, Waifs, Estrays, &c. which are casual. 5 *Rep.* 3. Parti-

tion between Partners may be made four Ways, viz. First, when they themselves divide the Land equally into so many Parts as there are *Parceners*; and each chuses one Share or Part, the Eldest first, and so the one after another, &c. Secondly, When they make Agreement to chuse certain Friends to make Division for them: Thirdly, Partition by drawing Lots, where having divided the Lands into as many Parts as there are *Parceners*, and written every Part in a distinct Scroll, being wrapt up they draw each of them one out of a Hat, Bason, &c. And Fourthly, Partition by Writ *de Partitione facienda*, which is by Compulsion, where some agree to Partition, and others do not; and when Judgment is given on a Writ of Partition, it is that the Sheriff shall go to the Lands, and by the Oaths of twelve Men make Partition between the Parties, without any Mention of Preference to the eldest Sister, &c. *Litt.* 248. 1 *Inst.* 164. The Partition made and delivered by the Sheriff and Jurors, ought to be return'd into the Court, under the Seal of the Sheriff, and the Seals of the twelve Jurors; for the Words of the judicial Writ of Partition which doth command the Sheriff to make Partition are, *Assumptis tecum, duodecim, &c. & Partitionem inde Scire facias Jusficiariis, &c. sub sigillo tuo & sigillis eorum per quorum Sacramentum Partitionem illam feceris, &c.* If Partition be made by Force of the King's Writ, and Judgment thereof given, it shall be binding to all Parties, because it is made by the Sheriff, by the Oath of twelve Men, by Authority of Law; and the Judgment is, that the Partition shall remain firm and stable for ever. 1 *Inst.* 171. In a Writ of Partition, the Judgment was, *Quod Partitio fiat*, and before it was executed by the Sheriff, a Writ of Error was brought; and it was adjudged, that a Writ of Error doth not lie upon this first Judgment, because this is not like other Actions, where Error lies before the *Habere facias Seisnam* is return'd, and the Judgment is final; but it is not so in this Case, as there must be another Judgment, i. e. *Quod Partitio stabilis maneat*, which cannot be 'till the Partition is made and return'd by the Sheriff. *Hesley* 36. *Dyer* 67. Where two Persons hold Lands *pro Indiviso*, and one of them would have his Part in Severalty, and the other refuseth to make Partition by Deed, there lies the Writ *de Partitione facienda* against him who refuses, directed to the Sheriff; and he must be present when the Partition is made, and if it is objected before the Return of the Writ, that he was not present, it may be examined by the Court; but after the Writ is returned and filed, 'tis too late. *Cro. Eliz.* 9. A Writ of Partition was taken forth, and the Sheriff made Partition, but was not upon the Land; and on Motion that the Return might not be filed, but that a new Writ might be awarded, because the Sheriff was not on the Land, the Court staid the Filing, and on examining the Sheriff, ordered a new Writ. *Cro. Car.* 9, 10. On Writ of Partition to the Sheriff to make Partition of Lands, Part of the Lands were allotted to one, and the Jury would not assist the Sheriff to make Partition of the other Part; which appearing upon the Return of the Writ, the Court was moved for an Attachment against the Jury, and a new Writ to the Sheriff. *Godb.* 265. Partition was brought by Tenant in Fee of one Moiety, against Tenant for Life of the other Moiety, on the Stat. 32 H. 8. c. 32. And though it has been resolv'd, if Partition be made between one that

that hath an Estate of Inheritance, and another who hath a particular Estate for Life; that the Writ ought to be framed upon the Statute, and to be made special, setting forth the particular Estate: Yet it was held to be good where the Writ was general. *Goldsb. 84. 2 Lutw. 1015.* A Partition may be made of any Estate of Freehold, or for Term of Years, &c. of Manors, Lands, Tenements and Hereditaments whereof the Partition is demanded; and if after Process of *Pone* return'd upon a *Writ of Partition*, and Affidavit of Notice given of the Writ to the Tenant to the Action, and a Copy left with the Tenant in Possession at least forty Days before the Return of the said *Pone*, &c. there be no Appearance entered in 15 Days; the Demandant having entered his Declaration, the Court may give Judgment by Default, and award a Writ to make Partition, whereby the Demandant's Part or Purpart will be set out severally; which Writ being executed, after eight Day's Notice, and return'd, and thereupon final Judgment entered, shall conclude all Persons, &c. But the Court may suspend, or set aside the Judgment, if the Party concerned move the Court in a Year, and shew good Matter in Bar. *Stat. 8 & 9 W. 3. c. 31.* And by this Statute, if the High Sheriff by Reason of Distance, &c. cannot be present at the Execution of any Judgment in Partition, then the Under-Sheriff in the Presence of two Justices of Peace of the County, shall proceed to the Execution of the Writ, by Inquisition, and the High Sheriff is to make the Return, &c. *Ibid.* When the Partition is made and return'd, the Persons who were Tenants of the Lands, or any Part thereof, before divided, shall continue Tenants of the Lands they held, to the respective Owners, under such Conditions and Rents as before: And no Plea in Abatement shall be admitted or received in any Suit or Partition; nor shall the same be abated by the Death of any Tenant, &c. *Ibid.* In a Writ of Partition the Defendant pleaded, that he himself formerly brought Writ of Partition against the now Plaintiff, and had Judgment to have Partition, and this was held a good Plea; but it was a Question, whether it should be pleaded in Bar or Abatement, or by Way of Estoppel. *Dyer 92.* No Damages can be recovered on a Writ of Partition; though the Writ and Declaration conclude *ad Damnum.* *Hestl. 35. Noy 143. 2 Nels. Abr. 1237.* Where Judgment for Debt is had against one *Parcener*, the Lands, &c. of both may be taken in Execution, and the Moiety undivided is to be sold, and then the Vendee will be Tenant in Common with the other *Coparcener*: If the Sheriff seise only a Moiety and sell it, the other *Parcener* will have a Right to a Moiety of that Moiety. *1 Salk. 392.* All Partitions ought to be according to the Quality and true Value of the Lands, and be equal in Value: But if Partition be made by *Parceners* of full Age, and unmarried, and *Sane Memoria*, it binds them for ever, although the Value be unequal, if it be made of Lands in Fee; and if it be of Lands intailed, it shall bind the Parties themselves for their Lives, but not their Issues, unless it be equal: If it be unequal, the Issue of her that hath the lesser Part, may after her Decease disagree, and enter and occupy in Common with the Aunt: Also if any be covert, it shall bind the Husband, but not the Wife or her Heirs; or if any be within Age, it shall not bind the Infant, but she may at her full Age disagree,

&c. *1 Inst. 166, 170. 2 Lill. Abr. 283.* It hath been adjudg'd, that notwithstanding a Partition is unequal, if it is by Writ, it cannot be avoided; but if it be by Deed, it may be avoided by Entry. *1 Inst. 171.* If the Estate of a *Parcener* be in Part evicted, that shall defeat the whole Partition; Partition implying a Warranty and Condition in Law to enter upon the whole on Eviction, as in Case of Exchange of Lands. *1 Inst. 173. 1 Rep. 87.* And if after Partition, one of the Parts is recovered from a *Parcener* by lawful Title, she shall compel the others to make a new Partition. *Cro. Eliz. 902.* Partitions made by Deed are of the following Form:

Form of a Deed of Partition of Lands among *Parceners.*

THIS Indenture, tripartite, made, &c. Between A. B. of, &c. of the first Part, C. B. of, &c. of the second Part, and E. B. of, &c. of the third Part. Whereas T. B. of, &c. Father of the said A. B. and C. B. &c. being seised in his Demesne as of Fee, of and in all those Messuages or Tenements, &c. situate lying and being in, &c. is dead, without any Heir Male of his Body lawfully begotten, and not making any Disposition of the said Premises, whereby all and singular the said Messuages, &c. are descended and come unto the said A. B. C. B. and E. B. Now this Indenture witnesseth, That the said A. B. C. B. and E. B. Have agreed to make Partition, and by these Presents do make a full, perfect and absolute Partition of the said Messuages, &c. to and amongst them the said A. B. C. B. and E. B. in three Parts, in Manner following, (that is to say) That the said A. B. her Heirs and Assigns, shall have, hold and enjoy, To the only proper Use and behoof of the said A. B. her Heirs and Assigns for ever, All that Messuage, &c. for the full Part, Share and Proportion of her the said A. B. of and in all and every the Messuages, Tenements, Lands and Premises above-mentioned, descended to them the said A. B. C. B. and E. B. as aforesaid; and that the said C. B. her Heirs and Assigns, shall have, hold and enjoy, To the only proper Use and behoof of the said C. B. her Heirs and Assigns for ever, All that other Messuage, &c. for the full Part and Proportion of her the said C. B. of, and in, &c. And that the said E. B. her Heirs and Assigns, shall have, hold and enjoy, &c. for the full Part and Share of her the said E. B. &c. And the said C. B. and E. B. do by these Presents grant, release, and confirm to the said A. B. and her Heirs, the said Messuage, &c. above-mentioned, and all the Estate, Right, Title, and Interest, which they the said C. B. and E. B. or either of them, have or hath, or may or ought to have, of, in, and to the said Messuage, &c. To have and to hold the said Messuage and Premises, with the Appurtenances to the said A. B. her Heirs and Assigns, to the only Use and behoof of the said A. B. her Heirs and Assigns, in Severalty for ever. And the said A. B. and E. B. do by these Presents grant, release, and confirm to the said C. B. and her Heirs, the said other Messuage, &c. And all the Estate, &c. To have and to hold the said, &c. to the said C. B. her Heirs and Assigns, to the only Use, &c. of the said C. B. her Heirs and Assigns in Severalty for ever. And the said A. B. and C. B. do by these Presents grant, release and confirm to the said E. B. and her Heirs, the said, &c. To have and to hold, &c. to the said E. B. her Heirs and Assigns in Severalty for ever. And the said C. B. and E. B. have severally and apart, and not jointly, and for their several Heirs, Executors, Administrators and Assigns, do severally

severally and apart, and not jointly, Covenant and Grant to, and with the said A. B. her Heirs and Assigns, that she the said A. B. her Heirs and Assigns, shall and may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage, &c. before allotted and granted for the Part of the said A. B. free and discharged of and from all other Estates, Rights, Titles, Interests, Charges, and Incumbrances whatsoever, had, made or suffered, or hereafter to be had, made, or suffered, of, or by the said C. B. and E. B. or either of them, their or either of their Heirs or Assigns; and that without any Let, Hindrance, Interruption or Denial of them the said C. B. and E. B. or either of them, their or either of their Heirs or Assigns, or of any other Person or Persons lawfully claiming by, from, or under them or any of them. And the said A. B. and E. B. severally and apart, &c. Covenant and grant, to and with the said C. B. &c. (The like Covenant from A. B. and E. B. that C. B. shall enjoy her Part; and from A. B. and C. B. that E. B. shall hold her Proportion; and likewise a Covenant may be added for further Assurance). In Witness, &c.

One *Parcener* may justify the Detaining of the Deeds concerning the Land in *Coparcenary* against the other; as they belong to one as well as the other. 2 *Roll. Abr.* 31. *Parcenary* is a Holding of Lands jointly by *Coparceners*, when the common Inheritance is not divided. *Litt.* 56.

Parco fracto, Is a Writ that lies against him who violently breaks a Pound, and takes out Beasts from thence, which for some Trespasses done, &c. were lawfully impounded. *Reg. Orig.* 166. *F. N. B.* 100. The Word *Parcus* was frequently us'd for a Pound to confine trespassing or straying Cattle; whence *Imparcare* to impound, *Imparcatio* Pounding, and *Imparcamentum*, Right of Pounding, &c.

Pardon, (Fr. *Pardonatio*) Is a Work of Mercy, whereby the King, either before Conviction or Attainder, or afterwards, forgiveth any Crime, Offence, Punishment, Execution, &c. And the King may extend his Mercy upon what Terms he pleases; and annex Conditions to his *Pardon*, on the Performance whereof the Validity of the *Pardon* will depend, as upon Condition of Transportation, &c. 3 *Inst.* 233. 1 *Inst.* 274. *Pardons* of Crimes and Transgressions against the King and the Laws, are *Ex gratia Regis*, or of *Course*; the First is that which the King, in some special Regard of the Person or other Circumstance, gives by his absolute Prerogative or Power; yet where some Things are required for its Allowance by the Common Law and by Statute; and the other is that which he granteth, as Law and Equity perswade for a light Offence, as where a Person is convicted of Homicide casual and excusable. *S. P. C.* 47. *H. P. C.* 38. *West's Symb. par.* 2. sect. 46. And *Pardons* of Grace are either *General*, by Act of Parliament or Charter of the King; or *Particular*, at the Coronation or any other Time, when any Offence is committed, &c. 2 *Inst.* 200. 3 *Inst.* 233. *H. P. C.* 250. A general *Pardon* doth discharge, not only the Punishment which was to have been inflicted upon the Person that did commit the Offence *pardon'd*; but also the Guilt of the Offence it self: It *pardons Culpa* so clearly, that in the Eye of the Law the Offender is as innocent as if he never had committed the Crime. 2 *Lill. Abr.* 270. And the *Pardon* of a Treason or Felony, even after a Conviction or Attainder, so far clears the Party from

the Infamy, that he may have an Action for a Scandal in calling him Traitor or Felon, after the Time of the *Pardon*; and he may be a good Witness notwithstanding the Attainder or Conviction, because the *Pardon* makes him a new Man, and gives him a new Capacity and Credit. 2 *Hawk. P. C.* 395. Also a Conviction of Felony, and Burning in the Hand, has in some Cases the Effect of a *Pardon*; for by this the Party is cleared of his Offence, and becomes a lawful Witness: But it seems to be the better Opinion, that the *Pardon* of a Conviction of Perjury doth not so restore the Party to his Credit, as to make him a good Witness. *Ibid.* A Conviction of Barrettry renders a Man infamous, and incapable of being a Witness; but a general *Pardon* will restore him: And according to *Holt Ch. Just.* The Difference between the King's Special *Pardon* and a General *Pardon* is this; wherever the Disability is Part of the Judgment by Act of Parliament, as in a Conviction of Perjury upon the Statute, there the King's Special *Pardon* cannot remove that Disability, but a General *Pardon* may; but where the Disability is by the Common Law, and only consequential to the Conviction, and no Part of the Judgment, in that Case the King's *Pardon* will take it away. 2 *Salk.* 513. 3 *Salk.* 264. The King may by *Pardon* restore a Person attainted of Treason or Felony, to his Lands, &c. But full Restitution of the whole Blood cannot be made by him, which must be by Parliament. The King's *Pardon* restores the Blood as to all Issue begotten afterwards: If a Man be attainted of Treason, &c. and the King pardons him, after which he purchases Lands and marries, and hath Issue and dies, this Issue shall inherit; for by his *Pardon* he is well restored, and is thereby enabled to purchase, &c. *Dalif.* 14. The Words *Pardonavit*, *Remisit* & *Relaxavit*, in a Charter of *Pardon* granted to one for Felony, doth not restore unto him what he hath forfeited to the King; there must be the Word *Restituit* in the *Pardon*, to restore him to his Goods, &c. 2 *Lill. Abr.* 270. No *Pardon* by the King, without express Words of Restitution, shall devest the King or a Subject of an Interest in Lands or Goods, vested in them by an Attainder or Conviction precedent; but a *Pardon* prior to a Conviction will prevent any Forfeiture of Lands or Goods. 5 *Rep.* 10. 2 *Hawk. P. C.* 306. The Power of *Pardoning* all Offences is inseparably incident to the Crown by the Common Law: But the King's Power of *Pardoning* is restrained by Statute in Cases of Murder; and where an Appeal may be brought at the Suit of the Subject, by the Laws of *England* a Murderer could never be *pardoned*. *Show.* 284. 2 *Inst.* 316. 5 *Rep.* 50. And in Appeals of Death, of Rape, Robbery, &c. the King cannot *pardon*. Though if on Appeal, the Offender is found guilty of Manslaughter, the King may *pardon* the Burning in the Hand. 3 *Inst.* 237. The King may *pardon* Crimes, Punishments and Forfeitures, and in Forgery the corporal Punishment; but the Plaintiff cannot release it. 3 *Inst.* 171. An Offence *Malum in se* cannot be *pardoned* before committed. *Finch* 234. A *Pardon* of Murder, &c. shall not be allowed without Writ of Allowance directed to the Justices. *Raym.* 13. In Case of Treason, a *Pardon* shall be admitted without Writ of Allowance; though not of Felony. *Cro. Eliz.* 814. And by our Statutes, no Charter of *Pardon* is to be granted for Murder, only where one killeth another

in his own Defence, or by Misadventure. 2 *Ed. 3. c. 2.* Also no *Pardon* of the Death of a Man, or other Felony, is to be granted but where the King may do it consistent with his Coronation-Oath. 14 *Ed. 3. c. 15.* The Offence is to be particularly specified in *Pardons*; no *Pardon* of Treason or Felony shall pass, without Warrant of the Privy Seal; and if the Offence is found wilful Murder, the *Pardon* shall not be allowed. 13 *R. 2. c. 1.* and 16 *R. 2. c. 9.* And Persons *pardon'd* of Felony, are to enter into a Recognizance with two sufficient Sureties for Good Behaviour for seven Years, &c. 5 & 6 *W. & M. c. 13.* A Man was indicted for Murder and Robbery, which he confessed, and produced his *Pardon*, which was of all Murders, Robberies, &c. *Non Obstante* the Stat. 13 *R. 2.* But the Court would not allow it; for after the said Statute a general *Non Obstante* would not do, without a Recital of the Effect of the Indictment, that it may appear the King was apprised of the Fact. *Sid. 366. 2 Nelf. Abr. 1233.* One *Parsons* being attainted for the Murder of *Mr. Wade*, pleaded the King's *Pardon*, which was for the Murder by express Words, without any *Non Obstante*, that being taken away by the Statute 1 *W. & M.* And he produced the Writ of Allowance, certifying that he had found Sureties for the Peace, &c. On its being objected against the Allowance of the *Pardon*, that the Crime could not be *pardon'd* by Law: It was held, that there was as good Reason for the King to *pardon* an Indictment for Murder, which is his Suit; as for the Party to discharge an Appeal for the same Crime, which is the Suit of the Subject; and that the King was by his Coronation-Oath, to shew Mercy as well as do Justice: That the Statute 2 *Ed. 3.* did not prohibit the *Pardoning* Murder, it only meant that the King should be fully inform'd before he *pardon'd* any Felony; for before the Statute of *Gloucester, c. 9.* it was usual for Criminals of this Nature to apply to the Lord Chancellor, and by false Suggestions procure *Pardons* with general Words in them; and this was the Occasion of these restrictive Statutes, that Application should be made to the King in Person, to the Intent he himself might be apprised of the Matter: 'Tis true, by the Statute 13 *R. 2.* great Difficulties were put upon Suitors for a *Pardon* of Murder; they are to incur a Penalty, &c. but by the Statute 16 *R. 2.* 'tis said this was repealed, which shews that there is a Necessity that the King should have Power to *pardon*; and the *Pardon* was allowed: *Hill. 3 W. & M. B. R. 2 Salk. 499. 4 Mod. 63.* The King *pardons* no Treasons by Implications; but by Special Words of *Pardon.* *Hutt. 21.* In Sir *Walter Raleigh's* Case it was adjudg'd, That the King's Grant of a military Command to a Person attainted of High Treason, and in his Commission called his True and Loyal Subject, and having thereby judicial Power given him over the Lives of others, did not amount to a *Pardon* of Treason, because every *Pardon* of Treason requires an express Mention of it; and if the Offence had been but Felony, it could not have been *pardon'd* after the Attainder, without express Mention made both of the Felony and the Attainder. 2 *Hawk. P. C. 388.* A Man commits Felony, and is attainted thereof, and abjured for the same; the King *pardoneth* him the Felony, without mentioning the Attainder or Abjuration, the *Pardon* is void. 3 *Inst. 238.* *Pardon* of all Felonies doth not extend to Piracy; for it

cannot be extended beyond the Words of it: And a *Pardon* of all Felonies is no Bar to Execution, where a Felon is attainted; nor will a *Pardon* of all Attainders, or Executions, *pardon* the Felony. 1 *Inst. 391. 3 Inst. 15, 233. 2 Hawk. 384.* But a *Pardon* of all Misdemeanors, Trespasses and Offences, &c. will *pardon* any Crime which is not capital; here the Word Offences is very extensive: And a Person convicted of a *Premunire*, obtained a *Pardon* in these Words, *Pardonamus omnes & singulas Transgressionis Offensiones & Contemptus*; and it was adjudged, that the *Premunire* was *pardon'd.* 1 *Mod. 102. 2 Bulstr. 299.* If a General Act of *Pardon* be of all Felonies, Offences, Injuries, Misdemeanors, and other Things done before such a Day, and a Person has a Wound given before the Day, though he dies not till after the Day mentioned in the *Pardon*; as the Stroke which was the Cause of the Death is *pardon'd*, all the Effects of it are *pardon'd.* *Read. on Stat. Vol. 4. pag. 327.* And all Contempts being *pardon'd*, Amerciaments, &c. depending upon them, are of Consequence *pardon'd.* 5 *Rep. 49.* A General *Pardon* of all Felonies, &c. except Murder, will *pardon* a *Felo de se.* 1 *Lev. 8.* In some Cases, the Felony of one Man may be so far dependant upon that of another, that a *Pardon* of it may enure to his Benefit; as where the Principal pleaded his *Pardon*, and was allowed it at Common Law, before Attainder, this extended to the Accessary; and where he pleads, and is allow'd it, at this Day, before his Conviction, 'tis said the Accessary may take the Benefit of it. 2 *Hawk. P. C. 387.* If a Man be bound to the King, as Surety for another, for the Payment of a Fine, or other Debt due to the Crown; the *Pardon* of the Principal is a Discharge of the Surety. *Ibid.* A *Pardon* may be of all Suits in the Spiritual Court *pro salute Anima*, as well before as after a Suit commenced: Not where the Party hath a Property in the Thing, as for Tithes, Legacies, &c. which the King cannot *pardon.* 5 *Rep. 51.* Although the Suit in the Spiritual Court be for the King, which he may *pardon*; when Sentence is given in a Cause of Defamation, &c. and Costs are taxed for the Plaintiff, he hath thereby a particular Interest in them by the Sentence, which the King cannot *pardon*: Though if the *Pardon* had been before Sentence it had discharged all. *Ibid.* Notwithstanding the King's *Pardon* to a Simonist, coming into a Church contrary to the Stat. 31 *Ed. 6.* or to an Officer coming into his Office by corrupt Contract contrary to 5 & 6 *Ed. 6.* may save such Clerk or Officer, from any criminal Prosecution thereupon; yet it shall not inable the Clerk to hold the Church, nor the Officer to retain the Office, because they are absolutely disabled by Statute. 2 *Hawk. 395.* But where one who was Judge of the Prerogative Court, was sentenced for Bribery, &c. and fined and imprisoned, and another obtained his Office; he afterwards brought an Assize for the said Office, and produced the King's *Pardon* after Sentence, wherein all the Special Matter was recited, and all Penalties and Punishments by Reason thereof, and all Disabilities were *pardon'd*: Adjudged, that the *Pardon* had taken away the Force of the Sentence, and that he might proceed in the Assize. *Cro. Car. 40.* A General *Pardon* by Parliament shall set aside a Judgment, and relate to the first Day of the Parliament. *Latch. 22. 2 Nelf. Abr. 1227.* And a General *Pardon* doth *Pardon* Publick Offences, done

done against the Commonwealth, but not private Injuries to particular Persons: It shall be taken Beneficially for the Subject, and most strongly against the King. 5 Rep. 49. 2 Lill. Abr. 271. A general Pardon by Act of Parliament 'tis said ought to be taken Notice of by the Court; but if it hath Exceptions of Offences or Persons, the Court cannot take Notice of it, nor can the Party have Benefit thereof unless he pleads it, and shews that he is none of the Persons, &c. excepted. 3 Inst. 233. 1 Lev. 25. He that will take the Benefit of a general Pardon, is to plead the Statute by which it is granted, that the Court may judge whether his Offence is pardoned or not, which they cannot do if the Pardon be not pleaded, and the Party do not shew that he is comprised in the Pardon. 2 Lill. Abr. 268. Sometimes Advantage is given to Offenders by the Act itself without pleading: And it hath been held; where a Statute Pardon contains Exceptions in the Body of the Act, he who pleads such Statute, to intitle himself to the Benefit thereof, must aver himself, not to be a Person excepted; but when the Exception follows in a distant Clause, by Way of Proviso, he needs not. 1 Vent. 134. 3 Salk. 266. A Charter of Pardon of the King under the Great Seal, cannot be allowed unless it be pleaded; and he who pleads such a Pardon, ought to produce it *sub pede Sigilli*: And it will be Error to allow a Man the Benefit of it, if it be not pleaded. H. P. C. 250. If there be Variance between the Record on which a Man is convicted or attainted, and his Charter of Pardon; if there be no Repugnancy that the same Person or Thing are meant in both, it may be supplied by proper Averments; as that he is the Person intended in the Indictment, and the Pardon, &c. And there are some Instances in the old Books, where upon such Variance the Court took an Enquiry of Office, whether the same Person were meant in both Records: Also if such variant Pardon be pleaded without any Averment, the Court may give a farther Day either for the Party to perfect his Plea, or to purchase a better Pardon. 2 Hawk. 398. Pardon for Treason cannot be pleaded, until the Prisoner is charged with Indictment for the Offence committed: But where a Man is indicted for Treason a Pardon is good though it doth not mention the Indictment; though it is not so where the Party is indicted for Murder, &c. 4 Rep. 43. 1 Vent. 217. The Acceptance of a Pardon is an Argument of Guilt; and he that pleads it, confesseth the Fact: But a Person may waive it, if it be not a general Pardon by Parliament, which cannot be waived. 4 Inst. 235. If a Peer hath a Pardon, he must plead it before the Judges of the Court where he is indicted. Wood's Inst. 637. And if one have a Charter of Pardon of Felony, the Court will allow it upon the Prayer of the Party, and on his producing it at the Bar; for if he Pray not the Allowance of it, the Court cannot tell whether he accepts of the Benefit thereof; and he is to do it upon his Knees, to express his Thankfulness for the Mercy afforded him by the Pardon. 2 Lill. Abr. 271. Gloves are due to the Judges on Allowance of a Pardon. Pult. 88.

General Acts of Pardon. In the 5th and 13th Years of the Reign of Queen Elizabeth, and also 21 Jac. 1. General Pardons were granted, which were very extensive and beneficial to the Subject. By Stat. 12 Car. 2. a General Pardon was granted to Persons concerned in the Grand Re-

bellion against King Charles 1. except those who sat in the traitorous Assembly which proceeded against the King's Life; and the two Persons that appeared disguised on the Scaffold at the King's Murder, &c. The 25 Car. 2. c. 5. likewise granted a General Pardon. By 2 W. & M. Sess. 1. c. 10. A General Pardon was granted on Account of the Revolution and Abdication of K. James 2. Treasons against the King and Queen's Persons, Murders, &c. excepted; and there was an Exception of the Marquess of Powys, the Lord Bishop of Durham, the Lord Jefferies, &c. The Stat. 6 & 7 W. 3. c. 20. was made for a general and free Pardon. And by 7 Ann. c. 23. was granted the Queen's most Gracious, General and Free Pardon; Treason, Murder, &c. and Persons employed in the Service of the Pretender excepted. By the 3 Geo. c. 19. a General and Free Pardon was granted of Crimes and Offences; and out of this Act were excepted Murders, Piracies, Burglaries, Rapes, &c. and all such Persons as were in the Service of the Pretender, and levied War against his Majesty in the late Rebellion; Robert Earl of Oxford, Simon Lord Harcourt, Matthew Prior, Thomas Harley, and Arthur Moor, Esqrs. and such who were impeached by Parliament. And the 7 Geo. c. 29. granted a most gracious, general and free Pardon, without the Exception of the Persons above named, so that it extended to those Gentlemen; and the late Directors of the South-Sea Company for their Conduct in the Year 1720. were excepted out of this Statute.

Pardons by Statute on Discovery of Accomplices in Crimes, are granted in the following Cases. For the Discovery of Highwaymen, &c. 4 & 5 W. & M. 11 W. 3. for discovering Counterfeiters of the Coin. 6 & 7 W. 3. for the Discovery of Persons guilty of Burglary, &c. 5 Ann. for discovering of Offenders in forcibly hindering or wounding any Officer of the Customs in the Execution of his Office. 6 Geo. and for Discovery of Smuglers of the Customs, &c. 7 Geo.

Pardoners, Were Persons that carried about the Pope's Indulgences, and sold them to any that would buy them. Stat. 22 H. 8.

Parent, (Parens) A Father or Mother; but generally applied to the Father. Parents have Power over their Children by the Law of Nature, and the Divine Law; and by those Laws they must educate, maintain and defend their Children. Wood's Inst. 63. The Parent or Father hath an Interest in the Profits of the Children's Labour while they are under Age, if they live with and are maintained by him: But the Father hath no Interest in the Estate Real or Personal of a Child, otherwise than as his Guardian. Ibid. The eldest Son is Heir to his Father's Estate; and if there are no Sons but Daughters, the Daughters shall be Heirs, &c. And there being a reciprocal Interest in each other's Estate, Parents and Children may maintain the Suits of each other, and justify the Defence of each others Persons. 2 Inst. 564.

Parentale, or de Parentela se tollere, Signified to renounce his Kindred or Family, which was done in open Court before the Judge, and in the Presence of twelve Men, who made Oath that they believed it was done for just Cause: We read of it in the Laws of K. Hen. 1. c. 38. — *Si quis propter Faidam vel causam aliquam de Parentela se velit tollere & eam foris Furaverit, & de societate & hereditate & tota illius ratione se seperet, si postea ali-*

quis a Parentibus abjuratis moriatur, vel occidatur, nihil ad eum de hereditate vel compositione pertineat, &c.

Parish, (*Parochia*) Did formerly signify what we now call the *Diocese* of a Bishop: But at this Day it is the Circuit of Ground in which the People that belong to one Church do inhabit, and the particular Charge of the Secular Priest. This Realm was first divided into Parishes by *Honorius, Archbishop of Canterbury*, in the Year of our Lord 636. according to *Camden*, who reckons 9284 Parishes in England, but other Authors differ in the Number. *Camd. Britan. pag. 160.* It is said that Parishes were ordained by the *Lateran Council*; before which every Man being obliged to pay Tithes to a Priest, had his Liberty to pay them to what Priest he pleased; but then came the Council which made the Parishes, and decreed, that every Person should pay his Tithes to his Parish Priest. *Hob. 296. 2 Lill. Abr. 271.* The Lord Chief Justice *Holt* held, that Parishes were instituted for the Ease and Benefit of the People, and not of the Parson; and the Reason why Parishioners must come to their Parish-Churches, is, because he having charged himself with the Cure of their Souls, that he may be enabled to take Care of that Charge. *3 Salk. 88, 89.* A Parish may comprise many Villages; but generally it shall not be accounted to contain more than one except the contrary be shewed, because most Parishes have but one Village within them. *Hill. 23 Car. 1. B. R.* And it shall not be intended that there is more than one Parish in a City, if it be not made to appear; for some Cities have but one Parish. *Ibid.* Where there are several Villages in a Parish, they may have Peace-Officers, and Overseers of the Poor for every particular Village: And an ancient Village in a Parish, that Time out of Mind hath had a Church of its own, and Churchwardens and Parochial Rights, being reputed a Parish, is a Parish within the Stat. 43 Eliz. c. 2. to provide for its own Poor, and shall not pay to the Poor of the Parish wherein it lies. *Cro. Car. 92, 384, 396.* But to make a Village a reputed Parish within 43 Eliz. it must have a Parochial Chapel, Chapel-Wardens and Sacraments at the Time that Statute was made. *2 Salk. 501.* Parishes in Reputation are within that Statute, especially where it has been the constant Usage of such Parishes to chuse their own Overseers, who may distrain for a Poor Tax, &c. *2 Roll. Rep. 160. 2 Nelf. Abr. 1235.* If a Highway lie in a Parish, the Parish is obliged to repair the same; and it is the most convenient and equal for the Parishioners in every Parish, to repair the Ways within it, if they are able to do it. *2 Lill. 272.* And if any Village, Liberty, &c. that uses to repair their own Highways, shall, after the usual Rate levied and employed, find the Ways not sufficiently repaired; the whole Parish may be ordered by Justices of Peace in their Sessions to contribute to the Repairing thereof. Stat. 7 & 8 W. 3. c. 29. Money given by Will to a Parish, shall be to the Poor of the Parish. *Chanc. Rep. 134.*

Parish Clerk. In every Parish the Parson, Vicar, &c. hath a Parish Clerk under him, which is the lowest Officer of the Church. These were formerly Clerks in Orders, and their Business at first was to officiate at the Altar, for which they had a competent Maintenance by Offerings; but now they are Laymen, and have certain Fees with the Parson, on Christnings, Marriages, Burials, &c. besides Wages for their Maintenance.

Count. Parf. Compan. 83, 84. They are to be twenty Years of Age at least, and known to be of honest Conversation, sufficient for their Reading, Singing, &c. And their Business consists chiefly in Responses to the Minister, Reading of Lessons, Singing of Psalms, &c. And in the large Parishes of London, they have some of them Deputies under them for the Dispatch of the Business of their Places, which are more gainful than common Rectories. *Ibid.* The Law looks upon them as Officers for Life: And they are chosen by the Minister of the Parish, unless there is a Custom for the Parishioners or Churchwardens to chuse them; in which Case the Canon cannot abrogate such Custom; and when chosen it is to be signified, and they are to be sworn into their Office by the Archdeacon. *Cro. Car. 589. Can. 91.*

Parishioner, (*Parochianus*) Is an Inhabitant of or belonging to any Parish, lawfully settled therein. See *Poor*.

Parish Offices, Divers Persons are exempted from serving in Parish Offices on Account of their Professions, viz. Physicians and Surgeons, Apothecaries, Dissenting Teachers, Registered Seamen, and Persons having prosecuted any Felon to Conviction, &c. Stat. 32 H. 8. 1 W. & M. 7 & 8 & 10 & 11 W. 3. 1 & 10 Ann. &c.

Park, (*Lat. Parcus, Fr. Parque, i. e. locus inclosus*) Is a large Quantity of Ground inclosed and privileged for wild Beasts of Chace, by the King's Grant or Prescription. 1 *Inst. 233.* *Manwood* defines a Park to be a Place of Privilege for Beasts of Venery, and other wild Beasts of the Forest and of the Chace, *tam Sylvestres, quam Campestres*; and differs from a Chace or Warren, in that it must be inclosed, and may not lie open; if it do 'tis good Cause of Seizure into the King's Hands as a Thing forfeited; as a Free Chace is if it be not inclosed; besides, the Owner cannot have an Action against such as hunt in his Park, if it lies open. *Man. Forest Laws. Crompt. Jurisd. 148.* No Man can now erect a Park, without a Licence under the Broad Seal; for the Common Law does not encourage Matters of Pleasure which bring no Profit to the Commonwealth. *Wood's Inst. 207.* But there may be a Park in Reputation, erected without lawful Warrant; and the Owner of such a Park may bring his Action against Persons killing his Deer. *Ibid.* To a Park three Things are required, 1. A Grant thereof. 2. Inclosures by Pale, Wall or Hedge. 3. Beasts of a Park, such as the Buck, Doe, &c. And where all the Deer are destroyed, it shall no more be accounted a Park; for a Park consists of Vert, Venison and Inclosure, and if it be determined in any of them, it is a total Disparking. *Cro. Car. 59, 60.* And the King may by Letters Patent dissolve his Park. *2 Lill. Abr. 273.* Parks as well as Chaces are subject to the Common Law, and are not to be governed by the Forest Laws. 4 *Inst. 314.* Pulling down Park Walls or Pales, the Offenders shall be liable to the same Penalty as for killing Deer, &c. by Statute; and the Statutes against Deer-stealing, are the 13 Car. 2. c. 10. 3 & 4 W. & M. c. 10. 5 Geo. c. 15, &c. See *Deer-stealers*.

Park-note, Signifies to be quit of inclosing a Park, or any Part thereof. 4 *Inst. 308.*

Parle Hill, The learned *Spelman* gives us this Description of it; [it is] (says he) *Collis vallo plerumque munitus, in loco campestri, ne insidiis exponatur, ubi convenire olim solebant Centurie aut Vicinie, utcola ad lites inter se tractandas & terminandas.* Scotis

tis reor Grith-hail q. *Mons pacificationis, cui Asyli privilegia concedebantur; & in Hibernia frequentes vidimus, the Parle and Parling Hills.* Spelm. Gloss.

Parliament, (*Parliamentum*, from the Fr. *Parler*, i. e. *loqui*, & *Ment*, *Mens*, to speak the Mind, sometimes called *Commune Concilium Regni Angliæ*, *Magnum Concilium*, &c.) Is the great Assembly of the States of the Kingdom, summoned together by the King's Authority, to treat of the weighty Affairs of the Realm. Some Authors say, that the ancient Britains had no such Assemblies, but that the Saxons had, which may be collected from the Laws of K. Ina, who lived about the Year 712. And William the 1st, called the Conqueror, having divided this Land among his Followers, so that every one of them should hold their Lands of him *in Capite*, the Chief of these were called *Barons*; who 'tis said thrice every Year assembled at the King's Court, viz. at Christmas, Easter and Whitsuntide, among whom the King was wont to come in his Royal Robes, to consult about the Publick Affairs of the Kingdom. This King called several *Parliaments*, wherein it appears, that the Freemen or Commons of England were also there, and had a Share in making of Laws: He by settling the Court of *Parliament*, so established his Throne, that neither Britain, Dane, nor Saxon, could disturb his Tranquility; the making of his Laws were by Act of *Parliament*, and the Accord between Stephen and him was made by *Parliament*; though all the Times since have not kept the same Form of assembling the States. Dodderidge's *Antiq. Parliament*. And according to the same Author, there was a *Parliament* before there were any Barons, and if the Commons do not appear, there can be no *Parliament*; for the Knights, Citizens and Burgeses, represent the whole Commons of England, but the Peers only are present for themselves, and none others. *Ibid.* Sir Edward Coke affirms, that divers *Parliaments* were held before the Conquest; and produces an Instance of one held in the Reign of King Alfred: He likewise gives us a Conclusion of a *Parliament* holden by King Athelstan, where Mention is made, that all Things were enacted in the great Synod or Council at Grately, whereat was Archbishop Wolfhelme, with all the Noblemen and Wisemen, which that King called together. 1 *Inst.* 110. It is apparent (says Mr. Pryn) from all the Precedents before the Time of the Conquest, that our pristine Synods and Councils were nothing else but *Parliaments*; that our Kings, Nobles, Senators, Aldermen, Wisemen, Knights and Commons, were present and voting in them as Members and Judges: And Sir Henry Spelman, Camden, and others, prove the Commons to be a Part of the *Parliament* in the Time of the Saxons, but not by that Name, or elected as consisting of Knights, Citizens and Burgeses. Pryn's *Sovereign Pow. Parliam.* As to the Original of the present House of Commons, our Authors of Antiquity vary very much; many are of Opinion that the Commons began not to be admitted as Part of the *Parliament*, upon the Footing they are now, until the 49 H. 3. And the Reason for it is, because the first Writ of Summons of any Knights, Citizens and Burgeses, is of no ancients Date than that Time. But the great Charter in the 17th Year of King John, (about which Time the Distinction of *Barones Majores* and *Minores*, is supposed to begin) was made *per Regem, Barones & Liberos Homines totius Regni*: Mr. Selden says, that the Borough of

St. Albans claimed by Prescription in the *Parliament* 8 Edw. 2. to send two Burgeses to all *Parliaments*, as in the Reigns of Edw. 1. and his Progenitors, which must be the Time of King John; and so before the Reign of King H. 3. And in the Reign of H. 5. it was declared and admitted, that the Commons of the Land were ever a Part of the *Parliament*. Selden's *Tit. Hon.* 709. Polydore Virgil, Hollinshead, Speed, and others mention, that the Commons were first summoned at a *Parliament* held at Salisbury. 16 Hen. 1. Sir Walter Raleigh, in his Treatise of the *Prerogative of Parliaments*, thinks it was Anno 18 H. 1. And Dr. Heylin finds another Beginning for them, viz. in the Reign of K. Hen. 2. Thus much for the Original of our *Parliament*: Which is the highest and most honourable, and absolute Court of Justice in England; consisting of the King, the Lords of *Parliament*, and the Commons; and again the Lords are divided into two Sorts, viz. Spiritual and Temporal; and the Commons divided into three Parts, i. e. into Knights of Shires or Counties, Citizens out of Cities, and Burgeses from Boroughs; the Words of the Writ to the Sheriff for the Election, being *Duos Milites gladiis cinctos magis idoneos & discretos comitatus tui, & de qualibet civitate comitatus tui duos Cives, & de quolibet Burgo duos Burgeses, de Discretioribus & magis sufficientibus, &c.* 1 *Inst.* 109. The Jurisdiction of this Court is transcendent, that it makes, enlarges, abrogates, repeals and revives Laws and Statutes, concerning Matters Ecclesiastical, Common, Civil, Criminal, Martial, Maritime, &c. And for making of Laws and in proceeding by Bill, this supreme Court is not confined either for Causes or Persons within any Bounds; nor is it tied down to any certain Rules or Forms of Law, in Proceedings and Determinations: The Court of *Parliament* hath Power to examine into the Corruption of Judges and Magistrates, and illegal Proceedings of other Courts; to redress Errors, and determine on Petitions and Appeals, &c. and from this High Court there lies no Appeal. *Ibid.* Affairs of *Parliament* are to be determined by the *Parliament*; though the *Parliament* err, it is not reversible in any other Court: And not only what is done in the House of Commons, but what relates to the Commons during the *Parliament*, and sitting the *Parliament*, is no where else to be punished but by themselves, or a succeeding *Parliament*. Sir Robert Atkins. Every Court of Justice having Laws and Customs for its Direction, the High Court of *Parliament* hath its own proper Laws and Customs, called the *Laws and Customs of Parliament*; inasmuch that no Judges ought to give any Opinion of Matters done in *Parliament*, because they are not to be decided by the Common Law: But the *Parliament*, in their judicial Capacity, are governed by the Common and Statute Laws, as well as the Courts in *Westminster-Hall*. 4 *Inst.* 14, 15. *State Trials*, Vol. 2. 735. The Lords and Commons in their respective Houses have Power of Judicature, and so have both Houses together: And in former Times both Lords and Commons sat together in one House of *Parliament*. 4 *Inst.* 23. The Lords have one that presides as Speaker in common Affairs, usually the Lord Chancellor; and the Commons have their Speaker, chosen by the House, but to be approved of by the King: The Commons anciently had no continual Speaker, but after Consultation, their Manner of Proceeding was to agree upon

upon some Person of great Abilities, to deliver their Resolutions: In the Reign of *William Rufus*, there was a great *Parliament* held at *Rockingham*, and a certain Knight came forth and stood before the People, and spake in the Name and Behalf of them all, who was undoubtedly the Speaker of the House of Commons at that Time: But the first Speaker certainly known was *Peter de Mountford*. 44 H. 3. when the Lords and Commons sat in several Houses, or at least gave their Assents severally. *Lex Constitution.* 162. Sir *Richard Walgrave*, 5 R. 2. was the first Speaker that made any formal Apology for Inability, as now practiced: *Richard Rich*, Esq; 28 H. 8. was the first of our Speakers that is recorded to have made Request for Access to the King: *Thomas Moyle*, Esq; 34 H. 8. is said to be the first Speaker that petitioned for Freedom of Speech; and Sir *Thomas Gargrave*, 1 Eliz. was the first that made the Request for Privilege from Arrests, &c. Sir *John Busbey*, 17 R. 2. was the first Speaker presented to the King in full *Parliament* by the Commons: And when Sir *Arnold Savage* was Speaker, 2 H. 4. it was the first Time that the Commons were required by the King to chuse a Speaker. *Ibid.* 163, &c. The King cannot take Notice of any Thing said to be done in the House of Commons, but by the Report of that House; and every Member of the House of *Parliament* has a judicial Place, and can be no Witness. 4 *Inst.* 15. When K. *Charles 2.* being in the House of Commons, and sitting in the Speaker's Chair, asked the then Speaker, whether certain Members, whom the King named, were present? The Speaker, from a Presence of Mind which arose from the Genius of that House, readily answered, That he had neither Eyes to see, nor Tongue to speak, but as the House was pleased to direct him. *Atkins's Jurisd. and Antiquity of House of Commons.* King *Henry 8.* having commanded Sir *Thomas Gawdy*, one of the Judges of the King's Bench, to attend the Chief Justices and know their Opinion, whether a Man might be attainted of High Treason by *Parliament*, and never called to answer; the Judges declared it was a dangerous Question, and that the High Court of *Parliament* ought to give Examples to Inferior Courts, for proceeding according to Justice, and no Inferior Court could do the like. *Lex Constitution.* 161. The House of Lords is a distinct Court of Judicature from the Commons, to several Purposes; they try Criminal Causes on Impeachments of the Commons; and have an original Jurisdiction for the Trial of Peers upon Indictments found by a Grand Jury: They also try Causes upon Appeals from the Court of Chancery, or upon Writs of Error to reverse Judgments in B. R. &c. And all their Decrees are as Judgments; and Judgment given in *Parliament* may be executed by the Lord Chancellor. 4 *Inst.* 21. *Fimb.* 233. 1 *Lev.* 165. It is said, that the Judicial Power of *Parliament* is in the Lords; but that the House of Lords hath no Jurisdiction over original Causes, which would deprive the Subject of the Benefit of Appeal. 2 *Salk.* 510. Also the House of Commons is a distinct Court to many Purposes; they examine the Right of Elections, expel their own Members, and commit them to Prison, and sometimes other Persons, &c. And the Book of the Clerk of the House of Commons is a Record. 2 *Inst.* 536. 4 *Inst.* 23. The Commons coming from all Parts are the General Inquisitors and Grand Inquest of the

Realm; to present publick Grievances and Delinquents to the King and Lords, to be punished by them: And any Member of the House of Commons, has the Privilege of impeaching the highest Lord in the Kingdom. *Wood's Inst.* 455. As the House of Lords seems to be politically constituted for the Support of the Rights of the Crown; so the proper Province of the House of Commons, is to stand for the Preservation of the People's Liberties. The Commons in making and repealing of Laws have equal Power with the Lords; and for laying of Taxes on the Subject, the Bill is to begin in the House of Commons, because from thence the greatest Part of the Money arises, and 'tis they that represent the whole Commons of *England*; for which Reason they will not permit any Alterations to be made by the Lords in a Bill concerning Money: And as formerly the Laying and Levying of new Taxes have caused Rebellions and Commotions; this has occasioned, particularly 9 Ed. 3. when a Motion has been made for a Subsidy of a new Kind, that the Commons have desired a Conference with those of their several Counties and Places, whom they have represented before they have treated of any such Matters. 4 *Inst.* 34. There are no Places of Precedency in the House of Commons as there are in the House of Lords; only the Speaker has a Chair or Seat, fixed towards the upper End, in the Middle of the House; and the Clerk, with his Assistant, sits near him at the Table, just below the Chair: The Members of the House of Commons never had any Robes as the Lords ever had, except the Speaker and Clerks, who in the House wear Gowns, as Professors of the Law do during the Term-Time: If a Lord be absent from the House, he may make another Lord his Proxy; though a Member of the House of Commons cannot make a Proxy. *Wood's Inst.* 456. No Knight, Citizen or Burghers of the House of Commons, shall depart from the *Parliament* without Leave of the Speaker and Commons assembled; and the same is to be entered in the Book of the Clerk of the *Parliament.* Stat. 6 H. 8. c. 16. And in the 1 & 2 P. & M. Informations were preferred by the Attorney General against Thirty-nine of the House of Commons, for departing without Licence, whereof six of them submitted to Fines, but 'tis uncertain whether any of them were ever paid. The Calling of the House is to discover what Members are absent, without Leave of the House, or just Cause; in which Cases Fines have been imposed: On the Calling over, such of the Members as are present, are marked; and the Defaulters being called over again the same Day, or the Day after, and not appearing, are sometimes summoned, and sometimes sent for by the Serjeant at Arms. *Lex Constitution.* 159. Forty Members are requisite to make a House of Commons for Dispatch of Business; and the Business of the House is to be kept entirely a Secret among themselves: In the 23d Year of Queen *Elizabeth*, *Arthur Hall*, Esq; Member of *Parliament*, for publishing the Conferences of the House, and writing a Book which contained Matter of Reproach against some particular Members, derogatory to the general Authority, Power and State of the House, and prejudicial to the Validity of the Proceedings, was adjudged by the Commons to be committed to the *Tower* for six Months, fined 500 l. and expelled the House. But the Speaker of the House

House of Commons, according to the Duty of his Office, as Servant to the House, may publish such Proceedings as he shall be ordered by the Commons assembled; and he cannot be liable for what he does that Way by the Command of others, unless all those other Persons are liable. The Case of *William Williams*, Esq; If any Member of either House speak Words of Offence in a Debate, after the Debate is over he is called to the Bar, where commonly on his Knees he receives a Reprimand from the Speaker; and if the Offence be great, he is sent to the Tower. When the Bill of Attainder of the *Earl of Strafford*, was passing the House of Commons, Mr. *Taylor*, a Member of that House, opposed it with great Violence and Indecency, and being heard to explain himself, was commanded to withdraw; whereupon it was resolved he should be expelled the House, be made incapable of ever serving as a Member of Parliament, and should be committed Prisoner to the Tower, there to remain during the Pleasure of the House: And he was called to the Bar, where he kneeled down, and Mr. Speaker pronounced the Sentence accordingly. And Sir *John Elliot*, *Denzel Hollis*, and another Person, having spoke these Words, (*viz.*) *The King's Privy Council, his Judges, and his Counsel learned in the Law, have conspired to trample under their Feet the Liberties of the Subject, and of this House*, an Information was brought against them by the Attorney General; and farther, for that the King having signified his Pleasure to the House of Commons for the Adjournment of the Parliament, and the Speaker endeavouring to get out of the Chair, they Violenter, &c. detained him in the Chair; upon which there was a great Tumult in the House, to the Terror of the Commons there assembled, and against their Allegiance, in Contempt of the King, his Crown and Dignity: The Defendants pleaded to the Jurisdiction of the Court, and refused to answer but in Parliament; but it was adjudged, that they ought to answer, the Charge being for a Conspiracy, and seditious Acts to prevent the Adjournment of the Parliament, which may be examined out of it; and not answering, Judgment was given against them, that Sir *John Elliot* should be committed to the Tower, and fined 2000 l. and the other two were Fined and Imprisoned. *Cro. Car.* 130. Members of Parliament, with their Servants, are not only privileged from Arrests, but likewise in an extraordinary Manner from Assaults, Menaces, &c. Sir *Robert Brandling* made an Assault upon Mr. *Witherington*, a Member of the House of Commons, in the Country before his Coming up to Parliament; and Sir *Robert* was sent for up by the House, and committed to the Tower. And Anno 19 Jac. 1. some Speeches passed privately in the House between two of the Members, and one of them going down the Parliament Stairs struck the other, who catching at a Sword in his Man's Hand, endeavoured to return the Stroke; and upon Complaint to the House of Commons they were both ordered to attend, where he who gave the Blow was committed to the Tower during the Pleasure of the House. Assaulting a Member coming to or attending in Parliament, the Offender shall pay double Damages, and make Fine and Ransom, &c. Stat. 11 H. 6. All Members of Parliament, that they may attend the publick Service of their Country, have Privilege of Parliament for themselves and their menial Servants, to be free

from Arrests, Subpœnas, Citations, &c. and for their Horses and Goods to be free from Distresses: And this Privilege of Parliament doth generally hold in all Cases except in Treason, Felony and Breach of the Peace. 4 Inst. 24, 25. There are many remarkable Cases in our Books treating of the Privileges of Parliament, relating to Arrests of Members of the House of Commons, and their Servants, and the Manner of their Confinement, Release, &c. The first Year of K. Jac. Sir *Thomas Shirley*, a Member of Parliament, was arrested four Days before the Sitting of the Parliament, and carried Prisoner to the Fleet; on which a Warrant issued to the Clerk of the Crown for a Habeas Corpus to bring him to the House, and the Serjeant was sent for in Custody, who being brought to the Bar, and confessing his Fault, was excused for that Time: But on hearing Counsel at the Bar for Sir *Thomas Shirley*, and the Warden of the Fleet, and upon producing Precedents, *Simpson* the Prosecutor, who caused the Arrest to be made, was ordered to be committed to the Tower; and afterwards the Warden refusing to execute the Writ of Habeas Corpus, and the Delivery of Sir *Thomas* being denied, was likewise committed to the Tower, tho' on his Agreeing to deliver up Sir *Thomas*, upon a new Warrant for a new Writ of Habeas Corpus, and making his Submission to the House, he was discharged: This Affair taking up some Time, the House entered into several Debates touching their Privileges, and how the Debt of the Party might be satisfied, which produced three Questions; First, Whether Sir *Thomas Shirley* should have Privilege? Secondly, Whether presently or to be deferred? And, Thirdly, Whether the House should petition the King for some Course for securing the Debt of the Party, according to former Precedents, and saving harmless the Warden of the Fleet? All which Questions were resolved; and a Bill was brought in to secure *Simpson's* Debt, &c. which also occasioned an Act 1 Jac. 1. c. 13. for Relief of Plaintiffs in Writs of Execution, where the Defendants in such Writs are arrested, and set at Liberty by Privilege of Parliament, by which a fresh Prosecution and new Execution may be had against them when that Privilege ceases. *Lex Constitut.* 141. And 19 Jac. one *Johnson*, a Servant to Sir *James Whitlock*, a Member of the House of Commons, was arrested by two Bailiffs, who being told Sir *James Whitlock* was a Parliament Man, answered, that they had known greater Mens Servants than his taken from their Masters in Time of Parliament: And this appearing, the two Bailiffs were sentenced to ask Pardon of the House and Sir *James Whitlock*, on their Knees; that they should both ride upon one Horse bare-backed, Back to Back, from Westminster to the Exchange, with Papers on their Breasts signifying their Offence; all which was to be executed presently, *Sedente Curia. Ibid.* In Action of Debt upon a Bond, conditioned that B. B. should render himself at such a Day and Place to an Arrest; the Defendant pleaded, that by Privilege of Parliament, the Members, &c. and their Servants, ought not to be arrested by the Space of forty Days before the Sitting of the Parliament, nor during the Session, nor forty Days afterwards; and that B. B. was at that Time Servant to such a Member of Parliament, so as he could not render himself to be arrested: Upon Demurrer to this Plea, it was adjudged ill, because he might have rendered himself at the

the Time and Place; but then it would be at their Peril if he was arrested. 1 *Brownl.* 81. The Commons in *Parliament* claim Privilege for forty Days before and after each Session and Prorogation. 2 *Lev.* 72. Though the Statute 12 *W.* 3. c. 3. ordains, that Actions may be prosecuted in any of the Courts at *Westminster* against Persons intitled to Privilege of *Parliament*, after a Dissolution or Prorogation, until a new *Parliament* is called, or the same is reassembled. And after Adjournment for above fourteen Days, and the respective Courts may proceed to Judgment, &c. Proceedings are to be by Summons and Distress infinite, until the Parties shall enter a common Appearance; and the Real or Personal Estates of the Defendants may be sequestred for Default of Appearance; but the Plaintiff may not arrest their Bodies: And where any Plaintiff shall be stayed or prevented from Proceeding by Privilege of *Parliament*, he shall not be barred by any Statute of Limitation, or Nonsuited, Dismissed, or his Suit discontinued for Want of Prosecution; but at the Rising of the *Parliament* shall be at Liberty to proceed to Judgment and Execution. Also the King's Debtor or Accomptant shall not be Privileged by *Parliament*, &c. And by 2 *Ann.* c. 8. Actions may be prosecuted against Officers of the Revenue, or in any Place of Publick Trust, for any Forfeiture or Breach of Trust, &c. and shall not be stayed by Colour of Privilege: But such Officer being a Member of *Parliament*, is not subject to Arrest during the Time of Privilege, but Summons, Attachment, &c. A Defendant who was a Member of *Parliament*, brought a Letter from the Speaker to the Court of *King's Bench* to stay Proceedings; but the Court would not allow it, but told him he might bring his Writ of Privilege. *Latch.* 150. Judgment was had against the Defendant, and afterwards he was chosen a Member of *Parliament*, and after his Election he was taken in Execution, yet he had his Privilege; though the Book tells us *minus juste*. *Moor* 57. And where Judgment being had against a Defendant, and he was taken in Execution in the Morning, and about three Hours afterwards was chosen a Member of *Parliament*; the House agreed, that being arrested before he was chosen, &c. he shall not have his Privilege. *Moor* 340. 1 *Nelf. Abr.* 27. The Courts at *Westminster* may judge of the Privilege of *Parliament*, where it is incident to a Suit the Court is possessed of: And Courts may proceed to Execution between the Sessions of *Parliament*, notwithstanding Appeals lodged, &c. *State Trials*, 2 Vol. pag. 66, 209.

Election of Members of *Parliament*. The *Parliament* is called by Force of the King's Writ of Summons out of *Chancery*, at least forty Days before the *Parliament* begins: And the Commons are elected by the People; and every Member, though chose for one particular Place or Borough, serves for the whole Kingdom. Also as Attendance of this Nature is for the Service of the Publick, the whole Nation has such an Interest therein, that the King cannot grant an Exemption to any Person from being elected as a Knight, Citizen or Burgess in *Parliament*; and for that Elections ought to be free. 29 *H.* 6. But an Alien cannot be elected of the *Parliament*, for he is not the King's Liege Subject; though if an Alien were Naturalized by Act of *Parliament*, he was eligible till the Stat. 12 *W.* 3. c. 2. A Man attainted of Treason or Felony, or one

Outlawed, &c. is not eligible; nor shall such Persons be suffered in the House of *Parliament*. 4 *Inst.* 48. A Person under the Age of twenty-one Years, may not be elected to sit in *Parliament*; neither can any Lord sit there, until he be of the full Age of twenty-one Years. *Ibid.* It was formerly held, that Mayors and Bailiffs of Towns-Corporate were not eligible; but now they may be elected: And so may a Sheriff of a County for another Shire. 4 *Inst.* 38 *H.* None of the Judges of the *King's Bench* or *Common Pleas*, or Barons of the *Exchequer*, who have Judicial Places, can be chosen Knight, Citizen or Burgess of *Parliament*, as it is now holden, and because they are Assistants in the House of Lords: And yet we find in the *Parliament. Roll* 31 *H.* 8. that *Thorpe*, Baron of the *Exchequer*, was Speaker of the House of Commons: Persons that have Judicial Places in the other Courts, Ecclesiastical or Civil, are eligible. 4 *Inst.* 47. Clergymen are not eligible to be Knights, Citizens or Burgesses of *Parliament*, they being of another Body, viz. of the Convocation. *Ibid.* Any of the Profession of the Common Law, and which are in the Practice of the same, are eligible; but *Anno* 6 *H.* 4. a *Parliament* was summoned by Writ and by Colour of a certain Ordinance, it was forbidden that any Lawyers should be chosen; by Reason whereof my Lord *Coke* observes, this *Parliament* was fruitless: And the prohibitory Clause inserted in the Writs was against Law, for Lawyers are eligible of Common Right, and cannot be disabled by Ordinance without Act of *Parliament*. By Stat. 12 *W.* 3. no Person who had any Office or Place of Profit under the King, or Pension from the Crown, was to serve as a Member of the House of Commons: And by 4 & 5 *Ann.* no Member of *Parliament* may enjoy any Office in the Government, and sit in the House at the same Time by Virtue of his former Election; for by the Acceptance of any Office, his Election is void: But he may be elected again, on a new Writ issued out, and sit in the House; and Officers in the Army or Navy, receiving any new Commission, need not be re-elected. 6 *Ann.* When Persons are incapable of being elected, the Election shall be void; and Sitting or Voting in the House of Commons they shall forfeit 500 *l.* And the Stat. 1 *Geo.* c. 56. enacts, that no Person having any Pension from the Crown, either in his own Name or in Trust for him, shall be capable of being elected a Member of *Parliament*, or of Sitting and Voting in the House: Pensioners presuming to Sit and Vote, shall forfeit 20 *l.* for every Day, &c. But the Act mentions a Pension for any Term or Number of Years; and not a Pension during Pleasure, according to the 4 *Ann.* c. 8. By ancient Statutes, Knights of the Shire are to be resident in the County for which they are chosen, as likewise Citizens and Burgesses elected shall be resident in and free of the same Cities and Boroughs, the Day of the Date of the Writ of Summons; and they are to be notable Knights of the same County, &c. notable Esquires or Gentlemen: Also by a late Act, no Person shall be qualified to serve in *Parliament* as a Knight of the Shire, who hath not an Estate of Freehold or Copyhold for Life, or some greater Estate to his own Use, of 600 *l.* a Year, over and above what will satisfy all Incumbrances, and a Citizen and Burgess 300 *l.* *per Annum*, of which Oath is to be made at the Request of a Candidate, or two Persons having Right

Right to Vote; and if any Person shall be elected and returned not so qualified, the Return shall be void. 9 *Ann. c. 5.* And none shall be qualified by Virtue of any Mortgage, whereof the Equity of Redemption is in another; unless the Mortgagee shall have been in Possession seven Years before the Election: But the eldest Son of a Peer, or of any Person qualified to serve as Knight of the Shire, shall not be incapable of being elected. *Stat. Ibid.* Members of *Parliament* must take the Oaths to the Government before they Sit and Vote in the House; or be adjudged Popish Recufants, and be disabled to sit in *Parliament*, and liable to certain Forfeitures, &c. *Stat. 5 Eliz. c. 1. 30 Car. 2. c. 1.* And this Statute is confirmed and enforced by the 13 & 14 *W. 3. c. 6.* The Election of Knights of the Shire is to be made by a Majority of Voices dwelling in the Counties, having each of them Lands or Tenements to the yearly Value of 40 s. besides Reprifes; and he that cannot expend 40 s. *per Ann.* shall have no Vote in the Election of Knights for the *Parliament.* 8 *H. 6. c. 7.* And by the 10 *H. 6. c. 2.* an Elector of Knights of the Shire must be resident, and have 40 s. *per Annum* Freehold over and above Reprifes in the same County. The 7 & 8 *W. 3.* requires, that every Freeholder shall take an Oath that he is a Freeholder of the County, and has Freehold Lands or Hereditaments of the yearly Value of 40 s. lying at such a Place, within the said County, and that he hath not been before polled at the Election: No Person is to be admitted to Vote in any Election of a Member to serve in *Parliament*, who is under the Age of twenty-one, or be intitled to any Vote by Reason of any Trust or Mortgage; if the Trustee or Mortgagee be not in actual Possession, and receive the Rents and Profits of the Estate; but the Mortgagor or *Cestui que Trust* in Possession, shall and may vote for the same Estate: And all Conveyances of Lands, Tenements, &c. in order to multiply Votes, or split and divide the Interest in any Houses or Lands, among several Persons, to enable them to vote, shall be void and of none Effect. By the 10 *Ann. c. 22.* None shall have a Voice for electing Knights of the Shire in Right of any Lands, who has not been charged or assessed to the Publick Taxes, Church Rates and Parish Duties, in such Proportion as other Lands and Tenements of 40 s. *per Annum*, lying within the same Parish; and for which he shall not have received the Rents and Profits, or be intitled to have received the same to the full Value of 40 s. or more, to his own Use for one Year, before the Election, except such Lands or Tenements come by Descent, Devise, Presentation to some Church, or Promotion to an Office, to which a Freehold is annexed; and Persons voting contrary shall forfeit 40 l. All Estates and Conveyances made to any Person in a fraudulent Manner, on Purpose to qualify him to vote, subject to Conditions to defeat or determine such Estate or reconvey the same, shall be taken against the Persons executing the same as free and absolute; and all Bonds, &c. for Redemption shall be void; also Persons voting by Colour of such Conveyance, incur a Forfeiture of 40 l. Persons refusing to take the Oaths of Abjuration, &c. are disabled to vote at any Election for Members of *Parliament.* 1 *Geo. c. 13.* As to who are or ought to be the Electors in Boroughs, it hath very much exercised the *British House of*

Commons: In the 22 *Jac. 1.* it was resolved, that where there is no Charter or Custom to the contrary, the Election in Boroughs is to be made by all the Householders, and not Freeholders only: And in a Question whether the Commons or the Capital Burgeses of a certain Borough in *Lincolnshire*, were the Electors of Members to *Parliament,* Anno 4 *Car. 1.* it was agreed, that the Election of Burgeses in all Boroughs did of common Right belong to the Commoners, and that nothing could take it from them but a Prescription and constant Usage beyond the Memory of Man. It has been holden, that the Commonalties of Cities and Burghs are only the ordinary and lower Sort of Citizens, Burgeses or Freemen; and that the Right of Election of Burgeses to *Parliament* in all Boroughs belongs to the Commoners, viz. the ordinary Burgeses or Freemen; and not to the Mayor, Aldermen, and Common Council: Though the Meaning of the Words *Communitates Civitatum & Burgorum*, has always signified, rightly understood, the Mayor, Aldermen and Common Council, where they were to be found; or the Steward or Bailiff, and Capital Burgeses, or the governing Part of Cities and Towns, by what Persons soever they were governed, or Titles called. The most extraordinary Case which has happened in this Age, with Relation to the Determinations of a Committee of Privileges and Elections, was the Case of *Ashby and White*, concerning the Borough of *Ailesbury*; on a Question put, whether an Action at Law lies for an Elector who is denied his Vote? In this Case the Debates ended in the following Resolutions, viz. That the Qualification of Electors and of Persons elected, is cognizable only before the Commons in *Parliament*; and that the examining and determining the Qualification or Right of any Elector, &c. belongs to them, where the Acts of *Parliament* give no particular Direction, that whoever shall prosecute any Action, &c. which shall bring the Right of Electors to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases provided for by some Statute, shall be guilty of a Breach of the Privilege of the House. Several Defendants were committed to *Newgate* by a Warrant signed by *Robert Harley*, Speaker of the House of Commons, for prosecuting Actions at Law against the Constables of the aforesaid Borough of *Ailesbury*, for refusing to take their Votes at the Election of Members of *Parliament,* &c. in Contempt of the Jurisdiction and Privileges of the House; and this Matter being returned by *Habeas Corpus* severally, and the Defendants brought into Court, their Counsel moved that they might be discharged, for that the Prosecution of a Suit at Law could be no unlawful Act, nor a Breach of the Privileges of the House of Commons: Three Judges were of Opinion, that the House were the proper Judges of their own Privileges; but *Holt Chief Justice* held, that the Authority of the Commons was circumscribed by Law; and if they should exceed that Authority, then to say they were Judges of their own Privileges is to make their Privileges to be what they would have them to be; and that if they should wrongfully imprison there could be no Redress, so that the Court at *Westminster* could not execute the Laws upon which the Liberties of the Subject subsist. 2 *Sal. 503.* And in Action on the Case, by a Burgess of *Ailesbury* against the Constables of the said

Borough, for refusing to receive the Plaintiff's Vote in the Election for a Member of *Parliament*; the Plaintiff had a Verdict, but the Judgment was arrested by the Opinion of three Judges, *viz.* That the Action is not maintainable, because the Constables acted as Judges, and the not Receiving the Plaintiff's Vote is *Damnum sine injuria*; for when the Matter comes before the House, his Vote will be received; that the Right of electing Members to serve in *Parliament*, is to be decided in *Parliament*, and the Plaintiff may petition the House for that Purpose, and after 'tis determined there, he may there bring his Action, and not before: *Holt Chief Justice contra*, That the Plaintiff had a Right to vote; a Freeholder has a Right to vote by Reason of his Freehold; and it is a real Right, and the Value of his Freehold was not material till the Stat. 8 Hen. 6. which requires it to be 40 s. *per Annum*: That as it is *Ratione liberi tenementi* in Counties; so in ancient Boroughs, they have a Right to vote *ratione Burgagii*; and in Cities and Corporations, it is *ratione Franchesie*, and a personal Inheritance, vested in the whole Corporation, but to be used by the particular Members; that this is a noble Privilege, which entitles the Subject to a Share in the Government and Legislature; and that if the Plaintiff hath a Right, he must have a Remedy to assert that Right, for Want of Right and Want of Remedy is the same Thing; that Refusing to take the Plaintiff's Vote is an Injury, and every Injury imports a Damage; and that where a parliamentary Matter comes in incidentally to an Action of Property, in the King's Court, it must be determined there, and not in *Parliament*; the *Parliament* cannot judge of the Injury, nor give Damages to the Plaintiff, and he hath no Remedy by way of Petition: And according to this Opinion, the Judgment of the other three Judges was reversed upon a Writ of Error brought in the House of Lords. 1 Salk. 19. Mod. Caf. 45. This Cause occasioned great Disputes, between the two Houses of *Parliament*; the Lords insisting, that if the Commons only could judge of the Right of their Electors, they would in Effect chuse their Electors, &c. And the Commons alleging, that if the Right of Electors might be determined in the Courts of Law, from whence Causes are removed by Writ of Error into the House of Lords, the Lords would become Judges of the Right of Electors to chuse, and consequently who were duly elected Members of the Commons House, whereby the Commons would lose their Independency, and be subject to the Lords, &c. But the *Parliament* being soon after prorogued, the Dispute was drop'd. By the Common Law of *England*, every Commoner hath a Right not to be subjected to Laws made without his Consent; and because such Consent cannot be given by every individual Man in Person, by Reason of Number and Confusion; that Power is lodged in their Representatives, elected and chosen by them, *viz.* Knights, Citizens, &c. 3 Salk. 18. And in several Counties, the Citizens and Burgesses were formerly chosen in the County-Courts, with the Knights of Shires, and jointly returned, &c. For there were commonly four or five Citizens or Burgesses sent from the respective Cities or Boroughs to the County-Court; and there they were chosen, with full Power for themselves and their several Communities, to do and consent to such Things, as by the Common Coun-

cil of the Kingdom, assembled in *Parliament*, should be ordained and enacted. It is said by some Writers, that in ancient Times the King hath nominated the very Persons to be returned, and did not leave it to the Election of the People; for which they give an Instance in the 45th Year of Ed. 3. And among the *Parliament Writs* 14 Eliz. there appears to be an Appointment and Return of Burgesses, by the Lord of a Town, &c. But these are single Instances in their Kind; and the Writs for Elections in the 23d Year of King Ed. 1. ran in *English* as follows, *viz.*

Form of an ancient Writ for Election of Members of *Parliament*.

TO the Sheriff of, &c. Greeting: Because we desire to have a Conference and Treaty with the Earls, Barons, and other great Men of our Kingdom, to provide Remedies against the Dangers our Kingdom is in at this Time; therefore we have commanded them, that they be with us at Westminster, on the Day, &c. next coming to treat, ordain, and do, so as those Dangers may be prevented: And we command, and firmly enjoin thee, that, without Delay, thou dost cause to be chosen, and to come to us, at the Time and Place aforesaid, two Knights of the County aforesaid, and of every City two Citizens, and of every Borough two Burgesses, of the best, most able, and discreet Men for Business; so as the said Knights may have sufficient Power for themselves, and the Community of the County aforesaid, and the Citizens and Burgesses may have the same Power separately from them, for themselves and the Communities of Cities and Burghs, then to do in the Premises what shall be ordained by the Common Council of the Realm, so that the Business aforesaid may not remain undone; and have there the Names of the Knights, Citizens, and Burgesses, and this Writ. Witness the King, &c.

The Return of the Writ, thereon indorsed, was thus.

IA. B. Sheriff, by Virtue of this Writ have caused to be chosen in the County of, &c. two Knights, and of every City of the same County two Citizens, and of every Borough two Burgesses, of the best, most able, and discreet Knights, Citizens and Burgesses of the County, City and Burghs aforesaid, according to the Tenor of the Writ.

By the Stat. 7 H. 4. cap. 15. The Election of Knights of the Shire, is to be made in the following Manner: At the next County-Court, after the Delivery of the Writ, Proclamation is to be made by the Sheriff of the County of the Day and Place the *Parliament* is to assemble, and that all as are there present shall attend to the Election of Knights of the Shire; and then in full County, a free and indifferent Election shall be made: And after such Choice, the Names of the Parties chosen, are to be written in an Indenture under the Seals of the Electors, which Indenture so sealed and tacked to the Writ, shall be the Sheriff's Return thereof. And by 23 H. 6. cap. 7. it is Enacted, That the Sheriff after Receipt of the Writ, shall deliver a Precept under his Seal to every Mayor and Bailiff of Cities and Boroughs within his County, reciting the Writ, and requiring them to chuse two Citizens and Burgesses to come to the *Parliament*; and such Mayors and Head Officers, are to make Return of the Precept to the Sheriff, by Indenture, &c. whereupon the Sheriff is enabled to make a good Return of the Writ: The Sheriff

Sheriff is to make Election between the Hours of eight and eleven in the Forenoon; and if any Knight, Citizen, or Burgeſs, returned by the Sheriff ſhall be put out and the Name of another put in, diſverſe Penalties are incurred; Sheriffs acting contrary to this Statute, and not returning a Member duly elected, are ſubject to a Forfeiture of 100 *l.* recoverable by Action of Debt; and Officers of Corporations, making falſe Returns, liable to a Penalty of 40 *l.* &c. It has been adjudged on this Act, that though no Election ſhould be made of any Knight of the Shire, but between eight and eleven of the Clock in the Forenoon; if the Election be begun within that Time, and cannot be determined in thoſe Hours, it may be made after. 4 *Inſt.* 48. And if any Electors give their Voices before the Precept for Election is read and published, it will be of no Force; for after the Precept is thus read, &c. they may alter their Voices and make a new Election. *Ibid.* 49. The Stat. 7 & 8 *W. 3. cap. 7.* ordains, if any Perſon ſhall return a Member to ſerve in *Parliament* for any Place, contrary to the Determination in the Houſe of Commons of the Right of Election for ſuch Place, the Return ſo made ſhall be judged a falſe Return; and the Party making it may be proſecuted, and double Damages with Coſts recovered againſt him: Officers wilfully and falſly returning more Perſons than are required to be choſen by the Writ or Precept, the like Remedy may be had againſt them; and all Contracts, Promiſes, &c. to return any Member of *Parliament* are not only declared void, but the Makers or Givers of the Contracts, &c. or of any Gift or Reward to procure a falſe or double Return, ſhall forfeit 300 *l.* one Third to the King, another to the Informer, and the other Third to the Poor of the Place, to be recovered in any Court of Record at *Weſtmiſter*, &c. By 7 & 8 *W. 3. cap. 25.* When any new *Parliament* ſhall be called, there ſhall be forty Days between the Teſte and Returns of the Writs; the Lord Chancellor, &c. is to iſſue out Writs for Election of Members of *Parliament*, with as much Expedition as may be; and the ſeveral Writs ſhall be delivered to the proper Officers for Execution, who are to indorſe the Day of the Receipt on the back of the Writ, and forthwith make out the Precepts to each Borough, &c. which are to be delivered to the Officers of every ſuch Borough, within three Days, and they muſt likewiſe indorſe the Day of Receipt, and immediately cauſe publick Notice to be given of the Time and Place of Election, and proceed to Election thereupon in eight Days: For electing of Knights of the Shire, the Sheriff is to hold his County-Court at the moſt publick and uſual Place, and there proceed in the Election at the next Court, unleſs it fall out to be within fix Days after the Receipt of the Writ, and then the ſame is to be adjourned, giving ten Days Notice of the Election; if the Election be not determined on View, but a Poll is demanded, the Sheriff is to take the ſame, and likewiſe a *Scrutiny*, and he or his Under-Sheriff ſhall appoint and ſwear Clerks for that Purpoſe, &c. The County-Court is not to be adjourned to any other Place, without the Conſent of the Candidates; nor ſhall any unneceſſary Adjournments be made, but the Poll to proceed; alſo every Sheriff, &c. is to deliver a Copy of the Poll to any Perſon deſiring it; and Officers for

every wilful Offence againſt this Act, are ſubject to a Forfeiture of 500 *l.* The 10 & 11 *W. 3.* directs, That the Sheriff or other Officer having the Execution and Return of Writs of Summons for *Parliament*, ſhall on or before the Day of Meeting of the *Parliament*, and with all Expedition not exceeding fourteen Days after Election, make Returns to the Clerk of the Crown in Chancery to be filed, on Pain of forfeiting 500 *l.* And the returning Officer, within twenty Days after the Election, is to deliver over to the Clerk of the Peace, all the Poll-Books on Oath made before two Juſtices, to be preſerved among the Records of the Sessions of the Peace, &c. 10 *Ann. cap. 23.* In double Returns, it has been formerly a general Practice in the Houſe of Commons, that neither one nor the other ſhould ſit in the Houſe, until it be decided; *Anno* 1640, two Returns were made for *Great Marlow*, and in both Indentures one Perſon was returned, and he was admitted to ſit, but the others ordered to withdraw until the Queſtion was determined: And in the ſame Year, it was ordered, That where ſome are returned by the Sheriff, or ſuch other Officer as by Law hath Power to return, and others returned by private Hands; in ſuch Caſe, thoſe that are returned by the Sheriff or other Officer, ſhall ſit until the Election is quaſhed by the Houſe. *Ordin.* 1640. If one be duly elected Knight, Citizen, or Burgeſs, and the Sheriff, &c. return another, the Return muſt be reformed and amended; and he that is duly elected, is to be inſerted, for the Election is the Foundation, and not the Return. 4 *Inſt.* 49. In Action of the Caſe, &c. the Plaintiff declared, that he was duly elected a Member of *Parliament* for ſuch a Borough, and the Defendant returned two other Perſons, and that he petitioned the Houſe of Commons, and was adjudged to be duly elected, and his Name ordered to be inſerted in the Roll, and the Name of the other to be razed out: The Plaintiff had a Verdict; but it was adjudged in Arreſt of Judgment, that this Declaration was not founded on the Act 7 & 8 *W. 3.* becauſe that Statute gave an Action where there was none before, and therefore the Faſt muſt be laid agreeable to it, which not being done, the Defendant had Judgment. 2 *Salk.* 504. The Court will not meddle in an Action upon a double Return, until it is determined in *Parliament.* *Lutw.* 88. And it hath been holden, that for a double Return, no Action lay before the Statute 7 & 8 *W. 3. cap. 7.* becauſe it is the only Method that the Sheriff had to ſecure himſelf; and when the Right was decided in the *Parliament*, then one Indenture is taken off the File, ſo that it is not then a double Return; neither can the Party have an Action for a falſe Return, for the Matter may be determined in the Houſe whether true or falſe; and if ſo, there will be an Inconvenience in contrary Reſolutions, if they ſhould determine in one Way, and the Courts at Law another Way; but after a Diſſolution the Action may lie for a falſe Return, as then the Right cannot be determined in *Parliament.* 2 *Salk.* 502. A double Return is of the ſame Nature with a falſe Return, as to Action on the Caſe; in both it is grounded on the Falſity; but there is another Reaſon why this Action will not lie for a double Return, (*viz.*) becauſe the Law doth not take any Notice of ſuch a Return, it is only allowed by the Uſage of *Parliament*, and in Caſes wherein the proper Of-

ficer cannot determine who is chosen; therefore when he doubts, he makes a double Return, and submits the Choice to the Determination of the House of Commons; and if that House doth admit such Returns, and make Determinations on them, it will be hard for the Law to subject a Man to an Action only for submitting a Fact to be determined by a Court, which hath a proper Jurisdiction to determine it: And by Reason of the Variety of Opinions, that an Action in this Case would lie, and would not; it hath been enacted by Stat. 7 & 8 W. 3. cap. 7. That the last Determination of the House of Commons concerning the Right of Election, is to be pursued. 2 Lev. 114. 1 Nelf. Abr. 30. A Member elected and returned for several Places, is to make his Choice for which Place he will serve; and if he doth not, by the Time which the House shall appoint, the House may determine for what Place he shall continue a Member, and Writs shall go out for the other Place. Candidates are not to make Presents of Money to, or treat, &c. Electors, after the *Teste* of the Writ of Summons, or issuing out the Writs of Election, or after any Place of a Member becomes vacant; if they do, for this Bribery they shall be incapacitated to serve as Members. 7 W. 3. c. 4. And no Officers of the Excise, Post-Office, &c. are to make any Interest for Members of Parliament, on Pain of forfeiting 100*l.* and Disability, &c. 5 & 6 W. & M. cap. 20. Members of Parliament had anciently an Allowance or Wages, for Attendance in the House, by Statute; Knights of the Shire 4*s.* a Day, and Citizens and Burgeffes 2*s.* per Diem. 4 Inst. 46.

Parliaments holden, and Proceedings in. Before the Conquest, Parliaments were to be held twice every Year: The 4 Ed. 3. Enacted, That a Parliament should be holden once a Year, and oftner if necessary; and the 36 Ed. 6. requires a Parliament to be held every Year. But by the Means of Cardinal *Wolsey*, the Favourite of King Hen. 8. a Parliament was but held once in fourteen Years during that Reign; which was upon a remarkable Occasion, viz. to attain the Duke of *Buckingham*. The Stat. 16 Car. 2. cap. 1. ordains, that the Sitting and Holding of Parliaments shall not be discontinued above three Years. And the 6 W. & M. cap. 2. enacts, That new Parliaments shall be chosen once in three Years; and no Parliament continue longer than three Years. But by 1 Geo. c. 38. the Time of Continuance of Parliaments is enlarged to seven Years; to be computed from the Day appointed for their Meeting, by the Writ of Summons. The occasional Law. 1 W. & M. Sess. 1. cap. 1. declared, That the Lords and Commons convened at *Westminster*, were the two Houses of Parliament, notwithstanding the Want of any Writ of Summons, or other Defect of Form, &c. A Parliament cannot begin, on the Return of the Writs, without the Presence of the King, in Person, or by Representation; and by Representation two Ways, either by a Guardian of *England*, by Letters Patent under the Great Seal, when the King is out of the Realm; or by Commission, to certain Noble Lords in Case of Indisposition, &c. when his Majesty is at Home. 4 Inst. 6, 7. And if any Parliament is to be holden before a Guardian of the Realm, there must be a special Commission to begin the Parliament; but the *Teste* of the Writs of Summons is to be in the Guardian's Name: And by an ancient Law, if the King

being beyond the Seas, cause a Parliament to be summoned in this Kingdom, by Writ under the *Teste* of his Lieutenant; and after the King returns hither, the Parliament shall not be dissolved by the Arrival of the King, but shall proceed without any new Summons. 8 H. 5. In the fifth Year of King Henry 5. a Parliament was held before John Duke of Bedford, Brother to the King, and Guardian of the Kingdom. Anno 3 Edw. 4. a Parliament was begun in the Presence of the King, and prorogued to a further Day; and then William Archbishop of York, the King's Commissary by Letters Patent, held the same Parliament, and made an Adjournment, &c. And 28 Eliz. the Queen by Commission under the Great Seal, reciting that for urgent Occasions she could not be present in her Royal Person, did authorise John Whitgift Archbishop of Canterbury, William Lord Burleigh Lord Treasurer of England, and Henry Earl of Derby Lord Steward, to hold a Parliament, &c. *Ad faciendum omnia & singula, necnon ad Parliamentum Adjornand' & Prorogand'*, &c. And in the upper Part of the Page, above the Beginning of the Commission is written, *Domina Regina Representatur per Commissarios, viz. &c.* These Commissioners sat on a Form before the Cloth of State, and after the Commission read, the Parliament proceeded. A Parliament may be holden at any Place the King shall assign; but it ought not to be dissolved as long as any Bill remains undiscussed, and Proclamation must be made in the Parliament, that if any Person have any Petition, he shall come in and be heard, and if no answer be given, it is intended that the publick are satisfied. *Lex Constitution. 157.* In former Times, by the Death of the King during the Sitting of the Parliament, the Parliament was *ipso facto* dissolved: But by the Stat. 1 Ann. c. 8. A Parliament sitting or in Being, at the Demise of the King, shall continue for six Months, &c. All Orders of Parliament determine by Prorogation; and one taken by Order of the Parliament, after their Prorogation, may be discharged on an *Habeas Corpus*, as well as after a Dissolution: But the Dissolution of a Parliament doth not alter the State of Impeachments, brought up by the Commons in a preceding Parliament. Raym. 120. 1 Lev. 384. And it hath been resolved by the Lords Spiritual and Temporal, that Cases of Appeals and Writs of Error, shall continue, and are to be proceeded in *Statu quo*, &c. as they stood at the Dissolution of the last Parliament. Raym. 381. A Prorogation of the Parliament is always by the King, and in this Case the Sessions must begin *de Novo*; and if a Parliament is prorogued upon the Return of the Writ of Summons, it begins at the End of the Prorogation: An Adjournment is by each House, and the Sessions continues notwithstanding such Adjournment. 1 Mod. 242. By a Prorogation of a Parliament, there is a Session; and every several Session of Parliament is in Law a several Parliament: Though if it be only an Adjournment, there is no Session; and when a Parliament is called and doth sit, but is dissolved without any Act passed, or Judgment given, it is no Session of Parliament, but a Convention. 4 Inst. 27. If a Parliament is assembled, and several Orders are made, and Writs of Error brought in the House of Peers, and several Bills agreed on, but none signed; this is but a Convention, and no Parliament, or Sessions of Parliament: But every Session, in which the King signs a Bill

a Bill, is a *Parliament*, and so every *Parliament* is a Session. 1 *Roll. Rep.* 29. *Hutt.* 61. And a Session doth continue, until it is prorogued or dissolved. The *Parliament* from the first Day of sitting is called the first Session of *Parliament*, &c. *Raym.* 120. And the Courts of Justice, *ex Officio* are to take Notice of the Beginning, Prorogation, and Ending of every *Parliament*; also of all general Statutes: And Acts of *Parliament* take Effect from the Beginning of the *Parliament*, unless it be otherwise ordered by the Acts. 1 *Lev.* 296. 4 *Rep. Hob.* 111. On a Prorogation, such Bills as have passed either or both Houses, not having received the Royal Assent, must fall: For there can be no Act of *Parliament*, without the Consent of the Lords, and Commons, and the Royal *Fiat* of the King, giving his Consent personally, or by Commission; and by the Stat. 33 *H. 8. cap.* 21. the King may pass Acts by Commission under the Great Seal, signed by his Hand; and such Acts shall be of equal Force as if the King were present in Person. Every Man in Judgment of Law is Party to an Act of *Parliament*; after the Royal Assent is given, it is the Prince's, and whole Realm's Deed: The Determination of the High Court of *Parliament*, being presumed to be the Act of every particular Subject, who is either present personally, or consenting by his Representative. Publick Bills or Acts of *Parliament* are commonly drawn by such Members of the House of Commons as are most inclined to the Effecting the Good of the Publick, particularly in Relation to the Bill designed, taking Advice thereupon; and Acts for the Revival, Repeal, or Continuance of Statutes, are penned by Lawyers Members of the House, appointed for that Purpose: And in the bringing in and passing of Statutes, the following Formalities are observed, *viz.* Any Member of *Parliament* may move for a Bill to be brought in, except it be for imposing a Tax, which is to be done by Order of the House; and being granted, the Person making the Motion, and those who second it, are ordered to prepare and bring in the same: When the Bill is ready, some of the Members ordered to prepare it, present it; and upon a Question being agreed to, it has the first Reading by the Clerk at the Table; after this, the Clerk delivers the Bill to the Speaker, who standing up declares the Substance of it, and if any Debate happens, he puts the Question, whether the same shall have a second Reading? And some Times upon Motion appoints a Day for it; for publick Bills, unless upon extraordinary Occasions, are seldom read more than once in a Day, the Members being allowed convenient Time to consider of them: If nothing be said against a Bill, the ordinary Course is to proceed without a Question; but if the Bill be generally disliked, a Question is some Times put, whether the Bill shall be rejected? And if it be rejected, it cannot be proposed any more that Session: When a Bill hath been read a second Time, any Member may move to have the same amended; but no Member of the House is admitted to speak more than once in a Debate, except the Bill be read more than once that Day, or the whole House is turned into a Committee; and after some Time spent in Debates, the Speaker collecting the Sense of the House, reduces the same to a Question, which he submits to the House, and is put to the Vote: And a Question is to be put, after the Bill is so read a second

Time, whether it shall be committed? which is either to a Committee of the whole House or a private Committee, as the Importance of the Bill shall require; and this Committee is to report their Opinion of the Bill, with the Amendments to the House, the Chairman having caused the Clerk attending to read the Bill, and read it himself, putting every Clause to the Question, &c. The Chairman makes his Report at the Side-Bar of the House, reading all the Alterations made, and then delivers the same to the Clerk of the *Parliament*; who likewise reads all the Amendments, and the Speaker puts the Question, whether they shall be read a second Time? And if that be agreed unto, he reads the Amendments himself, and puts the Question, whether the Bill so amended shall be ingrossed, and read a third Time some other Day? And then the Speaker takes the Bill in his Hand, holds it up, and puts the last Question, whether the Bill shall pass? If a Majority of Voices are for it, then the Bill passes; and it is sent up to the House of Lords, where, when it is twice read, the Question is to be for Commitment; or if it be not committed, then it is to be read a third Time, and the next Question to be for its Passing; and upon the third Reading of the Bill, any Member may speak against the whole Bill to throw out the same, or for Amendment of any Clause thereof; and if it be amended, it is to be sent back again to the Commons for their Concurrence, and being returned, is then passed in the House of Lords, and ready for the Royal Assent. If a Bill passes in one House, but a Demur happens upon it when sent to the other House, in this Case a Conference is demanded; wherein certain deputed Members of each House meet in the *Painted Chamber*, and Debate the Matter; and when they have agreed, the Bill passed is brought to the King in the House of Lords; where having his Crown upon his Head, and his Royal Robes on, he declares the Royal Assent, by the Clerk of the *Parliament. Pract. Solic. in Parliam.* 397, 398. As for private Bills, Leave is to be obtained by Petition, &c. to bring in the same, and the Substance thereof is to be set forth, until which the Bill is not to be offered; and when the Petition is read, and Leave given to bring in the Bill, whereupon it is accordingly brought into the House, the Persons concerned may be heard by themselves or Counsel at the Bar, or before a Committee, to whom such Bill is referred; (and in Case of a Peer, he shall be admitted to come within the Bar of the House of Commons, and sit covered on a Stool whilst the same is debating) And after Counsel is heard on both Sides, and the House is satisfied with the Contents of the Bill, it is committed, and passed, &c. All Bills, Motions and Petitions, are by Order of *Parliament* to be entered on the *Parliament Rolls*, although they are denied, and never proceeded to the Establishment of a Statute, together with the Answers. *Lex Constitution.* 154. The Speaker of the House of Commons is not allowed to persuade or dissuade in passing of a Bill, only to make a short Narrative of it; if any Question be upon the Bill, he is to explain, but not enter into Argument or Dispute; and he is not to vote, except the House is equally divided: When Mr. Speaker desires to speak, he ought to be heard without Interruption; and when the Speaker stands up, the Member standing up is to sit down.

down: If two stand up to speak to a Bill, he that would speak against the Bill, if it be known, is to be first heard; otherwise he that was first up, which is to be determined by the Speaker: Whosoever hisses or disturbs any Person in his Speech, shall answer it at the Bar of the House. And in going forth, no Member is to stir, until Mr. Speaker rises from his Seat: and then all the Rest are to follow after. *Ord. Anno 1604.*

Parliament de la Bonte, A Parliament in K. Edw. 2d's Time, so called, whereunto the Barons came armed against the two *Spencers*, with coloured Bands for Distinction. *Baronag. Engl. 1 part.*

Parliamentum Diabolicum, Was a Parliament held at *Coventry* 38 H. 6. wherein *Edward Earl of March*, (afterwards King) and divers of the Chief Nobility, were attainted; but the Acts then made were annulled by the succeeding Parliament. *Holinsh. Cron.*

Parliamentum Indoctorum, A Parliament 6 H. 4. whereunto, by special Precept to the Sheriffs in their several Counties, no Lawyer or Person skilled in the Law was to come; and therefore it was so termed. *Rot. Parl. 6 H. 4.*

Parliamentum insanum, Was a Parliament assembled at *Oxford* Anno 41 H. 3. so stiled, from the Madness of their Proceedings; and because the Lords came with great Numbers of armed Men to it, and Contentions grew very high between the King, Lords and Commons, whereby many Things were enacted contrary to the King's Pleasure, &c. *4 Co. Inst.*

Parliamentum Religiosorum. In most Convents, they had a common Room, into which the Brethren withdrew for Discourse and Conversation; and the Conference there had was termed *Parliamentum*. *Matt. Paris.* And besides the supreme Court of Parliament, the Abbot of *Croyland* was wont to call a Parliament of his Monks, to consult about the Affairs of his Monastery; And at this Day, the Societies of the two Temples, or Inns of Courts, do call that Assembly a Parliament, wherein they confer upon the common Affairs of their several Houses. *Crompt. Jurisd. fol. 1.*

Parochial, Belonging to a Parish; and there are some Places that are *Extraparochial*.

Parol, Is a French Word, used for a Plea in Court. *Kitch. 193.* and being joined with Lease, as *Lease parol*, is a Lease by Word of Mouth; to distinguish it from one in Writing.

Parol Arrest. Any Justice of Peace may by Word of Mouth, authorise any one to arrest another who is guilty of a Breach of the Peace in his Presence, &c. *Dalt. 117.*

Parol Demurrer, Is a Privilege allowed to an Infant, who is sued concerning Lands which came to him by Descent; and the Court thereupon will give Judgment, *Quod loquela predicta remaneat quousque* the Infant comes to the Age of Twenty-one Years: And where Age is granted, on Parol Demurrer the Writ doth not abate, but the Plea is put *sine Die*, until the Infant is of full Age; and then there shall be a Resummons. *2 Lill. Abr. 280. 2 Inst. 258. Rasb. Entr. 360.* The Granting of a Parol Demurrer is in Favour of an Infant, and for his Benefit, that he may not be prejudiced in his Right for Want of well knowing his Estate, &c. And, if his Ancestor dies seised, and the Lands descend to him, and he enters and takes the Profits, it would be a Prejudice to the Infant to lose the Possession which

he hath; so that in that Case it shall stay until his Age. *6 Rep. 3.* The Tenant in an Action, cannot pray *Parol Demurrer*, until the Infant Demandant comes of Age: This is expressly provided for by *6 Ed. 1. cap. 2.* And it would damage the Infant, if he should be so delayed upon an Action brought by him, where an Estate is descended to him from his Ancestor. *6 Rep. 3, 5. Parol Demurrer* is not allowed in an Affise, &c. *8 Rep. 50.* But when it may be had, if two are vouched, and there is *Parol Demurrer* for the Nonage of one; it shall be for the other also. *45 Ed. 3. 23.* See *Age Prier.*

Parson, (Persona) Signifies the Rector of a Church, because for his Time he represents the Church, and in his Person, the Church may sue for and defend her Right, &c. Or he is called *Parson*, as he is bound by Virtue of his Office, *in propria Persona servire deum.* *Fleta, lib. 9. cap. 18. 1 Inst. 300.* Also the Word *Parson* in a large Sense, includes all Clergymen having spiritual Preferments. And there may be two several Parsons in one Church, one of the one Moiety, and the other of the other; and a Part of the Church and Town allotted to each; and may be two that make but one Parson in a Church, presented by one Patron. *1 Inst. 17, 18.* To a Parson of a Church, these Things are requisite; Holy Orders, Presentation, Institution, and Induction; and where a Person is compleat Parson, he may cease to be Parson of the Church, by Death, or Cession, Resignation, Deprivation for Simony, Nonconformity to the Canons, for Adultery, &c. *1 Inst. 120. 4 Rep. 75, 76.* Sir Edward Coke was of Opinion, that at Common Law a Parson could not be arrested; and said he had seen a Report grounded on the Statutes *50 Edward 3. cap. 5. and 1 Henry 2. cap. 15.* which are in Affirmance of the Common Law, and in Maintenance of the Liberties of the Church; that a Parson ought not to be arrested in going, staying, or returning to celebrate Divine Service, nor any other Person who attended him in such Service; and that if he was, he might have an Action upon those Statutes, against the Person making the Arrest. *12 Rep. 100.* A Parson ought not to appear at the Sheriff's Turn, or the Court-Leet, without an absolute Necessity. *F. N. B. 160.* No Parson or Spiritual Person, shall take a Farm, or Lease of Lands, &c. to himself, or any one for his Use, on Pain of forfeiting 10 l. a Month, one Moiety to the King, and the other to the Informer. *Stat. 21 Hen. 8. cap. 13.* Nor shall he buy, to sell again, any Merchandize, Corn, Cattle, &c. upon Forfeiture of treble Value: But it is provided, that he may buy Horses, or any other Cattle, for his necessary Use in manuring his Glebe and Church Lands. *Ibid.* On Information upon this Statute for renting a Farm, the Defendant pleaded in Bar, that he had nor sufficient Glebe for pasturing his Cattle, nor Corn for his Family; but the Plaintiff traversed his having spent the Product thereof in his Family, &c. *1 Lutw. 134.* See *Church.*

Parson Imparsoner, (Persona impersonata) Is he who is in Possession of a Church, be it presentative or impropriate, and with whom the Church is full. *Persona*, according to the New Book of Entries, seems to be the Patron that has Right to give the Benefice, by Reason before the *Lateran Council* he had the Tithes in Respect of his Liberty in erecting or endowing the Church, *Quasi sustineret Personam Ecclesie*; and *Persona Impersonata* is

is the *Parson* to whom the Benefice is given in the Patron's Right. *Persona Impersonata* is used for the Rector of a Church presentative. *Reg. Judic.* 24. And Dyer says, a Dean and Chapter are *Parsons Imparsones* of a Benefice appropriated to them; who also shews that *Persona Impersonata* is one that is inducted and in Possession of a Benefice. Dyer 40, 221. So that *Persona* may be termed *Impersonata*, only in Regard of the Possession he hath of the Rectory, by the Act of another. 1 *Inst.* 300. In a *Quare Impedit* the Parson is to plead *Persona Impersonata*; but if he doth not say at the Time of obtaining the Writ, it will be inferred by the Writ that he is. *Cro. Car.* 105.

Parson mortal. The Rector of a Church instituted and inducted, for his own Life; was called *Persona mortalis*: And any Collegiate or Conventual Body, to whom the Church was for ever appropriated, were termed *Persona Immortalis*. Cartular. Reading. M.S. fol. 182.

Parsonage, Or Rectory, is a Parish Church, endowed with a House, Glebe, Tithes, &c. Or it is a certain Portion of Land, Tithes, and Offerings; established by Law, for the Maintenance of the Minister, that hath the Cure of Souls within the Parish whereof he is Rector: And though properly a *Parsonage* or Rectory doth consist of Glebe Land and Tithes; yet it may be a Rectory, tho' it have no Glebe, but the Church and Church-yard: Also there may be neither Glebe nor Tithes, but annual Payments in Lieu thereof. *Parf. Conc.* 190. The Rights to the *Parsonage* and Church Lands are of several Natures: For the Parson hath a Right to the Possession; the Patron hath the Right of Presentation; and the Ordinary a Right of Investiture, &c. But the Rights of the Patron and Ordinary are only collateral Rights; neither of them being capable of possessing or retaining the Church themselves; though no Charge can be laid on the Church or *Parsonage*, but by the Consent and Agreement of all of them. *Hugh's Parf. Law*, 188.

Partes finis nihil habuerunt, &c. An Exception taken against a *Fine* levied. 3 *Rep.*

Participatio, Is Charity so called, because the Poor are thereby made *Particeps* of other Men's Goods: We may read it in several Places in *Mon. Ang. Tom.* 2. pag. 321, &c.

Parties, Are the Persons which are named in a Deed or *Fine*, viz. that make or levy the same, and to whom it is made or levied.

Partitione faciendus, Is a Writ that lies for those who hold Lands or Tenements *pro indiviso*, and would sever to every one his Part, against them that refuse to join in Partition; as *Copartners*, &c. *F. N. B.* 61. 31 *H. 8.* c. 1.

Partition, (*Partitio*) Is a Dividing of Lands descended by the Common Law, or by Custom, among Coheirs or *Par. eners*, where there are two at the least: And *Partition* may be made by Jointenants, and Tenants in Common, &c. 31 *H. 8.* c. 1. 32 *H. 8.* c. 32. Vide *Par. eners*.

Partners, Are where two or more agree to come in Share and Share alike to any Trade or Bargain. If there are two *Partners* in Trade, and Judgment is recovered against one of them, his Moiety of the Goods in *Partnership* only shall be taken in Execution. *Show. Rep.* 174. See *Custom of Merchants*.

Part-owners, Are those that are concerned in *Ship* Matters, and who have joint Shares there-

in. And when there are *Part-owners* of a Ship, the Majority may fit her out, without the Consent of the Rest; and if they do, such Majority run all the Hazard, and are to partake of the Profits. *Show.* 13, 30. Action lies as well against the *Part-owners* of a Ship, for the Loss or Spoiling of Goods delivered to the Master, as against the Master; for as the Master of a Ship is chargeable in Respect of his Wages, so are the *Part-owners* in Respect of the Freight; but the Action against the *Part-owners* must be brought against all of them, or the Defendants may take Advantage of it by pleading in Abatement, &c. *Show. Rep.* 30, 105. 3 *Lev.* 259.

Party Jury, Is a Jury *de medieta Lingue*, in Actions brought by Foreigners. *Stat.* 14 *Car.* 2. cap. 11.

Parvise, (*Parvisia, Parvisus, non à Parvus adject. sed à Gal. le Parvis*) *Sed placitantes tunc, i. e. post meridiem, se divertunt ad Parvisum & alibi consulentes cum servientibus ad legem & alii consiliiis, &c.* Thus saith Fortescue in his *de Laudibus LL. Angl.* cap. 51. pag. 124. And Selden in his Notes on Fortescue defines it to be, an Afternoon's Exercise, or *Moot* for the Instruction of young Students; bearing the same Name originally with the *Parvisia* in Oxford. *Seld. Notes*, pag. 56. Of which Chaucer has Mention in one of his Prolog.

*A Serjeant at Law, that ware and wife,
That often had been at the Parvise.*

Pascha clausum. The Octaves of Easter or Low Sunday, which closes that Solemnity: And *Die (tali) post Pascha clausum* is a Date in some of our old Deeds. The first Statute of Westminster, Anno 3 Ed. 1. is said to be made the Monday after Easter Week; *post de la cluse de Pasche, &c.*

Pascha floridum, Is the Sunday before Easter called *Palm-Sunday*; when the proper Hymn or Gospel sung was *occurrent turba cum Floribus & Palmis, &c.* Cartular. Abbat. Glasston. M.S. f. 75.

Paschal Rents, Are Rents or yearly Tributes paid by the Clergy to the Bishop or Archdeacon, at their Easter Visitations.

Pastua, A Meadow, or Pasture Ground, set apart to feed Cattle. See *Pastura*.

Pascuage, (*Pascuagium* Fr. *Pasage*) The Grazing or Pasturing of Cattle.—*Et habere viginti Porcos quietos de Pascuagio, &c.* *Mon. Ang. Tom.* 2. pag. 23.

Pathage, And *Pathnage* in Woods, &c. See *Pannage*.

Passage, (*Passagium*) Is properly over Water, as Way is over Land; it relates to the Sea, and great Rivers, and is a French Word signifying *Transitum*. In the Stat. 4 Ed. 3. cap. 7. it is used for the Hire that a Man pays for being transported over Sea, or over any River: And it is mentioned among Customs and Duties, as *Theolonio*, *Passagio*, & *Lastagio*. *Chart. Hen.* 1. Also *Passagio* is a Writ directed to the Keepers of the Ports to permit a Man to pass over Sea, who has the King's Leave. *Ren. Orig.* 193.

Passagium Regis, Was a Voyage or Expedition to the Holy Land, when made by the Kings of England in Person. *Pryn's Collect.* par. 3. p. 767.

Passatoz, Is he that hath the Interest or Command of the Passage of a River; or the Lord to whom a Duty is paid for Passage. *Pat. Edw.* 3 par. 3. *Mon. Ang. Tom.* 1. p. 505.

Pass-port, Signifies a Licence granted by any Person in Authority, for the safe Passage of a

Man, or any Ship, &c. from one Place or Country to another. *Stat. 2 Ed. 6. c. 2.*

Pastoral Staff, The Staff or Crozier of a Bishop, wherewith they were invested.

Pasture, (*Pastura*) Is any Place where Cattle may feed; and Feeding for Cattle is called *Pasture*, wherefore we call Feeding Grounds *Common of Pasture*: But *Common of Pasture* is properly a Right of putting Beasts to *Pasture* in another Man's Soil; and in this, there is an Interest of the Lord and of the Tenant. *Wood's Inst. 196, 197. Pastura* differs from *Pascua*, as appears from what follows, viz. *Pastura omne genus pascendi significat, sive fiat in Pratis, sive in stipula, sive in Agriis, sive in Campis; sed Pascua est locus principaliter deputatus pecoribus pascendis, ut puta in montibus, moris, mariscis & planis non cultis nec aratis.* *Lindwood. Provin. Angl. lib. 3. c. 1.*

Pastus, A Procuration or Provision, which the Tenants of the King, or other Lords, were bound to make for them at certain Times, or as often as they made a Progress to their Lands.

—*Hoc modo per eum liberabo a Pastu Regis & Principium.* *Chart. Walgasi Regis Merciorum in Mon. Angl. Tom. 1. p. 123.*

Patentee, Is one to whom the King grants his Letters Patent. *7 Ed. 6. c. 3.*

Patents, Are the King's Writings, sealed with the Great Seal, having their Name from being open: And they differ from Writs. *Crompt. Jurisd. 126.* The King is to advise with his Council touching Grants and Patents made of his Estate, &c. And in Petitions for Lands, Annuities or Offices, the Value is to be expressed; also a former Patent is to be mentioned where the Petition is for a Grant in Reversion, or the Patents thereupon shall be void. *1 Hen. 4. cap. 6. 6 H. 8. cap. 15.* And Patents which bear not the Date and Day of Delivery of the King's Warrants into Chancery, are not good. *Stat. 18 Hen. 6. c. 1.* See *Grants of the King.*

Patria, Signifies the Country; but in the Law it is taken for a Neighbourhood, and when we say *Inquiratur per Patriam*, it is meant a *Fury of the Neighbourhood.*

Patriarch, (*Patriarcha*) Is a Greek Word applied to a Chief Father. *Anno 385.* in the general Council held at *Constantinople*, it was decreed that the Bishop of that Place should for ever be called a *Patriarch.*

Patrimony, (*Patrimonium*) An Hereditary Estate; or Right descending from Ancestors. The legal Endowment of a Church, or Religious House, was likewise called *Ecclesiastical Patrimony*; and the Lands and Revenues united to the See of *Rome*, are term'd *St. Peter's Patrimony.* *Cowel.*

Patrinus, Is used for Godfather, and *Matrina* a Godmother, in the Laws of King *Hen. 1.*

Patritius, Was an Honour conferred on Men of the first Quality, in the Time of the English Saxon Kings. — *Pro ampliori firmitatis Testamento, Principes & Senatores, Judices & Patritios subscribere fecimus.* *Mon. Ang. Tom. 1. p. 13.*

Patron, (*Patronus*) Signifieth in the Civil Law him that hath manumitted a Servant; and thereby is accounted his great Benefactor, and claims Duty and Reverence of him during his Life. *Digest. Tit. de Jure Patronatus.* In the Canon and Common Law, it is he who hath the Gift and Disposition of an Ecclesiastical Benefice; and the Reason of it is, because the Gift of Churches and Benefices belonged unto such good Men, as either built or endowed them with great Part of

their Revenues. *Terms de Ley 473.* And there are three Causes of *Patronage*: *Ratione Fundationis*, where one solely founds a Church; *Ratione Donationis*, when a Man only endows it; and *Ratione Fundi*, where a Person erects a Church on his own Ground. *Litt. Rep. 137. 2 Lill. Abr. 286.* The Patron is to present within six Kalendar Months after an Avoidance of the Church: And where the Church becomes void by the Death of the Incumbent, the Patron at his Peril is to take Notice of it, in making Presentation; but if there be an Avoidance by Deprivation, &c. he shall have Notice, and six Months after to present. *6 Rep. 61. 3 Leon. 46.* Where a Church becomes litigious by the Presentation of two several Patrons of their Clerks, a *Jus Patronatus* may be awarded by the Bishop to inquire into who is rightful Patron; and he is to admit accordingly, &c. *2 Roll. Abr. 384, 385.* If there is a Right of Nomination in one, and a Right of Presentation in another to the same Church; he that hath the Right of Nomination is the true Patron. *F. N. B. 133.* See *Advowson, &c.*

Pavage, (*Pavagium*) Money paid towards the Paving of Streets or Highways. *Rot. Parl. 10 Ed. 3.*

Pauper, Signifies a poor Man, according to which we have a Term in Law to sue in *Forma Pauperis.* See *Forma Pauperis.*

Pawn, (*Pignus*) A Pledge or Gage for Surety of Payment of Money lent: It is said to be derived à Pugno, quia Res quæ Pignori dantur, pugno vel manu traduntur. *Litt. Dist.* The Party that pawns Goods, hath a general Property in them; they cannot be forfeited by the Party that hath them in Pawn for any Offence of his, nor be taken in Execution for his Debt; neither may they otherwise be put in Execution, till the Debt for which they are pawned is satisfied. *Litt. Rep. 332.* If a Man pawns Goods for Money, and afterwards a Judgment is had against the Pawnee, at the Suit of one of his Creditors; the Goods in the Hands of the Pawnee shall not be taken in Execution upon this Judgment, until the Money is paid to the Pawnee, because he had a qualified Property in them, and the Judgment-Creditor only an Interest. *3 Bulst. 17.* And when a Person hath Jewels in Pawn for a certain Sum, and he that putteth them in Pawn is attainted; the King shall not have the Jewels unless he pay the Money. *Plowd. 487.* The Pawnee of Goods hath a special Property in them, to detain them for his Security, &c. and he may assign the Pawn over to another, who shall hold it subject to the same Conditions: And if the Pawnee die before redeem'd, his Executors shall have it upon the like Terms as he had it. If Goods pawn'd are perishable, and no Day being set for Payment of the Money, they lie in Pawn till spoiled, without any Default in him that hath them in Keeping; the Party that pawned them shall bear the Damage, for it shall be adjudged his Fault that he did not redeem them sooner; and he to whom pawned may have Action of Debt for his Money: Also if the Goods are taken from him, he may have Action of Trespass, &c. *Co. Litt. 89, 208.* Where Goods are pawned for Money borrow'd, without a Day set for their Redemption, they are redeemable at any Time during the Life of the Borrower: They may be redeem'd after the Death of him to whom pawn'd; but not after the Death of him who pawn'd the Goods. *2 Cro. 245.* Goods pawned generally, without any

Day of Redemption, if the *Pawner* dies, the *Pawn* is absolute and irredeemable; if the *Pawnee* dies, it is not so. *Noy* 137. 1 *Bulst.* 9. If Goods are redeemable at a Day certain, it must be strictly observed; and the *Pawnee*, in Case of Failure of Payment at the Day, may sell them. 1 *Roll. Rep.* 181, 215. In other Cases; Brokers commonly stay but a Year for their Money, at the End of which, if not redeem'd, they sell the Goods. *Law. Secur.* 99. He who borrows Money on a *Pawn* is to have again the Pledge when he repays it, or he may have Action for the Detainer; and his Tender of the Money revests the Special Property. 2 *Cro.* 244. And it hath been held, that where a Broker or *Pawnee* refuses upon Tender of the Money, to redeliver the Goods in *Pawn*, he may be indicted; because being secretly *pawn'd*, it may be impossible to prove a Delivery for Want of Witnesses, if Action of Trover should be brought for them. *Pasch.* 5 *W.* 3. 3 *Salk.* 268. Adjudg'd, that if Goods are lost, after the Tender of the Money, the *Pawnee* is liable to make them good to the Owner; for after Tender he is a wrongful Detainer, and he who keeps Goods wrongfully must answer for them at all Events, his wrongful Detainer being the Occasion of the Loss: But if they are lost before a Tender, 'tis otherwise; the *Pawnee* is not liable, if his Care of Keeping them was exact; and the Law requires nothing of him, but only that he shall use an ordinary Care in Keeping of the Goods, that they may be restored on Payment of the Money for which they were deposited; and in such Case, if the Goods are lost, the *Pawnee* hath still his Remedy against the *Pawner* for the Money lent. 2 *Salk.* 522. 3 *Salk.* 268. If the *Pawn* is laid up, and the *Pawnee* robb'd, he is not answerable: Though if the *Pawnee* useth the Thing, as a Jewel, Watch, &c. that will not be the worse for Wearing, which he may do, it is at his Peril; and if he is robbed, he is answerable to the Owner, as the Using occasioned the Loss, &c. *Ibid.* If the *Pawn* is of such a Nature that the Keeping is a Charge to the *Pawnee*, as a Cow, or a Horse, &c. he may milk the one, or ride the other, and this shall go in Recompence for his Keeping. *Ibid.* Things which will grow the Worse by Usage, as Apparel, &c. he may not use. *Owen* 124.

Pawnage In Woods and Forests for Swine. Vide *Pannage*.

Payment Of Money before the Day appointed, is in Law a Payment at the Day; for it cannot, in Presumption of Law, be any Prejudice to him to whom the Payment is made, to have his Money before the Time; and it appears by the Party's Receipt of it, that it is for his own Advantage to receive it then, otherwise he would not do it: Yet it is said, that the Defendant must not plead, that the Plaintiff accepted it in full Satisfaction; but that he paid it in full Satisfaction. 5 *Rep.* 117. Payment of a lesser Sum in Satisfaction of a greater, cannot be a Satisfaction for the Whole, unless the Payment be before the Day: Though the Gift of an Horse, or Robe, &c. in Satisfaction, may be good. *Ibid.* Upon *Soluit ad Diem* pleaded, it is good Evidence to prove Payment at any Time after the Day, and before the Action brought; and Payment, altho' after the Day, may be pleaded to any Action of Debt, upon Bill, Bond or Judgment, or *Scire facias* upon a Judgment. 2 *Lill. Abr.* 287. Stat. 4 & 5 *Ann.* Payment of Money shall be directed by

him who pays it, and not by the Receiver, &c. 5 *Rep.* 117. *Cro. Eliz.* 68. Vide *Bond.* Payment of Rent. See *Rent*.

Peace, (Pax) In the general Signification, is opposite to War; but particularly with us, it signifies a quiet and inoffensive Behaviour towards the King and his People. *Lamb. lib.* 1. c. 2. All Authority for Keeping of the *Peace* comes originally from the King, who is the supream Officer or Magistrate for Preservation thereof; though it is said the King cannot take a Recognizance of the *Peace*, because it is a Rule in Law, that no one can take any Recognizance, who is not either a Justice of Record, or by Commission: Also it is certain, that no Duke, Earl, or Baron, as such, have any greater Power to keep the *Peace*, than meer private Persons. *Lamb. lib.* 1. ch. 3. *Dalt. ch.* 1. But the Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward, the Lord Marshal, and every Justice of the King's Bench, have as incident to their Offices, &c. a general Authority to keep the *Peace* throughout all the Realm, and to award Process for the Surety of the *Peace*, and take Recognizances for it. 2 *Hawk. P. C.* 32. And every Court of Record hath Power to keep the *Peace* within its own Precinct: As have likewise Sheriffs of Counties, who are intrusted with the Custody of the Counties, and consequently have by it an implied Power of Keeping the *Peace* within the same; and Coroners may bind Persons to the *Peace* who make an Affray in their Presence; but these last may not grant Process of the *Peace*, &c. *Ibid.* See *Justice of Peace* and *Good Behaviour*.

Peace of God, and the Church, (Pax Dei & Ecclesie) Was antiently used for the Rest and Cessation, which the King's Subjects had from Trouble and Suits at Law between the Terms. According to *Spelman*, *Pax Dei, Tempus dicitur cultui Divino adhibitum, eaque appellatione omnes Dies Dominici, Festa & vigilia censentur.* *Spelm. Gloss.*

Peace of the King, (Pax Regis) Is that *Peace* and Security, for Life and Goods, which the King promises to all his People under his Protection: And where an Outlawry is reversed, a Person is restored to the King's *Peace*, called *Ad Pacem redire.* *Braff. lib.* 3. c. 11. There is, besides these, the *Peace of the King's Highway*, which is the Immunity that the King's Highway hath to be free from Annoyance or Molestation. *The Peace of the Plough*, whereby the Plough and Plough-Cattle are secured from Distresses. *F. N. B.* 90. And *Fairs* have been said to have their *Peace*; because no Man might be troubled in them for any Debt contracted elsewhere.

Pecia, A Piece or small Quantity of Ground. — *Cum duabus Peciis, &c. dicta terra pertinentibus.* *Paroch. Antiq.* 240.

Pectorale, A Word often met with in old Writings; and most Authors agree, that it is the same with the Garment called *Rationale*, which the High Priest in the old Law wore on his Shoulders as a Sign of Perfection, and the High Priests of the new Law wear as a Sign of the greatest Virtue: 'Tis by some taken to be that Part of the *Pall* which covers the Breast of the Priest, and from thence termed *Pectorale*; but it is by all agreed to be the richest Part of that Garment, embroidered with Gold, and adorn'd with precious Stones. *Item Capa cum Pectorale optime brendato cum rotundis Pectoralibus aurifrigiis, &c. humerali vincato de Fino auro brendato, & lapidibus insertis, &c.*

Petozel, Armour for the Breast, a Breast-plate or Petrel, for a Horse; from the Lat. *Pectus*: It is mentioned in the Stat. 14 Car. 2. c. 3.

Peculiar, (Fr. *Peculier*, i. e. Private) Is a particular Parish or Church, that hath Jurisdiction within it self, and Power to grant Administration or Probate of Wills, &c. exempt from the Ordinary. There are *Royal Peculiars*, and *Archbishops Peculiars*: The King's Chapel is a *Royal Peculiar*, exempted from all Spiritual Jurisdiction, and reserved to the immediate Government of the King himself; and there are also some *peculiar Ecclesiastical Jurisdictions* belonging to the King, which formerly appertain'd to Monasteries and Religious Houses. *Wood's Inst.* 504. It is an ancient Privilege of the See of Canterbury, that wheresoever any Manors or Advowsons do belong to it, they forthwith become exempt from the Ordinary, and are reputed *Peculiars* of that See; not because they are under no Ordinary, but because they are not under the Ordinary of the Diocese, &c. For the Jurisdiction is annexed to the Court of *Arches*, and the Judge thereof may originally cite to these *Peculiars* of the Archbishop. *Ibid.* The Court of *Peculiars* of the Archbishop of Canterbury, hath a particular Jurisdiction in the City of London, and in other Dioceses, &c. within his Province, in all fifty-seven *Peculiars*. 4 *Inst.* 338. Stat. 22 & 23 Car. 2. There are some *Peculiars* which belong to *Deans* and *Chapters*, or a *Prebendary*, exempted from the Archdeacon only; they are derived from the Bishop, of ancient Composition, and may be visited by the Bishop in his primary or triennial Visitation: 'In the mean Time, an Official of the Dean and Chapter, or Prebendary, is the Judge; and from hence the Appeal lies to the Bishop of the Diocese. *Wood* 504. Appeal lieth from other *peculiar Courts* to the King in Chancery. Stat. 25 H. 8. The Dean and Chapter of St. Paul's have a *peculiar Jurisdiction*; and the Dean and Chapter of Salisbury have a large *Peculiar* within that Diocese; so have the Dean and Chapter of Litchfield, &c. 2 *Nelf. Abr.* 1240, 1241. There are said to be *Peculiars* of *Archdeacons*; but they are not properly *Peculiars*, only subordinate Jurisdictions; and a *Peculiar* is *prima facie* to be understood of him who hath a co-ordinate Jurisdiction with the Bishop. *Hob.* 185. *Mod. Ca.* 308. If an Archdeacon hath a *peculiar Authority* by Commission, this shall not take away the Authority of the Bishop; but if he hath Authority and Jurisdiction by Prescription, it is said it shall. 2 *Roll. Rep.* 357. Where a Man dies Intestate, leaving Goods in several *Peculiars*, it has been held, that the Archbishop is to grant Administration. *Sid.* 90. 5 *Mod.* 239.

Pecunia, An Estate in Money; also Goods and Chattels, &c. *Leg. Edw. Confess.* c. 10.

Pecunia Ecclesiæ, Has been used for the State of the Church. *Till. Animado. on Selden's Tithes.*

Pecunia Sepulcralis, Money paid to the Priest at the Opening of the Grave, for the Benefit of the Deceased's Soul. *Leg. Canut.* 102. And this the Saxons called *Saulscead*, *Soulscot*, and *Anima Symbolum*. *Spelm.* de Concil. Tom. 1. fol. 517.

Pecuniary. All Punishments of Offences were anciently *Pecuniary*, by Mulct, &c. See *Fine*.

Pedage, (*Pedagium*) Signifies Money given for the Passing by Foot or Horse through any Country. *Pedagium à Pede dictum est, quod a transeuntibus solvitur*, &c. *Cassian. de Conf. Bur-*

gun. pag. 118. *Pedagia dicuntur que dantur a transeuntibus in locum constitutum à Principe, &c. Et capiens Pedagium, debet dare saluum Conductum, & Territorium ejus tenere securum.* *Spelm.* This Word is likewise mentioned by *Matt. Paris.* Anno 1256. And King Edward 3. granted to Sir Nele Loring, *Pedagium Sancti Macharii, &c.* *Ror. Pasch.* 22 Ed. 3.

Pedale, A Foot-Cloth, or Piece of Tapestry laid on the Ground to tread on for greater State and Ceremony. *Ingulph.* pag. 41.

Pedis abscissio. Cutting off the Foot was a Punishment of Criminals in former Times inflicted here, instead of Death; as appears by the Laws of William, called *The Conqueror*, viz. *Interdicimus ne quis occidatur vel suspendatur pro aliqua Culpa, sed eruantur Oculi, Abscindantur Pedes, vel Testiculi, vel Manus.* *Leg. Will.* 1. cap. 7. *Fleta*, lib. 1. c. 38. *Bract.* lib. 3. c. 32.

Pedones, A Word used for Foot-Soldiers. *Simoon de Durh.* Anno 1085.

Peer, (Fr. *Pierre*) Is a Fortrefe or Defence made against the Force of the Sea; for the better Security of Ships that lie at Harbour in any Haven: Such as the *Pier of Dover*. Stat. 14 Car. 2. c. 27. and the *Pier of Great Yarmouth*, mentioned 22 Car. 2. c. 2.

Peerage, A Duty or Imposition for Maintenance of a Sea Pier: Also the Dignity of the Lords or Peers of the Realm.

Peers, (*Pares*) Signify in our Common Law those that are impanelled in an Inquest for the Trial of any Man, and convicting or clearing him of the Offence for which he is called in Question: And by the Laws and Customs of England, every Man is to be tried by his Peers or Equals. *Kitch.* 78. *Magna Charta*, 9 H. 3. c. 29. And as every one of the Nobility being a Lord of Parliament, is a Peer or equal to all the other Lords, though they are of several Degrees; so the Commons are Peers to one another, although distinguished as Knights, Esquires, Gentlemen, &c. 2 *Inst.* 29. 3 *Inst.* 31.

Peers of the Realm, (*Pares Regni, Proceres*) Are the Nobility of the Kingdom, and Lords of Parliament; who are divided into Dukes, Marquesses, Earls, Viscounts and Barons: And the Reason why they are called Peers, is for that notwithstanding there be a Distinction of Degrees and Dignities in our Nobility, yet in all publick Actions they are equal; as in their Votes of Parliament, and in Passing upon the Trial of any Nobleman. *S. P. C. lib.* 3. And this Appellation seems to be borrowed from France, from those twelve Peers that Charlemaine instituted in that Kingdom, (called *Pares vel Patritii Francia*) but we have applied this Name to all our Lords of Parliament, and have no set Number of Peers, for they are more or less at the King's Pleasure. All Nobility and Peerage is granted by the Crown; and created either by Writ or Letters Patent: The Calling up a Lord by Writ is the most ancient Way, and gives a Fee-simple in a Barony, without Words of Inheritance, viz. To him and his Heirs; but the King may limit the general Estate of Inheritance to Heirs Male, or the Heirs of the Body: And as soon as the Person called sits in Parliament by Virtue of this Writ, his Blood is ennobled, and he is a Peer; but if he dies before he sits in Parliament, he is not, the bare Direction and Delivery of the Writ having no Effect. 1 *Inst.* 9, 16. But Creation by Letters Patent is good, and makes the Peerage sure, although

though he never sits in Parliament, and his Heirs shall inherit the Honour pursuant to the Words of the Patent: Though the Person created must in this Case have the Inheritance limited by apt Words; as to him and his Heirs, or the Heirs Male of his Body, Heirs of his Body, &c. otherwise he shall have no Inheritance. 1 *Inst.* 16. 2 *Inst.* 48. The King may create either Man or Woman noble for Life only: And *Peerage* may be granted for Life by Act of Law; as if a Duke take a Wife, she is a Dutches in Law by the Intermarriage; so of a Marquess, Earl, &c. 1 *Inst.* 16. 9 *Rep.* 97. Also the Dignity of an Earl may descend to a Daughter, if there be no Son, who shall be a Countess; and if there are many Daughters, it is said the King shall dispose of the Dignity to which Daughter he pleases. 1 *Inst.* 165. *Wood's Inst.* 42. Before the Time of King *Ed.* 3. there were but two Titles of Nobility, viz. Earls and Barons: Barons were originally by Tenure, afterwards created by Writ, and after that by Patent; but as to Earls, they were always created by Letters Patent. *Seld.* 536. And King *Hen.* 6. created *Edmond of Haddam*, Earl of *Richmond*, by Patent, and granted him Precedency before all other Earls. Queen *Mary* 1. likewise granted to *Henry Ratcliff*, Earl of *Suffex*, a Privilege by Patent beyond any other Nobleman, viz. that he might at any Time be covered in her Presence, like unto the *Grandeess of Spain*; and some few others of our Nobility have had conferred on them this Honour. The Stat. 31 *H.* 8. c. 10. settles the Precedency of the Lords of Parliament, and great Officers, &c. After whom, the Dukes, Marquesses, Earls, Viscounts, and Barons, take Place according to their Antienty; but it is declared, that Precedence is in the King's Disposition. *Thomas de la Warre* was summoned to Parliament by Writ, anno 3 *H.* 8. and *William* his Son, Anno 3 *Ed.* 6. was disabled by Attainder to claim any Dignity during his Life, but was afterwards called to Parliament by Queen *Elizabeth*, and sat there as *puisse* Lord, and died; then *Thomas*, the Son of the said *William*, petitioned the Queen in Parliament to be restored to the Place of *Thomas* his Grandfather; and all the Judges to whom it was referred were of Opinion that he should, because his Father's Disability was not absolute by Attainder, but only personal and temporary during his Life; and the Acceptance of the new Dignity by the Petitioner shall not hurt him, so that when the old and new Dignity are in one Person, the old shall be preferred. 11 *Rep.* 1. A Dignity of Earl, &c. is a Title by the Common Law; and if a Patentee be disturbed of his Dignity, the regular Course is to Petition the King, who indorses it and sends it into Chancery. *Staundf. Prerog.* 72. 22 *E.* 3. And where Nobility is gained by Writ, or Patent, without Descents, 'tis triable by Record; but when it is gained by Matter of Fact, as by Marriage, or where Descents are pleaded, Nobility is triable *per Pais.* 22 *Affs.* 24. 3 *Salk.* 243. A Person petitioned the Lords in Parliament to be tried by his *Peers*; the Lords disallowed his *Peerage*, and dismissed the Petition: And it was held in this Case, that the Defendant's Right stood upon his Letters Patent, which could not be cancelled but by *Scire facias*; and that the Parliament could not give Judgment in a Thing which did not come in a judicial Way before that Court. 2 *Salk.* 510, 511. 3 *Salk.* 243. Where

Peerage is claimed *ratione Baronii*, as by a Bishop, he must plead, that he is *unus Parium Regni Anglie*; but if the Claim is *ratione Nobilitatis*, he need not plead otherwise than pursuant to his Creation. 4 *Inst.* 15. 3 *Salk.* 243. There are no feudal Baronies at this Day: But there are Barons by Succession, and those are the Bishops, who by Virtue of ancient Baronies held of the King, (into which the Possessions of their Bishopricks have been converted) are called by Writ to Parliament, and have Place in the House of *Peers* as Lords Spiritual: The temporal Possessions of Bishops are held by their Service, to attend in Parliament when called; and that is in the Nature of a Barony; and all the Bishops together, it hath been said, make one of the three Estates in Parliament; but this is denied, because they have separately from the other Lords no negative Vote, &c. And though the Bishops are Lords of Parliament, and called by the King's Writ, and have a Vote there; they shall not be tried by the *Peers*, as they do not sit in Parliament by Reason of their Nobility, but of their Baronies which they hold in Right of the Church: They are not of the Degree of Nobility; their Blood is not ennobled, nor their *Peerage* hereditary; so that they are to be tried by the Country, i. e. by a common Jury: And when one of the Nobility is to be tried by his *Peers* in Parliament, the Spiritual Lords must withdraw and make their *Proxies.* 1 *Inst.* 70, 97, 110. 3 *Inst.* 30. 4 *Inst.* 1, 2. Some Bishops have been tried by *Peers of the Realm*; but it hath been when impeached by the *House of Commons*, as upon special Occasion many others have been who have not been *Peers*: And the Bishops may claim all the Privileges of the Lords Temporal; saving they cannot be try'd by their *Peers*, because the Bishops cannot in like Cases pass upon the Trial of any other *Peers*, they being prohibited by *Canon* to be Judges of Life and Death, &c. When a Lord is newly created, he is introduced into the House of *Peers*, by two Lords of the same Form in their Robes, Garter King at Arms going before, and his Lordship is to present his Writ of Summons, &c. to the Lord Chancellor; which being read, he is conducted to his Place: And Lords by Descent, where Nobility comes down from the Ancestor and is enjoy'd by Right of Blood, are introduced with the same Ceremony, the Presenting of the Writ excepted. *Lex Constitution.* 79. A Nobleman, whether a Native or Foreigner, who has his Nobility from a foreign State, although the Title of Dignity be given him, (as the highest and lowest Degrees of Nobility are universally acknowledged) in all our legal Proceedings no Notice is taken of his Nobility, for he is no *Peer*: And the Laws of *England* prohibit all Subjects to receive any hereditary Title of Honour or Dignity, of the Gift of any foreign Prince, without the Consent of the Sovereign. *Ibid.* 80, 81. Though Dignities of *Peerage* are granted from the Crown; they cannot be surrendered to the Crown, except it be in order to new and greater Honours; nor are they transferable over, unless they relate to an Office: And notwithstanding there are Instances of Earldoms being transferred, and wherein one Branch of a Family sate in the House of *Peers*, by Virtue of a Grant from the other Branch, particularly in the Reigns of *H.* 3. and *Ed.* 2. These Precedents have been disallowed; and the Duke of *Bedford*, who in the Reign of

King *Edw.* 4. was degraded for Poverty and Want of Possessions to support the Title, lost not his *Peerage* by Surrender, but by Authority of Parliament: And as Dignities may not be surrendered or transferred, without Authority of Parliament; so it hath been holden, that Honour and *Peerage* cannot be extinguished but by Act of Parliament, the King and Kingdom having an Interest in the *Peerage* of every Lord. *Lex Constit.* 85, 86, 87. An Earldom consists in Office, for the Defence of the Kingdom; and of Rents and Possessions, &c. and may be intailed as any other Office may, and as it concerns Land: But the Dignity of *Peerage* cannot be transferred by Fine, because it is a Quality affix'd to the Blood, and so merely personal, that a Fine cannot touch it. 2 *Salk.* 309. 3 *Salk.* 244. A personal Honour or Dignity may be forfeited, on committing Treason, &c. for 'tis implied by a Condition in Law, that the Person dignified shall be loyal; and the Office of an Earl, &c. is *ad Consulendum Regem tempore Pacis, & Defendendum tempore Belli*, therefore he forfeits it when he takes Counsel or Arms against the King. 7 *Rep.* 33. 2 *Nelf. Abr.* 934. All *Peers of the Realm* are looked upon as the King's hereditary Councillors: And as to the *Privileges* belonging to the *Peerage*, they are very great. At Common Law, it was lawful for any *Peer* to retain as many Chaplains as he would; but by Statute 21 *H.* 8. their Number is limited, *viz.* a Duke to have Six, Marquess or Earl Five, Viscount Four, Baron Three, &c. In many Cases, the Protestation of Honour shall be sufficient for a *Peer*; as in Trial of *Peers*, they proceed upon their Honour, not upon Oath; and if any *Peer* is a Defendant in a Court of Equity, he shall put in his Answer upon his Honour; (though formerly it was to be on Oath): And in Action of Debt upon Account, the Plaintiff being a *Peer*, it shall suffice to examine his Attorney, and not himself on Oath: But where a *Peer* is to answer Interrogatories, or make an Affidavit, or to be examined as a Witness, he must be upon his Oath. *Braet. lib.* 5. c. 9. 9 *Rep.* 49. 3 *Inst.* 29. *W. Jones* 152. 2 *Salk.* 512. A *Subpoena* shall not be awarded against a *Peer* out of the Chancery in a Cause; but a Letter from the Lord Chancellor, or Lord Keeper, in Lieu thereof. In any Trial where a *Peer* of the Realm is Plaintiff or Defendant, there must be Two or more Knights on the Jury. 2 *Mod.* 182. A *Peer* may not be impanelled upon any Inquests, though the Cause hath Relation to two *Peers*; and if any *Peer* be return'd upon a Jury, a special Writ shall issue for his Discharge from Service. No *Peer* can be assessed towards the Militia, but by an Assessment made by Six or more *Peers*; and the Houses of *Peers* shall not be searched for Conventicles, but by Warrant under the Sign manual, or in the Presence of the Lord Lieutenant, or one Deputy Lieutenant, and Two Justices of the Peace. 13 & 14 *Car.* 2. and 22 *Car.* 2. A *Peer* of the Realm being sent for by the King, in coming and returning may kill a Deer or Two in a Forest through which he passes; being done by the View of the Forester, or on blowing a Horn. 9 *H.* 3. If any Person shall divulge false Tales of any of the Lords of Parliament, by which Dissention may happen, or any Slander arise, the Offender shall be imprisoned, &c. *Stat. Westm.* 1. c. 34. A Nobleman menacing another Person, whereby such other Person fears his Life is in

Danger, no Writ of *Supplicavit* shall issue, but a *Subpoena*; and when the Lord appears, instead of Surety, he shall only Promise to keep the Peace. 35 *H.* 6. No *Capias* or Outlawry can be sued out against *Peers of the Realm*, in Civil Causes; and no *Essoin* lies against them. 9 *Rep.* 49. The Person of a *Peer*, as well out as in Parliament-time is privileged from all Arrests; unless for Treason, Felony, or Breach of the Peace, &c. *Peers* are not to be arrested upon mean Process, or on Execution for Debt or Trespas, because they are presumed not only to attend the King and the Publick Affairs, but the Law doth presume that they have sufficient Lands in which they may be distrained: But they may be arrested or apprehended, in Criminal Cases. 6 *Rep.* 52, 53. And though a *Peer* may not be arrested in his Body; yet his Estate may be sequestered for Debt, &c. upon a Prosecution after a Dissolution and Prorogation of Parliament, or Adjournment for above the Space of fourteen Days, when he refuses to appear and answer. 12 *W.* 3. And of late Years, on Non-appearance, &c. the Coaches and Horses of several *Peers* of this Kingdom, have out of the Time of Privilege been distrained, and Cattle seized upon their Lands, to compel them to appear: But the Privilege of a *Peer* is so great in Respect of his Person, that the King may not restrain him of his Liberty, without Order of the House of Lords, except it be in Cases of Treason, &c. A memorable Case wherein was that of the *Earl of Arundel* imprisoned by the King in the Reign of *Charles* 1. Every Lord of Parliament is allowed his Clergy in all Cases, where others are excluded by the Stat. 1 *Ed.* 6. 12. except wilful Murder; and cannot be denied Clergy for any other Felony wherein it was grantable at Common Law, if it be not ousted by some Statute made since the first of King *Ed.* 6. *S. P. C.* 1309. And it is said the Lord *Morley*, who was tried for Murder, and found guilty of Manslaughter, was discharged without Clergy. *Sid.* 277. 2 *Nelf. Abr.* 1181. *Peers of the Realm* are to be tried by their *Peers* in Parliament, *Magna Charta*, cap. 29. and 15 *Ed.* 3. c. 2. But Noblemen of *France*, *Ireland*, &c. and Sons of Dukes or Earls who are noble, and have the Title of Lords, but are not Lords of Parliament, shall not be permitted to have this Trial. 2 *Inst.* 50. A *Peer* shall be tried by his *Peers*, on Indictment for Treason, Murder, or Felony; though in Appeal of Felony, he shall be tried by Freeholders: And Indictments of *Peers* for Treason or Felony, are to be found by Freeholders of the County, and then they plead before the Lord High Steward, &c. 1 *Inst.* 156. 3 *Inst.* 28.

On the Trials of *Peers* in criminal Matters, all the *Peers* who have a Right to sit and vote in Parliament, are to be duly summoned twenty Days at least before the Trial, to appear and vote at the same, every such *Peer* first taking the Oaths required by the Act 1 *W. & M.* &c. The *Peer* being indicted for the Treason or Felony, before Commissioners of *Oyer and Terminer*, or in the *King's Bench*, if the Treason, &c. be committed in the County of *Middlesex*; then the King by Commission under the Great Seal, constitutes some *Peer* (generally the Lord Chancellor) Lord High Steward, who is Judge in these Cases; and the Commission commands the *Peers of the Realm* to be attendant on him, also the Lieutenant of the Tower, with the Prisoner, &c. A *Certiorari* is awarded

awarded out of the Chancery, to remove the Indictment before the Lord High Steward: And another Writ issues for the Bringing of the Prisoner; and the Lord Steward makes his Precept for that Purpose, assigning a Day and Place, as in *Westminster-Hall* inclos'd with Scaffolds, &c. and for summoning the *Peers*, which are to be Twelve and above at least present: At the Day, the Lord High Steward takes Place under a Cloth of State; his Commission is read by the Clerk of the Crown, and he has a White Rod delivered him by the Usher, which being return'd, Proclamation is made, and Command given for Certifying of Indictments, &c. and the Lieutenant of the *Tower* to return his Writ, and bring the Prisoner to the Bar; after this, the Serjeant at Arms returns his Precept with Names of the *Peers* summoned, and they are called over, and answering to their Names are recorded, when they take their Places: The Ceremony thus adjust'd, the High Steward declares to the Prisoner at the Bar, the Cause of their Assembly; assures him of Justice, and encourages him to answer without Fear; then the Clerk of the Crown reads the Indictment, and arraigns the Prisoner, and the High Steward gives his Charge to the *Peers*; this being over, the King's Counsel produce their Evidence for the King; and if the Prisoner hath any Matter of Law to plead, he shall be assigned Counsel; but if he pleads Not guilty, and has nothing farther, he shall be allowed no Counsel, for the Court are instead of it; after all the Evidence given for the King, and the Prisoner's Answer heard, the Prisoner is withdrawn from the Bar, and the Lords that are *Triers* go to some Place to consider of their Evidence: But the Lords can admit no Evidence, but in the Hearing of the Prisoner; they cannot have Conference with the Judges, (who attend on the Lord High Steward, and are not to deliver their Opinions before-hand) but in the Prisoner's Hearing; nor can they send for the Opinion of the Judges, or demand it, but in open Court; and the Lord Steward cannot collect the Evidence, or confer with the Lords, but in the Presence of the Prisoner; who is at first to require Justice of the Lords, and that no Question or Conference be had but in his Presence: Nothing is done in the Absence of the Prisoner, until the Lords come to agree on their Verdict; and then they are to be together as Juries until they are agreed, when they come again into Court and take their Places, and the Lord High Steward, publickly in open Court, demands of the Lords, beginning with the *Puisne* Lord, whether the Prisoner, calling him by his Name, be guilty of the Treason, &c. whereof he is arraigned, who all give in their Verdict; and he being found Guilty by a Majority of Votes more than Twelve, is brought to the Bar again, and the Lord Steward acquainting the Prisoner with the Verdict of his *Peers*, passes Sentence and Judgment accordingly: After which, an *O Yes* is made for dissolving of the Commission, and the White Rod is broken by the Lord High Steward; whereupon breaks up this Grand Assembly, which is esteem'd the most solemn and august Court of Justice upon Earth. 2 *Hawk. P. C.* 421, 422, &c. The Lord Steward gives no vote himself on a Trial by Commission; but only on a Trial by the House of *Peers*, while the Parliament is sitting: Where a *Peer* is tried by the House of Lords in full Parliament, the House may be adjourn'd as

often as there is Occasion, and the Evidence taken by Parcels; also it hath been adjudg'd, that where the Trial is by Commission, the Lord Steward, after a Verdict given, may take Time to advise upon it, and his Office continues 'till he has given Judgment. But the *Triers* may not separate upon a Trial by Commission, after the Evidence is given for the King; and it hath been resolv'd by all the Judges, that the *Peers* in such Case must continue together till they agree to give a Verdict. *State Trials*, Vol. 2. fol. 702. Vol. 3. fol. 657. 2 *Hawk.* 425. A *Peer* of the *Realm* arraigned in Parliament, must be tried before a Lord Steward; and if he appear not, he shall be outlaw'd: And he cannot waive a Trial by his *Peers*; for if a *Peer* on Arraignment before the Lords refuse to put himself upon such Trial, he shall be proceeded against as one who stands mute: But if one who has a Title to *Peerage*, be indicted and arraigned as a Commoner, and plead Not guilty, and put himself upon his Country; it hath been held, that he cannot afterwards suggest that he is a *Peer*, and pray Trial by his *Peers*. 3 *Inst.* 30. *Kel.* 57. *Dalif.* 16. It is said, that a Writ of Error lies in *B. R.* of an Attainder of a *Peer* before the Lord High Steward. 2 *Hawk. P. C.* 462. If a *Peer* be attainted of Treason or Felony, he may be brought before the Court of *B. R.* and demanded what he has to say why Execution should not be awarded against him? And if he plead any Matter to such Demand, his Plea shall be heard, and Execution ordered by the said Court, upon its being adjudg'd against him. 1 *H.* 7. 22. *pl.* 15. *Bro. Coro.* 129. *Fitz. Coro.* 49. Likewise the Court of *King's Bench* may allow a Pardon pleaded by a *Peer* to an Indictment in that Court: But that Court cannot receive his Plea of Not guilty, &c. but only the Lord Steward, on an Arraignment before the Lords. 2 *Inst.* 49. The Sentence against a *Peer*, in Case of Treason, is the same as against a common Subject; though the King forgives all but Beheading, which is a Part of the Judgment: For other capital Crimes, Beheading is also the general Punishment of a *Peer*; but 33 *H.* 8. the Lord *Dacres* was attainted of Murder, and had Judgment to be hanged; and anno 3 & 4 *P. & M.* the Lord *Stourton* being attainted of Murder, had Judgment against him to be hanged by the Neck until he was dead, which Sentences were executed. If Execution be not done; the Lord Steward may by Precept command it to be done according to the Judgment. 3 *Inst.* 31. Trial by *Peers* is a Practice very antient: In the Reign of *Will. 1.* called *The Conqueror*, the Earl of *Hereford*, for Conspiring to receive the *Danes* into *England*, and depose the Conqueror, was tried by his *Peers*, and found Guilty of the Treason, *per Judicium parium suorum*; but he lived in Prison his whole Life. 2 *Inst.* 50. The Duke of *Suffolk*, 28 *H.* 6. being accused of High Treason by the Commons, put himself upon the King's Grace, and not upon his *Peers*, and the King alone adjudg'd him to Banishment; but he sent for the Lord Chancellor, and all the Lords that were in Town to his Palace at *Westminster*, and also the Duke, and commanded him to quit the Kingdom in their Presence: The Lords nevertheless entered a Protest to save the Privilege of their *Peerage*; and this was deemed no legal Banishment, for the King's Judging in that Manner was no Judgment at all; he was extrajudicially bid to absent himself out of the Realm, and in doing;

doing it he was taken on the Sea and slain. The Case of the Lord *Cromwell*, in the Reign of K. H. 8. was very extraordinary; this Lord was attainted in Parliament, and condemned and executed for High Treason, without being allowed to make any Defence: And several great Persons during this Reign were brought to Trial before *Lords Commissioners*. Anno 32 Car. 2. the Lord *Stafford* was tried for Treason; and after the Evidence was given for the King, and the Prisoner had summ'd up all his Objections to the King's Evidence, he insisted upon several Points of Law, viz. That no Overt-Act was alledged in his Impeachment; that they were not competent Witnesses who swore against him, but that they swore for Money; and whether a Man could be condemned for Treason by one Witness, there not being two Witnesses to any one Point, &c. But the Points insisted upon being over-ruled, he was found Guilty by a Majority of twenty-four Votes; and was executed on *Tower-hill*. See more of *Peers* under *Baron*, *Descent of Dignities*, *Lords*, &c.

Peereſs. As we have Noblemen of several Ranks; so we have noble Women, and those may be by Creation, Descent, or Marriage: And first, King Hen. 8. made *Anne Bullen* Marchioness of *Pembroke*: King James 1. created the Lady *Compton*, Wife to Sir *Tho. Compton*, Countess of *Buckingham* in the Life-time of her Husband, without any Addition of Honour to him; and also the same King made the Lady *Finch* Viscountess of *Maidstone*, and afterwards Countess of *Winchelsea*, to her and the Heirs of her Body: And the late King Geo. 1. made the Lady *Sculinborough*, Dutcheſs of *Kendal*. A Woman noble by Creation or Descent, marrying one under the Degree of Nobility, still remaineth Noble; but if she be noble by Marriage only, she loseth her Dignity if she marry afterwards a Commoner; though not if the second Husband is noble, and inferior in Dignity to the first Husband: And by the Custom of *England*, Women noble by Marriage always retain their Nobility. 1 *Inst.* 16. 1 *Inst.* 50. 6 *Rep.* 53. If an *English* Woman born takes to Husband a *French* Nobleman, she shall not bear the Title of Dignity; and if a *German* Woman, &c. marry a Nobleman of *England*, unless she be made Denizen, she cannot claim the Title of her Husband, no more than her Dower, &c. *Lex Constitution.* 80. A Countess or Baroness may not be arrested for Debt or Trespass; for though in Respect of their Sex, they cannot sit in Parliament, they are nevertheless *Peers* of the Realm, and shall be tried by their *Peers*, &c. But a *Capias* being awarded against the Countess of *Rutland*, it was held that she might be taken by the Sheriff; because he ought not to dispute the Authority of that Court from whence the Writ issued, but must execute it, for he is bound by his Oath so to do; and although by the Writ it self it appeared, that the Party was a Countess, against whom a *Capias* would not generally lie, for that in some Cases it may lie, as for a Contempt, &c. therefore the Sheriff ought not to examine the judicial Acts of the Court. 6 *Rep.* 52. By the Statute 20 H. 6. c. 9. a Dutcheſs, Countess, or Baroness, married or sole, shall be put to answer, and judged upon Indictments of Treason and Felony, before such Judges and *Peers* as the *Peers* of the Realm shall be: And it has been agreed, that a Queen Consort, and Queen Dowager, whether she continue sole after the King's Death, or take a second Husband,

and he be a *Peer* or Commoner; and also all *Peereſſes* by Birth, whether they be sole or married to *Peers* or Commoners; and all Marchionesses and Viscountesses are intitled to a Trial by the *Peers*, though not expressly mentioned in the Act. 2 *Inst.* 50. *Crompt. Jurisd.* 33. 2 *Hawk.* P. C. 423. A Dutcheſs, Marchioness, Countess, or Baroness, may retain two Chaplains, by 21 H. 8. c. 13. But it is said that a Baroness, &c. may not retain Chaplains during her Coverture; only Widows of Noblemen. *Wood's Inst.* 44. 4 *Rep.* 89. Vide *Chaplain*.

Pelfa, A Pound-weight; it was antiently used for *Pondus*, whence to *Peise* or *Poise*, and *Pesage*.

Pela, A Peel, Pile or Fort; and the Citadel or Castle in the Isle of *Man* was granted to Sir *John Stanley* by this Name. *Pat.* 7 H. 4.

Pelfe and **Pelfre**, (*Pelfra*). — *Tho. Venables Arm. clamat Quod si aliquis Tenent. sive Resident. infra Dominium sive Manerium de Kinderton feloniam fecerit, & Corpus ejus per ipsum Thomam super factum illud captum, & convict. fuerit, habere Pelfram, viz. Omnia Bona & Catalla hujusmodi seifire, &c.* *Plac. in Itin. apud Cestr.* 14 Hen. 7. —

In Time of War, the *Earl Marshal* is to have of Preys and Booties, all the gelded Beasts, except Hogs, Goats, &c. which is called *Pelfre*. M.S. S. Knyveton.

Pellage, The Custom or Duty paid for Skins of Leather. *Rot. Parl.* 11 H. 4.

Pellicia, A Pilch: *Tunica vel Indumentum Pelliceum, hinc Super-pelliceum*, A Sur-pilch or Surplice. *Spelm.*

Pelt-mool, Is the Wool, stripp'd off the Skin or Pelt of a dead Sheep. *Stat.* 8 H. 6. c. 22.

Pen, A Word used by the *Britains* for a high Mountain, and also by the antient *Gauls*; from whence those high Hills, which divide *France* from *Italy*, are called the *Apennines*. *Camd. Britan.*

Penal Laws, Are of three Kinds, viz. *Pœna Pecuniaria*, *Pœna Corporalis*, and *Pœna Exilii*. *Cro. Jac.* 415. And Penal Statutes have been made upon many and various Occasions, to punish and deter Offenders; and they ought to be construed strictly, and not be extended by Equity; but the Words of them may be interpreted beneficially, according to the Intent of the Legislators. 1 *Inst.* 54, 268. Where a Thing is prohibited by Statute under a Penalty, if the Penalty, or Part of it be not given to him who will sue for the same; it goes and belongs to the King. *Rast. Entr.* 433. 2 *Hawk.* 265. But the King cannot grant to any Person, any Penalty or Forfeiture, &c. due by any Statute, before Judgment thereupon had; though after Plea pleaded, Justices of Assize, &c. having Power to hear and determine Offences done against any Penal Statute, may compound the Penalties with the Defendant, by Virtue of the King's Warrant or Privy Seal. *Stat.* 21 Jac. 1. c. 3. The Spiritual Court may hold Plea of a Thing forbidden by a Statute upon a Penalty; but they may not proceed upon the Penalty. 2 *Lev.* 222. See *Information*.

Penalty of Bonds, &c. If a Man brings an Action of Debt upon a Bond for Performance of Covenants, the Plaintiff shall recover the whole Penalty of his Bond; because in Debt, the Judgment must be according to the Demand, and the Demand is to be for the whole Penalty: But upon the Defendant's bringing a Bill in Equity, and praying an Injunction to the Suit at Common Law, the Court of Equity usually grants it 'till the

the Hearing of the Cause; and upon the Hearing of the Cause, they will continue the Injunction farther, and order a Trial at Law on a *Quantum damnificatus*, for the Jury to find what Damage the Plaintiff received by Reason of the Breach of Covenants, &c. And they farther order, that after such Verdict given at the Common Law, both Parties shall resort back for the Decree of that Court: So that here must be several Actions and Suits at Law and in Equity; whereas a bare *Action of Covenant*, without suing for the *Penalty of the Bond*, will make an End of the Business in less Time, and for a much less Charge. 2 *Lil. Abr.* 288, 289.

Penance, (*Pœnitentia*) Is a Punishment imposed for a Crime by the Ecclesiastical Laws. It is an Acknowledgment of the Offence, and standing in some publick Place, &c. to satisfy the Church for the Scandal given by an evil Example; particularly in the Cases of Adultery, &c. for which the Offender stands in the Church, Barefoot and Bareheaded, in a White Sheet, &c. But for smaller Faults it may be made in the Court, or before the Minister and Church-wardens, or some of the Parishioners; as in Case of Defamation, &c. *Wood's Inst.* 507. Penance may be changed into a Sum of Money, to be applied to Pious Uses, called *Commuting*. 3 *Inst.* 150. 4 *Inst.* 336.

Penance At Common Law, where a Person stands mute. See *Pain Fort & Dure*.

Penerarius, An Ensign-bearer; as *John Parient* was Squire of the Body, and *Penerarius* to *K. Rich.* 2.

Denigeldum, *Denarii alicujus ex quavis consuetudine pro facultate aliqua, vel Privilegio habendo, puta in Foresta aut alibi.* *Mon. Angl. Tom.* 1. pag. 372.

Denon, (*Fr. Penmon*) A Standard or Banner carried in War. 11 *R. 2. c.* 1.

Pension, (*Pensio*) Is an yearly Payment of Money in Recompence of Service, &c. And to receive a *Pension* from a foreign Prince or State, without Leave of our King, has been held to be criminal, because it may incline a Man to prefer the Interest of such foreign Prince to that of his own Country. 1 *Hawk. P. C.* 59. Persons having *Pensions* from the Crown are declared incapable of being elected Members of Parliament, &c. by Statute 12 *W. 3. 4 & 5 Ann.* 1 *Geo.* See *Parliament*.

Pensions of Churches, Are a certain Sum of Money paid to Clergymen in Lieu of Tithes. And some Churches have settled on them Annuities, *Pensions*, &c. payable by other Churches; which *Pensions* are due by Virtue of some Decree made by an Ecclesiastical Judge upon a Controversy for Tithes, by which they have been decreed to be enjoyed by one, and a *Pension* instead thereof to be paid to another; or they have arisen by Virtue of a Deed made by the Consent of the Parson, Patron, and Ordinary; and if such *Pension* hath been usually paid for twenty Years, then it may be claimed by Prescription, and be recovered in the Spiritual Court; or a Parson may prosecute his Suit for a *Pension* by Prescription, either in that Court or at Common Law, by a Writ of Annuity; but if he takes his Remedy at Law, he shall never afterwards sue in the Spiritual Court: If the Prescription be denied, that must be tried by the Common Law. *F. N. B.* 51. *Hardr.* 230. *Ventr.* 120. A Spiritual Person may sue in the Spiritual Court, for a *Pension* originally granted and confirmed by the

Ordinary; but where it is granted by a Temporal Person to a Clerk, he cannot; as if one grant an Annuity to a Parson, he must sue for it in the Temporal Courts. *Cro. Eliz.* 675. If a Parson or Vicar have a *Pension* out of another Church, and it is not paid, they may bring a Writ of Annuity; because a *Pension* issuing out of a Rectory is the same Thing as a Rent, for it may be demanded in a Writ of Entry, and a Common Recovery may be suffered of it. 2 *Nels. Abr.* 1243. Upon a Bill in the Exchequer for a *Pension* issuing out of a Vicarage, it hath been held, that though there is no Glebe nor Tithes, but only Offerings, &c. yet the Vicar is chargeable; and a Suit may be brought in this Court as well as at Common Law, &c. for a *Pension* by Prescription. *Hardr.* 230. A *Pension* out of an Appropriation by Prescription is suable in the Spiritual Court; and if the Duty is traversed, it may be tried there. 1 *Salk.* 58. A *Libel* was had in the Spiritual Court for a *Pension*, to which the Plaintiff made a Title by Prescription; and a Prohibition was pray'd, for that the Court had no Cognisance of Prescriptions; but adjudged, that they having Cognisance of the Principal, it shall draw the Accessary. 1 *Ventr.* 3. The Curate of a Chapel of Ease libelled against the Vicar of the Parish for the Arrears of a *Pension*, which he claimed by Prescription; though a Prohibition was granted, because the Curate is removable at the Will of the Parson, and therefore cannot prescribe; he must bring a *Quantum meruit*. 2 *Salk.* 506. The Stat. 13 *Ed.* 1. appoints a Remedy for *Pensions* in the Ecclesiastical Court: And the 34 & 35 *H. 8. c.* 19. gives Damages to the Value and Costs, &c.

Pensions of the Inns of Courts, Are annual Payments of each Member to the Houses: And also that which in the Two Temples is called a Parliament, and in *Lincoln's Inn* a Council, in *Gray's Inn* is termed a *Pension*.

Pension-writ, Is a Writ or peremptory Order against those who are in arrear for *Pensions* and other Duties; and when once issued, none sued thereby in any of the Inns of Court shall be discharged or permitted to come in Commons till all Duties are paid. *Ord. Gray's Inn.*

Pensioners, (*Pensionarii*) Are a Band of Gentlemen so called, that attend as a private Guard on the King's Person; they were first instituted Anno 1539.

Pentecostals, (*Pentecostalia*) Certain pious Oblations made at the Feast of *Pentecost* or Whitson-tide by Parishioners to the Priest of the Parish, &c. Which Oblations were also termed *Whitson Farthings*, and divided into four Parts; one to the Parish Priest, a second to the Poor, a Third for the Repairs of the Church, and the Fourth to the Bishop of the Diocese. *Steph. of Pentecostals*, &c.

Peny, Was our ancient current Money; and the Saxons had no other Sort of Silver Coin. 2 *Inst.* 575. It was equal in Weight to our Three Pence now; five of those *Penies* made one Saxon Shilling, and thirty Pence a Mark, which weighed as much as Three of our Half-Crowns: And this *Peny* was made with a Cross in the Middle, and so broke into Half-pence and Farthings. *Matt. Paris.* 1279. The English *Peny* called *Stirling* is round, and antiently weighed 32 *grana frumenti in medio Spica*. *Stat. Edw.* 1.

Peny-weight. As every Pound contains 12 Ounces, so each Ounce was divided into twenty Parts, called twenty *Peny-weights*; and tho' the

Peny-

Peny-weight be altered, the Denomination still remains: Every *Peny-weight* is subdivided into twenty-four Grains.

Perambulation, (*Perambulatio*) Signifies a Travelling through, or over: As *Perambulation of the Forest* is the Surveying or Walking about the Forest, and the utmost Limits of it; by certain Justices, or other Officers thereto assign'd, to set down and preserve the Metes and Bounds thereof. 17 Car. 1. c. 16. 20 Car. 2. c. 3. 4 Inst. 30. *Perambulation of Parishes* is to be made by the Minister, Church-wardens and Parishioners, by going round the same once a Year, in or about *Ascension-week*: And the Parishioners may well justify going over any Man's Land in their *Perambulation*, according to Usage; and it is said may abate all Nuisances in their Way. Cro. Eliz. 444. And there is a *Perambulation of Manors*; and a Writ *Perambulatione facienda*, which lies where any Incroachments have been made by a neighbouring Lord, &c. then by the Assent of the Lords, the Sheriff shall take with him the Parties and Neighbours, and make a *Perambulation*, and settle the Bounds: Also a Commission may be granted to other Persons to make *Perambulation*, and to certify the same into the Chancery, or the Common Pleas, &c. And this Commission is issued to make *Perambulation of Towns, Counties, &c.* New Nat. Br. 296. If Tenant for Life of a Lordship, and one who is Tenant in Fee-simple of another Lordship adjoining, sue forth this Writ or Commission, and by Virtue thereof a *Perambulation* is made; the same shall not bind him in Reversion: Nor shall the *Perambulation* made with the Assent of Tenant in Tail, bind his Heir. Ibid. And 'tis said this Assent of the Parties to the *Perambulation* ought to be acknowledged and made Personally in the Chancery, or by *Dedimus Potestatem*; and being certified, the Writ or Commission issues, &c. The Writ begins thus: *Rex Vic', &c. Precipimus tibi, quod assumpt. tecum duodecim discretis & legal. Milit. in Com. tuo in propria Persona tua accedas ad terram A. B. de, &c. & terram C. D. de, &c. per eorum Sacramentum Fieri fac. Perambulat', &c. per certas Metas & Divisas, &c.*

If *Perambulation* be refused to be made by a Lord, the other Lord who is grieved thereby shall have a Writ against him called *de Rationabilibus Divisib.*

Perca, For *Pertica*, a *Perch* of Land. — Et unam acram Prati per majorem Percam. Mon. Angl. Tom. 2. pag. 87.

Perch, Is used with us for a Rod or Pole of sixteen Foot and a Half in Length, whereof forty in Length, and four in Breadth, make an Acre of Ground. Cromp. Jurisd. 222. But by the Customs of several Counties, there is a Difference in this Measure: In *Staffordshire* it is twenty-four Foot; and in the Forest of *Sherwood* twenty-five Foot, the Foot there being eighteen Inches long: And in *Heresfordshire*, a *Perch* of Ditching is twenty-one Foot; the *Perch* of Walling sixteen Foot and a Half; and a Pole of denshired Ground is twelve Foot, &c. Skene.

Per cui & post, Writs of Entry so called. See Entry.

Perdings, Signifies the Dregs of the People, viz. Men of no Substance. Leg. H. 1. c. 29.

Perdonatio Utlagariæ, Is a Pardon for a Man who for Contempt in not yielding Obedience to the Process of the King's Courts is outlawed, and

afterwards of his own Accord surrenders himself. Reg. Orig. 28.

Peremptory, (*Peremptorius*) Joined with a Substantive, is taken for a final and determinate Act, without Hope of Renewing or Altering the same: And there is a *Peremptory Action, Day, Nonsuit, &c.* Bract. lib. 4. c. 20. F. N. B. 35, 38, 104. If a Defendant in an Action, tender an Issue in Abatement of the Plaintiff's Writ, and the Plaintiff demurs upon the Issue, if on arguing the Demurrer the Issue is over-ruled as not good; the Court will give the Defendant a Day over to answer *peremptorily*, viz. To plead a Plea to the Merits of the Cause; the former Plea which was over-ruled, being only in Abatement of the Writ: But it is otherwise where such an Issue and Demurrer is in Bar of the Action; for there the Merits of the Cause are put upon it. Trin. 24 Car. 1. B. R. 2 Lill. Abr. 190. A *Peremptory Day* is when a Business is by a Rule of Court to be spoken to at a precise Day; but if it cannot be spoken unto then, by Reason of other Business, the Court at the Prayer of the Party concerned will dispence with the not Speaking to it at that Time, and give a farther Day without Prejudice to him; and this is called the putting off of a *Peremptory*, and is used to be moved for by Counsel at the Rising of the Court, when it is granted of Course. 2 Lill. Ibid. If a *Peremptory Day* is put off by the Court, the Party that will take Advantage of it, must enter the Rule of Court that was made for the Putting it off. Trin. 1651. *Peremptory Challenge* of Jurors in Capital Cases. Vide Challenge.

Perinde valere, Is a Term in the Ecclesiastical Law; and signifieth a Dispensation granted to a Clerk, who being defective in his Capacity, is nevertheless admitted *de facto* to a Benefice, or other Ecclesiastical Function: And it is also called a *Writ*. Stat. 25 Hen. 8. c. 21.

Periphrasis, {Lat.} Is a Circumlocution; a Figure of Rhetorick, when that which might have been said in one or two Words is express'd by many. Litt. Dist. No *Periphrasis* or Circumlocution will supply Words of Art, which the Law hath appropriated for the Description of Offences in Indictments: And not any *Periphrasis*, Intendment and Conclusion shall make good an Indictment, which doth not bring the Fact within all the material Words of a Statute; unless the Statute be recited, &c. Cro. Eliz. 535, 749. 2 Hawk. P. C. 224, 249.

Perjury, (*Perjurium*) Is a Crime committed, when a lawful Oath is administered by one that hath Authority to any Persons in a judicial Proceeding, who swear absolutely and falsely in a Matter that is material to the Issue or Cause in Question, by their own Act, or the Subornation of others. 3 Inst. 164. And *Perjury*, before the Conquest, was punished sometimes by Death, other Times by Banishment, and sometimes by corporal Punishment, &c. Afterwards it came to Fine and Ransom, and Disability to bear Testimony. 3 Inst. 163. At Common Law, *Perjury* and Subornation of *Perjury* is punished by Fine, Imprisonment, Pillory, &c. and the Offender is ever after incapable to be a Witness. 3 Inst. 163. By Statute, Persons committing wilful and corrupt *Perjury*, in any Cause depending concerning Lands or Goods, &c. in any of the Courts of Record, shall forfeit 20*l.* and be imprisoned fix Months, and their Oath shall not be received in any

any Court of Record, until the Judgment is reversed; and if the Offenders have not Goods or Chattels to the Value of 20 *l.* they shall be set on the Pillory in some Market-place, and have both their Ears nailed thereto: And unlawful and corrupt Procuring and Suborning a Witness to give false Testimony in any Court of Record, &c. or corruptly Procuring any Witness to testify in *perpetuam rei Memoriam*, the Offender shall forfeit 40 *l.* And if he be not worth 40 *l.* he shall suffer Six Months Imprisonment, and stand on the Pillory in some open Market near the Place where the Offence was committed; and shall not be received as a Witness till such Judgment be reversed; but if the Judgment be reversed, the Party grieved shall recover Damages against the Prosecutor, by Action on the Case, &c. 5 *Eliz. cap. 9.* It has been adjudged, that if a Man be convicted of *Perjury* at the Common Law, a Pardon will restore the Party to his Testimony; but not in a Conviction on the Statute, for there he must reverse the Judgment before he can be restored, and Disability is Part of the Judgment. 2 *Salk. 513.* 2 *Nelf. Abr. 978.* Yet a Person convicted of *Perjury* was allowed to make Affidavit, to set aside a Judgment for Irregularity; though the Affidavits of such Persons have been refused to be read. 2 *Salk. 461.* *Perjury*, if it relates to Justice, is punishable by Statute; and if it be in a Spiritual Matter in the Spiritual Court, it may be punished there. 3 *Salk. 269.* A false Oath in a Court of Justice is more criminal than elsewhere: And 'tis an Offence for which the Party may be indicted, either by the Common Law, or upon the Stat. 5 *Eliz.* by which the Punishment is enlarged, but the Nature of the Offence is not altered by that Statute; and in many Cases an Indictment will lie at Common Law, when it will not lie upon the Statute; as for Instance; A Person may be indicted at Common Law for a false Affidavit taken before a Master in Chancery, but not on the Statute; because this is not *Perjury* in a Matter relating to the Proof of what was in Issue. *Style 336. Sid. 106. Bulst. 322.* The Statute extends to no other *Perjury* than that of Witnesses; but Persons *perjuring* themselves in their Answers in Chancery, or in the Exchequer, by Affidavit, or Swearing the Peace against another, &c. may be punished for the *Perjury* at the Common Law; which is esteemed the safest Way to prosecute for *Perjury*, or Subornation of *Perjury*. 3 *Inst. 166.* 2 *Roll. Abr. 77.* Wood's *Inst. 414.* *Perjury* at Common Law may be in an immaterial Thing in an Answer in Chancery; but if one swear false to an Interrogatory, in a Thing not materially charged therein, this is not *Perjury*, because he who administered the Oath had not Power to administer it, but in Matters charged in the Interrogatory. *Sid. 274.* And where an Oath is taken before one, that hath not Authority to do it; or when a Court hath no Authority to hold Plea of the Cause; there *Perjury* cannot be committed. 3 *Inst. 164.* 4 *Inst. 278.* Also if an Oath be given by him that has lawful Authority, and any Breach be made therein, if it be not in a judicial Proceeding, it is not punishable as *Perjury* by the Common or Statute Law; as where one takes an Oath to the Government, or duly to perform an Office, &c. and breaks it. *Read. on Stat. Vol. 4. 349.* Indictment will not lie at the Sessions before Justices of Peace, for a *Perjury* at Common Law; though it will for a *Perjury* upon the Stat. 5 *Eliz.*

that Statute giving the Justices Jurisdiction. 1 *Salk. 406.* It is said a Man may be indicted for *Perjury* upon a voluntary and extrajudicial Oath; as where a Person stole the Daughter of another, and made Oath before a Justice of the Peace, that he had her Father's Consent, and this in order to get a Licence to marry her. 1 *Ventr. 369.* On Indictment for *Perjury*, for that the Defendant swore at a Trial by *Nisi prius*, that a Person was on such a Day in London, to be arrested; this was material, as the Issue to be tried was concerning the Arresting him by the Sheriff, and it was proved that he was in *Southwark* at that Time, and the Defendant being found Guilty was fined 20 *l.* *Sid. 404.* A Person was indicted for *Perjury*, and convicted of Swearing that he was Servant to *W. R.* when in Truth he was Servant to his Servant, and fined 10 *l.* *Allen 79.* *Perjury* in Witnesses, if it is not of Consequence in the Decision of the Cause, tho' it is a false Oath, it is not to be punished as *Perjury*: But if a false Oath be given by a Man, attended with Circumstances, which makes them Reasons of his Remembrance of a Thing, to strengthen the substantial Part of his Evidence, by this Means the Jury may be induced in the Giving of a Verdict, and he may be guilty of *Perjury*. 3 *Inst. 167.* 1 *Roll. Abr. 41, 78.* 1 *Cro. 428.* 2 *Lill. Abr. 291.* *Palm. 382, 535.* Though where a Witness being ask'd, whether such a Sum of Money were paid for two Things in Controversy between the Parties? Answered, that it was, where the Truth of it was, that it was paid only for one of them by Agreement; such Witness ought not to be punished for *Perjury*; for as the Case was, it was no Way material whether it was paid for one or both. 2 *Roll. Rep. 41.* To make an Offence *Perjury*, it must be wilful and deliberate, and not committed through Surprise, Inadvertency, or Mistake of the Question; and the Deposition is to be direct and absolute, not as the Person swearing thinks or believes, &c. 3 *Inst. 167, 266.* Nothing which the Party offers upon his Belief is assignable for *Perjury*. *Sid. 418.* It must be false, in express Words or Intention, to make it *Perjury*; for Falshood in Intention may be punished by the Common Law, though the Words be true: And if one knows not what he swears, it is a false Oath in him, so that one may swear the Truth, and yet be *perjured*; as where the Plaintiff in an Action caused two Men to swear the Value of his Goods, who never saw or knew them, although that which they swore was true, yet because they knew it not, it was a false Oath in them, for which the Procurer and the Witnesses were sentenced in the Star-Chamber. 3 *Inst. 166.* 2 *Roll. Abr. 77.* But the Law will not allow of constructive *Perjury*. 2 *Salk. 513.* *Perjury* may not be in a private Matter, howsoever wilful or malicious the Oath may be; and upon this Ground it hath been holden, that a false Oath taken by one upon the Making of a Bargain, that the Thing sold is his Own, is not *Perjury*. 1 *Hawk. 173.* Not only in a Court of Record, but in any other lawful Courts, as a Court-Baron, &c. *Perjury* may be committed. *Wood's Inst. 412.* An Indictment for *Perjury* may be preferred against one for Taking a false Oath rashly, and for Want of Consideration in a Court of Record; and he may be convicted and fined thereupon, but the Fine shall be more moderate than where committed out of Malice. 2 *Lill. Abr. 291.* The Words *Wilfully* and *Corruptly*

must be inserted in the Prosecution upon the Statute; and an Indictment was held ill, because it did not allege that the Defendant voluntarily swore, &c. 3 *Inst.* 166. 1 *Cro.* 147. *Perjury* or Subornation of *Perjury*, in Proceedings on an Indictment, is not within the Statute, which mentions only Suits by Writ, Bill, Plaint, or Information: And no false Oath is within the Intent of the Act, that is not prejudicial to some Person in his Cause; and gives him just Cause of Complaint, that he was aggrieved by the Deposition of the Witnesses. 3 *Inst.* 164. But it hath been held not to be material upon an Indictment of *Perjury* at Common Law, whether the false Oath were at all credited, or whether the Party in whose Prejudice it was intended were in the Event any Way grieved by it, or not; as this is not a Prosecution grounded on the Damage of the Party, but on the Abuse of publick Justice. 3 *Leon.* 230. 2 *Leon.* 211. And if a Person procure another to take a false Oath amounting to *Perjury*, but he doth not take it, though the Person who incited him is not guilty of Subornation of *Perjury*, he is punishable by Fine. *Read. Stat.* 4 *Vol.* 350. Where a Plaintiff loses his Action by a false and perjured Witness produced on the Part of the Defendant, it is said he cannot have an Action against that Witness, till he is indicted and convicted; unless it be such a *Perjury*, or in such a Court, that an Indictment would not lie for it. *Sid.* 90. 3 *Salk.* 270. On Motion to amend an Information for *Perjury*, it was granted, giving Notice to the Defendant what they would amend; and he to shew Cause why they should not. 1 *Lev.* 189. Acquittal upon a bad Indictment of *Perjury* is no Plea to a good one, and the Party may be indicted *de novo*; but an Acquittal upon a good One is peremptory. *Mod. Ca.* 167. A Person was found guilty in an Information for *Perjury*, and upon several Affidavits the Court was moved for a new Trial; tho' it was denied, except the King's Counsel would consent, notwithstanding it appeared to the Court that there was Cause for a new Trial. *Sid.* 49. Sir John Jackson being acquitted of a great Debt, by the *Perjury* of Fenwick and Holt, they were indicted for the *Perjury*, and the Trial being appointed, the Witnesses who could prove it were arrested and committed, so that they could not be present at the Trial; and this being done by the Contrivance of Sir John, he was found guilty of the Misdemeanor on an Information, and fined 1000 Marks, and committed for a Month: But the Court would not grant a new Trial in *Perjury*. *Sid.* 149, 153. An Indictment for *Perjury* will not be quashed for any Insufficiency till the Merits are tried, and 'tis Time enough to move to quash it after a Verdict; and no *Certiorari* shall be had to remove an Indictment for *Perjury* or Forgery; for when they are removed, they are seldom proceeded on. *Sid.* 54. 2 *Nels. Abr.* 975. Indictment at Common Law is to be brought where a Witness for the King swears falsely; or he may be punished by Information: And the Offence of *Perjury*, if prosecuted by Indictment, is local; but 'tis otherwise on an Information. 3 *Inst.* 164. 1 *Ventr.* 182.

Per my & per tout, Are Words used where a Jointenant is said to be seised of the Land he holds jointly, by every Parcel, and by the Whole; which Signification they bear in the Law. *Litt.* 10. *Sec.* 288.

Pernancy, (From the Fr. *Prendre*) Signifies a Taking or Receiving; as *Tithes in Pernancy* are Tithes taken or that may be taken in Kind.

Perno of Profits, Is he that takes or receives the Profits of Lands, Tenements or Hereditaments; and is said to be all one with *Cestuy que use*. *Stat.* 1 *Hen.* 7. *cap.* 1. 1 *Rep.* 123. The King has the *Pernancy* of the Profits of the Lands of an Outlaw, in personal Actions; and by Seizure shall hold against the Alienation of such Outlaw, &c. *Raym.* 17. See *Co. Lit.* 589.

Perpars, A Part of the Inheritance.—*Tantumquam terram qua sibi descendit in perpartem de hereditate*, &c. *Fleta*, lib. 2. c. 54.

Perpetuity, (*Perpetuitas*) Is a Continuance everlastingly; and in Law, it is when an Estate is designed to be so settled in Tail, &c. that it cannot be undone or made void: As where if all the Parties that have Interest join, they cannot bar or pass the Estate; but if by the Concurrence of all having the Estate-tail, it may be barred, it is no *Perpetuity*. 2 *Lill. Abr.* 292. It is a Rule that hath destroyed *Perpetuities*, that an Estate cannot be made to cease for a Time, and then to rise again; or to cease as to one Person, and have Being as to another; or deprive a Tenant in Tail by Condition or Limitation of the Power of Alienation. *Hob.* 257. 1 *Rep.* 84. *Perpetuities* are odious in the Law; and an executory Devise of Lands after an Estate-tail generally, tends to a *Perpetuity*; tho' not where it depends upon one Life, when a Fee-simple may be to one, and remain to another, &c. 2 *Cro.* 695. A Term for Years may not be devised in Tail, with Remainders over to raise a *Perpetuity*: But a Limitation of a Term in Reversion, to several Persons *in esse*, doth not extend to create a *Perpetuity*; though if it be to Persons not *in esse*, it is otherwise. *Moor* 495. *Chanc. Rep.* 8. A Lease for Years, to a Man and the Heirs of his Body, &c. is not good; but it may be assigned to Trustees, for the Issue in Tail to receive the Profits, &c. yet if such a Lease comes then to be limited in Tail, a present Remainder may not be limited thereon; but the Law will allow a future Contingent Estate, so as it wears out in a short Time, as in the Compass of two Lives, &c. 10 *Rep.* 87. 4 *Inst.* 27.

Per quæ servitia, Is a judicial Writ, issuing on the Note of a Fine, and lies for the Cognisee of a Manor, Lands, Rents, or other Services, to compel the Tenants at the Time of the Fine levied to attorn to him thereupon. *Old Nat. Br.* 155.

Perquisite, (*Perquistum*) Signifies any Thing gained by one's own Industry or Purchase; contradistinguished from that which descends to a Man from a Father or Ancestor. *Bract.* lib. 2. *cap.* 30.

Perquisites of Courts, Are commonly those Profits that arise to Lords of Manors, from their Courts-Baron, over and above the certain and yearly Revenue of the Lands; as Fines of Copyholds, Heriots, Amerciaments, &c. *Perk.* 20, 21. *Perquisites of Officers*. See *Fees*.

Per quod consortium amisit, And *per quod servitium amisit*, are Words necessary in Declarations for Trespass, &c. where a Man's Wife or Servant is beaten, or taken from him, and he loses their Service, &c. 2 *Lill. Abr.* 595, 596.

Person, A Man or Woman; also the State or Condition, whereby one Man differs from another.

Personable, (*Personabilis*) Is as much as to say enabled to hold Plea in Court; as the Defendant was judged *personable*, to maintain the Action. *Old Nat. Br.* 142. And in *Kitchen*, the Tenant pleaded, that the Demandant was an Alien, born in *Portugal*, without the Allegiance of the King; and Judgment was asked whether he should be answered: To which the Demandant said, he was made *personable* by Parliament, i. e. as the Civilians would speak it, *Habere Personam standi in Judio*. *Kitch.* 214. *Personable* likewise signifieth to be of Capacity to take any Thing granted. *Plowd.* 27.

Personal, (*Personalis*) Goods or Chattels, signifies any movable Thing belonging to a Man, be it quick or dead. *West. Symb. par.* 2. *Sect.* 58. *Personal Things* may be given to a Corporation; as a Horse, a Cow, Sheep, or other Goods, &c. *Kitch.* 139. See *Chattels*.

Personal Action, (*Actio Personalis*) Is that which one Man may have by Reason of a Contract for Money or Goods against another: It is such an Action whereby a Debt, Goods and Chattels are demanded, or Damages for them; or Damages for Wrong done to a Man's Person. *Terms de Ley* 19. In the *Civil Law*, it is called *Actio in Personam*, and is brought against him who is bound by the Covenant, &c. And in our Law, *Actio Personalis movitur cum persona*. 1 *Inst.* 53. Action of Debt lieth not against Executors, upon a Contract for the Eating and Drinking of the Testator; for that Action in such Case dieth with him. 9 *Rep.* 87. If a Person commit a Battery or Trespass, and he or the Person beaten, &c. die; the Action dieth, and is gone. *Noy's Max.* 5. An Executor cannot bring an Appeal for a Larceny from the Testator; the Appeal for it is said to be a mere *Personal Action*, vested in the Testator, and dies with him as all Actions for Torts do. *H. P. C.* 184. *S. P. C.* 50. And an Appeal of Death is a *Personal Action* given to the Heir, in Respect to his immediate Relation to the Person killed; and like other *Personal Actions*, shall die with the Person. 2 *Hawk. P. C.* 165.

Personal Tithes, Are Tithes paid of such Profits as come by the Labour and Industry of a Man's Person; as by Buying and Selling, Gains of Merchandize, and Handicrafts, &c.

Personality, (*Personalitas*) Is an Abstract of *Personal*: The Action is in the *Personalty*, i. e. it is brought against the right Person, or the Person against whom in Law it lies. *Old Nat. Br.* 92. Or it is to distinguish Actions and Things *Personal* from those that are *Real*.

Perticata terræ, The fourth Part of an Acre. See *Perch*.

Perticulas, Poor Scholars of the *Ile of Man*: The King granted to *L. Macguin de Insula de Man Scholari*, quondam *Eleemosynam* vocat. *Perticulas*, ad sustentationem cujusdam Pauperis Scholaris de *Insula prædicta* ad exercend. Scholas, per Progenitores nostros, quondam *Reges Angliæ* datam & concessam. *Pat.* 5. *Hen.* 4.

Perwise, According to *Sommer*, signifies *Palatii atrium* vel *area* illa à fronte *Aulæ Westm.* hodie the *Palace-Yard*, vulgo nuncupata. *Somn. Gloss.* See *Parwise*.

Pesage, (*Pesagium*) A Custom or Duty paid for the Weighing of Merchandize, or other Goods.

— *Galfridus Plantagenet Regis Henrici Filius*, Dux *Britanniæ* & Comes *Richmundiæ*, Dedi *Tro-nagium* & *Pelagium* de *Nundinis sancti Botulphi*, &c. *Selden's Tit. Hon.*

Pessona, Malt of Oaks, &c. or the Money taken for Malt, or feeding of Hogs. *Mon. Angl. Tom.* 2. p. 213. See *Mast*.

Pestifable, As Wares *pestifable*, seem to be such as *pester*, and take up much Room in a Ship. *Stat.* 32 *H. 8. c.* 14.

Peter-corn, Is mentioned in some of the ancient Registers of our Bishops, particularly in that of *St. Leonard de Ebor*, which contains a Grant thereof by King *Athelstane*, &c. *Collect. Dodsw. M.S.*

Peter-pence, (*Denarii Sancti Petri*) Otherwise called in the *Sax. Romefeob*, i. e. the Fee due to *Rome*, was a Tribute or rather Alms given by *Ina* King of the *West Saxons*, in his Pilgrimage at *Rome* in the Year 725. And the like was given by *Offa* King of the *Mercians*, through his Dominions, *Anno* 794. But it is said not to be as a Tribute to the Pope, but for the Sustentation of the *English School* or College at *Rome*; and it was called *Peter-pence*, because collected on the Day of *St. Peter ad vincula*, and was a Penny for every House. King *Edgar's* Laws contain a sharp Constitution touching this Money. *Leg. Edg.* 78. *cap.* 4. It was prohibited by King *Ed.* 3. and by *Stat.* 25 *H. 8.* But it revived 1 & 2 *Ph. & Mar.* and was wholly abrogated by 1 *Eliz. c.* 1.

Peter ad vincula, Mentioned in the Statute 4 *Ed.* 4. *c.* 1. &c. See *Gule of August.*

Petition, (*Petitio*) Hath a general Signification for all Kinds of Supplications made by an Inferior to a Superior, and especially to one having Jurisdiction. *S. P. C. c.* 15, 22. By Statute, the Soliciting, Labouring or Procuring the Putting the Hands or Consent of above twenty Persons to any *Petition*, to the King, or either House of Parliament, for Alterations in Church or State; unless by Assent of three or more Justices of Peace of the County, or a Majority of the Grand Jury, at the Assises or Sessions, &c. and repairing to the King or Parliament to deliver such *Petition*, with above the Number of ten Persons, is subject to a Fine of 100 *l.* and three Months Imprisonment, being proved by two Witnesses, within six Months in the Court of *B. R.* or at the Assises, &c. 13 *Car.* 2. *cap.* 5. And if what is required by this Statute be observed, Care must be taken that *Petitions* to the King contain nothing which may be interpreted to reflect on the Administration; for if they do, it may come under the Denomination of a Libel: And 'tis remarkable, that the *Petition* of the City of *London*, for the Sitting of a Parliament was deem'd libellous, because it suggested that the King's Dissolving a late Parliament was an Obstruction of Justice. *Read. Stat. Vol.* 4. 353. To subscribe a *Petition* to the King, to frighten him into a Change of his Measures, intimating that if it be denied, many Thousands of his Subjects will be discontented, &c. is included among the Contempts against the King's Person and Government, tending to weaken the same, and punishable by Fine and Imprisonment. 1 *Hawk. P. C.* 60.

Petit Larceny, *Parvum Latrocinium*. See *Larceny*.

Petit Treason, (*Fr. Petit Trahison*, i. e. *Proditio minor*) Treason of a lessor or lower Kind. 25 *Ed.* 3. *cap.* 2. and 22 *Hen.* 8. *cap.* 14. See *Treason*.

Petra, Is a Weight, which we call a Stone, but differing in many Parts of *England*; in some Places consisting of Sixteen, in others Fourteen or Twelve, and eight Pounds. *Cowel.*

Petue, Pete, Combustible Earth dug up in small Pieces for Fuel; it is usually found in low Meadow Ground. *Cartular. Abbat. Glaston. M.S.*

Pettyfogger, (From the Fr. *Petite*, small, and Sax. *Fogere*, a Suitor or Solicitor) Signifies a Petty Attorney, or inferior Solicitor in the Law; or rather a Pretender to the Law, having neither Law nor Conscience.

Pharos, (From *Pharus*, a small Island in the Mouth of the Nile, wherein stood a high Watch-Tower) A Watch-Tower, or Sea-Mark: And no Man can erect a *Pharos*, Light House, Beacon, &c. without lawful Warrant and Authority. 3 *Inst.* 204.

Physicians. No Persons within the City of London, or seven Miles thereof, shall practice as a *Physician* or Surgeon, without a Licence from the Bishop of London, or Dean of St. Paul's; who are to call to their Assistance four Doctors of Physick, on Examination of the Persons before granted: And in the Country, without Licence from the Bishop of the Diocese, on Pain of forfeiting 5 *l.* a Month. 3 *Hen.* 8. *cap.* 11. By the 14 & 15 *H.* 8. *cap.* 5. the King's Charter for incorporating the College of *Physicians* in London, is confirmed: They have Power to chuse a *President*, and have perpetual Succession, a Common Seal, Ability to purchase Lands, &c. Eight of the Chiefs of the College are to be called *Elects*, who from among themselves shall chuse a *President* yearly: And if any shall practice Physick in the said City, or within seven Miles of it, without the Licence of the said College under their Seal, he shall forfeit 5 *l.* Also Persons practising Physick in other Parts of England, are to have Letters testimonial from the *President* and three *Elects*, unless they be graduate *Physicians* of Oxford, or Cambridge, &c. The Stat. 32 *H.* 8. *c.* 10. ordains, that four *Physicians*, (called *Censors*) shall be yearly chosen by the College of *Physicians*, to search Apothecaries Wares, and have an Oath given them for that Purpose by the *President*; Apothecaries denying them Entrance into their Houses, &c. incur a Forfeiture of 5 *l.* And the *Physicians* refusing to make the said Search, are liable to a Penalty of 40 *s.* And every Member of the College of *Physicians*, is authorized to practice Surgery in London or elsewhere. Persons having a Knowledge and Experience in Herbs and Roots, may practice and minister to outward Sores or Swellings, any Herbs or Ointments, according to their Skill; and also Drinks for the Stone, Strangury, or Agues, without Licence, or incurring any Penalties by the Statute 3 *H.* 8. *cap.* 11. Stat. 34 & 35 *H.* 8. *cap.* 8. Popish Recusants are disabled to practice Physick, or to use the Trade of an Apothecary, &c. under Penalties. 3 *Jac.* 1. *cap.* 5. The four Persons called *Censors*, annually chosen by the *President* and College of *Physicians*, calling to their Assistance the Wardens of the Apothecary's Company in London, or one of them, are empowered to enter into the Houses, Shops, or Warehouses of Apothecaries, &c. and search and examine Medicines, and to burn or destroy those that are defective or decayed, or not fit for Use; but subject to appeal to the College of *Physicians*, &c. 10 *Geo.* *cap.* 20. In the Case of Dr. Bonham, 7 *Jam.* 1. is shewn the Power of the College of *Physicians*, in punishing Persons for practising Physick without Licence. 8 *Rep.* 107. Apothecaries taking upon them to administer Physick, without Advice of a Doctor, has been adjudged

Practising of Physick within the Statutes; the proper Business of an Apothecary being to prepare the Prescriptions of the Doctor. 2 *Salk.* 45. It has been anciently holden, that if a Person not duly authorized to be a *Physician* or Surgeon, undertakes a Cure, and the Patient dies under his Hands, he is guilty of Felony; but 'tis said not to be excluded the Benefit of Clergy. 1 *Hawk.* P. C. 87.

Philosophers Stone. King *Hen.* 6. granted Letters Patent to certain Persons, who undertook to find out the *Philosophers Stone*, and to change other Metals into Gold, &c. to be free from the Penalty of the Stat. 5 *Hen.* 4. made against the Attempts of *Chymists* of this Nature. Pat. 34 *Hen.* 6. 3 *Inst.* 74. See *Multiplication of Gold and Silver*.

Picard, A Kind of large Boat, of about fifteen Tons or upwards, used on the River *Severn*. Stat. 35 *H.* 8. *c.* 9. 13 *Eliz.* *c.* 11.

Picage, (*Picagium*, from the Fr. *Piquer*, i. e. *Effodere*) A Consideration of Money, paid for the Breaking up of Ground to set up Booths, Stalls or Standings, in Fairs; it is payable to the Lord of the Soil.

Pickards. No Person shall use any Iron Cards, or *Pickards*, in rowing any Woollen Cloth, upon Pain to forfeit the same, and 20 *s.* for every Offence. 3 & 4 *Ed.* 6. *c.* 2.

Picte, (*Pictellum*) A small Parcel of Land enclosed with a Hedge; a little Close: This Word seems to come from the Italian *Picciola*, i. e. *Parvus*; and in some Parts of England, it is called *Pightel*.

Piece of Eight, Spanish Coin valued at about 4 *s.* 6 *d.* English Money, brought from Mexico, Peru, &c. *Merch. Dict.*

Piepowder Court, A Court incident to Fairs and Markets: And the Fair of St. Giles's, held on the Hills of that Name, near the City of Winchester, by Virtue of Letters Patent of King *Edw.* 4. hath a Court of *Piepowder* of a transcendent Jurisdiction; the Judges whereof are called *Justices of the Pavilion*, and have their Power from the Bishop of Winchester. Prin. Animadv. on 4 *Inst.* 191. See Court of *Piepowder*.

Pies, *Freres pies*, Were a Sort of Monks so called; 'tis said, because they wore black and white Garments like Magpies: They are mentioned by *Walsingham*, p. 124.

Pietantia, A small Portion of Meat and Drink, distributed to the Members of some Collegiate Body, or other People, upon a high Festival, or stated Anniversary. *Libr. Statut. Eccl. Paul. Lond.* A. D. 1298.

Pietanciarus, The Officer in Collegiate Churches, who was to distribute the *Pittances*, at such Times and in such Proportions as were appointed by the Donors. See *Pittance*.

Pigeons. Every Person who shall shoot at and kill a Pigeon, may be committed to the common Gaol for three Months, by two or more Justices of the Peace, or he shall pay 20 *s.* to the Poor of the Parish. Stat. 1 *Jas.* 1. *cap.* 27. And to steal Pigeons in a Pigeon-house, shut up so that the Owner may take them, is Felony. 1 *Hawk.* P. C. 94.

Pigeon-house, Is a Place for the safe Keeping of Pigeons: And a Lord of a Manor may build a Pigeon-house or Dovecote upon his Land, Parcel of the Manor; but a Tenant of a Manor cannot do it, without the Lord's Licence. 3 *Salk.* 248. Formerly none but the Lord of the Manor

nor, or the Parson, might erect a *Pigeon-House*; though it has been since held, that any Freeholder may build a *Pigeon-House* on his own Ground. 5 Rep. 104. Cro. Eliz. 548. Cro. Jac. 440, 382. A Person may have a *Pigeon-House*, or Dovecote, by Prescription. *Game Law*, 2 Pa. 133. See *Nuisance*.

Pila, Is that Side of *Money* which is called *Pile*, because it is the Side on which there was an Impression of a Church built on *Piles*; and he who brings an Appeal of Robbery against another, must shew the certain Quantity, Quality, Price, Weight, &c. *valorem & Pilum*, where *Pilum* signifies *Figuram Monetæ*. *Fleta*, lib. 1. cap. 39.

Pilettas, Was anciently used for an Arrow, as had a round Knob a little above the Head, to hinder it from going far into a Mark; from the Lat. *Pila*, which signifies generally any round Thing like a Ball. — *Et quod Forestarii non portabunt sagittas barbata, sed Pileos*. *Chart.* 31 H. 3. Persons might shoot without the Bounds of a Forest with sharp or pointed Arrows; but within the Forest, for the Preservation of the Deer, they were to shoot only with Blunts, Bolts, or *Piles*: And *Sagitta Pileta* was opposed to *Sagitta barbata*; as *Blunts* to *Sharps*, in *Rapiers*. *Matt. Paris*.

Pileus Suppotationis, A Cap of Maintenance; Pope *Julius* sent such a Cap with a Sword to King *Hen.* 8. Anno 1514. *Holin.* pag. 827.

Pille, At *Fouldrey* in the County of *Lancaster*, is so called by the Idiom of the County, for a *Pile* or Fort, built for the Safeguard or Protection of any Place: This *Pille* was erected by the Abbot of *Fornesse* in the first Year of King *Ed.* 3. See *Pela*.

Pillory, (*Collistrigium*, *Collum stringens*; *Pilloria* from the Fr. *Pilleur*, i. e. *Deperulator*, or *Pelori* derived from the Greek Πύλον, *Fanua*, a Door, because one standing on the *Pillory*, puts his Head, as it were, through a Door, and *ὀπλον*, *video*) Is an Engine made of Wood to punish Offenders, by exposing them to publick View, and rendering them infamous. There is a Statute of the *Pillory*. 51 Hen. 3. And by Statute, it is appointed for Bakers, and for those that use false Weights, Perjury, Forgery, &c. 3 Inst. 219. Lords of Leets are to have a *Pillory* and Tumbrel, or it will be Cause of Forfeiture of the Leet; and it is said that a Vill may be bound by Prescription to provide a *Pillory*, &c. 2 Hawk. P. C. 73.

Pilot, Is he that hath the Government of a Ship, under the Master: And *Pilots* of Ships, taking upon them to conduct any Ship or Vessel from *Dover*, *Deal*, &c. to any Place up the River of *Thames*, are to be first examined and approved by the Masters and Wardens of the Society of *Pilots* of *Trinity House*, &c. or shall forfeit 10 l. for the first Offence, 20 l. for the Second, and 40 l. for every other Offence, one Moiety to the Informer, and the other to the said Master and Wardens; but any Master or Mate of a Ship, &c. may pilot his own Vessel up the said River: And if any Ship shall be lost, through the Negligence and Carelessness of any *Pilot*, he shall be for ever after incapacitated to act as a *Pilot*. 3 Geo. 13. Also the Lord Warden of the *Cinque Ports* may make Rules for Government of *Pilots* at *Dover*, *Deal*, &c. and order a sufficient Number to ply at Sea to conduct Ships up

the *Thames*. 7 Geo. cap. 21. By the Laws of *France*, no Person shall be received as a *Pilot*, till he has made several Voyages, and hath pass'd a strict Examination; and after that, on his Return in long Voyages, he is to lodge a Copy of his Journal in the Admiralty: And if a *Pilot*, by Ignorance or Negligence, shall occasion the Loss of a Ship, he is to pay 100 Livres Fine, and be for ever deprived of the Exercise of *Pilotage*; and if he doth it designedly, he shall be punished with Death. *Lex Mercat.* 70, 71. The Laws of *Oleron* ordain, that if any *Pilot* shall designedly misguide a Ship, that it may be cast away, he shall be put to a rigorous and unmerciful Death, and hung in Chains: And if the Lord of the Place where a Ship shall be thus lost, shall abet such Villains in Order to have a Share in the Wreck, he shall be apprehended, and all his Goods forfeited for the Satisfaction of the Persons suffering; and his Person shall be fastened to a Stake in the midst of his own Mansion, which being fired on the four Corners thereof, it shall be burnt to the Ground, and he with it. *Leg. Ol.* cap. 25. And by the Laws of *Oleron*, if the Fault of a *Pilot* be so notorious, that the Ship's Crew see an apparent Wreck, they may lead him to the Hatches, and strike off his Head; but the Common Law denies this hasty Execution: An ignorant *Pilot* is sentenced to pass thrice under the Ship's Keel, by the Laws of *Denmark*. *Lex Mercat.* 70. Matters of Ships shall not oblige *Pilots* to pass through dangerous Places, or to steer Courses against their Wills; but if there be Difference in Opinions, the Master may in such Case be governed by the Advice of the most expert Mariners. *Ibid.* Before the Ship arrives at her Place or Bed, while she is under the Charge of the *Pilot*, if she or her Goods perish, or be spoiled, the *Pilot* must make Good the same: But after the Ship is brought to the Harbour, then the Master is to take the Charge of her, and answer all Damages, except that of the Act of God, &c. *Leg. Ol.* cap. 23. In Charterparties of *Afreightment*, the Master generally covenants to find a *Pilot*, and the Merchant to pay him: And in Case the Ship shall miscarry through the Insufficiency of the *Pilot*, the Merchant may charge either the Master, or the *Pilot*; and if he charges the Master, such Master must have his Remedy against the *Pilot*. *Lex Mercat.* 70. See *Lodmanage*.

Pimp-Tenure. — *Willielmus Hoppehort*, tenet dimidiam virgatam terræ in *Rockhampton* de *Domino Rege*, per servitium custodiendi sex *Damiselas*, scil. *Meretrices*, ad usum *Domini Regis*, 12 Ed. 1. viz. by *Pimp-Tenure*. *Blount's Ten.* 39.

Pinnas bibere, Or *Ad pinna bibere*. The old Custom of Drinking brought in by the *Danes*, was to fix a Pin in the Side of the *Wassal-Bowl*, and so to drink exactly to the Pin; as now is practised in a sealed Glass, &c. This Kind of Drunkenness was forbid the Clergy, in the Council at *London*, Anno 1102.

Pioneers, (Fr. *Pionniers*, i. e. *Fossores*) Are such Labourers as are employed in the King's Army, to cast up Trenches, or undermine Forts. *Stat.* 2 & 3 Ed. 6. c. 20.

Pipe, (*Pipa*) Is a Roll in the *Exchequer*, otherwise called the *Great Roll*; and there are several Officers of the *Pipe*, &c. 37 Ed. 3. cap. 4. It is also a Measure of Wine, containing two Hogheads, or Half a Ton, that is, one hundred and twenty-six Gallons; mentioned in 1 R. 3. c. 3.

Pirates.

Pirates, (*Pirate*) Are common Sea Rovers, without any fix'd Place of Residence, who acknowledge no Sovereign and no Law, and support themselves by Pillage and Depredations at Sea: But there are Instances wherein the Word *Pirata* has been formerly taken for a Sea Captain. *Spelm.* *Pirates* are Enemies to all; for which Reason, neither Faith nor Oath is to be kept with them: They are denied Succour by the Laws of Nations; and by the *Civil Law*, a Ransom promis'd to a *Pirate*, if not complied with, creates no Wrong; for the Law of Arms is not communicated to such, neither are they capable of enjoying that Privilege, which lawful Enemies are intitled to in the Caption of another. *Lex Mercat.* or *Merch. Comp.* 183. If a *Pirate* enters a Port or Haven, and assaults and robs a Merchant Ship at Anchor there; this is not *Piracy*, because it is not done upon the High Sea; but it is a Robbery at the Common Law, the Act being *infra Corpus Comitatus*: And if the Crime be committed either *super Altum mare*, or in great Rivers within the Realm, which are looked upon as common Highways, there it is *Piracy*. *Sir Fra. Moor*, 756. And it has been held, that *Piracy* being an Offence by the Civil Law only, shall not be included in a Statute speaking generally of Felonies, as to Benefit of Clergy, &c. which shall be construed only of those Felonies which are such by our Law; as those *Piracies* are which are committed in a Port or Creek, within the Body of a County. 2 *Hawk. P. C.* 345. If a Ship be riding at Anchor at Sea, and the Mariners Part in their Ship Boat, and the Rest on Shore, so that none are left in the Ship; and a *Pirate* shall attack her, and commit a Robbery, the same is *Piracy*. 14 *Ed.* 3. And where a *Pirate* assaults a Ship, and only takes away some of the Men, in order to the Selling them for Slaves; this is *Piracy*: And if a *Pirate* shall make an Attack on a Ship, and the Master for the Redemption is compelled to give his Oath to pay a certain Sum of Money, though there be no Taking, the same is *Piracy* by the *Marine Law*; but by the Common Law there must be an actual Taking, as in case of Robbery on the Highway. *Lex Mercat.* 185. But the Taking, by a Ship at Sea, in great Necessity, of Victuals, Cables, Ropes, &c. out of another Ship, is no *Piracy*; if that other Ship can spare them, and paying or giving Security therefore. *Ibid.* 183. A *Pirate* takes Goods upon the Sea, and sells them, the Property is not thereby altered, no more than if a Thief upon the Land had stolen and sold them. 27 *Ed.* 3. cap. 13. *Godb.* 193. Yet by the Laws of *England*, if a Man commits a *Piracy* upon the Subjects of any other Prince, and brings the Goods into *England*, and sells them in a Market-overt, the same shall be binding, and the Owners be concluded. *Hob.* 79. When Goods are taken by a *Pirate*, and afterwards the *Pirate* making an Attack upon another Ship, is conquered and taken by the other, by the Law *Marine* the Admiral may make Restitution of the Goods to the Owners, if they are Fellow Subjects of the Captor's, or belong to any State in Amity with his Sovereign, on paying the Costs and Charges, and making the Captor an equitable Consideration for his Service. *Lex Mercat.* 184. If a *Pirate* at Sea assault a Ship, and in the Engagement kills a Person in the other Ship, by the Common Law all the Persons on Board the *Pirate* Ship are Principals in the Murder, al-

though none enter the other Ship; but by the *Marine Law*, they who gave the Wound only shall be Principals, and the Rest Accessaries, if the Parties can be known. 28 *Eliz. Yelo.* 134. It has been holden, that there cannot be an Accessary of *Piracy*, by the Law of this Realm; but if it happens, that there is an Accessary upon the Sea, such Accessary may be punished by the Civil Law, before the Lord Admiral: And it was made a Doubt, whether one who was an Accessary at Land to a Felony at Sea, were triable by the Admiral, within the Purview of 28 *Hen.* 8. Though this is settled by 11 & 12 *W.* 3. which provides that Accessaries to *Piracy*, before or after, shall be inquired of, tried and adjudged according to the said Statute. 2 *Hawk.* 222. In case the Subjects of a Prince in Enmity with the Crown of *England*, enter themselves Sailors on Board an *English* *Pirate*, and a Robbery is committed by them, who are afterwards taken; it is Felony in the *English*, but not in the Strangers: But in ancient Times, it was Petit Treason in the *English*, and Felony in the Strangers: And if any *Englishman* commits *Piracy* upon the Subjects of any Prince or State in Amity with the Crown of *England*, they are within the Stat. 28 *Hen.* 8. If the Subjects of any Nation or Kingdom, in Amity with *England*, shall commit a *Piracy* on the Ships or Goods of the *English*, the same is Felony, and punishable by this Statute: And *Piracy* committed by the Subjects of *France*, or of any other Country in Friendship with us, upon the *British* Seas, is properly punishable by the Crown of *England* only. *Lex Mercat.* 186, 187. In case of *Piracy* attempted on the Ocean, if the *Pirates* are overcome, the Takers may immediately inflict a Punishment, by hanging them up at the Main-yard-End; tho' this is understood where no legal Judgment may be obtained: And hence it is, that if a Ship shall be on a Voyage to any Part of *America*, or the Plantations there, on a Discovery of those Parts; and in her Way she is attacked by a *Pirate*, but in the Attempt the *Pirate* is overcome; the *Pirates* may be forthwith executed, without any Solemnity of Condemnation, by the *Marine Law*. *Ibid.* 184. By Stat. 28 *Hen.* 8. cap. 15. all Robberies and Felonies committed by *Pirates* at Sea, &c. shall be inquired of, heard and determined in any County of *England*, by the King's Commission, as if the Offences had been committed on Land; and such Commission shall be directed to the Lord Admiral, &c. and three or four other Persons, as shall be named by the Lord Chancellor, who shall hear and determine such Offences after the common Course of the Laws of the Kingdom used for Felonies and Robberies, &c. and award Judgment and Execution against Persons indicted on the Statute, as against Felons for any Felony done upon the Land; and the Offenders shall suffer such Pains of Death, Loss of Lands and Goods, as if they had been attainted of such Offence committed on Land, &c. This Statute doth not alter the Offence of *Piracy*, but leaves it as it was before, viz. Felony only by the Civil Law; but giveth a Trial according to the Common Law, and inflicts Pains of Death, &c. as if the Offenders had been convicted of any Felony done upon the Land. 3 *Inst.* 112. *H. P. C.* 77. And no Attainder for this Offence corrupts the Blood, the Statute mentioning only that the Offender shall suffer such Pains of Death, Loss of Lands, &c. as if

if he were attainted of a Felony at Common Law; but says not, that the Blood shall be corrupted. 3 *Inst.* 112. Likewise the Offender is to be tried on the Statute; to forfeit his Lands, &c. which are not forfeited by the Civil Law. 1 *Lill. Abr.* The Stat. 11 & 12 *W. 3. cap. 7.* enacts, that all *Piracies*, Felonies and Robberies committed in or upon the Sea, or in any Haven, &c. where the Admiral hath Jurisdiction, may be try'd at Sea or upon the Land, in any of his Majesty's Islands, Plantations, &c. abroad, appointed for that Purpose, by Commission, under the Great Seal or Seal of the Admiralty, directed to such Commissioners as the King shall think fit; who may commit the Offenders, and call a Court of Admiralty, consisting of seven Persons at least; or for Want of Seven, any Three of the Commissioners may call others; and the Persons so assembled may proceed according to the Course of the Admiralty, pass Sentence of Death, and order Execution of the Criminals, &c. And Commissioners for Trial of the said Offences within the Jurisdiction of the *Cinque Ports*, shall be directed to the Warden of the said *Cinque Ports*, and the Trial to be by the Inhabitants of the same Ports. And by the said Statute 11 & 12 *W. 3.* if any natural-born Subjects or Denizens of *England*, shall commit *Piracy* against any of his Majesty's Subjects at Sea, under Colour of any Commission from any foreign Prince, they shall be adjudged *Pirates*: If any Master of a Ship or Seaman, give up his Ship, &c. to *Pirates*, or combine to yield up or run away with any Ship; or any Seaman shall lay violent Hands on his Commander, or endeavour a Revolt in the Ship, he shall be adjudged a *Pirate*, and suffer accordingly; also if any Person shall discover a Combination for running away with a Ship, he shall be intitled to a Reward of 10 *l.* for every Vessel of 100 Tons, and 15 *l.* if above: And all Persons who shall set forth any *Pirate*, or be assisting to those committing *Piracy*; or that shall conceal such *Pirates*, or receive any Vessel or Goods piratically taken, shall be deemed Accessary to the *Piracy*, and suffer as Principals. The 6 *Geo.* makes the Stat. 11 & 12 *W. 3. cap. 7.* perpetual: And by 8 *Geo. cap. 24.* Masters of Ships trading with *Pirates*, or furnishing them with Stores, &c. and Persons corresponding with *Pirates*, are declared Guilty of *Piracy*; and shall be tried according to the Statutes 28 *Hen. 8.* and 11 & 12 *W. 3.* and suffer Death, forfeit Lands, &c. Ships fitted out with Design to trade with *Pirates*, and the Goods shall be forfeited: And Masters of Ships, and Seamen of Ships carrying Guns, being attacked by *Pirates*, if they do not defend their Ships, shall forfeit their Wages, and be imprisoned six Months; but Seamen wounded in the Defence of Ships against *Pirates*, shall be admitted into *Greenwich Hospital*, &c. Where an *English Ship* shall have been defended by Fight against *Pirates*, and any of the Officers or Seamen shall be killed or wounded, the Judge of the Admiralty, or Mayor or chief Officer of any Port, assisted by four Merchants, may by Process levy a Sum not exceeding 2 per Cent. of the Value of the Ship and Goods defended, to be distributed among the Officers and Seamen, or the Widows and Children of the Persons killed. *Lex Mercat.* 186. *Pirates* are always excepted in general Pardons: And the Indictment for *Piracy* must alledge the Fact to be done upon

the Sea; and have both the Words *Felonice* and *Piraticæ*, &c.

Piscary, (*Piscaria*, vel *Privilegium Piscandi*) Is a Right or Liberty of *Fishing* in the Waters of another Person: And there are three Sorts of *Piscaries*, *Libera Piscaria*; *Separalis Piscaria*; and *Communis Piscaria*. See *Fishing*, and *Common of Piscary*.

Piscenarius, Is used in old Records for a Fishmonger. *Pat. 1. Ed. 3.*

Pit, Is a Hole wherein the *Scots* use to drown Women Thieves; and to say condemned to the *Pit*, is as when we say condemned to the Gallows. *Skene*.

Pit and Gallows. See *Fossa* and *Furca*.

Pitance, (*Pitancia*, modicum) A little Repast, or Refection of Fish or Flesh, more than the common Allowance. — *Johannes Dei Gratia*, &c. *Concessimus*, &c. *In usus Pauperum*, & ad *Refectionem Monachorum*, qui illis diebus *Officia divina pro Defunctis celebrabunt*, quæ *Refectio Pitancia vocat.* &c. *Rot. Char. ad Hospital. S. Salvator. Sancti Edmundi*, &c. *Ann. 1. Reg. Johan. p. 2.*

Pitching-pence, Is that Money, commonly a *Penny*, which is paid for *Pitching*, or setting down every Bag of Corn, or Pack of Goods, in a Fair or Market.

Placard, (*Fr. Plaquant*, Dutch *Placcaert*) Hath several Significations: In *France*, it is a Table, wherein Laws, Orders, &c. are written and hung up; and in *Holland*, it is an Edict or Proclamation; also it is used for a Writing of safe Conduct: With us it is mentioned as a Licence to use certain Games, &c. in the Stat. 2 & 3 *P. & M. cap. 7.*

Place, (*Locus*) Where a Fact was committed, is to be alledged in Appeals of Death, Indictments, &c.

Placita, Is a Word often mentioned in our Histories, and Law Books: At first it signified the publick Assemblies of all Degrees of Men where the King presided, and they usually consulted upon the great Affairs of the Kingdom; and these were called *Generalia Placita*, because *Generalitas universorum majorum tam Clericorum quam Laicorum ibidem conveniebat*: And this was the Custom in our neighbouring Nation of *France*, as well as here, as we are told by *Bertinian*, in his *Annals of France*, in the Year 767. Some of our Historians, as *Simeon of Durham*, and others, who wrote above 300 Years afterwards, tells us, that these Assemblies were held in the open Fields; and that the *Placita Generalia*, and *Curia Regis*, were what we now call a Parliament: 'Tis true, the Lords Courts were so called, viz. *Placita Generalia*, but oftner *Curia generales*, because all their Tenants and Vassals were bound to appear there. The Word *Placita* was likewise sometimes applied to Penalties, Fines, Mulcts, or Emendations, according to the *Black Book* in the *Exchequer*, *Lib. 2. Tit. 13.* And hence is the old Custom, *Comes habet tertium denarium Placitorum*. *Leg. Hen. 1. cap. 12.* It is now taken for Pleadings or Debates, and Trials at Law.

Placitare, i. e. *Litigare & Causas agere*, to plead: And the Manner of Pleading before the Conquest was, *Coram Aldermanno & Proceribus*, & *coram Hundredariis*, &c. *M.S. in Bibl. Cotton.*

Placitator, A Pleader: *Ralf Flambard* is recorded to be *Totius Regni Placitator*. *Temp. W. 2.*

Placitum nominatum, Is the Day appointed for a Criminal to appear and plead, and make his Defence. *Leg. Hen. 1. cap. 29, 46.*

Plague.

Plague. Mayors, Bailiffs, Head Officers of Corporations, and Justices of Peace, have Power to tax Inhabitants, Houses, Lands, &c. within their Precincts, for the Relief of Persons infected with the *Plague*; and Justices of the County may tax Persons within five Miles round, on a Parish's Inability; the Tax to be levied by Distress and Sale of Goods, or in Default thereof by Imprisonment: Infected Persons going abroad, after commanded to keep House for avoiding further Infection, may be resisted by Watchmen, &c. and punished as Vagrants, if they have no Sores upon them; and if they have infectious Sores on them, it is Felony: Justices of Peace, &c. are to appoint Searchers, Examiners, and Buriers of the Dead, in Places infected, and administer Oaths to them for the Performance of their Duties, &c. *Stat. 1 Jac. 1. c. 31.* Some Places in the *Baltick* being infected with the *Plague*, in the Reign of Queen Anne, an Act was made for obliging Ships coming from thence to perform their *Quarentine* during the Infection in foreign Parts; and Masters of Ships coming on Shore, during the *Quarentine*, are to forfeit their Ships, &c. And others directed to take Care of the *Quarentine*, permitting any to come on Shore, shall forfeit 100 *l.* 9 *Ann. c. 2.* During the late Reign that *Marfeils* in France was infected, a Statute was made with further Provisions for the Preventing of Infection: By this Act, Ships coming into Ports, are to perform *Quarentine*; and Persons quitting Ships before performed, shall incur the Forfeiture of 200 *l.* Goods after *Quarentine* performed are to be aired; and Ships infected, to be burnt: His Majesty may make Orders concerning *Quarentine*; and, in Time of Infection here, cause Lazarets to be provided for the Sick, and Lines and Trenches to be cast up about Places, &c. And infected Persons were to be removed from their Houses to such Lazarets; and Escaping from thence, or out of the Lines of Places, to be guilty of Felony: Watches to be appointed by Justices of Peace, to keep People within the Lines, &c. 7 *Geo. cap. 3.* And by a subsequent Act, the King is enabled to prohibit Commerce with any Countries infected, by Proclamation; also Persons trading contrary to the Proclamation, their Goods and Ships shall be forfeited; and Officers of Ports may resist the Entrance of Ships, by firing of Guns, &c. Persons going to Places infected, incur a *Premunire*; and coming from such Places, shall be adjudged guilty of Felony. 8 *Geo. cap. 8.* The Clauses in the Act 7 *Geo.* relating to Removal of Persons infected to Lazarets, and making Lines round Towns, &c. are repealed by 8 *Geo. cap. 10.* And these last Acts, are since expired.

Plaint, (Fr. *Plainte* Lat. *Querela*) Is the Exhibiting any Action, real or personal, in writing; and the Party making his *Plaint* is called the *Plaintiff*. *Kitch. 231.* A *Plaint* in an inferior Court is the Entry of an Action, after this Manner: A. B. *Queritur versus* C. D. *de Placito Transgressionis, & sunt Pleg. de Prosequend. scilicet* Johannes Doe & Richardus Roe. The first Process in an inferior Court is a *Plaint*, which is in the Nature of an Original Writ, because therein is briefly set forth the Plaintiff's Cause of Action; and upon this *Plaint* there may issue a *Pone*, till the Return of a *Nihil*, upon which a *Capias* will not lie against the Body of the Defendant. 2 *Lill. Abr. 294.* Where a *Plaint* is levied in an

inferior Court, the Defendant must be first distrained for Non-appearance, by something of small Value; and then if he doth not appear, a farther Distress is to be taken to a greater Value, and so on; if all his Goods are distrained upon the first Distress, Attachment may be issued out of B. R. against the Officers, &c. *Ibid.* A Plaintiff in an *Affise* may abridge his *Plaint* of any Part whereunto a Bar is pleaded. 21 *H. 8. c. 3.* See *County Court.*

A *Plaint* is said to be the Cause for which the Plaintiff doth complain against the Defendant, and for which he doth obtain the King's Writ: For as the King denies his Writ to none, if there be Cause to grant it; so he grants not his Writ to any without there be Cause alledged for it. 2 *Lill. 294.*

Plantation, (*Plantatio, Colonia*) Is a Place whither People are sent to dwell, or a Company of People transplanted from one Place to another, with an Allowance of Land for their Tillage. *Litt. Dist.* All Wastes, which the Natives of any Country make no use of, nor can receive any Damage by their being in the Hands of others, may lawfully be possessed by *Planters*: If a Nation or People should happen to be expelled out of their own Land, they may seek void Places in some other Country, and there may justly plant; and the immediate Possessing such *Plantations* creates a Right against all Persons but he that hath Empire there. *Lex Mercat. 156.* And where Persons having arrived in any Territories and planted there, if before they can reap the Fruits of their Labour the Necessities of human Life are wanting, by the Laws of Nature they may force a Subsistence from a Neighbour *Planter*; and the Reason is this, that a Subsistence belongs to every Man, unless he has merited to lose the Life which he seeks to preserve. *Ibid.* Our *Plantations* abroad are chiefly Islands in America, over which there are particular Governors; and the Islands of *Jamaica* and *Barbadoes*, with some others, are very populous, and much frequented by unfortunate Persons, as they are there privileged from Arrests for Debt on foreign Contracts made out of those Islands; and have so great Advantages in Trade, that by Industry and Application, a present Misfortune is oftentimes attended with a future Happiness, by accumulating great Wealth from the Products of these foreign Colonies. *Geograph. Epitom. 228.* The *Plantation Islands* being gotten by Conquest, or by some of the King's Subjects going in Search of some Prize, and planting themselves there, the King is not restrained by the Laws of England to govern them by any particular Laws, but may govern them by what Law he will. 3 *Mod. 159.* 2 *Nelf. Abr. 871.* But it is said, if an uninhabited Country be newly found out by English Subjects, all Laws in Force in the Kingdom of England are immediately in Force there. 2 *Salk. 411.* All that are appointed Governors of the *Plantations*, shall, before their Entrance into their Government, take an Oath to do their utmost to put the Laws in Force in the said *Plantations*; and upon Complaint to the King, or such as he shall appoint, that such Governors have been wittingly negligent therein, the Governors so offending shall be removed, &c. 12 *Car. 2. c. 18.* 7 & 8 *W. 3.* And by the Stat. 11 & 12 *W. 3. c. 12.* If any Governor, Deputy Governor, or Commander in Chief of any *Plantation* or Colony within his Majesty's Dominion beyond the Seas, shall

shall oppress any of his Majesty's Subjects within their respective Governments, or be guilty of any other Crime or Misdemeanor, contrary to the Laws of this Realm, or those in Force within their Governments; such Oppressions shall be inquired of, heard and determined in the Court of *King's Bench* in *England*, or before such Commissioners, and in such County of this Realm as the King shall appoint, and by good and lawful Men of such County; and the like Punishments shall be inflicted as are usual for such Offences here in *England*. All Laws, Usages or Customs in Practice in any of the *Plantations*, which are repugnant to the Laws of this Kingdom, are declared null and void. 7 & 8 W. 3. c. 22. By the same Statute all Places of Trust in the Courts of Law, or relating to the Treasury, in any Island, Colony or *Plantation*, belonging to *England*, shall be in the Hands of the Native-born Subjects of *England*, *Ireland*, or of the said Islands; also Tracts of Land on the Continent of *America*, held by Charter or Letters Patent, shall not at any Time be aliened or sold to any other than the Natural-born Subjects of *England*, *Ireland*, &c. without the King's Licence. Stat. *Ibid*. No Alien shall be a Merchant or Factor in any of the Territories and *Plantations* belonging to *England*, in *Asia*, *Africa* or *America*, on Pain to lose all his Goods; one third to the King, another third to the Governor of the *Plantation*, and the other third to any Person suing in any of the King's Courts there. 12 Car. 2. And no Governor abroad shall be a Factor or Agent under the Penalty of 500 l. &c. 9 & 10 W. 3. Governors of the *Plantations* are not to suffer any foreign-built Ship or Vessel to load or unload Goods, till a Certificate is produced that the Owner or Owners are not Aliens, and Examination is made: And no Sugars, Tobacco, Ginger, Indico, &c. of the Growth of any *English Plantations* in *America*, shall be transported to any Place but to some *English Plantation*, or to *England*, *Ireland*, &c. on Pain of Forfeiture and the Ship, one Moiety to the King, and the other to him that will seize and sue for the same. 12 Car. 2. c. 18. For every Vessel which sets out from *England* or *Ireland* for any of the said *Plantations*, Bond shall be given, with one Surety, to the chief Officers of the Custom-house of the Place whence she sails, of 1000 l. if the Ship be under 100 Tuns; and of 2000 l. Penalty if of greater Burden; that if the said Vessel load any of the said Commodities at such *Plantations*, it shall bring them to some Port of *England*, *Ireland*, &c. And for all Ships coming from any other Port to those *Plantations*, the Governors, before the Ship be permitted to load, shall take such Bond that it shall carry the Merchandize to some other *English Plantations*, or to *England* or *Ireland*; and every Ship taking on board any of the aforesaid Goods before such Bond given, or Certificate thereof, &c. shall be forfeited; and the said Governors shall twice in every Year return true Copies of such Bonds to the chief Officers of the Customs in *London*, &c. *Ibid*. If any Vessel shall take on board any of the Commodities aforesaid, at any of the said *English Plantations*, before Bond be given, as directed by 12 Car. 2. or Certificate produced from the Officers of some Custom-house in *England*, &c. that such Bond hath been there given; or shall carry the said Goods to any Place, contrary to the Tenor of such Bonds, the same shall be forfeited, with the Ship and all

her Furniture, Guns, Ammunition, &c. one Moiety to the King, and the other Moiety to him that will sue for the same in any of the said *Plantations*, or in the Court of the High Admiral of *England*, or of any Vice-Admiral, or any Court of Record in *England*. 22 & 23 Car. 2. c. 26. But these Penalties seem to be taken off by the Stat. 25 Car. 2. c. 7. which ordains, that if any Ship or Vessel shall come to any of his Majesty's *Plantations* to ship any Sugar, Tobacco, &c. and Bond shall not be first given to bring the same to *England*, there shall be answered to the King several Duties before Lading thereof, and under such Penalties as for Non-payment or defrauding the King of his Customs in *England*. Goods are to be imported and exported from and to the *Plantations* in Ships built in *England* or *Ireland*, or the said *Plantations*; and navigated with the Master and three Fourths of the Mariners of the said Places, on Pain of forfeiting Ship and Goods, &c. And all Ships, lading or unlading any Goods at any of the *Plantations* in *America*, and the Masters and Commanders thereof shall be subject to the same Rules, Visitations, Searches, Penalties, and Forfeitures, as Ships and their Ladings are liable to in *England*; and the Officers for collecting the Customs there, shall have the like Powers as the Officers of the Customs in this Kingdom; and Persons assisting in Concealments, shall be subject to the like Penalties, &c. 7 & 8 W. 3. c. 22. Persons serving on Board, or retained to serve on Board any Trading Ships, in any Part of the *Plantations* of *America*, or any Persons being on Shore there, may not be impress'd by any Ships of War; unless such Persons shall be Deserters from such Ships, on the Penalty of 20 l. Stat. 6 Ann.

Form of a Power to let and demise *Plantations*, and receive the Products thereof.

TO all People, &c. A. B. of, &c. sendeth Greeting. Whereas the said A. B. is seised in his Demesne, as of Fee, of and in two several *Plantations* in the Island of Barbadoes, called or known by the Names of, &c. together with the Slaves, Horses, Mills, Coppers, and other Appurtenances thereunto belonging. Now know ye, That the said A. B. hath constituted, authorized and appointed, and by these Presents doth constitute, authorize and appoint C. D. of, &c. and hereby give to him full Power and Authority, in his Name, and to his Use, to enter into and upon the said *Plantations*, whereof he the said A. B. is now seised as aforesaid, and to have, receive and take the Rents, Issues and Profits of the same respectively, with the Appurtenances; and to lease, demise, let and set, to such Person or Persons as he shall think fit, all his *Plantations* and Tracts of Land, Negroes, Horses, Coppers and Mills whatsoever, in the said Island of Barbadoes, or any Part thereof, for such Term or Number of Years, not exceeding, &c. and for and under such yearly and other Rents, Covenants, Provisions and Agreements as he thinks fit or convenient; or otherwise to manage, occupy or employ the same, &c. as to him the said C. D. shall seem best, and for the greatest Benefit and Advantage: And from Time to Time, to receive and take the Revenues and Profits of the said Houses, *Plantations*, Lands and Premises above-mentioned; and to use and take all lawful Methods, by Action, Distress, or otherwise, for the Obtaining and Recovering of the Rents, Issues, and Profits of all or any Part of the said Premises, or to

compound for the same as he shall think fit; and to give Acquittances or Discharges therefore. And the said A. B. doth hereby make, ordain, constitute and appoint the said C. D. his true and lawful Attorney, for him and in his Name, and to his Use, to ask, require, demand, sue for, recover and receive, all and every Sum and Sums of Money, Sugars, Debts, Goods, Wares and Merchandizes, due, owing or belonging, or to grow due or belonging to him the said A. B. from any Person or Persons whatsoever in the said Island of Barbadoes; and on Non-payment, or Non-delivery thereof, or of any Part thereof, for him and in his Name, to use and take all proper Methods, according to the Laws and Customs, of the said Island, for the Recovering of the same: And on Payment or Delivery thereof to his said Attorney, to release and discharge the Person and Persons so paying and delivering the same: And he the said A. B. doth hereby farther authorize and empower the said C. D. to do, execute and perform all other lawful and reasonable Acts and Acts, Thing and Things whatsoever, for him, and in his Name, or otherwise, touching and concerning the Management or Disposal of all or any Part of his Estate, Real or Personal, within the said Island of Barbadoes, and for the Recovering and Receiving the Profits and Produce thereof, or of any Part or Parcel thereof, or any other Matter or Thing whatsoever, as fully as he himself might or could do, if he were personally present; and one or more Attorney or Attornies, under him, to make, substitute, and appoint, for all or any the Purposes aforesaid; hereby ratifying and confirming whatsoever his said Attorney, or his Substitute or Substitutes, by and under him appointed, shall do, execute and perform, or cause to be done, executed and performed, in and about, or touching or concerning the said Premises. In Witness, &c.

Felons transported to the Plantations, for certain Terms of Years, &c. by 4 Geo. c. 11. 6 Geo. cap. 22. See Clergy and Felony.

Plate, A Hoy, or small Water Vessel. 13 Eliz. cap. 15.

Playhouse. Playhouses were originally instituted with a Design of recommending Virtue to the Imitation of the People, and exposing Vice and Folly; and therefore are not in their own Nature Nuisances: But it hath been holden, that a common Playhouse may be a Nuisance, if it draw together great Numbers of Coaches, &c. as prove generally inconvenient to the Places adjacent. 5 Mod. 142. If any Persons shall in Plays, &c. jestingly or profanely use the Name of God, they shall forfeit 10*l.* Stat. 1 Jac. 1. c. 21. And speaking any Thing in Derogation of Religion, &c. they are liable to Forfeitures and Imprisonment. 1 Eliz. Also acting Plays or Interludes on a Sunday, is subject to Penalties, by 1 Car. 1. cap. 1.

Plea, (*Placitum*) Is that which either Party alledges for himself in Court, in a Cause there depending to be tried: And Pleading in a large Sense, contains all the Matters which come after the Declaration, as well on the Defendant's as the Plaintiff's Side, till Issue is joined; but is commonly taken for the Defendant's Answer to the Plaintiff's Declaration. Pleas are divided into Pleas of the Crown and Common Pleas; Pleas of the Crown are all Suits in the King's Name, for Offences committed against his Crown and Dignity, and also against the Peace, as Treasons, Felonies, Maihem, &c. And Common Pleas are those that are agitated between common Persons, in Civil Cases: And Pleas may be farther di-

vided into as many Branches as Action; for they signify all one. *S. P. C. cap. 1. 4 Inst. 10.* A Plea to the Action is that which goes to the Merits of the Cause or Action; and is General to the Declaration, or a Special Plea: A General Plea, in Debt on Contract, is *Nil debet*: In Debt on Bond, *Non est factum*, or *Solvit ad Diem*; in Action of the Case upon a Promise, *Non assumpsit*; in Trespass upon the Case, *Not guilty*; in Covenant, Performance of Covenants, &c. A Special Plea contains the Matter at large, concluding to the Declaration or Action; and Special Pleas are many, as *Per Dures* and *Per Minas*, and in Justification, that in Assault and Battery, the Plaintiff struck the first Blow, &c. In Waste, on *Nul Waste* pleaded, the Defendant cannot plead justifiable Waste; but he may give in Evidence, Lightning, Enemies, &c. to prove it to be no Waste: He is to confess the Fact, and plead specially in these Cases. *Finch 362, 378. 1 Inst. 282, 372.* Special Pleas in Answer to the Plaintiff's Declaration, are of two Kinds; Pleas in Bar, and in Abatement; and every Plea must be pleaded either in Bar to the Action brought, or in Abatement of the Writ upon which the Action is framed, or it is but a Discourse, and not a Plea. A General Plea is drawn without Counsel's Hand, only the Defendant's Attorney's Name is to it; and he is to pay the Plaintiff's Attorney for entering it: Special Pleas are drawn up in Form, and must be sign'd by Counsel, or they will not be received: A Foreign Plea is to be ingrossed in Parchment, and signed by Counsel, and be put in upon the Oath of the Defendant, that the Plea is true. *Practis. Attorn. Edit. 1. pag. 80.* And when a Defendant hath pleaded, the Plaintiff answers the Defendant's Plea, which is called a Replication; and the Defendant answers the Plaintiff's Replication, by Rejoinder; which the Plaintiff may answer by Surrejoinder; and sometimes, though seldom, Pleadings come to Rebutter, in Answer to the Surrejoinder; and Surrebutter. 1 Inst. 303. In good Order of Pleading, a Person ought to plead, 1st, To the Jurisdiction of the Court. 2dly, To the Person of the Plaintiff, and next of the Defendant. 3dly, To the Writ. 4thly, To the Action of the Writ. 5thly, To the Count or Declaration. 6thly, To the Action it self in Bar thereof. A Plea to the Jurisdiction is called a foreign Plea, because it alledges that the Matter ought to be tried in another Court, &c. Pleas to the Person have been formerly Six, viz. Villenage, Outlawry, Excommunication, the Party an Alien, out of Protection, and professed in Religion; but the last is now no Plea. The Plea to the Writ, &c. is for Variance between the Writ and Record, Death of Parties, Misnomer, Jointenancy, &c. and may be to the Writ and Bill, or Count together. Pleas to the Count or Declaration are Variance between the Writ and the Count, Specialty or Record, Incertainty, &c. and all these are properly Pleas in Abatement. Plea to the Action of the Writ is where one pleadeth such Matter which sheweth the Plaintiff had no Cause to have the Writ brought. And a Plea in Bar to the Action it self, is when the Defendant pleadeth a Plea which is sufficient to overthrow the Action of the Plaintiff. *Kitch. 95. Litt. 196.* Pleas in Bar, such as a Release, the Statute of Limitations, Agreement with Satisfaction, &c. destroy the Plaintiff's Action for ever: But Pleas in Abatement are temporary and dilatory, and do not destroy the Action, only

ly stop the Cause for a while, till the Defect is removed ; as where there is some Fault in the Writ or Declaration, Misnomer of the Defendant, where the Plaintiff is excommunicate, &c. A *Plea* to the Jurisdiction, Misnomer, or any other *Plea* in Abatement, cannot be pleaded after an Imparance ; though a *Plea* in Bar may, because that goes to destroy the Action. 2 *Lutw.* 1174. *Pleas* in Bar may come after a Continuance, or general Imparance ; but if such *Plea* be first pleaded, the Defendant shall not be admitted afterwards to plead in Abatement of the Writ, which is allowed to be good by Pleading in Bar to the Action : Yet Matter of Record may be shewn in Arrest of Judgment, and thereby the Writ be abated. *Hob.* 280, 281. By Imparance a Writ or Bill is admitted to be good, so that after it *Plea* in Abatement ought not to be received ; but if it be accepted, and the Plaintiff doth demur to it, the Demurrer is good : After a Defendant hath pleaded in Abatement, and before he pleads directly in Bar, he may demur to the Declaration of the Plaintiff ; as he may where he is advised that the Declaration is insufficient, &c. *Pract. Solic.* 235, 236. If the Defendant can have no Advantage by Pleading in Abatement, or by Demurring in Law, he may afterwards plead in Bar ; and before he pleads any special Matter in Bar, he may plead in general, viz. A Release, or Defeasance ; Acceptance of other Things ; Tender of Amends ; Concord or Accord ; Arbitrament ; *Auterfoits* Bar by former Judgment ; the Statute of Limitation of Actions ; Disability of the Plaintiff ; Privilege of the Defendant, or other Matter ; for several Matters pleadable in Abatement, may be pleaded in Bar. *Pract. Attorn.* 1 *Edit.* 82. Also he may plead another Action depending of the same Nature, for the same Thing, &c. and if a Person mistaking his first Action, bring another Action without discontinuing the First, this *Plea* may be pleaded. 1 *Salk.* 392. There is likewise a *Plea puis Darrein Continuance*, where the Defendant hath pleaded a *Plea*, and before Trial, there happens some new Matter, which will avoid the Action : It may be pleaded after Issue joined, at any Time before the Verdict ; but after Verdict, and before Day in Bank, there is no Day to plead it ; so that the Remedy is by *Audita Querela*, *Cro. Jac.* 646. Anciently all Pleadings were in *French* ; but by Statute, they are to be pleaded and answered in *English*, and entered and inrolled in *Latin*. *Stat.* 36 *Ed.* 3. *cap.* 15. 22 *Car.* 2. *c.* 3. A Defendant in any Suit, may plead several Matters ; but if any such Matter be excepted to, and found insufficient, Costs shall be given : And no dilatory *Plea* shall be allowed in any Court of Record, unless the Truth be proved by Affidavit ; or probable Matter be shewn. 4 & 5 *Ann.* *cap.* 16. When a Declaration, or Bar, are defective in Circumstances of Time, Place, &c. this may be helped by the Pleading of the adverse Party to it ; but not if it be insufficient in Matter. 2 *Ventr.* 222. 1 *Danv. Abr.* 156. If the Defendant pleads a dilatory and frivolous *Plea*, to hinder the Plaintiff from going to Trial ; the Court, on Motion, will order the Defendant to plead such a *Plea* as he shall stand to, or to accept of a Demurrer to his dilatory *Plea*, on Arguing whereof, if the *Plea* be not good, the Court will not after permit him to amend it ; and when a dilatory *Plea* in Abatement is over-ruled, there shall be a

Respondeas Ouster, except an Issue be joined on it. 6 *Mod.* 102. And if a *Plea* in Bar of the Action, which is peremptory, is over-ruled, Judgment shall be given against the Defendant. *Lutw.* 42. Where it is doubtful between the Parties, whether a *Plea* be good or not, it cannot be determined by the Court on Motion, but there ought to be a Demurrer upon the *Plea* ; and upon Arguing thereof, the Court shall judge of the *Plea* whether good or bad : And no Advantage can be had of double Pleading, without special Demurrer. 2 *Lill. Abr.* 310. *Lutw.* 422. But though the Court is to judge of Pleadings, they will not direct any Person how to plead, notwithstanding the Matter be difficult ; but the Parties must plead at their Peril, and Counsel are to advise, &c. If the Plaintiff's Attorney will consent, the Defendant may wave his *Plea* pleaded, without moving the Court ; but if he will not consent, it cannot be done without moving the Court. *Trin.* 1651. A Defendant may wave his special *Plea*, and plead the general Issue, if there be no Joinder in Demurrer. 2 *Salk.* The Defendant, before Joinder in Demurrer, may amend his *Plea* ; and so after Joinder in Demurrer, before argued : And where a Defendant has demurred, and the Plaintiff joined ; the Court will oftentimes allow him to withdraw his Demurrer, and plead to the Action, if the Plaintiff hath not been put by a Trial. *Pract. Solic.* 303. A *Plea* may be amended, on Leave of the Court, if it be but in Paper, and not entered, paying Costs : If after the Defendant hath pleaded, the Plaintiff alters his Declaration, the Defendant may alter his *Plea*. 2 *Lill.* 322. Falshood in a Defendant's *Plea*, if it be not hurtful to the Plaintiff, nor beneficial to the Defendant, it doth no Injury ; as it doth where detrimental to the Plaintiff, &c. *Ibid.* 297. Though if an Attorney pleads a false *Plea* by Deceit, it is against his Oath, and he may be fined. 1 *Salk.* 515. Concerning *Pleas* in general ; all *Pleas* are to be succinct, without unnecessary Repetitions, and to be direct and pertinent to the Case, not by Way of Argument or Rehearsal ; and the *Plea* of every Man shall be taken most strongly against himself. 2 *Lill.* 304. The *Plea* must directly answer the Charge in the Plaintiff's Declaration, or it will not be good. 1 *Danv. Abr.* 235. If it doth not answer all the Matter contained in the Declaration, the Plaintiff shall have Judgment as for Want of a *Plea*. 1 *Lev.* 16. And in pleading a Tender, at the Putting in of the *Plea*, the Money is to be brought into Court, or the *Plea* will not be accepted, but the Plaintiff shall sign Judgment. 2 *Lill. Abr.* 308. Though when Judgment in Ejectment is signed for Want of a *Plea* if Possession be not delivered, a Judge before the Assises may compel the Plaintiff to accept of a *Plea*. 2 *Salk.* 516. Pleadings which amount to no more than the general Issue, are not to be allowed, but the general Issue shall be entered ; and where the Defendant may plead the general Issue, he ought to plead so that the whole Matter in Question may be tried. 2 *Lill.* 302. 2 *Nelf. Abr.* 1246. 1 *Salk.* 394. If the Defendant is not constrained to plead a special *Plea*, he may plead the general Issue proper to the Action brought, and give the special Matter in Evidence : And in many Cases general Pleadings are permitted, to avoid Tediousness and Multiplicity, and the Particular shall come on the other Side ; as in Case of a Condition to perform all Covenants

in an Indenture, &c. but where a Thing rests in a Man's own Notice, he must plead it particularly. 1 *Inst.* 303. 8 *Rep.* 133. 2 *Danv. Abr.* 249. 2 *Nelf. Abr.* 1249. General Estates in Fee-simple may be generally alledged; but Estates in Tail, and particular Estates, must be shewed. A Plea of Conveyance of Lands, &c. *inter alia*, where the Conveyance contains more than relates to the Matter of the Plea, is good. 1 *Roll. Rep.* 72. But Pleading a Thing *per nomen*, &c. is no good Way of Pleading; for it never mends a Plea which is bad in the Beginning. 2 *Nelf. Abr.* 1267. Bonds and Deeds are to be pleaded with a *Profert hic in Curia*, &c. *Ibid.* 1261. If one comes in by Act of Law, the general Allegation will suffice; and Things spiritual, or where the Plea consists of Matter infinite may be generally pleaded: All necessary Circumstances implied by the Law, need not be expressed in the Plea; but when any special or substantial Matter is alledged, it should be specially answered; and so Matters of Record, where they are the Foundation of the Suit, or Substance of the Plea. 10 *Rep.* 94. 3 *Cro.* 749. *Plowd.* 65. That which is alledged by Way of Inducement to the Substance of the Matter, needs not be certainly alledged as the Substance it self. *Plowd.* 81. Pleas that are too general are not good. 1 *Lutw.* 239. 2 *Salk.* 521. And every Plea ought to be single and certain; and not be double, or contain a Multitude of distinct Matter to one and the same Thing, whereto several Answers are required, which will not be allowed; nor where the Defendant pleads two Matters, each being a sufficient Bar to the Action, unless one depends upon the other, or the Defendant cannot come at the one without shewing the other, when it is good. 11 *Rep.* 52. 1 *Ventr.* 48, 272. 2 *Nelf. Abr.* 1254. A double Plea will not be good; for where there is double Matter, no certain Issue can be taken: But a Plea is not double which contains divers Matters, if it would not have answered the whole Declaration without alledging all those Matters in it, and which are necessary in the Defendant's just Defence. 2 *Lill. Abr.* 300. A Man cannot plead any Thing afterwards which he might have pleaded at first. *Ibid.* 318. Though Surplusage shall never make the Plea vicious, but where it is contrary to the Matter before. *Raym.* 8. The Court never orders a Defendant to plead peremptorily, 'till all the Rules are out: And where the Plaintiff amends and gives an Imparlance, there shall be new Rules given to plead, but not if there is no Imparlance. 2 *Salk.* 517. In the Court of C. B. if the Defendant doth not plead on Rule to answer, before the Rule is expired, the Plaintiff's Attorney may afterwards enter up Judgment by *Nil dicit*. *Pract. Solic.* 303. If a Copy of the Plaintiff's Declaration be delivered to the Defendant's Attorney before the *Essoin*-Day of the Term, he may be compelled to plead that Term, or Judgment shall be entered against him: By the usual Course, the Defendant is to answer the same Term in which he appears, if it be an issuable Term, and the Writ is returnable at the Beginning thereof; but generally a Defendant hath Time to plead 'till the next Term. *Pract. Attorn. Edit.* 1. When a Matter is expressly pleaded by one Party in the Affirmative, which is expressly pleaded to and denied by the other Party, the next Thing is to be an Issue in order to Trial, that they may not plead in infinitum. *Raym.* 199. The Law requires in every Plea two Things,

viz. Matter sufficient; and that it be expressed according to the Forms of the Law. *Hob.* 164. Each Plea is to have its proper Conclusion; and regularly all Pleas that are Affirmative conclude, *Et hoc paratus est verificare*, &c. A Plea in Abatement begins, *Quod Def. ad Billam*, &c. *Respondere non debet*, &c. and concludes, *Unde petit Judicium de Bill. vel Nar. prad.* *Et quod Billa cassetur*, &c. or, *Si prad. C. D. ad Bill. prad. Respondere compelli debeat*, &c. In a Plea in Bar, the Defendant in the Beginning says, *Quod Quer. Actionem suam vers. eum habere seu manutenere non debet*; and concludes with, *Pet. Judicium si Actionem suam vers. eum habere seu manutenen. debeat*, &c. *Pract. Solic.* 236. A Plea of Record ought to conclude, *Et hoc paratus est verificare per Recordum*, or *prout patet per Recordum*. 2 *Nelf.* 1269. See Abatement, Issue, Misnomer, &c.

A Plea of Nil debet, in Debt.

ET prad. A. B. ven. & defend. injur. quando, &c. *Et dicit quod prad. C. D. Action. suam prad. versus eum habere non debet, Quia dicit quod ipse idem A. B. non debet prefato C. D. prad. quinq; libr. nec aliquem denar. inde prout prad. C. D. superius vers. prad. A. B. narravit, & de hoc pon. se super Patriam*, &c.

A Plea in Abatement.

ET prad. Johannes B. per C. D. Attorn. suum ven. & defend. vim & injur', &c. *Et pet. Judic. de Bill. prad. quia dicit quod ipse prad. Johannes Nominatur & vocatur per nomen*, &c. *Et per eadem nomen & cognomen tempore Nativitatis sue hucusq; semper cogn. & vocat. fuit & non per nomen Johan. A. prout in Bill. prad. superius nominatur. Et hoc parat. est verificare, Unde petit Judic. de Bill. prad. & quod Billa Cassetur*, &c.

Form of a Plea in Bar of an Action.

ET prad. A. per, &c. Attorn. suum venit & defend. vim & injur. quando, &c. *Et dicit quod prad. C. actionem suam prad. inde versus eum habere non debet, Quia dicit quod post Promission. & Assumption', &c. suas prad. in forma prad. fact. & ante diem impetr. Brevis original. pradiit. A. scilicet Die & Anno, &c. bene & fidelit. solvit prefat. C. prad. vigint. libr. secundum Promission. & Assump. suas prad. Et hoc paratus est verificare, Unde pet. Judicium si prad. C. Actionem suam prad. vers. eum habere debeat*, &c.

Pleas in Criminal Cases. One indicted of Felony, &c. ought not to be allow'd to plead to the Indictment, 'till he holds up his Hand at the Bar; which is in Nature of an Appearance, &c. A Prisoner on his Arraignment may plead the General Issue, or in Abatement, &c. or demur to the Indictment; and he may plead in Bar, *Auterfoits Acquit*, *Auterfoits Convict* before Judgment, *Auterfoits Attaint*, &c. *viz.* That he was heretofore acquitted, convicted, or attainted of the same Felony. *H. P. C.* 228. 3 *Inst.* 213, 214. A Criminal may also plead a Pardon, or Benefit of Clergy, tho' this last is not usually pleaded until he has otherwise pleaded before. Vide *Auterfoits Acquit*.

Pleas of the Sword, Were the Pleas of the Dignity of the Earl of Chester; signifying Sovereign Authority. King Will. 1. gave the Earldom of Chester to his Half-Brother Hugh Lupus, Ancestor to Ranulph the third Earl of Chester; *Tenere*

Tenere ita libere per Gladium, sicut ipse Rex Willielmus tenuit Angliam ad Coronam: And Earl Ranulph, anno 2 Hen. 3. granted to his Barons of *Chebbire*, a Charter of Liberties, *Exceptis Placitis ad Gladium, &c.* Rot. Pat. 3 Ed. 4. According to the Grant of Will. 1. in all Indictments for Felony, Murder, &c. in that County Palatine, the Form was antiently. — *Contra Pacem Domini Comititis, Gladium & Dignitatem, &c.*

Plebanus, A Rural Dean, because the Deane-ries were commonly affix'd to the *Plebanae*, or chief Mother-Churches within such a District, at first commonly of ten Parishes: But it is infer'd from divers Authorities, that *Plebanus* was not the usual Title of every Rural Dean; but only of such a Parish Priest in a large Mother-Church, exempt from the Jurisdiction of the Ordinary, who had the Authority of a Rural Dean committed to him by the Archbishop, to whom the Church was immediately subject. *Wharton. Angl. Sac. Pa. 1. pag. 569. Reg. Eccl. Christ. Cantuar. M.S.*

Plebiscitum, A Law or Statute made by the joint Consent of the People or Commons, without the Senate. *Litt. Dist.*

Pledge, (Lat. *Plegius*, Fr. *Pleige*, i. e. *Fidejussor*) A Surety that undertakes for another Man in Action of Trespafs, &c. *Pledges* are Bail to Actions; also upon suing out some original Writs, it is thus inserted, viz. *Si A. B. fecerit te securum de Clamore suo Prosequendo tunc pone per vadios & salvos Plegios C. D. & E. F. de, &c. quod sit, &c.* or these *Pledges* are generally *John Doe* and *Richard Roe*. 2 *Litt. Abr.* 329. Those that bail or redeem any Thing but the Body of a Man, are called *Pledges*: And *Pledges* are usually found for the Demandants in Real Actions, and Plaintiffs in Personal Actions. *Ibid.* The Reason of finding these *Pledges* was, that the Plaintiff should prosecute his Suit with Effect to Judgment, and not put the Defendant to unnecessary Trouble and Charge; for if he were nonsuited at the Trial, the Entry of the Judgment upon it was thus, *Ideo Considerat. est quod pred. Quer. & Pleg. sui de Prosequend. sint inde in Misericordia, &c.* The Plaintiff's *Pledges* that he shall prosecute his Suit, may be entered at any Time pending the Action; and the Putting in of *Pledges* is now but a meer formal Thing; yet if the *Pledges* be not entered at all, it is Error, because the Law directs the Plaintiff to find *Pledges*. *Trin. 22 Car. B. R.* In the Return of a *Venire facias*, the Omission of the Returning of the *Pledges* is but Matter of Form, and not like unto where *Pledges* are omitted upon an original Writ; wherefore it has been adjudged to be help'd by the Statutes of *Feofails*. 2 *Nelf. Abr.* 944. Want of *Pledges* hath been held to be Substance; but it is aided by the Statute of 4 & 5 Ann. unless set forth particularly for Cause upon a Demurrer. 2 *Lev.* 39. 2 *Litt. Abr.* 329. The *Pledges*, *John Doe*, &c. are entered by the Defendant; on his being arrested, and giving common Bail for his Appearance, &c.

Pledges of Goods For Money, &c. See *Pawns*.

Pledgery, (Fr. *Pleigerie*, Lat. *Plegiagium*) Signifies Suretiship, an Undertaking or Answering for: And the Appellant shall require the Constable and Marshal to deliver his *Pledges*, and discharge them of their *Pledgery*, after that he is come into the Lists, &c. *Orig. Fur. ex Cod. M.S. in Bibl. Seldeniana.*

Plegiis Acquietandis, Is a Writ that lies for a Surety, against him for whom he is Surety, if he pay not the Money at the Day. *F. N. B.* 137. If the Party who becomes Surety be compelled to pay the Money, &c. he shall have this Writ against the Person who ought to have paid the same: And if a Man be Surety for another to pay a Sum of Money, so long as the Principal Debtor hath any Thing, and is sufficient, his Sureties shall not be distrained by the Statute of *Magna Charta*; if they are distrained by the Sheriff, &c. they shall have a special Writ upon the Statute to discharge them. *Magn. Chart.* 9 H. 3. c. 8. But if the Plaintiff sue the Sureties in C. B. where the Principal is sufficient to pay the Debt, whether the Sureties may plead that, and aver that the Principal Debtor is sufficient to pay it; or whether they shall have a Writ to the Sheriff not to distrain in such a Case, hath been made a Question. *New Nat. Br.* 306. It was adjudged *Pasch.* 43 Ed. 3. that the Writ *de Plegiis acquietandis* lieth without any Specialty shewed thereof: As it has been held, that a Man shall have an Action of Debt against him who cometh *Pledge* for another upon his Promise to pay the Money, without any Writing made of it. *New Nat. Br.* 270, 304.

Plena forisfactura, A Forfeiture of all that one hath, &c. See *Forfeiture*.

Plenary, Is a Term used in Ecclesiastical Affairs, where a Church is full of an Incumbent. A Clerk inducted may plead his Patron's Title; and being instituted by the Space of Six Months, his Patron may plead *Plenary* against all common Persons. *Plowd.* 501. Institution by Six Months, before a Writ of *Quare Impedit* brought, is a good *Plenary* against a common Person; but *Plenary* is no Plea against the King, 'till Six Months after Induction. 1 *Inst.* 119, 344. *Plenary* for Six Months is not generally pleadable against the King, because he may bring *Quare Impedit* at any Time, and *Nullum Tempus occurrit Regi*: Though if a Title devolves to the King by Lapse, and the Patron presents his Clerk by Usurpation, who is instituted and inducted, and enjoys the Benefice for Six Months, this is such a *Plenary* as deprives the King of his Presentation. 2 *Inst.* 361. And *Plenary* by Six Months after Institution is a good Plea against the Queen-Consort; although she claims the Benefice of the King's Endowment. *Wood's Inst.* 160. Upon Collation of a Bishop by Lapse, *Plenary* is not pleadable; for the Collation doth not make a *Plenary*, by Reason the Bishop would be Judge in his own Cause: The Bishop must certify whether the Church is full, or not; and his Collation is interpreted to be no more than to supply the Cure 'till the Patron doth present; and 'tis for this Cause a *Plenary* by Collation cannot be pleaded against the right Patron: But by Collation, *Plenary* may be a Bar to any Lapse of the Archbishop, and to the King, though 'tis no Bar to the right Patron. 6 *Rep.* 50. 1 *Inst.* 344. 2 *Cro.* 207. *Plenary*, or not, shall be tried by the Bishop's Certificate, being acquired by Institution, which is a Spiritual Act; but in a *Quare Impedit*, the *Plenary* must be tried by a Jury. 6 *Rep.* 49. By the Common Law, where a Person is presented, instituted and inducted to a Church, the Church is full, though the Person presented be a Layman; and shall not be void, but from the Time of the Deprivation of the Incumbent for his Incapacity.

Count.

Count. Pars. Compan. 99. Avoidance is contrary to *Plenarty*, as where there is a Want of a lawful Incumbent, &c.

Plene administrabit, Is a Plea pleaded by an *Executor* or *Administrator*, where they have administered the Deceased's Estate faithfully and justly before the Action brought against them. On *Plene administravit* pleaded by an *Executor*, if it be proved that he hath Goods in his Hands which were the Testator's, he may give in Evidence that he hath paid to the Value of his own Money, and need not plead it specially; for when an *Executor* before the Action, hath paid the Money in equal Degree with that demanded by the Plaintiff, he may plead fully administered generally, and give the Special Matter in Evidence. 2 *Lill. Abr.* 330. And where a Testator or Intestate was indebted to the *Executor* or *Administrator*, upon Bond, they may plead *Plene administravit*, and give their own Bonds in Evidence against any other Bond; so likewise upon an *Indebitatus*, having the Privilege of Paying themselves first. *Ibid.* *Plene administravit* is no Plea where an *Executor*, &c. is sued in the *Debet* and *Detinet*, because he is charged for his own Occupation. 1 *Mod.* 185. And if *Plene administravit* be pleaded, omitting the Words, *Et quod ipse non habet aliqua bona seu Catalla Testatoris, nec habuit die exhibitionis Bille præd. seu unquam postea*, &c. it is naught on a Demurrer, and not help'd by Verdict, &c. *Cro. Jac.* 132. 3 *Lev.* 28. See *Executors*. **Plevin**, (*Plevina*, from the Fr. *Plenwine*). Vide *Replevin*.

Plight, Is an old *English* Word, used sometimes for the Estate, with the Condition and Quality of the Land. 1 *Inst.* 221.

Plite of Lawn, Seems to be an antient Measure, as a Yard or an Ell at this Time; it is mentioned in the Stat. 3 *Ed. 4. c.* 5.

Plonkets, A Kind of coarse woollen Cloth. 1 *R.* 3. c. 8.

Plow-alms, (*Eleemosyna aratrales*) Was antiently 1 d. paid to the Church for every Plow-land. *Mon. Angl. Tom.* 1. pag. 256.

Plow-bote, A Right of Tenants to take Wood to repair Ploughs, Carts and Harrows, and for making Rakes, Forks, &c.

Plow-land, Is the same with a *Hide* of Land; and a *Hide* or *Plow-land*, it is said, do not contain any certain Quantity of Acres: But a *Plough-land*, in Respect of Repairing the Highways is settled at 50 l. a Year, by the Stat. 7 & 8 *W.* 3. c. 29. See *Carucate*.

Plurality, (*Pluralitas*) Signifies the Plural Number; mostly applied to such Clergymen who have more Benefices than one: And *Selden* mentions *Triality* and *Quadrality*, where one Parson hath three or four Livings. *Seld. Tit. Hon.* 687. *Plurality of Livings* is where the same Person obtains Two or more Spiritual Preferments, with Cure of Souls; in which Case the first is void *ipso facto*, and the Patron may present to it, if the Clerk be not qualified by Dispensation, &c. for the Law enjoins Residence, and 'tis impossible that the same Person can reside in two Places at the same Time. *Count. Pars. Compan.* 94. By the *Canon Law*, no Ecclesiastical Person can hold two Benefices with Cure *simul & semel*, but that upon Taking the second Benefice, the First is void: But the *Pope* by Usurpation did dispense with that Law; and a first every Bishop had Power to grant Dispenations for *Pluralities*, till it was abrogated by a General Council, held

anno 1273, and this Constitution was received till the Statute 21 *H. 8. c.* 13. *Moor* 119. 2 *Nelf. Abr.* 1271. The Stat. 21 *H. 8.* ordains, that if any Person having one Benefice with Cure, of the yearly Value of 8 l. or above, in the King's Books, accepts of another Benefice with Cure, and is instituted and inducted, then the first shall be void: So that there may be a *Plurality* within the Statute; and a *Plurality* by the *Canon Law*. 2 *Lutw.* 1306. The Power of granting Dispenations to hold two Benefices with Cure, &c. is vested in the King by the aforesaid Statute: And it has been adjudged, that a Dispensation is not necessary for a *Plurality*, where the King presents his Chaplain to a second Benefice; for such a Presentment imports a Dispensation, which the King hath Power to grant as supreme Ordinary; but if such a Chaplain be presented to a second Benefice by a Subject, he must have a Dispensation before he is instituted to it. 1 *Salk.* 161. A Man by Dispensation may hold as many Benefices, without Cure, of whatsoever Value, as he can get; and likewise so many with Cure as he can get, all of them, or all but the last being under the Value of 8 l. *per Annum* in the King's Books; if the Person to be dispensed withal, be not incapable thereof: Yet if a Dispensation is made to hold three Benefices with Cure, whereof the first is of the yearly Value of 8 l. the Dispensation is void, unless it be in Case of the King's Chaplains, &c. who may hold three Benefices with Cure, above the Value of 8 l. a Year, where one of them is in the King's Gift. *Hob.* 148. In these Cases it hath been held, that the Value of Livings to make *Pluralities* shall be determined by the King's Books in the First-fruits Office: Though the Court hath been divided, whether the Value should be taken as it was in the King's Books, or according to the true Value of the Living. 2 *Lutw.* 1301. 2 *Nelf.* 1271. No Deanery shall be taken by our Law to be a Benefice with Cure, to need Dispensation on having another Benefice, &c. 21 *H. 8.* 1 *Leon.* 316. And a Parsonage and Vicarage make not a *Plurality*, but are only one Cure; the Vicarage being endow'd out of the Parsonage. 2 *Cro.* 691. Parsons may purchase a License or Dispensation to take and keep Two or more Benefices with Cure, according to the Directions and Qualifications in the said Statute 21 *H. 8. c.* 13. And in some Cases, Persons may hold *Pluralities*, without being retained as Chaplains, &c. pursuant to that Statute, *viz.* by Birth, as being the Son or Brother of a Lord; by University Degree, where a Man is Doctor of Divinity, Law, &c. or by Office or Employment, as a Bishop. Stat. 26 *H. 8.* But when a Person is made a Bishop, his former Qualification to hold *Plurality* of Livings is void. *Hob.* 158. See *Chaplain*.

Pluries, Is a Writ that issues in the third Place, after two former Writs have been disobey'd; for first goes out the *Original* Writ or *Capias*, which if it has not Effect, then issues the *Alias*; and if that also fails, then the *Pluries*. *Old Nat. Br.* 33. It is used in Proceedings to Outlawry; and in great Diversity of Cases. *Table Reg. Writs*.

Pocket of Wool, Is a Quantity of Wool containing Half a Sack. 3 *Inst.* 96.

Poison, The Killing a Person by *Poisoning*, has been held more criminal than any other Murder, because of its Secrecy which prevents all Defence against it; whereas most open Murders

ders give the Party kill'd some Opportunity of Resistance: And for this Reason Offenders guilty of *Poisoning* any Person, were antiently judg'd to a severer Punishment than other Offenders. In this Kingdom *Poisoning* Persons was formerly a Kind of Treason, punished by Boiling to Death. 22 H. S. c. 9. 3 Nels. Abr. 363. And at this Day, to *poison* any one wilfully, is Murder and Felony, if the Party die in a Year; and the Aiders and Abettors, &c. shall suffer Death. Stat. 1 Ed. 6. c. 12. If a Man persuade another to drink a *poisonous* Liquor, under the Notion of a Medicine, who afterwards drinks it in his Absence; or if A. intending to *poison* B. put *Poison* into a Thing, and deliver it to C. who knows nothing of the Matter, to be by him delivered to B. and C. innocently delivers it accordingly in the Absence of A. In this Case the Procurer of the Felony is as much a Principal as if he had been present when it was done. 2 Hawk. P. C. 313. And so likewise all those seem to be who are present when the *Poison* was infused, and privy and consenting to the Design: But Persons who only abet their Crime, by Command, Counsel, &c. and are absent when the *Poison* was infused, are Accessaries only. *Ibid.*

Pokes, Were long sleeved Gowns; which Fashion formerly grew so affected and extravagant, that the Wearing them was prohibited by the Bishop of London in his Injunctions Anno 1410.

Pole, A Measure of Land; the same with Perch. See *Perch*.

Poledavies, Canvas wherewith Sail-ware is made, mentioned in the Stat. 1 Jac. 1. c. 24.

Polein, Was a Shoe, sharp or picked, and turned up at the Toe; that first came in Use in the Reign of William Rufus, and by Degrees became of that Length, that in King Richard the Second's Time they were tied up to the Knees, with Gold or Silver Chains: They were restrained anno 4 Ed. 4. but not wholly laid aside till the Reign of Hen.-8. Malms. in Vit. Will. 2.

Poletria, A Stud of Colts; *Poledrus*, a Colt. *Fleta*, lib. 2. cap. 87.

Policy of Assurance, or *Insurance*, (From the Ital. *Poliza*, i. e. *Schedula*, & *Assicuratio*) Is an Instrument entered into by *Insurers* of Ships and Merchandize, &c. to Merchants, obligatory for the Payment of the Sum *insured*, in Case of Loss. *Merch. Dict.* It is a Course taken by those who adventure Goods or Merchandizes to Sea, that they unwilling to hazard the Whole do give unto some other, called an *Insurer*, a certain Rate or proportionate Sum of so much *per Cent.* to secure the safe Arrival of the Ship and Goods, &c. at the Place agreed upon; so that if the Ship and Merchandize do miscarry, the *Insurer* maketh good to the Adventurer so much as he promis'd to secure; but if the Ship arrive safely, he gaineth that clearly which the Merchant compoundeth to pay him: And for the more equal Dealing between the *Insurer* and the *insured* in this Case, there is a Clerk or Officer ordain'd to set down in Writing the Sum of their Agreement, which is subscribed or underwritten by the *Insurer*; and this is called *Policy*, to prevent any Difference that might after happen between them. Stat. 43 Eliz. c. 12. and 14 Car. 2. c. 23. See *Insurance*.

Pollards, Base Coin heretofore current in this Kingdom; which with *Crocards* have been long since prohibited. *Matt. Westm. Anno 1299.* *Pollards*, *Crocards*, *Staldings*, *Eagles*, *Leonines*, &c.

were antient Coins of Money in *England*, but now forgotten. *Coke 2 Inst. 577.*

Pollard Trees, or *Pollengers*, Are such *Trees* as have been usually cropp'd, and therefore distinguished from *Timber-Trees*. *Plowd. 469.*

Poll-Doney, (*Capitatio*) Is a Tax upon the Heads of Men; either upon all indifferently, or according to their several Degrees and Distinctions. By the Stat. 18 Car. 2. c. 1. every Subject in this Kingdom was assessed by the Head or Poll, according to his Degree; as a Duke 100*l.* Marquess 80*l.* Baron 50*l.* Baronet 30*l.* Knight 20*l.* Esquire 10*l.* and every common Person 1*s.* &c. And Anno 1 & 2 Will. 3. a general *Twelve-penny Poll-Tax* was granted for the Publick Occasions.

Poll-Silver, There was antiently (says *Camden*) a personal Tribute called *Poll-Silver*, impos'd upon the Poll or Person of every one; of Women from the Age of twelve Years, and Men the fourteenth Year of their Ages. *Camd. Notes upon Coins.*

Polygamy, (*Polygamia*) Is where a Man marries Two or more Wives together, or a Woman has Two or more Husbands at the same Time; when the Body of the first Husband and Wife may be said to be injured by the second Marriage while either are Living. 3 *Inst. 88.* *Wood's Inst. 363.* And by Statute, marrying a second Wife or Husband, the former being alive, is made Felony; unless in Case of Absence for seven Years, &c. 1 Jac. 1. c. 11. See *Marriage*.

Pomeranium, A Word used for an Orchard in antient Charters. *Mon. Angl. Tom. 2. pag. 129.*

Ponderare. It was a Custom formerly in Times of Superstition, to weigh sick Children at the Tomb of some Saint, and to ballance the Scales with Wheat Bread, or any Thing which they were willing to offer to God or his Saints, but always with some Money, and by this the Cure of the Sick was said to be perform'd. — *Ad Sepulchrum Sancti Nummo se Ponderabat.*

Pondus Regis, Is the Standard Weight appointed by our antient Kings. 35 Ed. 1. And what we now call *Troy Weight*, was this *Pondus Regis*, or *Le Roy Weight*, with the Scales in equilibrium; whereas the *Aver du pois* was the fuller Weight, with a declining Scale. *Cowel.*

Pone, Is a Writ whereby a Cause depending in the County-Court, or other inferior Court is removed into the *Common Pleas*; and sometimes into the *King's Bench*: As when a *Replevin* is sued by Writ out of *Chancery*, &c. then if the Plaintiff or Defendant will remove that Plea out of the County-Court into C. B. it is done by *Pone*. *F. N. B. 69. 2 Inst. 339.* And the Writ *Pone* lies to remove Actions of Debt, Writs of Detinue, Writ of Right, of Nuisance, &c. *New Nat. Br.* Also a Writ willing the Sheriff to summon the Defendant to appear and answer the Plaintiff's Suit, on his putting in Sureties to prosecute, &c. *Wood's Inst. 570.* And the Writ to the Sheriff to take Surety of one for his Appearance is called *Pone per Vadium*.

Ponendis in Affis, A Writ granted by the Statute of *Westm. 2. c. 38.* which Statute shews what Persons Sheriffs ought to impanel upon *Affises* and Juries, and what not. *Reg. Orig. 175. F. N. B. 165.*

Ponendum in Ballium, Is a Writ commanding that a Prisoner be bailed in Cases bailable *Reg. Orig. 133.*

Ponendum sigillum ad Exceptionem, A Writ by which Justices are required to put their Seals

to Exceptions, exhibited by the Defendant against the Plaintiff's Evidence, Verdict, or other Proceedings before them, according to the Stat. Westm. 2.

Pontage, (Pontagium) Is a Contribution towards the Maintenance or Re-edifying of Bridges: And may also signify *Toll* taken to that Purpose. 1 H. 8. c. 5. 3 Eliz. c. 24. This was accounted one of the Three publick Charges on the Nation, from which no Persons were exempted, viz. *Expediitio, Pontis & Artis reparatio*, called *Trinoda Neccitas*, always excepted in Grants of Privileges, *propter Publicum Regni utilitatem*, that the People might the better resist the Enemy; and from which Selden writes, *That ne quidem Episcopi, Abbates & Monachi immunes erant*. Seld. Notes on Eadmer.

Pontibus reparandis, A Writ directed to the Sheriff, &c. commanding him to charge one or more Persons to repair a Bridge, to whom it belongs. Reg. Orig. 153.

Pauper, (Pauper) A poor Person is such as is a Burden to, and charge upon a Parish. The Poor our Law takes Notice of, are of three Kinds, 1st, Poor by Impotency and Defect; as the Aged and Decrepit, Fatherless and Motherless, Poor under Sicknefs, and Persons that are Ideots, Lunaticks, Lame, Blind, &c. these the Overseers of the Poor are to provide for. 2^{dly}, Poor by Casualty; such as House-keepers decay'd or ruin'd by Fire, Water, Robbery, &c. or by Losses in Trade; Poor Persons over-charged with Children, Labourers that are disabled; and these, having Ability, are to be set to work; but if not able to work, they are to be relieved with Money. 3^{dly}, Poor by Prodigality and Debauchery, also called *Thriftless Poor*; as idle slothful Persons, Pilferers, Vagabonds, Strumpets, &c. which are to be sent to the House of Correction, and be put to hard Labour, to maintain themselves; or Work is to be provided for them, that they do not perish for Want; and if they become impotent by Sicknefs, or if their Work will not maintain them, there must be an Allowance by the Overseers of the Poor for their Support. Dal. ch. 73. sect. 35. Before the Reign of Queen Elizabeth we had no such Thing as settled Laws for the Relief of the Poor; for, as History tells us, our Abbeys and Monasteries, assisted with the Benevolence and antient Hospitality of Lords of Manors, 'till the Time of the Reformation, were a sufficient Provision for the Poor of this Kingdom: But I find, by the Stat. 23 Ed. 3. c. 7. Relief was to be given to those that could not Labour: The 2 H. 5. c. 1. ordained, that Hospitals founded for impotent Poor, were to be visited. And by 27 H. 8. c. 25. Governors of Counties, Cities, Towns, &c. were obliged to keep aged Poor and impotent Persons; and compel those that were able to work and go to Service: And then in the Reign of Q. Eliz. several particular Laws were enacted for the Relief of the Poor, appointing Overseers, &c. For by the 5 Eliz. c. 3. Relief of Parishes is to be gathered by Collectors, and weekly distributed to the Poor; and none shall be permitted to beg openly, &c. And the 43 Eliz. c. 2. enacts, That the Church-wardens of every Parish, and two or three House-keepers, shall be nominated yearly in Easter-Week, or within one Month after, by Two or more Justices of the Peace of the County, dwelling near the Parish, under their Hands and Seals, to be Overseers of the Poor; and they with the Consent of Two such Justices, shall set

to work the Children of those Persons who are not able to maintain them, and all Persons who have no Means to maintain themselves, or use no Trade to get their Living; and shall raise weekly, or otherwise, by a Tax, on every Inhabitant and Occupier of Lands, &c. such a Sum as they shall think fit for Purchasing a Stock of Flax, Hemp and Wool, to set the Poor on Work; and such Sums as shall be necessary for the Relief of the Lame, Old, Blind and Impotent, and for putting out poor Children Apprentices, &c. And the said Overseers so nominated and appointed, shall meet once a Month at least in their Parish Church, having no just Excuse, to be allow'd of by two Justices, upon a Sunday after evening Service, and there take Order in the Premises; which Overseers, within four Days after the End of their Year, are to yield a true Account to two Justices, of all Money by them received, and all Things concerning their Office, and deliver what shall be in their Hands to the new Overseers, or on Refusal, shall be committed to Gaol till they account, and pay over the Money, &c. If the Inhabitants of any Parish are not able to raise Money for the Relief of their Poor, then two Justices of the Peace may tax any other Parishes within the Hundred; and if the Hundred be not thought able, the Justices at their Quarter-Sessions may rate any other Parish in the County; the Sums assessed to be levied by Warrant of two Justices, by Distress and Sale of Goods, and in Default thereof the Justices may commit the Offenders till paid; and the said Justices may commit Persons not setting themselves to work, according to Appointment, &c. The Church-wardens and Overseers, by the Assent of two Justices, may bind poor Boys Apprentices until the Age of twenty-four Years, and every Girl 'till the Age of twenty-one Years, or 'till she marry; and the Overseers, &c. by Leave of Lords of Manors, may build Dwelling-houses on the Waste for the impotent Poor, and place Inmates, or more Families than one in them; the said Houses to be built at the Charge of the Parish, Hundred or County, to be taxed as aforesaid: And the Father and Grandfather, Mother and Grandmother, and Children of every poor impotent Person, being able, shall relieve such Poor, in such Manner, and according to such Rates as the Justices of Peace at their Sessions shall assess, under the Penalty of 20 s. a Month for every Failure: And Mayors, and other Head Officers of Corporations, being Justices of Peace within their Precincts, shall have the same Power as Justices of Peace of the County, to execute this Act; and no other Justices shall intermeddle there; also every Alderman of London may execute so much of the Statute as is appointed to be done by one or two Justices of Peace of any County: Where any Parish extends into more Counties than one, or lies Part within a Corporation and Part without, the Justices and Head Officers shall act only in that Part of the said Parish as lies within their Limits; but the Church-wardens and Overseers of such Parishes as extend into several Limits shall, without dividing themselves, jointly execute their Office, and exhibit one Account to the Head Officer of the Corporation, and another to two Justices of Peace as aforesaid. And where in any Place there shall be no Overseers yearly appointed, every Justice of the Division where such Default shall happen, and every Mayor and Head Officer of

of a Corporation, &c. shall forfeit 5*l.* to the Use of the *Poor*, leviable on their Goods by Warrant from the Quarter-Sessions. The 3 *Car.* 1. c. 4. ordains, That the Church-wardens and Overseers of the *Poor*, mentioned in the 43 *Eliz.* may, with the Consent of Two or more Justices of Peace, or of one Justice where there shall be no more, set up any Trade or Occupation for Employing or better Relief of the *Poor* of their Parishes. By the 14 *Car.* 2. c. 12. Persons coming to settle in a Parish, and renting a Tenement under the Value of 10*l.* a Year, on Complaint by the Church-wardens and Overseers of the *Poor* to a Justice of Peace within forty Days, may be removed to the Parish where last legally settled for forty Days, &c. by Order of two Justices; unless they give Security to indemnify the Parish, to be allowed by the said Justices: But Persons may go into another Parish to Harvest-Work, &c. by Certificate from the Minister, Church-wardens and Overseers, that they have a Dwelling in the Parish they came from; and such Persons are to return to their Parishes when their Work is finished, and shall not be accounted settled where they sojourn, &c. and by this Statute, one Corporation or Work-house was to be in the Cities of *London* and *Westminster*, and the Towns and Places within the Bills of Mortality, govern'd by Presidents, &c. as a Stock for which Justices in their Sessions might tax and assess the Inhabitants in their Divisions and Parishes not exceeding a Year's Rate usually made for Relief of the *Poor*. The Act 14 *Car.* 2. (except what relates to the Incorporation of Work-houses within the Weekly Bills of Mortality) is continued by 1 *Fac.* 2. c. 17. And the 40 Days to make a Settlement was to commence from the Delivery of Notice to the Church-wardens. And by 3 & 4 *W. & M.* c. 11. it is enacted, that the forty Days intended to make a Settlement by the Act 13 & 14 *Car.* 2. shall be accounted from the Publication of Notice in Writing in the Church, of any Person's coming to inhabit in any Parish; and Church-wardens and Overseers neglecting to publish such Notice the next Sunday after received, or to register the same, shall forfeit 40*s.* to the Party grieved: But Persons coming into a Parish, and executing for themselves any Publick annual Office during one Year; or who shall be charged and pay publick Taxes to the said Parish; they shall be deemed a legal Settlement, without Notice: And if any unmarried Person, not having a Child or Children, shall be hired into any Service for one Year, such Service shall be a Settlement; and being bound Apprentice, and inhabiting in any Parish, such Binding and Habitation shall make a Settlement, without Notice: Persons removed by Warrant or Order of two Justices, are to be received by the Church-wardens and Overseers whither sent, on Pain of forfeiting 5*l.* to the *Poor* of the Parish from whence convey'd, to be levied by Distress and Sale by Warrant from one Justice; and for Want of Distress to be committed to Gaol for forty Days; but Persons aggriev'd may appeal to the next Quarter-Sessions of the County, &c. and there shall be kept in every Parish a Book, wherein the Names of all Persons that receive Relief shall be registred, and the Occasion; and the Parishioners are to meet at a Vestry yearly in *Easter-Week*, or oftner, when the Book shall be examined, by calling over the Persons, and inquiring into the Reasons of their taking Re-

lief, and then a new List shall be made of such Persons as they think fit to allow Collection to; and no other Persons shall receive Collection, unless by Authority under the Hand of one Justice, or by Order of Justices in their Sessions, &c. The Stat. 8 & 9 *W.* 3. c. 30. gives Leave to *poor* Persons to remove to other Parishes for Work and the better Maintenance of their Families, by Certificate from the Church-wardens and Overseers of the *Poor*, under Hand and Seal, attested by two Witnesses, and allowed and subscribed by two Justices of Peace, owning and acknowledging them to be Parishioners legally settled at the Place from whence they came; which Certificate shall oblige the said Parish or Place to receive and provide for them and their Families, when-ever they become chargeable to, or ask Relief of the Parish to which they remove and the Certificate is given; and then, and not before, such Persons and their Children, (though born in that Parish, not having acquired a legal Settlement) shall be removed back to, and settled in the Parish from whence such Certificate was brought: *Poor* receiving Relief of any Parish, upon the Shoulder of the right Sleeve of their Coats, are to wear a Badge or Mark, with a large Letter *P.* and the first Letter of the Name of the Parish whereof they are Inhabitants, cut either in Red or Blue Cloth; and such *Poor* neglecting or refusing to wear such Badge, any Justice of Peace may punish them, by Ordering their Allowance to be abridged or withdrawn, or committing them to the House of Correction there to be whipp'd and kept to hard Labour; and if any Church-warden or Overseer shall relieve any *poor* Person, not wearing a Badge, he shall forfeit 20*s.* one Half to the Informer, and the other to the *Poor*. By 9 & 10 *W.* 3. c. 11. No Person coming into any Parish by Certificate, shall gain a legal Settlement there, unless he *bona fide* take a Lease or Tenement of 10*l.* *per Annum*, or execute some annual Office in such Parish. And the 12 *Ann.* c. 18. which makes the 13 & 14 *Car.* 2. perpetual, (excepting what concerns Corporations) declares, that no Apprentice or hired Servant to Persons coming into a Parish by Means of a Certificate, shall acquire a Settlement in such Parish, except the Master be afterwards legally settled. The Stat. 2 *Ann.* c. 6. impowers Justices of Peace, &c. and Church-wardens and Overseers, with Consent of two Justices, to place out *poor* Boys, of Parents chargeable to the Parish, Apprentice to the Sea-Service, and the Church-wardens and Overseers are to pay to the Master with a Boy 2*l.* 10*s.* for Cloathing and Bedding, which shall be allowed in their Accounts; and these Apprentices are to be convey'd to the respective Ports to their Masters by the Overseers, and the Charges born as is provided for Vagrants; and the Indentures to be sent to the Collectors of the Customs of such Ports, &c. The 5 *Geo.* cap. 8. provides, that Church-wardens and Overseers of the *Poor*, where any Wife or Children are left upon the Parish, by Persons who have Estates, &c. which might keep them, by Warrant from two Justices of Peace, may seise so much of the Goods and Chattels and receive so much of the Rents of the Husband or Father as the Justices shall order for the Keeping of such Wife or Children, which Order of the Justices is to be confirm'd at the next Quarter-Sessions, and then the Goods and Chattels may be disposed of; and the Overseers,

&c. shall be accountable to the Sessions. And the Stat. 9 Geo. enacts, that no Justice of Peace shall order Relief to any *poor* Person 'till Oath be made of reasonable Cause, and that such Person had been refused Relief by the Overseers of the *Poor* of his Parish, &c. and until the Justice hath summoned the Overseers to shew Cause why Relief should not be given; and Persons to whom any Justice shall order Relief, shall be registered in the Parish-Books as other *Poor*, and the Church-wardens and Overseers are not to bring to the Parish Account any Money given to *Poor*, (unless on sudden and emergent Occasions) that are not registered, on Pain of 5 *l.* Penalty, to be levied by Distress and Sale, by Warrant from two Justices, and applied to the Use of the *Poor*: Church-wardens and Overseers of the *Poor*, with Consent of a Majority of the Parishioners, at a Vestry or other Publick Meeting, may purchase or hire Houses, and contract with Persons for the Lodging, Maintaining and Employing of *poor* Persons desiring Relief; and take the Benefit of their Work for their better Maintenance; and *poor* Persons refusing to be so lodged and kept, shall be struck out of the Parish-Books, and not be intitled to any Collection; and where any Parish, &c. shall be too small to purchase or hire Houses, two Parishes, with Consent as aforesaid, and Approbation of a Justice of Peace, may unite in doing thereof; and the *Poor* may be also lodged and maintained in other Parishes by Church-wardens and Overseers, &c. But no *poor* Persons, or their Apprentices, or Children, shall gain a Settlement in such Parishes: No Person shall be deemed to have acquired a Settlement in any Parish, by Virtue of any Purchase of an Estate under 30 *l.* Value, for any longer Time than such Person shall inhabit in the Estate purchased; and Persons taxed or assessed on the Scavenger's Rates, or to the Highways; and who shall pay such Rates, shall not thereby gain any legal Settlement in a Parish: And in Case of Appeals from Orders for Removal of *Poor*, none shall be proceeded upon in the Quarter-Sessions, unless reasonable Notice be given; and if the Justices determine in Favour of the Appellant, he shall be awarded the Expenses employ'd in Relief of the *poor* Person, between the Time of the Removal and Determination of the Appeal, to be recovered by Distress, &c. by Order of the Justices, as Costs and Charges, by 9 W. 3. c. 30. Every Parish is to keep their own *Poor*, by the 43 Eliz. And if any *Poor* demand Relief, that are not settled in a Parish; they ought to be removed to their proper Parishes, and there be relieved. *Dalt.* 73. If Justices of Peace in Sessions, &c. make Orders for Maintenance of Persons who are not impotent, but able to work, or having any Thing to live upon; those Orders are against Law. *Dalt.* 166. A Father has been ordered to make an Allowance to his Son's Wife, while his Son was beyond Sea: And if the Father of Children leaves the Parish, and there is a Grandfather to be found; this Grandfather, if he be of Ability, is chargeable with keeping the Children, and not the Parish. 2 *Bulst.* 2. *Lill.* 333. A Father-in-Law, or a Grandfather-in-Law, married to the Mother or Grandmother of Children, of Ability to keep them, is within the Stat. 43 Eliz. *Style* 283. A Husband marrying a Grandmother, having an Estate with her sufficient, shall be chargeable to

the Relief and Maintenance of a *poor* Grandchild, during the Life of the Grandmother; but after her Death he is under no Obligation to do it: And where a Grandmother is unable to relieve her Grandchildren, and marries with a Man of Ability, he is not to be charged to maintain his Wife's Grandchildren; also if the Husband, after Marriage, becomes to be of Ability, the Grandmother, at the Time of the Marriage, having nothing, he shall not be bound to keep the Children. 2 *Bulst.* 345. A Person was ordered by Justices in Sessions to pay so much a Week towards the Support and Maintenance of his Father, 'till that Court should order the contrary; and it was held good; and if an Estate happen to fall to the Father, the Justices might be applied to: Otherwise if a Time was limited. 2 *Salk.* 534. Rates and Assessments for providing for and relieving of the *Poor* of Parishes, made by the Overseers of the *Poor*, are usually approved by the Inhabitants, and to be allowed by the Justices: And not only Lands, Houses, &c. but Tithes, and any Thing from whence an annual Profit arises, may be taxed towards the *Poor*'s Rate. 2 *Bulst.* Persons are to be taxed according to the visible Estate they have in the Parish; and this Tax may be upon Lands or Goods; and when charged on Goods, they are rated according to the usual Value of Land, viz. 100 *l.* Stock of Goods at 5 *l.* per Annum. A Person, who hath Lands in his Occupation, and a Stock of Goods and Wares besides, as a Tradesman, Draper, Grocer, &c. may be taxed for both; but not for such Stock or Goods with which he uses to manure his Lands, nor for the Profits of Lands for which he hath been already taxed as Occupier, though for other Stock and Personal Estate he is chargeable. 2 *Salk.* The Farmer or Occupier is to be charged to the *Poor*'s Rate, and not the Landlord, who is not to be taxed for his Rent, for then the Land would pay twice; though if he be possessed of Personal Estate, he may be taxed for that: And for Personal Estate, the Party must be charged only in that Place where the Goods are at the Time of the Assessment; if he hath not Goods or Personal Estate where he is assessed, to the Value he is charged, and is distrained, he may have Action of Trespass. *Read. Stat.* Vol. 5. pag. 21. The most reasonable and the common Way of taxing Lands for Relief of the *Poor* is by a Pound-Rate; and if the Overseers make an unequal Rate, they may be indicted and fined for it. 1 *Keb.* 173. Church-wardens and Overseers of the *Poor* of a Parish, made a Rate for the Relief of the *Poor*, which was confirmed by two Justices of Peace; but all was rated upon the Real Estates, and none on the Personal, and therefore upon Appeal to the Sessions the Rate was quash'd, and the Overseers, &c. ordered to make a new Rate, upon the Real and Personal Estates; which they afterwards did, but with a very great Inequality on the Real Estates; whereupon several Persons appeal'd again, and this Rate was likewise vacated: In B. R. it was objected, that the Sessions had no Power to vacate whole Rates; but adjudg'd, that they may quash whole Rates, and refer it to the Church-wardens and Overseers to make new Rates, or they may make a new Rate themselves. 2 *Salk.* 483. Church-wardens and Overseers may not tax particular Persons, and not the whole Parish; but the Justices

tices may tax particular Persons, and need not affect the whole Parish, which is to contribute to the Poor of another: Or the Justices may assess the Parish in a certain Sum, and leave it to the Parish-Officers to collect and levy the same of particular Persons. 2 *Bulst.* 352. 2 *Salk.* 480. It has been held, that Justices cannot make a standing Rate; because by Statute the Rate must be equal, which a standing Rate cannot be, for Lands may be improv'd every Year, and the Rate should be altered as Circumstances alter. 2 *Salk.* 526. A Rate should be made every Month, which the Justices are to approve; and if they refuse, a *Mandamus* may be had: And it hath been resolv'd, that a Tenant could not be rated for a whole Quarter, by Reason the Statute directs Rates to be assessed monthly, and otherwise a Man cannot remove in the Middle of a Quarter but he will be twice rated; and where there is a Custom to rate quarterly, a Distress cannot be taken of any one before the Quarter is ended, nor then without special Warrant on Purpose. *Ibid.* 532. A *Mandamus* to make a Rate to reimburse an Overseer Money laid out is not good; for the Court of B. R. cannot order such a Rate, but only to raise Money for Relief of the Poor: And an Overseer is not bound to lay out Money till he has it; if he doth he must make a new Rate for Relief of the Poor, &c. *Ibid.* 531. Justices of Peace refusing to sign a Poor Rate, a Rule was made in B. R. for them to sign it, or shew Cause, &c. and no good Cause being shewed, a peremptory Rule was made for them to sign it, or that an Attachment should go. *Sid.* 377. 5 *Mod.* 275. A *Mandamus* was issued to Justices of Peace, and the Overseers of the Poor, to give an Account of Money by them received for the Relief of the Poor; who return'd, that they had given an Account of the Money, and that they had disposed several Sums in a particular Manner, setting forth, &c. And it was held, that the *Mandamus* was ill, for Want of Suggesting that the ordinary Remedy could not be had. 5 *Mod.* 420. If Overseers make a false Account, they may be indicted. *Dalt.* 154. But where Overseers of the Poor refused to account, &c. and they were indicted for the same; an Objection was made, that the Indictment would not lie, because another Remedy was provided by the Statute. 3 *Salk.* 187. And where an Account of Overseers was allow'd by two Justices, and the Parish appealed from this Allowance to the Quarter-Sessions, and they disallowed the Account, and ordered the Overseer to pay, &c. for not doing which, they committed him; it was resolv'd, that the Justices of Peace at the Sessions upon the Appeal, must execute their Judgment in the same Manner as the two Justices might do, who must first send their Process to distrain, and on Return that there is no Distress, then commit the Overseer. *Mich.* 4 *Ann.* B. R. 2 *Salk.* 533. There are Penalties and Forfeitures for Offences, given by Statute to the Poor, for their further Maintenance, which are to be paid to Church-wardens and Overseers, &c. and by them to be accounted for; and these are concerning Ale-houses, Drunkenness, Customs, Excise, unlawful Gaming, Destroying the Game, Hedge breakers, Sabbath-breaking, Swearing, Scavengers, unlawful Weights and Measures, &c. *Poor Laws* 57. Vide *Justice of Peace*.

Poor settled in Parishes. Settlements of Poor are gained three Ways: By *Inheritance*; as when a

Child claims a Settlement in a Parish, because his Father was there settled: By being born in a Parish; and by *Commorancy*. As to the First of these, if the Father has a legal Settlement, the Child is settled where the Father is: And if the Father have no legal Settlement, the Child regularly gains a Settlement in the Parish where born. 2 *Bulst.* 351. But this Settlement by Birth may be defeated several Ways; 1st, If the Parent is removed by an illegal Order; and from the Order an Appeal is duly made, pending which the Child is born; in this Case on quashing the Order the Child shall be sent back with the Mother. 2. By Practice; if a Woman near her Time is clandestinely sent to another Parish, and there delivered. 3. If a Woman with Child be sent to the House of Correction, and is there delivered, the Child shall not gain a Settlement by its Birth in the Parish where the House of Correction is; but in the Parish where the Mother dwelt when sent to the House of Correction, as the Place where she had otherwise probably been delivered. 2 *Bulst.* 358, 381. 1 *Salk.* 121. If a travelling Woman, having a small Sucking-child, shall be apprehended for Felony, and be sent to the Gaol, and afterwards arraigned and hanged, this Child is to be sent to the Place of its Birth, there to be settled and maintained, if the same be known; but otherwise it must be sent to the Town where the Mother was apprehended: And Children born in common Gaols, their Parents being Prisoners, are to be maintained at the Charge of the County. *Dalt.* 157. If a Man and his Family be illegally thrust out of a Parish, and during that Time he shall have a Child born; he must be returned to the Place where he was legally settled, and the Child with him: And Persons, whose Interest in Houses or Lands is determined, cannot be put out of the Town where they were legally settled; nor can they be sent to the Place of their Birth, or last Habitation, but according as they are able or impotent shall be set to work, or relieved in the Town where so settled; though if they wander and beg, then they may be taken up and sent to the Place of their Birth. *Dalt.* 158, 166. Bastard Children gain a Settlement by their Birth; but it has been usual for preventing any Charge to the Parish, if a single Woman with Child come into a Parish, by Justice's Warrant to remove her to the Place of her last legal Settlement: Bastards of Vagrants must be with the Mother while Nurse-Children until seven Years of Age; and then be sent to the Parish where born. *Ibid.* Till seven Years of Age, Children are accounted Nurse-Children; yet afterwards they must have Maintenance from the Parishes where they themselves were settled: If a poor Man settled at A. marries a poor Woman who is settled at B. and has Children by a former Husband, the Wife shall be removed with him to A. and the Children under seven Years old shall be removed, but only for Nurture; so that they shall be kept at the Charge of the Parish from whence they are removed: But the Children above seven Years of Age are not removeable. 2 *Salk.* 470, 482. Generally a Wife is to be sent to, and settled with the Husband, though he be but an Inmate or Servant; as all Children are generally to be sent to, and settled with the Parents: But if a Man hireth an House in A. and being there with his Wife and Children, he shall afterwards bind himself a Servant to one in B. his Wife and

Children are not to be sent to B. but are to remain still at A. where they were once settled. *Dalt.* 166. A Man and his Wife settled at one Parish, came clandestinely into another Parish, and there a Child was born; the Father died in the King's Service, the Question was, Who should keep the Child: *Per Holt Ch. Just.* The Death of the Father doth not alter the Child's Settlement; which must be settled where the Father was last settled as well as the Mother. *Comberb.* 380. Settlement gain'd by *Commorancy* is where a Person continues in some other Place than that in which he was before legally settled; and such Continuation makes a Settlement: Formerly, every one who was settled as a Native, Householder, Apprentice, or Servant, for a Month, without a just Complaint made to remove them, were lawfully settled. *Dalt.* But since, this Month has been enlarged to forty Days, where a Person shall come into a Parish, and Rent a Tenement under 10 *l. per Annum.* By the Statutes 13 & 14 *Car. 2.* 3 *W. & M.* and by Statute, Renting 10 *l.* a Year; Executing a publick Office in the Parish on a Man's own Account; Paying a Share to the Parish-Taxes, as Church or *Poor* Rates, &c. Living as a hired Servant for a Year in the Parish, being unmarried, &c. and Serving an Apprenticeship in a Parish, all make a legal Settlement: So that a Person being settled by any such Means, and not having acquired a Settlement elsewhere, if he falls into Poverty, shall be intitled to Relief from the Parish where he last gained such Settlement; and where he is settled his Family must follow him. *Wood's Inst.* 94. It has been held, in Respect to a Settlement within the Statute 13 & 14 *Car. 2.* That coming into a Parish publicly, taking a House, and being rated to the *Poor* on the Parish-Book is sufficient Notice; the Statute being made against private and clandestine Removals, and not publick ones, which the Parish can take Notice of it self. *Show.* 12. A Person rented a House of 3 *l. per Annum* in a Town, and his Landlord paid the Taxes; and whilst he lived in the Parish, he took his Freedom of the Corporation, and voted as a Freeman at the Election of Bailiffs, &c. And it was adjudg'd, that since the explanatory Act of 3 & 4 *W. 3.* nothing makes a Settlement that is not within the Words of the Statute, which implies a Negative to any Thing else not contained in it; and that as to his Voting, it doth not imply a Settlement, for 'tis an Act which relates to the corporate Body, and not to the Parish. 2 *Salk.* 534. Renting a Water-mill of 10 *l. per Annum*, &c. makes a Settlement; for a Mill is a Tenement. 2 *Salk.* 536. But no Settlement can be legal in any Parish, when the Residence of the Party is obscure and uncertain, as coming now and then, and lying in Barns, Outhouses, &c. or where the Party is under Disturbance by Officers. 3 & 4 *W. & M.* A *poor* Man appointed to be a Parish-Clerk, and executing the Office a Year, has been adjudg'd to make a good Settlement; and 'tis not material whether he came in by Appointment of the Parson, or by the Election of the Parishioners; for he is in for Life, and this is Executing a Publick annual Office and Charge within the Meaning of the Statute 3 & 4 *W. 3.* 2 *Salk.* 536. A Servant was hired first from *Lady-day* to *Michaelmas*, and from thence to *Lady-day* following; and this was resolved to be a good Settlement, for there was a Hiring for

a Year: But it must be one intire Hiring, and one intire Service (though different Times are mentioned) for one whole Year, that must make a Settlement, according to the Statute. *Hill.* 10 *W. 3.* An unmarried Person, hired as a Servant for a Year, married before the Year was expired; and it was held, that he could not be removed, and that from performing his Service he would gain a Settlement. 2 *Salk.* 527. A Man hired a Maid-servant for a Year; but she falling sick, her Master turn'd her out of his Service: The Servant, in her Passage to the Place of her Nativity, begg'd for Relief, and she was sent as a Vagrant to the Parish where she was born; whereupon she was sent back by that Parish, to the Parish where she was a hired Servant; but by Order of Sessions she was settled at the Place of her Birth: This was removed by *Certiorari* into B. R. and the Court determined the Settlement to be at the Parish where she was an hired Servant, and not where she was born. *Style* 168. A Person served an Apprenticeship in a Parish, where he marry'd and had several Children; his Wife dying, he married another Woman, who had a Term for Years in another Parish, to which Place he removed, and resided there for a Year; afterwards he return'd to the first Parish, was rated to the *Poor*, lived there two Years, and then he died: In a short Space after his Death, his Widow and Children were removed, by an Order of two Justices to the other Parish where he had lived a Year; but upon Appeal to this Order at the Sessions, the Sessions adjudged them to be Inhabitants settled in the first Parish. *Mich.* 3 *Jac.* 2. Where a Man lives in a Parish, and hath Lands of his own there, or in Right of his Wife, this will make a Settlement; but if he hath Land in one Parish, and lives in another, the Land will not make a Settlement of him in that Parish where it lies and he doth not live. 2 *Salk.* 524. If a Man be settled where he will, he cannot, though likely to become chargeable to the Parish where he goes to reside in, be removed from thence, if he have any Estate there. 5 *Mod.* 416. See Stat. 9 *Geo. supra.* The Law unsettles none who are lawfully settled, nor permits it to be done. If one had but hired a House, the Law unsettles not such Person; and if any shall by indirect Means hinder a *poor* Man from Hiring an House, he may be indicted; also it is fineable to remove any out of the Parish who ought not to be put out, and the Persons removed may be sent back. *Dalt.* 98. And if a Parish will have a Man born in A. but settled with them, to go and wander and beg in B. that he may be sent to A. and he doth so; he shall be sent back to the Parish from whence he came. *Ibid.* But when two Justices of Peace of one County, send a *poor* Person to a Parish in another County, two Justices of the County whither such Person is sent, cannot make an Order to remove him back again, or to send him to any other Place; the Town to which such Person was sent, hath no other Remedy than by Appeal to the Sessions of that County from whence the Party was sent. 2 *Salk.* 488. A Settlement by Order of Sessions upon an Appeal is good and binding; but if it do not appear that the Cause came before the Justices in Sessions by Way of Appeal, it may be quashed, for without that they have no Jurisdiction: If a *poor* Family, after Order of Sessions for their Removal on Appeal, return to the Parish from whence they were removed,

moved, the Sessions must see their Order of Settlement obeyed; though if such poor Family go into another Parish, not concerned in the Appeal, two Justices of Peace ought by an Original Order to remove them to the Parish where they were settled by the Sessions Order. 2 Salk. 481, 482, 489. The Sessions having made an Original Order for Removal of a poor Person to a third Parish, after an Order of two Justices, it was quashed upon Motion: And adjudged, that the Sessions could only confirm, or reverse the Order of Settlement of the two Justices; and thereupon a new Order might be made by two Justices for Removal to the third Parish, &c. 2 Salk. 475. A general Order to remove a Man and his Family, is not good; it must be particular, for some of the Family may be chargeable, and others not: And where Justices make Orders of Settlement, it must appear, that the Parties are likely to become chargeable; and that the Person removed is removable; and contain an Adjudication of the last legal Settlement of the Party, &c. 2 Salk. 485, 491. 5 Mod. 149, 321. And according to the Opinion of the Lord Chief Justice Holt, the most regular Way to proceed on the Statute 14 Car. 2. in removing a poor Person, is to make a Record of the Adjudication of the last Settlement, and the Complaint of the Churchwardens and Overseers, and upon that to make a Warrant or Order under their Hands and Seals to the Churchwardens, &c. to convey the Persons to the Parish to which they ought to be sent, and to deliver in the Record at the next Sessions, to be kept among the Records; and this Record may be removed by Certiorari. 1 Salk. 406. But on a Motion in B. R. to set aside an Order for the Settling a poor Person in a Parish, sent thither by Warrant of two Justices, and confirm'd in the Sessions, upon an Appeal: The Court refused to enter into the Merits of the Cause; the Orders of Sessions being in this Case final, unless it be made appear that there is Error in the Form of Proceeding. Pasch. 29 Car. 2. Vent. 310. And it is a standing Rule in the Court of King's Bench, That if upon an Appeal, the Order of two Justices is either affirmed or quashed, upon the Merits of the Cause, in Relation to Settlements, it shall be conclusive between the two Parishes. Pasch. 10 Ann. The Order of two Justices not appeal'd from, binds the Parish upon which it is made, 'till a new Settlement is gained: An Order reversed is final only between the Parties; but an Order confirm'd, &c. is final to all the World. 2 Salk. 472, 492. By Law, the Place that the Poor were last legally settled at, is the Place that is to provide for them. Trin. 5 Ann. B. R. See Vagrants.

Form of an Appointment of Overseers of the Poor.

WE A. B. and C. D. Esqrs; two of his Majesty's Justices of Peace for the County of, &c. do hereby nominate and appoint E. F. and G. H. of, &c. to be Overseers of the Poor of the Parish, &c. in the said County, for the Year ensuing, according to the Direction of the Statute in that Case made. Given, &c.

A Justice's Warrant to relieve a poor Person, on the Stat. 9 Geo.

WHEREAS Complaint hath been made unto me, That A. B. of your Parish, Labourer, is

very Poor and Impotent: And the said A. B. hath made Oath before me, That by Reason of Age and Lameness, he is utterly disabled to provide for himself and his Family, so that they must inevitably perish, unless timely relieved; and that he had applied to, &c. Overseers of the Poor of your Parish, and been refused Relief by them; and the said Overseers, &c. having been summoned to shew Cause why Relief should not be given, and assigned none: These are therefore to require you to pay to the said A. B. the Sum of 2 s. per Week, for and towards the Support and Maintenance of the said A. B. and his Family, until the said A. B. shall be better able to provide for the same, or until you shall be ordered to the contrary. Given under my Hand and Seal, &c.

Form of an Order to remove a Person to his Place of Settlement.

WHEREAS it appears to us T. G. and J. L. Esqrs; two of his Majesty's Justices of the Peace for the County of, &c. (one whereof of the Quorum) on the Complaint of N. O. P. R. S. T. &c. Churchwardens and Overseers of the Poor of the Parish of, &c. in the County aforesaid, That B. A. being on, &c. last settled in the Parish of, &c. in the County of S. is now come into the Parish of, &c. aforesaid, to endeavour to obtain a Settlement in the said Parish, not having done any Act as the Law requires to make him a Parishioner there, whereby he is likely to become chargeable to the Parish of, &c. aforesaid: And whereas it appears by the Oath of, &c. that the said B. A. was last legally settled at the Parish of, &c. which we do adjudge accordingly: Now we the aforesaid Justices, do hereby order you the Constable of, &c. to remove and convey the said B. A. from the said Parish of, &c. unto the aforesaid Parish of, &c. the Place of this last legal Settlement, and to deliver him to the Churchwardens and Overseers of the Poor there, or some or one of them; hereby also requiring you the said Churchwardens and Overseers of the said Parish of, &c. to receive the said B. A. as your lawful Parishioner, and provide for him accordingly. Given, &c.

Poor Prisoners In Gaol how relieved and discharged, &c. Vide Prisoners.

Pope, (Papa) Was anciently applied to some Clergymen in the Greek Church; but by Usage is particularly appropriated in the Latin Church to the Bishop of Rome, who is called the Pope; and formerly had great Authority here. As to the Incroachments of the See of Rome, it is said to be the general Opinion, That Christianity was first planted in this Island by some of the Eastern Church, which is very probable from the ancient Britons observing Easter always on the fourteenth Day of the Month, according to the Custom of the East: But the Saxons being converted about the Year 600. by Persons sent from Rome, and wholly devoted to the Interest thereof, it could not be expected that such an Opportunity of enlarging the Jurisdiction of that See, should be wholly neglected; and yet there are few Instances of the Papal Powers in England before the Norman Conquest, though four or five Persons were made Bishops by the Pope at the first Conversion, and there was an Instance or two of Appeals to Rome, &c. But the Pope having favoured and supported William the First, in his Invasion of this Kingdom, made that a Handle for enlarging his Incroachments; and in this King's Reign, began to send his Legates hither; and after he prevailed with King Hen. 1. to give up

up the Donation of Bishopricks; and in the Time of King *Stephen*, gained the Prerogative of Appeals; and in the Reign of King *Hen. 2.* he exempted all Clerks from the secular Power: Indeed this King did at first strenuously withstand these Innovations; but upon the Death of *Becket*, who for having violently opposed the King, was slain by some of his Servants, the Pope got such an Advantage over the King, that he was never able to execute the Laws he had made: And not long after this, by a general Excommunication of the King and People, for several Years, because they would not suffer an Archbishop to be imposed upon them, King *John* was reduced to such Straits, that he surrender'd his Kingdoms to the Pope, to receive them again, and held them of him under the Rent of a thousand Marks: And in the following Reign of King *Hen. 3.* partly from the Profits of our best Church Benefices, which were generally given to *Italians*, and others residing at the Court of *Rome*, and partly from the Taxes imposed by the Pope, there went yearly out of the Kingdom Seventy Thousand Pounds Sterling, a very great Sum in those Days: The Nation being thus burden'd and under a Necessity, was obliged to provide for the Prerogative of the Prince, and the Liberties of the People, by many strict Laws. And hence in the Reign of King *Edw. 1.* it was declared by Parliament, That the Pope's Taking upon him to dispose of *English* Benefices to Aliens, was an Incroachment not to be endured; and this was followed with the Stat. 25 *Ed. 3.* called the Statute of *Provisors*, against Popish *Bulls*, and disturbing any Patron to prefer to a Benefice, &c. The 12, 13 & 16 *R. 2.* the Stat. 2 *H. 4.* and 6, 7 & 9. *ejusdem*; the 3 *Hen. 5.* 23 & 28 *Hen. 8.* &c. And Maintaining by Writing, Preaching, &c. the Pope's Power here in *England*, is made a *Præmunire* upon the first Conviction; and High Treason upon the Second. 5 *Eliz.* In the Construction of which Statute, it has been held, That he who knowing the Contents of a Popish Book, written beyond Sea, brings it over, and secretly sells it, or secretly conveys it to a Friend; or having read the Book, or heard of its Contents, doth after in Discourse allow it to be good, &c. is in Danger of the Statute; but not he who having heard thereof, buys and reads the same. *Selden's Janus Anglor. Davis's Rep. 90.* &c. *Dyer 282.* 2 *Inst. 580.* See *Bull* and *Præmunire*.

Popery. There are several Statutes made against Persons perverting or withdrawing others to *Popery*, and being perverted to the *Romish* Religion, &c. which was made Treason, by 23 *El.* and 3 *Fac. 1.* But if any one reconciled to the See of *Rome* beyond the Seas, return into the Realm, and submit himself, &c. and take the Oaths within six Days, he is to be excused. 3 *Fac. 1. cap. 4.*

Popish Recusants, Are subject to divers Penalties and Disabilities by Statute. See *Recusants*.

Popular Action, Is an Action given in general to any one who will sue for a Penalty on the Breach of some Penal Law. *Actions Popular*, which may be brought before Justices of Assize, &c. are to be generally prosecuted in the Counties where the Offences were done. And *Popular Actions*, where the King only hath the Penalty or Forfeiture, are to be commenced in two Years; and where an Informer hath a Part, in

one Year, &c. 21 *Fac. 1. cap. 4.* 31 *Eliz. c. 5.* Vide *Information*.

Portary, (*Portaria*) Signifies a Swines-Stry, according to *Fleta* and *Domesday*.

Port, (*Portus*) A Harbour or Place of Shelter, where Ships arrive with their Freight, and Customs for Goods are taken. The Ports we have in *England*, are *London*, *Ipswich*, *Yarmouth*, *Lyn*, *Boston*, *Hull*, *Newcastle*, *Berwick*, *Carlisle*, *Chester*, *Milford*, *Cardiff*, *Gloucester*, *Bristol*, *Bridgewater*, *Plymouth*, *Exeter*, *Poole*, *Southampton*, *Chichester* and *Sandwich*; all which are declared lawful Ports, & *infra Corpus Comitatus*: And to these Ports there are a great Number of Creeks, where commonly Officers are placed, by way of Prevention of Frauds in the Customs; but they are not lawful Places of Exportation or Importation, without particular Licence from the Port, or Member under which they are placed. *Lex Mercat. 132.* See the Stat. 1 *Eliz. c. 11.*

Porter, Is an Officer of the Courts of Justice; but a Porter in the general Signification, is a Carrier of Things from Place to Place, &c.

Porterage, A Kind of Duty paid at the Custom-house to those who attend the Water-side, and belong to the Package-Office; and these Porters have Tables set up ascertaining their Dues for Landing of Strangers Goods, and for Shipping out the same. *Merch. Dict.*

Portgreve or **Portrebe,** (*Portus præfectus*) Is a Chief Magistrate in certain Maritime Towns; and as *Camden* says, the Chief Magistrate of *London* was anciently so called, as appears by a Charter of King *Will. 1.* called the *Conqueror*, to the same City in these Words.—*William King, Greet William Bishop, and Godfrey Portgreve, and all the Burgeis within London, French and English: And I grant you, That I will that you be all your Law worth that ye were in Edward's Days the King: And I will that each Child be his Father's Eyer, and I will not suffer that any Man you any wrongs Beed. And God you kepe. Ex libro perveitusto.* Instead of this Portgreve, the succeeding Kings by Charter ordained two Bailiffs; and afterwards a Mayor, for their yearly Magistrate. *Camd. Britan. 325.*

Portifozium, The Ecclesiastical Ensign or Banner, provided of old in all Cathedral and most Parochial Churches, to be solemnly carried in the Front of any Possession, &c.

Portioners, (*Portionarius*) Where a Parsonage is served by two, or sometimes three Ministers alternately, the Ministers are called *Portioners*; because they have but their *Portion* or Proportion of the Tithes or Profits of the Living: And *Portion* is that Allowance which a Vicar commonly has out of a Rectory or Impropriation. 27 *H. 8. cap. 28.*

Portmen. The Twelve Burgeses of *Ipswich*, are so denominated: So also are the Inhabitants of the *Cinque Ports*. *Camd.*

Portmote, (From *Portus*, & *gemot, conventus*) Is a Court kept in Haven Towns or Ports; and is called the *Portmote Court*. 43 *Eliz. c. 15.*—*Curia Portmоторium est Curia in Civitate Cestria coram Majore in Aula Motorum tenenda. Pl. in Itin. Ibid. 14 Hen. 7.* The *Portmote*, or *Portmannimote*, i. e. *Portmen's Court*, is said to be held not only in Port-Towns, as generally rendred; but in Inland Towns, the Word *Port* in *Saxon* signifying the same with *City*.

Portsale, Is a publick Sale of Goods to the highest Bidder; or of Fish presently, upon its Arrival

Arrival in the Port or Haven. *Stat. 35 Hen. 8. cap. 7.*

Portokne, (From the Sax. *Port*, i. e. *Civitas*, & *foca*, *jurisdiclio*) The Suburbs or Liberty of a City. King *Hen. 3.* granted by Charter to the City of London. — *Quietantiam Murdri, &c. infra urbem & in Portokne, viz.* within the Walls of the City, and the Liberties without the Walls. *Placit. temp. Ed. 1.*

Portuos or **Porthose**, Was what we now call a *Breviary*, and reckoned among Books prohibited by the *Stat. 3 & 4 Ed. 6. c. 10.*

Posse Comitatus, The Power of the County, according to *Lambard*, contains the Aid and Attendance of all Knights, Gentlemen, Yeomen, Labourers, Servants, Apprentices, and of other young Men above the Age of Fifteen, within the County; because all of that Age are bound to have Harnes, by the *Statute of Winchester*: But Ecclesiastical Persons, and such as are decrepit, or labour under any Infirmary, are not compellable to attend, Persons able to travel being required to be assistant in this Service; which is used where a Riot is committed, a Possession is kept upon a *Forcible Entry*, or any Force or Rescue made, contrary to the Commandment of the King's Writ, or in Opposition to the Execution of Justice. *Stat. 2 Hen. 5. cap. 8.* Sheriffs of Counties are to be assisting to Justices of Peace in the suppressing of Riots, &c. and raise the *Posse Comitatus*, by charging any Number of Men to attend for that Purpose, who may take with them such Weapons as shall be necessary to enable them to do it; and they may justify the Beating, Wounding and even Killing of such Rioters as shall resist, or refuse to surrender themselves; and Persons refusing to assist the Sheriffs or Justices of Peace herein, may be fined and imprisoned. *17 R. 2. cap. 8. 13 Hen. 4. cap. 7. 2 Hen. 5. cap. 8. Lamb. 313, 318. Crompt. 62. Dalt. cap. 46. 2 Inst. 193.* Justices of Peace, having a just Cause to fear a violent Resistance, may raise the *Posse* in Order to remove a Force in making an Entry into or detaining of Lands: And a Sheriff, if Need be, may raise the Power of the County to assist him in the Execution of a Precept of Restitution; and therefore if he make a Return thereto, that he could not make a Restitution by reason of Resistance, he shall be amerced. *1 Hawk. P. C. 152, 156.* Also it is the Duty of a Sheriff, or other Minister of Justice, having the Execution of the King's Writs, and being resisted in endeavouring to execute the same, to raise such a Power as may effectually enable them to quell any such Resistance; though it is said not to be lawful for them to raise a Force for the Execution of a civil Process, unless they find a Resistance. *2 Inst. 193. 3 Inst. 161.* It is lawful for a Sheriff, Constable, or other Peace-Officer, or for a private Person, to assemble a competent Number of People, and sufficient Power to suppress Rebels, Enemies, Rioters, &c. But herein there must be great Caution, least under a Pretence of keeping the Peace, they cause a greater Breach of it; and Sheriffs, Justices of Peace, &c. are punishable for using any needless Violence, or alarming the Country in these Cases, without just Grounds. *1 Hawk. P. C. 156, 161.*

Posse, Is an Infinitive Mood, but used substantively for a Possibility; as we say, such a Thing is *in posse*, that is, it may possibly be. See *in esse*.

Possessio fratris, Signifies in the Law where a Man hath a Son and a Daughter by one Woman or *Venter*, and a Son by another *Venter*, and dies, if the first Son enters and dies without Issue, the Daughter shall have the Land as Heir to her Brother, although the second Son by the second *Venter* is Heir to the Father: But if the eldest Son dies without Issue, not having made an actual Entry and Seisin, the younger Brother by the second Wife, as Heir to the Father, shall enjoy the Estate; and not the Sister. *1 Inst. 11, 15.* Lands are settled on a Man, and the Heirs of his Body, and he hath Issue a Son and a Daughter by one Woman, and a Son by another, and dieth; and then the eldest Son dies before any Entry made on the Lands either by his own Act, or by the Possession of another, the younger Brother shall inherit, he claiming as Heir of the Body of the Father, and not generally, as Heir to his Brother; yet if the elder Brother enter, and by his own Act hath gained the Possession; or if the Lands were leased for Years, or in the Hands of a Guardian, there the Possession of the Lessee or Guardian doth vest the Fee in the elder Brother, and then upon his Death the Sister shall inherit as Heir to her Brother, for there is *Possessio fratris*. *3 Rep. 42.* There can be no *Possessio fratris* of a Dignity; in such Case, the younger Brother is *Heres Natus*: The Lord Grey being created a Baron to him and his Heirs, had Issue a Son and a Daughter by one *Venter*, and a Son by another; and after his Death, the Eldest being possessed of the Barony, and dying without Issue, it was adjudged, that the younger Brother, and not the Sister should have it. *Cro. Car. 437. 2 Nels. Abr. 923.*

Possession, (*Possessio, quasi Pedis positio*) Is either actual, where a Person actually enters into Lands or Tenements descended or conveyed to him; or in Law, when Lands, &c. are descended to a Man, and he hath not actually entered into them: Also before, or until an Office is found of Lands escheated to the King by Attainder, he hath only a Possession in Law. *Bract. lib. 2. cap. 17.* Long Possession, beyond the Memory of Man, establishes a Right; but if by the Knowledge of Man, or Proof of Record, &c. the contrary is made out, though it exceeds the Memory of Man, this shall be construed within Memory. *1 Inst. 115.* A long Possession the Law favours, as an Argument of Right, although no Deed can be shewn; rather than an ancient Deed, without Possession. *1 Inst. 6.* Continued quiet Possession is a violent Presumption of a good Title: And where two Persons claim the same Land, as to Forcible Entries, and Detainers, &c. the Possession will be always adjudged in him who has Right, &c. *1 Inst. 256, 323.* He that is out of Possession of Lands, if he brings his Action, must make a good Title: And where one Man would recover any Thing from another, it is not sufficient to destroy the Title of him in Possession; but you must prove your own better than his. *Vaugh. 8, 58, 60.* But in Action against a Person for digging of Coney-Boroughs in a Common, &c. it was held, that the Action being grounded on the Possession of the Tenement, to which the Common belonged, the Plaintiff need not shew a Title; and in this Case the Defendant may be a Stranger; besides the Title is not traversable, but ought to be given in Evidence

dence upon the Trial of the Issue. *Trin. 8 W. 3. 3 Salk. 12.* A Defendant in Trespas, &c. for taking Cattle Damage-feeant, has been allowed to justify the Taking on his Possession, without shewing his Title; the Matter of Justification being collateral to the Title of the Land. *2 Mod. 70. 3 Salk. 220.* Though in such a Case, on its being insisted, that there was the same Reason for justifying upon a Possession, as there was for maintaining an Action upon a bare Possession; it hath been adjudged, that a Justification upon a Possession only is not good; for a Possession cannot be but by Contract, but a Seisin may be by Right or Wrong. *Hill. 2 & 3 Fac. 2.* In Replevin, if the Defendant had the Possession, 'tis a good Bar against the Plaintiff, if he has no Title; but he cannot give a Return, unless he shew a Property in the Goods. *Pasch. 2 Ann.* Action of the Case lies for shooting at and frightening away Ducks from a Decoy-Pond, which is in the Plaintiff's Possession, without shewing that he had any Property in them. *3 Salk. 9.* A Man upon a Lease and Release of Lands, &c. is in Possession to all Intents, except bringing Trespas; which cannot be without an Entry, *Pedis positio. 2 Lill. Abr. 335.* And to make Possession good on Entry, the former Possessor and his Servants, &c. are to be removed from the Land; and if Possession be lost by Entry of another, it must be regained by Retray, &c. *Pasch. 1650.* A Person in Possession may bring an Action, for Loss of his Shade, Shelter, Fruit, &c. when Trees are injured; and he in Reversion, for spoiling the Trees. *3 Lev. 209.* One in Defence of his lawful Possession, may assemble his Friends to resist those that threaten to make an unlawful Entry into a House, &c. *5 Rep. 91.* There is an Unity of Possession, when by Purchase, the Seignior and Tenancy, become in one Man's Possession. *Kitch. 134.*

Impossibilitas, Is taken in the Saxon Laws for an Act wilfully done; and **Impossibilitas**, for a Thing done against one's Will. *Leg. Alfred. cap. 38.*

Possibilitas, In our Law is defined to be an uncertain Thing, which may or may not happen. *2 Lill. Abr. 336.* And it is either near or remote; as for Instance: Where an Estate is limited to one, after the Death of another, this is a near Possibility; but the Law doth not regard a remote Possibility. *Haydr. 417. 2 Rep. 50.* A Possibility cannot be granted over; no Possibility, Right, or Chose in Action, &c. may be granted or assigned to a Stranger. *4 Rep. 66. 10 Rep. 48.* A Lease was made to Husband and Wife of a Term of Years, for their Lives, Remainder to the Executors of the Survivor; the Husband granted the Term, and it was adjudged, that it should not bind the Wife, the Husband having only a Possibility to it, if he had survived his Wife, and no Interest till then. *Hill. 17 Eliz. 2. Nels. Abr. 1274.* A Man made a Lease to his Brother for Life, and that if he marry'd, and his Wife should survive, then she should have it for Life; the Lessee, before he married, made a Feoffment of the Lands to another, and afterwards the Lessor levied a Fine to him; then the Lessee married, and died, and his Wife survived: And it was held, that the Remainder to the Wife for Life was gone by this Feoffment, and the Possibility of her having it was included in the Fine, which is likewise barred. *Moor 554.* A Testator possessed of a Lease for Years, devised the Profits thereof to W. R. for Life, Remainder to an-

other; and afterwards the Devisee for Life entered with the Assent of the Executor, and then he in Remainder for Life assign'd all his Interest to another, and after the Devisee for Life died; it was resolv'd, that this Assignment was void, because whilst the Devisee for Life was living, he in Remainder had only a Possibility to have the Term, for the Devisee for Life had an Interest in it *sub modo*, and might have survived the whole Term. *4 Rep. 64.* A Devise of the Possibility of a Term is void; as where a Term is devised to A. for Life, Remainder to B. and B. devises this Remainder to C. and dies, and then A. dies; this Devise to C. is void, and the Executors of B. shall have it. *3 Lev. 427.* A Possibility founded on a Trust, differs from a mere Possibility; the first may be devised, but the other cannot. *Moor 808. 2 Nels. 1275.*

Post, A swift or speedy Messenger to carry Letters, &c. And the Post-Office is of the greatest Consequence to this Kingdom, being a Country of Trade. The first Law that introduced this very great Convenience, was made in the Reign of King Car. 2. By the 12 Car. 2. cap. 35. a General Letter or Post-Office was erected, under the Management of a Postmaster General, &c. And the Rates for Carriage of Letters was 2 d. for a single Letter of a Sheet, not exceeding eighty Miles; two Sheets 4 d. Packets 8 d. per Ounce; and above eighty Miles 3 d. not exceeding a Sheet, &c. The 1 W. & M. was made for erecting a Post-Office in Scotland: And by 9 Ann. cap. 10. the Post-Office of England and Scotland are united; and the Price of Postage of Letters is increased to 3 d. for a single Letter from any Place not distant above eighty Miles from London, and 6 d. for a double Letter, and so proportionably for Packets of Letters; and for Packets of Writs, Deeds, &c. 12 d. per Ounce; single Letters above eighty Miles from London 4 d. and for double Letters 8 d. and for other Things 1 s. 4 d. per Ounce: Single Letters to and from Edinburgh, or to and from Dublin 6 d. double Letters 12 d. and Parcels 2 s. per Ounce, &c. And by this Statute, the Rates of Letters from London to France, Spain, Flanders, Holland, &c. are appointed: And the Postmaster is not only to continue constant Posts to all Places on the Post Roads; but may erect cross Stages, keep Packet-Boats, &c. for the Conveyance of Letters; and no Person but the Postmaster or his Deputies, shall receive, take or carry Letters, or set up any Foot-Post, &c. under certain Penalties; nor shall Carriers carry Letters, except such as concern Goods sent by them: Opening, Delaying, or Detaining Letters, by Officers of the Post-Office; unless by Warrant from a Secretary of State, or the Party to whom directed refuses to pay the Postage; or where the Letter is returned for Want of true Directions, incurs a Penalty of 20 l. Money due for Postage of Letters, not exceeding 5 l. shall be recovered before two Justices of Peace, on Complaint, and Summons of the Party, Distress, &c. as small Tithes; and shall be paid before any Debt due to a private Person. *Stat. 9 Ann.* A Person having inclosed Exchequer Bills in a Letter sent by the Post, which were lost, the Owner brought an Action on the Case against the Postmaster; and by three Judges it was held, that the Action did not lie, because the Office is for Intelligence only; and it is impossible the Postmaster General, who is to execute this Office in such distant Places, by so many

many several Hands, should be able to secure every Thing, and for that this is not a Conveyance for Treasure: But the Lord Chief Justice Holt was of a contrary Opinion; he considered this as a Letter lost in the Office, not on the Road, and held that the *Postmaster General* is liable, the whole Care being committed to him, and the Law makes the Officer answerable for himself and his Deputies; he has a Reward, which is the Reason why Innkeepers, Carriers, &c. are liable for Goods lost; and where a Man takes upon him a publick Employment, he is bound to serve the Publick, or Action lies against him, &c. *Pas. h. 12 W. 3. B. R. 1 Salk. 17.* The *Post Office* in London is managed by the *Postmaster*, and other Officers to the Number of Seventy-seven; one of which is called the *Court Post*, constituted by Patent for Life, with a handsome Salary: And the *Postmaster General* has under him one hundred eighty-two Deputy *Postmasters* in England and Scotland, most of them keeping regular Offices in their Stages, and *Sub-Postmasters* in their Branches: The Conveyance of *Post Letters* extends to every considerable Market-Town, and is so expeditious that every twenty-four Hours the *Post* goes Six-score Miles; and the *Post Days* to send Letters from London to any Part of England and Scotland, are *Tuesdays, Thursdays and Saturdays*, and the Returns *Mondays, Wednesdays and Fridays*; but to Wales and Ireland, the *Post* goes only twice a Week, *Tuesdays and Saturdays*, and returns from Wales every *Monday and Friday*; but from Ireland the Return is uncertain, &c. See *Master of the Posts*.

Penny-Post. Letters or Parcels, not exceeding sixteen Ounces Weight, or ten Pounds Value, are conveyed daily by the *Penny-Post*, to and from all Places within the *Bills of Mortality*, and ten Miles Distance from the General *Post Office*, for 1 d. each Packet, Letter, &c. *Stat. 9 Ann. c. 10.* And several General Offices are kept at convenient Distances from one another, to receive and take in *Penny-Post Letters* every Day, *Sundays* excepted: Also Letters that come from all Parts by the General *Post*, directed to Persons in any Country-Towns to which the *Penny-Post* goes, are delivered by the Messengers thereof the same Day they come to London; and the Answers are carried every *Post Night* to the General *Post Office* in Lombard-street, being left at the Receiving Houses.

Post Conquestum, Were Words inserted in the King's Title, by King *Ed. 1.* and constantly used in the Time of *Ed. 3.* *Claus. 2 Ed. 3.*

Post Diem, Is where a Writ is returned after the Day assigned, for which the *Custos Brevium* hath a Fee of 4 d. whereas he hath nothing if it be returned at the Day.

Post-Disseisin, Is a Writ that lies for him who having recovered Lands or Tenements by *Precipe quod reddat*, on Default or Reddition, is again disseised by the former Disseisor; then he shall have this Writ, and recover double Damages, and the Party shall be punished by Imprisonment, &c. *Stat. Westm. 2. c. 26. Reg. Orig. 208. F. N. B. 190.* The Writ of *Post-Disseisin* ought to be brought by the Parties who first recovered, or some of them, and of the same Land which was recovered, or Part thereof, and against those or some of them against whom the Recovery was: But if a Man recover by a *Precipe quod reddat*, and after he is disseised by him against whom he recovered, and the Disseisor

makes a Feoffment, and takes back an Estate to him and another, a *Post-Disseisin* may be had against him and his Jointenant; and if he that loseth the Land, by Default, &c. do after disseise him who recovered, and make a Feoffment to another Person, he that recovered shall have this Writ against the Disseisor, although he be not Tenant of the Land; for in a Writ *Post-Disseisin*, the Demandant shall not have Judgment to recover the Land; but the Sheriff shall restore the Plaintiff to his Possession, if the Disseisin be found, and take the Defendant and keep him in Prison. *New Nat. Br. 423.* And the Defendant is not to be delivered out of Prison, until he hath paid a Fine to the King, and without the King's special Command, upon a *Certiorari* to remove the Record into B. R. whereupon a Writ shall go to the Sheriff to deliver him. *Ibid.* Non-tenure is no Plea in a *Post-Disseisin*, for the Defendant ought to answer the Disseisin, &c.

Postea, Is the Return of the Judge, before whom a Cause was tried, after a Verdict, of what was done in the Cause; and is indorsed on the Back of the *Nisi prius* Record: It begins, *Postea die & loco*, &c. wherefore it is so called. 2 *Lill. 337.* A *Postea* is a Record of the Court, trusted with the Attorney in the Cause by the Clerk of the Assise; and the Attorney, so entrusted, is to deliver it into the Office, that the Judgment may be entred by it by the Officer of the Court. *Trin. 1651.* It is brought into Court at the Day in Bank, and recorded there, and delivered back to the Attorney, who gives a Rule for Judgment upon it; and if there be no Rule to the contrary, after the Rule for Judgment is out, the Attorney brings his *Postea* to the Secondary, who signs his Judgment, and then he enters all his Matter upon the Issue Roll. 2 *Lill. 337.* The Court may stay the Bringing in of the *Postea*, and Entering up the Judgment upon a Verdict, if they find Cause to do it, for any undue Practice in the Proceedings to Trial: And if the Party for whom the Verdict passed, will not bring in the *Postea*, upon Notice given by the other Party that he intends to move in Arrest of Judgment; the Court, on Motion, will order Judgment to be stay'd, until four Days after the *Postea* is brought in, allowed to speak in Arrest of Judgment. *Mich. 22 Car. B. R.* Altho' the Verdict given be prejudicial to the Plaintiff, he ought to bring in the *Postea*; for he must abide by the Trial. There is no general Rule of Court for the Clerk of the Assise, &c. to bring in the *Postea* into the Court of B. R. by a precise Time; but if it be not return'd in convenient Time, the Court may be moved at the Side-Bar for a Rule to bring it in speedily. 2 *Lill. 337.* If the Clerk of the Assise hath mistaken in drawing up the *Postea*, he may amend it by his Notes, before it is filed; and the Return of a *Postea* hath been amended by the Memory of a Judge, who tried the Cause. *Cro. Car. 338.*

Posterioꝛity, (*Posterioꝛitas*) Signifies the Being or Coming after, and is a Word of Comparison and Relation in Tenures, the Correlative whereof is *Priority*: As a Man holding Lands or Tenements of two Lords, holds of his ancients Lord by *Priority*, and of his latter Lord by *Posterioꝛity*. *Staundf. Prærog. 10, 11. 2 Inst. 392.*

Post-fine, Is a Duty to the King for a Fine formerly acknowledged in his Court, paid by the

the Cognisee after the Fine is fully passed ; and it is so much, and Half so much as was paid to the King for the *Pre-Fine*, collected by the Sheriff of the County where the Land lies of which the Fine was levied, to be answered by him into the *Exchequer*. Stat. 22 & 23 Car. 2.

Posthumous, Is where a Child is born after his Father's Death, &c. And *Posthumous* Children are enabled to take Estates by Remainder in Settlements, as if born in their Father's Lifetime, though no Estate be limited to Trustees to preserve them till they come in esse. 10 & 11 W. 3. cap. 16.

Postnatus, Is a Word that signifieth the second Son, or one born afterwards ; often mentioned in *Bracton*, *Glanville*, *Fleta*, and other ancient Law-Writers : And as to *Postnati* and *Antenati* ; it was by all the Judges solemnly adjudged, that those who after the Discent of the Crown of England to King *Jam. 1.* were born in Scotland, were not Aliens here in England : But the *Antenati*, or those born in Scotland, before the said Discent, were Aliens here, in respect of the Time of their Birth. 7 Jac. 7 Rep. Calvin's Case.

Postponed, (From *Postpono*) Set or put behind or after another. 22 & 23 Car. 2.

Post-Terminum, Is a Return of a Writ, not only after the Day for the Return thereof, but after the Term ; on which the *Custos Brevium* of the Court of *Common Pleas* takes the Fee of 20 d. It is also used for the Fee so taken.

Postulation, (*Postulatio*) Signifies a Request, Suit or Petition. Formerly when a Bishop was translated from one Bishoprick to another, he was not elected to the new See ; for the Canon Law is, *Electus non potest Eligi*, and the Pretence was, that he was married to the first Church, which Marriage could not be dissolved but by the Pope ; thereupon he was petitioned, and he consenting to the Petition, the Bishop was translated, and this was said to be by *Postulation* : But being an Usurpation and against our Law, it was restrained by the Stat. 16 R. 2. and 9 H. 4. c. 8. Since which Translations of Bishops have been by Election, and not by *Postulation*. 1 Jones 160. 1 Salk. 137. *Postulations* were made upon the unanimous Voting any Person to a Dignity or Office ; of which he was not capable by the ordinary Canons or Statutes, without special Dispensation : And by the ancient Customs, an Election could be made by a Majority of Votes ; but a *Postulation* must have been *Nemine Contradicente*.

Pot, An Head-Piece for War, mentioned in the Stat. 13 Car. 2. c. 6.

Pound, (*Parvus*) Is generally any Place inclos'd, to keep in Beasts ; but especially a Place of Strength to keep Cattle that are distrained, or put in for any Trespas done by them, until they are replevied or redeemed. In this Signification, it is called *Pound overt* and *Pound covert* ; a *Pound overt* is an open Pound, usually built on the Lord's Waste, and which he provides for the Use of himself and his Tenants, and is also called the Lord's or the Common Pound ; and a Backside, Yard, Ground, &c. whereto the Owner of the Beasts impounded may come to give them Mear, without Offence, is a *Pound overt* : And a *Pound covert* is a close Place, as the Owner of the Cattle cannot come to for the Purpose aforesaid, without giving Offence ; such as a House, Cattle, &c. *Kitch. 144. Terms de Ley 483. 1 Inst. 96.* There

is a Difference between a common Pound, an open Pound, and a close Pound, as to Cattle impounded : For where Cattle are kept in a common Pound, no Notice is necessary to the Owner to feed them ; but if they are put into any other open Place, it is otherwise, Notice is to be given ; and if Beasts are impounded in a Pound Close, in Part of the Distrainer's House, &c. he is to feed them, at his Peril. 1 Inst. 47. See *Distress*.

Pound-breach. If a Distress be taken, and impounded, though without just Cause, the Owner cannot break the Pound, and take away the Distress ; if he doth, the Party distraining may have his Action, and retake the Distress wherever he finds it : And for *Pound-breaches*, &c. Action of the Case lies, whereon treble Damages may be recovered. 1 Inst. 161. 2 W. & M. c. 5. Also 'tis said, that all *Pound-breaches*, may be inquired of in the Sheriff's Turn ; as they are common Grievances, in Contempt of the Authority of the Law. 2 Hawk. P. C. 67.

Poundarium, The Liberty of Pounding Cattle. *Hist. Croyland contin. pag. 519.*

Poundage, Is a Subsidy or Duty granted to the King of 12 d. in the Pound on all Goods and Merchandizes exported and imported. Stat. 1 & 2 Ed. 6. c. 13. 1 Jac. 1. c. 33. 12 Car. c. 4. See *Customs*.

Pound in Money, (From the Sax. *Pund*, i. e. *Pondus*) Is Twenty Shillings : In the Time of the Saxons it consisted of 240 Pence, as it doth now ; and 240 of those Pence weighed a Pound, but 720 scarce weigh so much at this Day. *Lambard 219.*

Pour fair proclamer, que null inject Fines ou Ordures en Fosses ou Rivières pres Cités, &c. Is an ancient Writ directed to the Mayor or Bailiff of a City or Town, requiring them to make Proclamation, That none cast Filth into the Ditches or Places near such City or Town, to the Nuisance thereof ; and if any be cast there already, to remove the same : It is founded on the Stat. 12 R. 2. c. 13. *F. N. B. 176.*

Pourpresture, In Lands and Woods, &c. See *Purpresture*.

Pour seisir Terres la Femme que tient en Dotier, Was a Writ whereby the King seised the Land, which the Wife of his Tenant in Capite had for her Dowry after his Decease, if she married without the King's Leave ; by Virtue of the Statute of the King's Prerogative, cap. 3. *F. N. B. 174.*

Poursuivant, A Messenger of the King. Vide *Pursuivant*.

Power, Is an Authority which one Man gives to another to act for him ; and it is sometimes a Reservation which a Person makes in a Conveyance for himself to do some Acts, i. e. to make Leases, or the like. 2 Lill. Abr. 339. And Powers are either *Appendant* or *Collateral* ; the one is where a Man devises Lands for Life, with a Power for the Devisee to make a Jointure, &c. and the other is when he devises to his Executor to sell, &c. In the first Case, the Power is annexed to the Estate, and derived out of it ; but in the other Case, 'tis collateral to it. 3 Salk. 276. A Feoffment, Fine or Recovery, will destroy a Power coupled with an Interest to the Party himself ; though not a collateral Power : As for Instance ; Lands are devised to *W. R.* in Tail, Remainder over, with a Power given to him to make a Jointure to a second Wife, &c. The

The Tenant in Tail, in the Life-time of his first Wife, suffered a common Recovery to the Use of himself and his Heirs; then his Wife died, and he married a second Wife, and covenanted to stand seised to the Use of himself and his Wife, for their Lives, &c. Adjudged, that this Power when created, was to be executed out of the Estate-tail, which was now destroyed by suffering the Recovery, and by Consequence the Power to make a Jointure was destroyed. 2 Lev. 58, 60. A single Lady made a Settlement of her Estate for Life, Remainder to her in Tail, with a Power to make Leases (being sole) for three Lives; afterwards she married, and she and her Husband made a Lease, &c. And it was held, that this Lease was void, being not pursuant to the Power; for the Lease of the Husband and Wife is the Lease of the Husband; and the Difference betwixt a naked Power, and a Power which arises from an Interest, is, That if a Woman hath only a naked or bare Power, as by a Will to sell Lands, she may sell, tho' she marry, because this is not a Power created by her self out of any Interest; but where a Power is reserved upon a Settlement, she must execute it pursuant to that Power, when it was at first reserved. *Chanc. Rep.* 18. 3 *Salk.* 273. It is said, if a Man hath a Power to make a Lease for three Lives, or Twenty-one Years, he cannot make a Lease for Ninety-nine Years, if three Persons live so long: But if he hath a Power to make a Lease, *Proviso* that it doth not exceed three Lives, &c. he may make a Lease for Ninety-nine Years, if three live so long. 4 *Rep.* 70. A Power ought to be exactly and strictly executed. 6 *Rep.* 33. But a Power may be well executed, though there be no Recital of the Power in the Deed for the Execution thereof. 1 *Lev.* 150. And a Power hath been decreed in Equity, though not pursued strictly. *Chanc.* 263, 264. Yet it hath been held, that a Power not well executed in Law, shall not be made good in Equity. 1 *Lev.* 241. A Power to sell Lands, is subject to the Rules of Equity. *Chanc. Rep.* 281. Powers ought to be construed according to the Intent of the Parties; and a bare Power is not assignable over. 5 *Mod.* 379. 1 *Mod.* 318. Where Attornies have Power to make Leases for Years, they must make them in the Name of him who gave the Authority. 9 *Rep.* 76. And the Lease ought to run thus: This Indenture made, &c. between A. B. and C. D. of the one Part, and E. F. of the other Part: Whereas the said A. B. by a Writing or Letter of Attorney under his Hand and Seal duly executed, dated, &c. among other Things therein mentioned, did authorize the said C. D. in the Name of him the said A. B. and on his Behalf, to seal and execute Leases of such Parts of his Lands, Tenements, &c. as he thought fit to be leased: Witnesseth that in Consideration of, &c. he the said A. B. by his Attorney C. D. hath demised and granted, Habend', &c. yielding and paying to the said A. B. &c. And the said E. F. covenants with the said A. B. his Heirs, &c. And the said A. B. by the said C. D. his said Attorney doth covenant, &c. 2 *Lill.* 340. See Letter of Attorney.

Power of the County, On what Occasions, and how raised, &c. See *Posse Comitatus*.

Poyning's Law, Is an Act of Parliament made in Ireland in the Reign of King Hen. 7. and so called because Sir Edward Poyning was Lieutenant there when it was made, whereby all the Statutes in England were declared of Force in Ireland;

which before that Time were not, nor any since that Time, but by special Words. 12 *Rep.* 109.

Practice. The Law loves plain and fair Practice, and will not countenance Fraud in Proceedings, nor suffer Advantage to be taken thereby. 2 *Lill.* 342. Private clandestine Proceedings in several Cases, are said to be by Practice.

Præceptories, (Præceptorie) Were a Kind of Benefices, having their Name from being possessed by the more eminent Templers, whom the Chief Master by his Authority created and called *Præceptores Templi*: And of these Præceptories, there are recorded Sixteen, as belonging to the Templers in England, viz. *Cressing Temple, Balshal, Shengay, Newland, Tevely, Witham, Templebruere, Willington, Rothley, Ovenington, Temple Combe, Trebigh, Ribstane, Mount St. John, Temple Newsum* and *Temple Hurst.* *Mon. Angl. Tom. 2. pag. 543.* But some Authors say, these Places were Cells only; subordinate to their Principal Mansion, the Temple in London. 32 *Hen. 8. c. 24.*

Præcipe in capite, Was a Writ issuing out of the Chancery, for a Tenant holding of the King in capite, viz. in Chief, as of his Crown. *Magn. Chart. cap. 24. Reg. Orig. 4.*

Præcipe quod reddat, Is the Form of a Writ, which extends as well to a Writ of Right, as to other Writs of Entry or Possession, beginning *Præcipe A. quod reddat B. unum messuagium, &c.* *Old Nat. Br.* 13.

Præcipitium, Was a Punishment inflicted on Criminals, by casting them from some high Place or Rock. *Malsm. lib. 5. p. 155.*

Præfatus Uilæ, Is the same as *Præpositus Ville, i. e.* The Mayor of a Town. *Leg. Ed. Confess. cap. 28.*

Præfine, Is that Fine which upon suing out the Writ of Covenant on levying Fines of Lands, is paid before the Fine is passed. 22 & 23 *Car. 2.*

Præmium, A Reward or Recompence; among Merchants it is used for that Sum of Money, which the Insured gives to the Insurer, for insuring the safe Return of any Ship or Merchandize. *Stat. 19 Car. 2. c. 1.*

Præmunire, Is taken either for a Writ so called, from the Words therein *Præmunire facias*, or *Præmonere facias, &c.* signifying to forewarn, or bid the Offender take Heed, or it is the Offence on which the Writ is granted. The Church of Rome, under Pretence of her Supremacy, formerly carried Things to that Height in this Kingdom, that King Ed. 3. in the 27th Year of his Reign, made a Statute against those that drew the King's People out of the Realm, to answer and sue for Things belonging to the King's Court; which greatly restrained this Liberty of the Pope: But notwithstanding, he still adventured to continue his Mandates and Bulls, insomuch that King Rich. 2. made several Statutes against them, but most expressly that of 16 R. 2. cap. 5. commonly called the Statute of *Præmunire*, which ordains the Punishment of this Offence, viz. *The Offenders are to be out of the King's Protection, forfeit their Lands and Goods, and be imprisoned and ransomed at the King's Pleasure, &c. and if the Offenders are not to be found, they shall be outlawed.* After him King Hen. 4. in like Manner aggrieved at other Abuses not remedied by former Statutes, in the second Year of his Reign added certain new Cases, laying upon the Offenders the same Punishment; as likewise did 3 *Hen. 5. cap. 4.* And by the 24 *Hen. 8. cap. 12.*

to appeal to *Rome* from any of the King's Courts is made a *Premunire*. So if any Dean and Chapter refuse to elect a Bishop named by the King, or any Archbishop or Bishop to confirm him, &c. 25 Hen. 8. cap. 20. Refusing the Oath of Supremacy is a *Premunire*: And Affirming the Authority of the Pope; or Contributing to the Maintenance of a Popish Seminary, is the same Offence. 1 Eliz. c. 1. 13 Eliz. c. 1. and 27 Eliz. cap. 2. To refuse the Oath of Allegiance, upon Tender, incurs a *Premunire*. 3 Jac. 1. cap. 4. Affirming that both or either Houses of Parliament, have a Legislative Power without the King, is made a *Premunire*. 13 Car. 2. cap. 1. The Oaths of Supremacy and Allegiance prescribed in former Acts are abrogated, and new Oaths substituted by 1 W. & M. c. 8. which to refuse upon Tender, makes one liable to the Penalty of a *Premunire*: And Counsellors, Attornies, Solicitors, Proctors, &c. practising as such in any Court, without taking the Oaths of Allegiance and Supremacy, and subscribing the Declaration, incur a *Premunire*, by the Stat. 7 & 8 W. 3. cap. 24. If any shall maliciously and directly, by Preaching, or advisedly Speaking, affirm that the pretended *Prince of Wales* hath any Title to the Crown, or that the King with Authority of Parliament, cannot by Laws limit the same, &c. it is a *Premunire*. 1 & 2 Ann. cap. 17. 4 Ann. c. 8. And so in divers other Cases; and most of these later Statutes refer the Punishment to the Stat. 16 R. 2. On the Statutes 27 Ed. 3. and 16 R. 2. making it a *Premunire* to sue or pursue Causes out of the Realm, in the Court of *Rome* or elsewhere, or in any other Court, to defeat the Judgments given in the King's Courts, it has been formerly holden, by the Words *elsewhere*, &c. That Suits in Equity, to relieve against a Judgment given at Law, as the Court of Chancery in the Proceeding in Course of Equity, which is no Court of Record; Suits in the Admiralty, or in the Courts of the Constable and Marshal; and Ecclesiastical Courts, for Matters belonging to the Cognisance of the Common Law, are within the Statute: And he that procures one to sue to the Court Christian, in a Temporal Cause, shall forfeit as much as he that sueth as Principal, and is in equal Degree of *Premunire*. 3 Inst. 121. 2 Inst. 601, &c. But it is agreed at this Day, that no such Suit in Equity seeking Relief after Judgment at Law, &c. is within the Intention of the said Statutes. 1 Hawk. P. C. 51. The Writ of *Premunire* runs *Contra Coronam & Dignitatem Regis*; and it hath been held by all the Judges, that when an Ecclesiastical Judge doth usurp upon the Temporal Laws, which are the Birthright of the Subject, he draweth the Matter *ad aliud Examen*, and therein he offends *contra Coronam & Dignitatem*, &c. 12 Rep. 50. A Prohibition was granted by the King against a Prior, for that the King having recovered against him in a *Quare Impedit*, he sent his Brother with an Appeal to *Rome*, and sued there to avoid the Judgment; upon Not guilty pleaded, it was found against the Defendant, and thereupon the King prayed Judgment upon the Stat. 27 Ed. 3. as in case of a *Premunire*; but it was adjudged, that he should not have such Judgment, because the Suit was not brought according to the Statute, but by a Writ of Prohibition at Common Law. 9 Rep. 71. And yet it hath been resolved, That a Statute, by appointing that an Offender shall incur the Penalty and

Danger mentioned in the 16 R. 2. of *Premunire*, does not confine the Prosecution for the Offence to the particular Process thereby given. 1 Vent. 173. A *Premunire* lieth as well for the Party grieved, as for the King; and both may join in one Writ. 3 Inst. 125. Davies 83. But where the Attorney General prosecuted a *Premunire* for the Queen and R. B. against the Dean of *Christchurch* in *Oxford*, and others, and afterwards withdrew his Suit: It was held, that by this Means the Party grieved could not proceed, because the principal Matter of the *Premunire* was the Putting the Defendants out of the King's Protection, &c. and the Damages to the Party are but accessory; so that the Principal being released, the Damages are so likewise. 1 Leon. 290. In Prosecutions on the Stat. 1 Eliz. and 3 Jac. 1. for refusing the Oaths of Allegiance, &c. the Trial must be by a Jury of the County wherein the Oaths were refused; though the Statute authorizes an Indictment by a Jury of the County where the Court sits: And any Misrecital of the very Words of the Oath, in an Indictment for not taking it, is erroneous; but the Tenor of the Oath is as much as if it were *verbatim*. Dyer 234. Raym. 212, 374. The Lord *Vaux* was indicted for refusing to take the Oath of Allegiance, being lawfully tendered to him, and he being above 18 Years old; this was certified into B. R. under the Hands of several of the Privy Council; and he being brought into Court, and the Oath read to him, he pray'd to have Counsel; but it was denied; and being press'd to plead to the Indictment, he confess'd it, and thereupon had Judgment of *Premunire*, viz. To be out of the King's Protection, to forfeit his Lands, Tenements, Goods and Chattels to the King, and to be imprisoned during Life. 1 Bulst. 197. The Forfeiture of Lands to the King in a *Premunire*, is understood of Lands in Fee only for ever; and of Lands in Tail but during Life, or of such Estate as one may lawfully forfeit. 1 Inst. 130. 3 Inst. 125. Tenant in Tail is attainted in a *Premunire*, he shall forfeit his Lands only during Life; and afterwards the Issue in Tail shall inherit. 11 Rep. 56. A Person being seised in Fee of Lands, was indicted for a *Premunire* upon the Stat. 13 Eliz. but before Conviction he made an Entail of his Lands; and it was adjudged, that the Attainder shall relate to the Time of the Offence, and that was before he entailed the Lands, and not the Time of the Judgment which was afterwards; and the Freehold being in him at the Time of the Attainder, shall not be divested without an Inquisition under the Great Seal. Cro. Car. 123, 172. It is said the Statute of *Premunire* doth not extend to the Forfeiture of Rents, Annuities, Fairs, &c. or any other Hereditaments that are not within the Word *Terre*. 3 Inst. 126. This Suit need not be by Original Writ in B. R. for if the Defendant be in *Custodia Marefchalli*, the Suit may be against him by Bill; and the Defendants cannot be sued in any other Court, when they are in *Custodia Marefchal*. But if the Defendant come not at the Day, &c. Judgment shall be given against him; and if the Defendant appear and plead, and the Issue be found against him; or if he demur in Law, &c. Judgment shall be given, that he shall be out of Protection, &c. 3 Inst. 124. So odious was this Offence of *Premunire*, that a Man attainted of the same, being out of the King's Protection, might be slain by any Person;

son; because it was provided by Law, that a Man might do to him as to the King's Enemy, and any Man may lawfully kill an Enemy: But this Severity and Inhumanity is restrained and provided against by Stat. 5 Eliz. though no Person attainted of any *Præmunire* can bring an Action for any Injury whatsoever; and no one knowing himself to be guilty, can with Safety give him Aid, Comfort or Relief. 1 Inst. 130. 1 Hawk. 55. The Laws making Offences to be *Præmunire*, it has been observ'd are so very severe, that they are seldom put in Execution. See Pope.

Præpositus Ecclesiæ, Is used for a Church-Reve, or Church-warden.

Præpositus Villæ, Is sometimes taken for the Constable of a Town; and frequently an Head or Chief Officer of the King in any Town, Village, Manor, &c. Leg. Edw. Confess. cap. 28. Crompt. Jurisd. 205. But this *Præpositus Villæ* in old Records, was no more than the Bailiff of the Lord of the Manor: And by the Laws of Hen. 1. the Lord answered for the Town where he was resident, and where he was not, his *Seneschal*; but if neither of them could be present, then *Præpositus & quatuor de unaquaque Villa*, i. e. The Bailiff or Reeve, and Four of the most substantial Inhabitants, were summoned to appear before the Justices, &c. Brad. Gloss. pag. 97.

Præsentare ad Ecclesiam, Denotes originally the Patron's Sending or Placing an Incumbent in the Church, and is made for *Representare*; which in the Council of Lateran, and elsewhere, occurs for *Præsentare*. Selden of Tithes, pag. 390.

Pragmaticus, A Practiser in the Law; Petty-fogger, or Splitter of Causes.

Pratum falcatibile, A Meadow or mowing Ground. Trin. 18 Edw. 1.

Pray in Aid, Or Aid-Prayer. See Aid.

Prayers of the Church, Are to be read in Churches by Clergymen, as directed by the Book of Common Prayer, under Penalties. Stat. 1 Eliz. c. 2. 14 Car. 2. c. 4. Vide Common Prayer.

Preaching. Every beneficed Preacher, resident on his Benefice, and having no lawful Impediment, shall in his own Cure, or some neighbouring Church, preach one Sermon every Sunday of the Year: And if any beneficed Person be not allow'd to be a Preacher, he shall procure Sermons to be preached in his Cure by licensed Preachers; and every Sunday whereon there shall not be a Sermon, he or his Curate is to read some one of the Homilies: Also no Person not examined and approved by the Bishop, or not licensed to preach, shall expound the Scripture, &c. nor shall any be permitted to preach in any Church, but such as appear to be authorized thereto, by shewing their Licence; and Church-wardens are to note in a Book the Names of all strange Clergymen that preach in their Parish; to which Book every Preacher is to subscribe his Name, the Day when he preached, and the Name of the Bishop of whom he had Licence to preach. Can. 44, 45, 49. If any Parson licensed to preach, refuses to conform to the Laws Ecclesiastical, after Admonition, the Licence of every such Preacher shall be void: And if any Parson shall preach Doctrine contrary to the Word of God, or the Articles of Religion, Notice is to be given of it to the Bishop by the Church-wardens, &c. So likewise of Matters of Contention and impugning the Doctrine of other Preachers in the

same Church; in which Case, the Preacher is not to be suffered to preach, except he faithfully promise to forbear all such Matter of Contention in the Church, until the Bishop hath taken farther Order therein. Can. 53, 54. No Minister shall preach or administer the Sacrament in any private House, unless in Times of Necessity, as in Cases of Sickness, &c. upon Pain of Suspension for the first Offence, and Excommunication for the Second; which last Punishment is also inflicted on such Ministers as meet in private Houses, to consult upon any Matter tending to the impeaching the Doctrine of the Church of England. Can. 71, &c.

Prebend, (*Præbenda*) Is the Portion which every Prebendary of a Cathedral Church receives in Right of his Place, for his Maintenance, as *Canonica Portio* is properly us'd for that Share, which every Canon receiveth yearly out of the common Stock of the Church. And *Præbenda* is a several Benefice rising from some Temporal Land, or some Church, appropriated towards the Maintenance of a Clerk, or Member of a Collegiate Church, and is commonly named of the Place whence the Profit arises. *Præbenda*, strictly taken, is that Maintenance which daily *præbetur* to another; but now it signifies the Rents and Profits belonging to the Church, divided into those Portions called *Præbenda*, and is a Right of Receiving the Profits for the Duty perform'd in the Church, sufficient for the Support of the Person in that Divine Office where he resides. Decret. Tit. De *Præbend.* *Præbends* are distinguished into those which are called *Simple* and *Dignitary*: A *Simple Prebend* hath no more than the Revenue for its Support; but a *Prebend with Dignity* hath always a Jurisdiction annexed, and for this Reason the *Prebendary* is stiled a *Dignitary*, and his Jurisdiction is gained by Prescription: And *Præbends* are some of them donative; and some are in the Gift of Laymen, but in such Case they must present the *Prebendary* to the Bishop, and the Dean and Chapter inducts him, and places him in a Stall in the Cathedral Church, and then he is said to have *Locum in choro*; at Westminster the King collates by Patent, and by Virtue thereof the *Prebendary* takes Possession, without Institution or Induction. 2 Roll. Abr. 356. As a *Prebend* is a Benefice without Cure, &c. a *Prebend* and a Parochial Benefice are not incompatible Promotions; for one Man may have both without any Avoidance of the First: But though *Prebendaries* are such as have no Cure of Souls, yet there is a sacred Charge incumbent upon them in those Cathedrals where they are resident, and they are obliged to Preaching by the Canons of the Church; and it is not lawful for a *Prebendary* to possess two *Præbends* in one and the same Collegiate Church. Roll. Abr. 361. *Prebendaries* are said to have an Estate in Fee-simple in Right of their Churches, as well as Bishops of their Bishopricks, Deans of their Deaneries, &c.

Prebendary, (*Præbendarius*) Is he that hath such a *Præbend*; so called, not as is said by some Writers, a *Præbendo auxilium & consilium Episcopo*, &c. but from Receiving the *Præbend*. And there is a Golden *Præbendary* of Hereford, otherwise term'd *Præbendarius Episcopi*, who is one of the twenty-eight minor *Præbendaries* there, and has *ex Officio* the first Canon's Place that falls; he was antiently *Confessarius* of the Cathedral Church, and to the Bishop, and had the Offerings at the

Altar,

Altar, whereby, in Respect of the *Gold* commonly given there, he had the Name of *Golden Prebendary*. Blount.

Præcaræ, Days Work that the Tenants of some Manors are bound to give the Lord in Harvest; which in some Places are called *Bind-Days*.

Precedents, Are Examples or Authorities to follow, in Judgments and Determinations in the Courts of Justice. *Precedents* have always been greatly regarded by the Judges and Sages of the Law: The *Precedents* of the Courts are said to be the Laws of the Courts; and the Court will not reverse a Judgment, contrary to many *Precedents*. 4 Rep. 93. Cro. Eliz. 65. 2 Lill. Abr. 344. But new *Precedents* are not considerable; *Precedents* without a judicial Decision upon Argument, are of no Moment; and an extrajudicial Opinion given in or out of Court, is no good *Precedent*. Vaugh. 169, 382, 399, 429. It has been held, that there can be no *Precedent* in Matters of Equity, as Equity is universal Truth; but according to the Lord Keeper Bridgman, *Precedents* are necessary in Equity to find out the Reasons thereof for a Guide; and besides the Authority of those that made them, it is to be supposed they did it upon great Consideration, and it would be strange to set aside what has been the Course for a long Series of Time; therefore *Precedents* were ordered. 1 Mod. 307. And says Hale Ch. Baron, If a Man doubt whether a Case be equitable, or no, in Prudence he will determine as the *Precedents* have been; especially if made by Men of good Authority and Learning. Ibid. If there be a Special Cause to alter an antient *Precedent* of a Writ, by Reason of any new Statute, &c. the Curfitors are not to keep to the old Form, but to alter it as the Case requires; to prevent Abatement of Writs, and Vexation to the People. Trin. 1650. See *Innovation*.

Præce partium, Is where a Suit is continued by the Prayer, or Assent of both Parties. 13 Ed. 1. cap. 27.

Precept, (*Præceptum*) Is generally taken for a Commandment in Writing sent out by a Justice of Peace, &c. for the Bringing of a Person or Records before him; of which divers are mentioned in the Table of the *Register judicial*.

Precontract, Is a Contract made before another Contract; chiefly applicable to Contracts of Marriage. 2 & 3 Ed. 6. c. 25.

Prædial Tithes, (*Decima Prædiales*) Are those which are paid of Things arising and growing from the Ground only; as Corn, Hay, Herbs, &c. 2 Ed. 6. c. 13.

Pre-emption, (*Pra-emptio*) Signifies the first Buying of a Thing; and it was a Privilege allowed the King's Purveyor, to have the Choice and first Buying of Corn, and other Provisions for the King's House. 12 Car. 2. c. 24.

Prælate, (*Prælatus*) We commonly understand to be an Archbishop or Bishop. It is a Bishop, or one who hath a Dignity in the Church: And the learned Spelman saith, *Prælati Ecclesiæ vocantur nedom superiores, ut Episcopi, sed etiam inferiores, ut Archidiaconi, Presbyteri, &c.* Spelm.

Præmisses, Is that Part in the Beginning of a Deed whose Office is to express the Grantor and Grantee, and the Land or Thing granted. 5 Rep. 55. See *Deed*.

Prændit, (Fr. *Prendre*, i. e. *Accipere*) Is the Power or Right of Taking a Thing before it is

offered; as it lies in *Render*, but not in *Prender*, &c. 1 Rep.

Prænder de Baron, Signifieth literally to take an Husband; and it is used for an Exception to disable a Woman from pursuing an Appeal of Murder, against one who killed her former Husband. S. P. C. lib. 3. c. 59.

Præpensed, (*Præpensus*) Forethought; as *prepensed* Malice is *Malitia Præcogitata*, which makes Killing Murder; and when a Man is slain upon a sudden Quarrel, if there were Malice *prepensed* formerly between the Parties, it is Murder, or as it is called by the Statute *prepensed Murder*. 12 H. 7. c. 7. 3 Inst. 51. See *Murder*.

Prærogative, (*Prærogativa Regis*, from *Pra ante*, & *Rogare*, to ask or demand) Is that Power, Pre-eminence, or Privilege which the King hath and claimeth over and beyond other Persons, and above the ordinary Course of the Common Law, in Right of his Crown: Set forth in the Statute called *Prærogativa Regis*. 17 Ed. 2. c. 1. and other Statutes. See *King*.

Prærogative of the Bishop of Canterbury or York, (*Prærogativa Archiepiscopi Cantuariensis sive Eboracensis*) Is an especial Pre-eminence that these Sees have in certain Cases above the other Bishops within their Province. De Antiq. Britan. Eccl. cap. 8. pag. 25.

Prærogative Court, (*Curia Prærogativa Archiepiscopi Cant.*) The Court wherein all Wills are proved and Administrations granted, that belong to the Archbishop by his *Prærogative*; that is, in Cases where the Deceased had Goods of any considerable Value out of the Diocese, wherein he died within the Archbishop's Province, and that Value is usually 5*l.* and above. And if any Contention arise between Two or more, touching any such Will or Administration, the Cause is properly to be debated and decided in this Court; the Judge whereof is termed *Judex Curiae Prærogativæ Cantuariensis*, the Judge of the *Prærogative Court* of Canterbury. Not only all Causes of Instance for Proving or Revoking such Wills as aforesaid, and for Granting or Revoking such Administrations; but also Causes concerning Accounts upon the same, and Legacies bequeathed in such Wills are to be tried in the *Prærogative Court*: Though of late such Legacies are suffered by this Court to be sued for in the inferior Ecclesiastical Court, under whose Jurisdiction the Executor dwells. 1 Vent. 233. Wood's Inst. 502. Appeal lies from this Court to the King in Chancery; who appoints Delegates, &c. 25 H. 8. c. 19. Though it is said if the Delegates revoke a Will, &c. They cannot grant Letters of Administration; for their Power is to hear and determine the Appeal. 2 Bulstr. 2. Roll. Abr. 233. The Archbishop hath Probate of every Bishop's Testament, &c. though he hath not *Bona Notabilia* out of the Diocese: So where a Person dies beyond Sea. 4 Inst. 335. Vide *Bona Notabilia*.

Prærogative Court of York. The Archbishop of York hath the like Court, but inferior to that of Canterbury in Power and Profit; which is called his *Ex-bequer*.

Præbiter, A Priest; an Elder or honourable Person. Isidore, lib. 7.

Præbyterium, *Presbytery*; or that Part of the Church where Divine Offices are perform'd, applied to the Choir or Chancel, because it was the Place appropriated to the Bishop, Priests and other Clergy, while the Laity were confined

fin'd to the Body of the Church. *Mon. Angl. Tom. 1. pag. 243.*

Presbyterian, A Sectarist or Dissenter from the Church. *13 Car. 2.*

Prescription, (*Prescriptio*) Is a Title acquired by Use and Time, and allowed by the Law; as when a Man claims any Thing because he, his Ancestors, or they whose Estate he hath, have had or used it all the Time, whereof no Memory is to the contrary: Or it is where for Continuance of Time, *ultra Memoriam Hominis*, a particular Person hath a particular Right against another. *Kitch. 104. 1 Inst. 114. 4 Rep. 32.* *Prescriptions* are properly Personal, and therefore are always alledged in the Person of him who prescribes, *viz.* That he, his Ancestors, or all those whose Estate he hath, &c. or of a Body Politick or Corporation, they and their Predecessors, &c. Also a Parson may *prescribe*, *quod ipse & predecessores sui*, and all they whose Estate, &c. for there is a perpetual Estate, and a perpetual Succession, and the Successor hath the very same Estate which his Predecessor had, as that continues, though the Person alters, like the Case of the Ancestor and the Heir. *3 Salk. 279.* There is a Difference between a *Prescription*, Custom, and Usage: *Prescription* hath Respect to a certain Person, who by Intendment may have Continuance for ever; as for Instance; he and all they whose Estate he hath in such a Thing, this is a *Prescription*: But Custom is local, and always applied to a certain Place, as Time out of Mind there has been such a Custom in such a Place, &c. And *Prescription* belongeth to one or a few only; but Custom is common to all: Now Usage differs from both, for that may be either to Persons or Places; as to Inhabitants of a Town, to have a Way, &c. *2 Nels. Abr. 1277.* *Prescription* is to be Time out of Mind; though it is not the Length of Time, that begets the Right of *Prescription*, nothing being done by Time, although every Thing is done in Time, but it is a Presumption in Law, that a Possession cannot continue so long quiet and not interrupted, if it was against Right or injurious to another. *3 Salk. 278.* A *Prescription* cannot be annexed to any Thing but an Estate in Fee, which must be set forth; but it is always applied to incorporeal Inheritances: One cannot make Title to Land by *Prescription*; but only to Rent or Profit out of Land. *2 Mod. 318. 4 Rep. 31.* A Person may make Title by *Prescription*, to an Office, a Fair, Market, Toll, Way, Water, Rent, Common, Park, Warren, Franchise, Court-Leet, Waifs, Estrays, Wreck, &c. But nothing may be *prescribed*, which cannot be raised by Grant at this Day, and a *Prescription* must not be laid in an Uncertainty; no Person can *prescribe* against an Act of Parliament, or against the King, where he hath a certain Estate and Interest against the Publick Good, Religion, &c. Nor can one *Prescription* be pleaded against another, unless the First is answered or traversed; or where one may stand with the other. *Lutw. 381. Raym. 232. 2 Roll. Abr. 264. 2 Inst. 167. 7 Rep. 28. Cro. Car. 432. 1 Bulstr. 115. 2 Lill. 346.* Tenants in Fee-simple are to *prescribe* in their own Name; and Tenants for Life, or Years, &c. though they may not *prescribe* in their own Names, yet they may in the Name of him who hath Fee: And where a Person would have a Thing that lies in Grant by *Prescription*, he must *prescribe* in himself, and his Ancestors, whose Heir he is by Descent; not in himself and those whose Estate, &c. (unless

the *Que Estate* is but a Conveyance to the Thing claimed by *Prescription*) for he cannot have their Estate that lies in Grant without Deed, which ought to be shewed to the Court. *1 Inst. 113. Wood's Inst. 297.* A Copyholder, by Reason of the Baseness of his Tenure, cannot lay a *Prescription* in himself and his Ancestors; but he may *prescribe* in the Name of the Lord of the Manor, that the Lord and his Ancestors have had Common, &c. for themselves and Tenants, &c. And this serves where Persons cannot *prescribe* in their own Name, or of any certain Person; Parishioners cannot generally *prescribe*, but they may alledge a Custom; and Inhabitants may *prescribe* in a Matter of Easement, Way to a Church, Burying-place, &c. *2 Saund. 325. 1 Lev. 253. Cro. Eliz. 441. Cro. Car. 419. 2 Roll. 290.* To lay a *Prescription* for Common, a Man must shew, that he and his Ancestors, or all those whose Estate he hath, have Time out of Mind of Man had and used to have Common of Pasture in such a Place, being the Land of another, &c. And as a *Prescription* is a Title or Claim of a real Interest of Profit in the Land of another Person, it must be pleaded according to certain Rules; and they are not like Customs or improper *Prescriptions*, that are by Way of Discharge, or for Easements, or for Matters of personal Exemption or Privilege. *Wood's Inst. 298, 299.* A *Prescription* may be laid in several Persons, where it tends only to Matters of Easement or Discharge; though not where it goes to Matter of Interest or Profit *in alieno solo*, for that is a Title, and the Title of one doth not concern the other; therefore several Men having several Estates, cannot join in making a *Prescription*. *1 Mod. 74. 3 Mod. 250.* The Word *Easement* is a Genus to several Species of Liberties, which one may have in the Soil of another, without claiming any Interest in the Land it self; but where the Thing was set forth in a *Prescription* to catch Fish in the Water of another Man, &c. and no Instance could be given of a *Prescription* for such a Liberty by the Word *Easement*, a Rule was made to set the *Prescription* right, and to try the Merits. *4 Mod. 362.* In Trespass for Breaking the Plaintiff's Close, the Defendant *prescribed*, that the Inhabitants of such a Place, Time out of Mind, had used to dance there, at all Times of the Year, for their Recreation, and so justified; and Issue being taken upon this *Prescription*, the Defendant had a Verdict; it was objected against it, that a *Prescription* to dance in the Freehold of another, and spoil his Grass, was ill, especially as laid in the Defendant's Plea, *viz.* At all Times of the Year, and not at seasonable Times, and for all the Inhabitants; who, though they may *prescribe* in Easements which are necessary, as a Way to a Church, &c. they cannot in Easements for Pleasure only: But adjudg'd, that the *Prescription* is good, Issue being taken upon it, and found for the Defendant; although it might have been ill on a Demurrer. *1 Lev. 176. 2 Nels. 1280.* A Custom that the Farmers of such a Farm have always found Ale, &c. to such a Value at Perambulations, was held naught; because it is no more than a *Prescription* in Occupiers, which is not good in Matter to charge the Land. *2 Lev. 164.* *Prescription* by the Inhabitants of a Parish to dig Gravel in such a Pit, which was the Soil of *W. R.* it was doubted whether this was good, or not, though it was to repair the Highway; but the Inhabitants may *prescribe* for a Way, and by

by Consequence for necessary Materials to repair it. 2 *Lutw.* 1346. A Defendant pleaded, that within such a Parish, all Occupiers of a certain Close *habent, & habere consueverunt*, a Way leading over the Plaintiff's Close, to the Defendant's House; this was held to be ill, for 'tis not like a *Prescription* to a Way to the Church or Market, which are necessary, & *pro bono publico*. 2 *Ventr.* 186. Where a Man *prescribes* for a Way to such a Close, he must shew what Interest he hath in the Close: *Aliter* if he *prescribes* for a Way to such a Field; because that may be a common Field by Intendment. *Latch.* 160. The Plaintiff declared, that the Occupiers of the adjoining Field have, Time out of Mind, repaired the Fences, which being out of Repair, his the Plaintiff's Beasts escaped out of his own Ground and fell into a Pit; it is good, without shewing any Estate in the Occupiers, but it had not been so if the Defendant had *prescribed*. 1 *Ventr.* 264. *Prescription, &c.* to take Underwood growing on the Lands of another, to make the Hedges there, is not good. 1 *Leon.* 313. A Man may claim a Fold-course, and exclude the Owner of the Soil by *Prescription*. 1 *Saund.* 353. But a Diversity has been taken where a *Prescription* takes away the whole Interest of the Owner of the Land; and where a particular Profit is restrained: In one Case it is good, and in the other it is void. 1 *Leon.* 11. If a Person *prescribes* for Common Appurtenant, 'tis ill, unless it be for Cattle *Levant and Couchant, &c.* And the Reason is, because by such a *Prescription* the Party claims only some Part of the Pasture, and the *Quantum* is ascertained by the Levancy and Couchancy, the Rest being left for the Owner of the Soil; and therefore if he who thus *prescribes*, should put in more Cattle than are *Levant and Couchant* on his Tenement, he is a Trespasser. *Noy* 145. 2 *Saund.* 324. *Prescription* to have Common for a Cow and a Half, has been held good; and it shall be intended that two Men had but one Cow originally. *Sid.* 226. In a *Prescription* to have Common, the Jury found it to be Paying every Year a Penny: Here the *Prescription* is intire, whereof the Payment of one Penny is Parcel; which ought to be intirely alledged in the *Prescription* in the Plea, or it will not be good. *Cro. Eliz.* 563, 564. But where the Payment is collateral from the *Prescription*, a *Prescription* may be good without alledging it. *Cro. Eliz.* 405. Upon the Pleadings in a Cause, it was a Question, whether a Toll, independent of Markets and Fairs, might be claim'd by *Prescription*, without shewing that the Subject hath some Benefit; and some Arguments were brought for it, from an Authority in *Dyer* 552. Though by *Holt Ch. Just.* this *Prescription* cannot be good, because there was no Recompence for it; and every *Prescription* to charge the Subject with a Duty, must import some Benefit to him who pays it; or else some Reason must be shewed why the Duty is claimed. 4 *Mod.* 319. A Court-Leet is derived out of the Hundred; and if a Man claims a Title to the Leet, he may *prescribe* that he and his Ancestors, and all those whose Estate he hath in the Hundred, Time out of Mind had a Leet. 1 *Inst.* 125. If a Court held by *Prescription* is granted and confirmed by the King's Letters Patent; this doth not destroy the *Prescription*, but 'tis said the Court may be held by *Prescription* as before. 2 *Roll. Abr.* 271. And a Grant may enure as a Confirmation of a *Prescription*; and the *Prescription* continue un-

altered by a new Charter, &c. where the Charter is not contrary to the *Prescription*. *Moor* 818, 830. But in some Cases it is intended, that a *Prescription* shall begin by Grant; and as to *Prescriptions* in general, the Law supposes a Descent, or Purchase originally. *Cro. Eliz.* 709. 1 *Inst.* 113. Every *Prescription* is taken strictly: And a Man ought not to *prescribe* to that which the Law of common Right gives. 3 *Leon.* 13. *Noy* 20. A *Prescription* must have a lawful Commencement, and peaceable Possession and Time are inseparably incident to it. 1 *Inst.* 113. Though a Title gain'd by Custom or *Prescription*, will not be lost by Interruption of the Possession for ten or twenty Years; but it may be lost by Interruption in the Right. 1 *Inst.* 114. 2 *Inst.* 653. *Prescriptions* for repairing Highways. See *Highways*.

Prescriptions against Actions and Statutes. The 7 *Hen.* 8. ordains, that four Years being past after the Offence committed, provided against by this Statute, no Suit can be commenced. By 31 *Eliz. c. 5.* all Actions, &c. brought upon Statutes, the Penalty whereof belongs to the King, shall be brought within two Years after the Offence done, or shall be void. And the Stat. 23 *Eliz. c. 1.* enacts, that Offences comprised in that Statute, &c. are inquirable and determinable before Justices of Peace and Assize, within a Year and a Day after the Offence, &c. So that whosoever offendeth against any of these Statutes, and escapes unquestion'd for four Years, Two, or One Year, may be said to *prescribe* against the Actions and Punishments ordained by those Statutes: And there are other Statutes which have the like Appointments or Limitations of Time, whence may arise the like *Prescription* and Bar. 4 *Rep.* 84. 2 *Inst.* 652. Vide *Action*.

Prescription by the Ecclesiastical Law, as to Tithes, &c. See *Modus Decimandi*.

Presentation, (Presentatio) Is properly the Act of a Patron, offering his Clerk to the Bishop of the Diocese, to be instituted in a Church or Benefice of his Gift, which is void. 2 *Lill. Abr.* 351. Antiently the *Presentation* to all Churches was said to be in the Bishop of common Right, 'till since it has been indulg'd to the Laity, to encourage them to build and endow Churches; and now if the Patron neglects to *present* to the Church, then this Right returns to the Bishop by Lapse, &c. 1 *Nelf. Abr.* An Alien born can't *present* to a Benefice in his own Right; for if he purchase an Advowson, and the Church becomes void, the King shall *present* after Office found that the Patron is an Alien. 2 *Nelf.* 1290. And by Statute no Alien shall purchase a Benefice in this Realm; nor occupy the same, without the King's Licence, on Pain of a *Premunire*. 7 *R. 2. c. 12.* *Papists* are disabled to *present* to Benefices, and the Universities are to *present*, &c. But a Popish Recusant may grant away his Patronage to another, who may make *Presentation*, where there is no Fraud. Stat. 3 *Jac.* 1. 1 *W. & M.* 1 *Jon.* 19. All Persons that have Ability to purchase or grant, have likewise Ability to *present* to vacant Benefices: But a Dean and Chapter cannot *present* the Dean; nor may a Clergyman who is Patron *present* himself, though he may pray to be admitted by the Ordinary, and the Admission shall be good. An Infant may *present* of whatsoever Age, because Guardians have not Power to do it in Right of the Heir; a Guardian in Socage cannot *present* to a Church, by the Law he being not to meddle with any Thing but for what

what he may account, which he cannot do for a *Presentation*, by Reason he is to take nothing for it: If a *Feme Covert* hath Title to *present*, the *Presentation* ought to be in the Name of both Husband and Wife, and not be by her alone; or he may *present* in his own Name during the *Coverture*: *Coparceners* are but as one Patron, and ought to agree in the *Presentation* of one Person; if they can't agree, the *Eldest* shall *present* first alone, and the Bishop is obliged to admit her Clerk, and afterwards the others in their Order shall prefer their Clerks; *Jointenants* and *Tenants in Common* must regularly join in *Presentation*, and if either *present* alone, the Bishop may refuse his Clerk, as he may also the Clerk *presented* by the major Part of them; but if there are two *Jointenants* of the next Avoidance, one of them may *present* the other, and two *Jointenants* may *present* a Third, but not a Stranger: The next *Presentation* was granted to four Persons, & *eorum cuilibet conjunctim & divisim*, &c. And the Church becoming void, one of the Grantees alone *presented* one of the others; and it was adjudg'd, that this *Presentation* by one was good: When an aggregate Corporation *presents*, it must be under their common Seal, and by the true Name of their Corporation: The King may *present* by Letters Patent under the Great Seal, and by the Words, viz. *Damus & concedimus*; for this amounts to a Warrant for the Bishop to admit the Clerk; it is said the King may *present* by Word, or in Writing under any Seal, who cannot do any other legal Act but by Matter of Record; and in the Opinion of some, the King may *present* to a Church by his Letter sent to the Ordinary, to institute and induct such a One his Clerk to the Living; but the most secure Way is to have a *Presentation* under the Great Seal: If a Rector is made Bishop, the King shall *present* to the Rectory, unless he grant to the Bishop before he is consecrated, a Dispensation to hold it with his Bishoprick; and if an Incumbent of a Church is made a Bishop, and the King *presents* or grants that he shall hold the Church in *Commendam*, which is *quasi* a *Presentation*, a Grantee of the next Avoidance or *Presentation* hath lost it, the King having the next *Presentation*: If the King do *present* to a Church by *Lapse*, where he ought to *present* *Pleno jure*, and as Patron of the Church, such a *Presentation* is not good; for the King is deceived in his Grant, by Mistaking his Title, which may be prejudicial to him, the *Presenting* by *Lapse* intitling only that *Presentation*: The Lord Chancellor *presents* to the King's Benefices under 20 l. a Year, &c. 2 *Roll. Abr.* 354. 3 *Inst.* 156. 1 *Inst.* 186. 2 *Nelf. Abr.* 1288, 1290. 2 *Lill.* 351. The King may repeal a *Presentation*, before his Clerk is inducted; and this he may do by Granting the *Presentation* to another, which without any farther Signification of his Mind is a Revocation of the first *Presentation*. *Dyer* 293, 360. A Patron may revoke his *Presentation* before Institution, but not afterwards, a *Presentation* being no more than a Power given to the Ordinary to admit the Clerk; and if the Patron die before Induction, his *Presentation* is determined: But this is in the Case of the King; for in the Case of a common Person, if he die after Institution, and before Induction, the *Presentation* is not determined by his Death. *Latch.* 191. *Dyer* 348. If two Patrons *present* their Clerks to a Church, the Bishop is to determine who shall be admitted by a *Fus Patro-*

natus, &c. And two Patrons pretending a Title to *present*, one of them *presented* W. R. but the Bishop refused Institution; whereupon he sued in the Court of Audience of the Archbishop, and had an Inhibition to that Bishop, and upon that Suit he obtained an Institution by the Archbishop, on which he was inducted; afterwards the Bishop, who was inhibited, granted Institution upon the *Presentation* of the other Patron, and his Clerk was likewise inducted; and thereupon W. R. who had been instituted and inducted before, on a Motion procured a Prohibition, because by the first Induction the Incumbency was determined: So that *quoad* the Incumbency, the Prohibition was granted; but not as to the Contempt of the Ordinary after he had been inhibited. *Moor* 499. The Father was incumbent, and after his Death the Patron *presented* his Son, who was refused by the Bishop, because by the Canon Law *Filius non potest succedere patri in eadem Ecclesia*, and the Patron *presented* another Person; then the Son, who was first *presented*, obtained a Dispensation *non obstante* the Canon; but the Ordinary admitted the second *Presentee*, who was also instituted and inducted; thereupon the Son sued him and the Bishop in the Spiritual Court, but a Prohibition was granted. *Latch.* 191. A Clerk may be refused by the Bishop, if the Patron is excommunicate; or if the Clerk is not *Persona Idonea*, which includes Ability of Learning, and Honesty in Conversation, &c. But in a *Quare Impedit* brought against the Bishop for Refusal of a Clerk, he must shew the Cause of his Refusal specially and directly; and because the Clerk is of ill Life, or a Schismatick in general, is not sufficient, without shewing what Crimes, or Sort of Schism he has been guilty of: And the Temporal Court then will judge whether the Cause be just or not; and if the Party denies the same, the Court may write to the Metropolitan to examine the Matter, and certify it; and tho' the Matter be of a Spiritual Nature, it shall be tried by a Jury: For whether the Cause be Temporal or Spiritual, the Examination of the Bishop concludes not the Clerk; he is Judge of the Ability, but not the ultimate Judge: But in Case of Refusal for Insufficiency in Learning, it hath been adjudg'd, that the Ordinary is not accountable to any Temporal Judge; and that in *Literatura minus sufficiens*, &c. is a good Plea, without setting forth the Kind of Learning, or Degrees of it. 5 *Rep.* 58. 2 *Inst.* 631. 3 *Lev.* 311. *Show.* 88. *Wood's Inst.* 32, 35. That the *Presentee* has a Benefice already, is no good Cause of Refusal, &c. 1 *Roll. Abr.* 355. If the Bishop refuses to admit the Clerk *presented*, he must give Notice of his Refusal, with the Cause of it forthwith; and on such Notice the Patron must *present* another Clerk, within Six Months from the Avoidance, if he thinks the Exception against his first Clerk contains sufficient Causes of Refusal; but if not, he may bring his *Quare Impedit* against the Bishop. 2 *Roll. Abr.* 364. And where a Church becomes void by Deprivation by the Canon Law, or Resignation, the Patron must have Notice from the Ordinary, to *present* another Person: But if the Church becomes void by the Act of God, as Death of the Incumbent; or by Creation, or Cession, &c. the Patron is bound to take Notice himself of the Avoidance, and to *present*, &c. *Wood's Inst.* 154. If a Defendant, or any Stranger, *presents* a Clerk pending a *Quare Impedit*, and afterwards the Plaintiff ob-

tains a Verdict and Judgment, he cannot by Virtue of that Judgment remove him who was thus presented; but he is to bring a *Scire facias* against him, to shew Cause *Quare Executionem non habet*; and then if it be found that he had no Title, he shall be amoved: Now the Way to prevent such a Presentation, is to take out a *Ne admittas* to the Bishop; and then the Writ *Quare Incumbavit* lies, by Virtue whereof the Incumbent shall be amoved, and put to his *Quare Impedit*, let his Title be what it will; but if a *Ne admittas* be not taken out, and another Incumbent should come in by good Title *pendente lite*, he shall hold it. *Sid. 93. 2 Cro. 93.* A Man must set forth a Presentation in himself, or those under whom he claims, in a *Quare Impedit*; and it ought to be alledged in him that hath the Inheritance: And when Six Months pass hanging the Writ, &c. by the Disturbance of any one, so that the Bishop hath a Right to present by Lapse, Damages shall be recovered by two Years Value of the Church, if the Person lose his Presentation; and if he recovers his Presentation within the Six Months, Damages to Half a Year's Value, &c. *2 Inst. 362. Vaugh. 7, 57. Cro. Eliz. 518. 13 Ed. 1. c. 5.* Where a Person gets the Fee to his Presentation, which is his Title, he must in his Declaration alledge the Presentation to be *Tempore pacis*, or it may be intended to be *Tempore belli*, and then 'tis no Title; but where the bare Presentation is not his Title, but only in Pursuance of a former Right, in such Case he may alledge it generally: As for Instance; where he declares that A. B. was seised of the Manor of D. as of Fee, to which an Advowson was appendant, and that being so seised he presented W. R. and afterwards granted the next Avoidance to the Plaintiff; this is good, for here the Plaintiff shews a precedent Right, and doth not make the Presentation it self his Title. *1 Mod. 130. 2 Mod. 183. 3 Salk. 280.* If a Church becomes void in the Life-time of a Bishop, he cannot devise the next Presentation; but if the Bishop, or any Incumbent of a Church, hath the Advowson in Fee, and then either of them deviseth, that upon the next Avoidance his Executor shall present; this is good, though they devise the Inheritance to another. *Dyer 285.* When a Bishop hath a Presentation in Right of his Bishoprick, and dies, his Executor, nor Heir, shall not have the void Turn; but the King in whose Hands are the Temporalities, and he hath a Right to present upon an Avoidance after the Seizure, and upon the Death of the Bishop: Tho' where an Incumbent was seised of the Advowson in Fee, and died, upon a Question who should present either his Heir or Executor, the Advowson not descending to the Heir till after the Death of his Ancestor, and immediately upon his Death the Church was void, and therefore that Avoidance was vested in the Executor; it was adjudg'd, that the Heir shall present, because the Descent to him, and the Avoidance to the Executor, happened at one and the same Instant, and where two Titles concur in an Instant, the elder Title shall be preferred. *3 Lev. 47.* A Grant was made of the next Presentation to a Church, the Grantee died, and then the Church became void; and it was held, that the Executor of the Grantee shall have the Presentation as a Chattel. *Glanvil, lib. 6. c. 7. 2 Nelf. Abr. 1286.* But in *Quare Impedit*, the Defendant pleaded, that the Patron granted the next Presentation to B. B. who died, and made his Executor, who

presented the Defendant; Issue was taken upon *Non concessit*, and the Jury found, that the Patron granted the Presentation to B. B. during his Life, and that he died before the Church became void; adjudg'd, that this was not an absolute Grant of the next Presentation, but restrain'd during the Life of the Grantee, wherefore it shall not go to the Executor, unless the Church become void in the Life-time of the Testator. *Cro. Car. 363.* A Tenant in Tail of an Advowson, and his Son and Heir joined in a Grant of the next Presentation, the Tenant in Tail died; this Grant was held void as to the Son and Heir, because he had nothing in the Advowson at the Time that he joined with his Father in the Grant. *Hob. 45.* By Last Will and Testament, the Right of Presenting to the next Avoidance, may be devised to any Person; and by the Deed the next Avoidance of a Church may be granted; where the Church is then full; also whilst a Church is void, the next Avoidance that shall happen, or the Inheritance of the Advowson may be granted away, and by Deed or Grant, the Right of Presenting will pass: But the void Turn it self is not grantable by any common Person, though it may be granted by the King, and be good; for that it is a meer Spiritual Thing annex'd to the Person of the Patron, and during the Time of the Vacation 'tis a Thing in Right and in Action, the Fruit and Execution of the Advowson, not the Advowson it self. *2 Cro. 371. Clergym. Law 154.* As a void Turn is not grantable; so if Two have a Grant made to them of a next Avoidance, and after the Church is void, one doth release all his Right and Title which he had in the Advowson and Presentation to his Companion, who presents to the Church, this Presentation is void; because after the Avoidance, the Interest was attached in both, and both had a Power to present, which could no more be released by one to the other, than it could be granted in that Manner, being but a Right, and not a Chattel in Possession: But a Release in this Case may be good, if it be made before the Church is void, and the Party to whom made may present, &c. *1 And. 223. 3 Cro. 173. Moor 467.* If a Presentation it self bears Date whilst the Church is full of another Clerk, it is void: And where Two or more have a Title to present by Turns, one of them presents, and his Clerk is admitted, instituted and inducted, and is afterwards deprived for some Crime; he shall not present again, but that Presentation shall serve his Turn: Though where the Admission and Institution of his Clerk is void, there the Turn shall not be serv'd, as if after Induction he neglects to read the thirty-nine Articles, &c. his Institution is void by the Stat. *13 Eliz.* and the Patron may present again. *F. N. B. 33. 5 Rep. 102.* The Right of Presenting to a Church, 'tis said, may pass from one seised of the same, by the Patron's Acknowledging of a Statute, &c. which being extended, if the Church doth become void, during the Conussee's Estate, the Conussee may present. *Owen 49.* A Presentation doth not carry with it the Formality of a Deed; but is in the Nature of a Letter Missive, by which the Clerk is offered to the Bishop; and it passeth no Interest, as a Grant doth, being no more than a Recommendation of a Clerk to the Ordinary to be admitted. *Young Clergym. Lawyer 17, 18.* But where a Plaintiff declared upon a Grant of the next Presentation, and on Oyer of the Deed it appeared to be only a Letter written by the Patron

to the Father of the Plaintiff, that he had given his Son the next *Presentation*; adjudg'd, that it would not pass by such Letter, without a formal Deed. Owen 47.

Form of a Presentation to a Benefice.

Reverendo in Christo Patri & Domino Domino B. Permissione Divina Episcopo S. &c. ejus vel in Absentia Vicario suo in Spiritualibus Generali, aut alii cuicunque in hac parte sufficientem Autoritatem habenti: Prænobilis A. B. Baro de, &c. verus & indubitatus Patronus Rectorie Ecclesie Parochialis de, &c. Salutem, in Domino Sempiternam. Ad Ecclesiam Parochialem de, &c. prædict. vestra Dialectice modo per mortem naturalem C. D. ultimi Incumbentis ibidem vacantem, & ad meam Præsentationem pleno jure spectantem, dilectum mihi in Christo E. F. Clericum, Artium Magistrum, Paternitati vestre Præsentem, humiliter supplicans ut præfatum E. F. ad dictam Ecclesiam admittere, ipsumque in Rectoriam ejusdem Ecclesie Institui & Induci facere, cum suis juribus & pertinentiis Universis cateraque; omnia & singula peragere & adimplere in hac parte, quæ ad vestrum munus Episcopale pertinere videbuntur, dignemini cum favore. In cujus rei Testimonium, his Præsentibus sigillum meum apposui, dat' Die, &c. Anno Regni, &c. Annoq; Dom. 1727.

A Grant of the next Presentation to a Church.

TO all to whom these Presents shall come, A. B. of, &c. Esq; the True and undoubted Patron of the Rectory or Parish-Church of D. in the County and Diocese of, &c. sendeth greeting. Know ye, that the said A. B. for divers good Causes and Considerations him thereunto moving, hath given, granted and confirmed, and by these Presents, doth for him and his Heirs, give, grant and confirm unto C. D. of, &c. his Executors, Administrators and Assigns, the First and next Advowson, Presentation, free Disposition and Right of Patronage, of, and to the Parsonage, Rectory, or Parish-Church of D. aforesaid, with all its Appurtenances, with full Power and Authority to and for the said C. D. his Executors, Administrators and Assigns, to present a Learned and fit Person to the said Parsonage, Rectory, or Parish-Church, with all its Rights and Appurtenances, whensoever the same shall first and next happen to become void, by the Death, Resignation, Cession, or Deprivation of E. F. the present Incumbent, or otherwise howsoever; and to do and perform all and every other Act and Acts, Thing and Things whatsoever, in order to the same, in as full and ample Manner, to all Intents and Purposes, as the said A. B. or his Heirs might, or hereafter could have done, if this present Grant had not been made. In Witness, &c.

Right of *Presentation* may be forfeited in several Cases: As by *Attainder* of the Patron, or by *Outlawry*; and though the *Outlawry* be reversed, where the *Advowson* is forfeited by the *Outlawry*, and the Church becomes void after, the *Presentation* is vested in the Crown; but if at the Time of the *Outlawry* the Church was void, then the *Presentation* is forfeited as a Chattel, and upon Reversing the same, the Party shall be restored to it. By *Appropriation* without Licence from the Crown, Right of *Presentation* may be forfeited; though the Inheritance in this Case is not forfeited, only the King shall have the *Presentation* in Nature of a Distress, 'till the Party hath paid a Fine for his Contempt. By *Aliena-*

tion in Fee of the *Advowson*, by a Grantee for Life of the next Avoidance, a *Presentation* is forfeited; and after such Alienation the Grantor may present, but then he must enter for the Forfeiture of the Grantee in the Life-time of the Incumbent, to determine his Estate before the *Presentation* vests in him on the Incumbent's Death. And by *Simony* it may be likewise forfeited and lost, where any Person for Money, &c. shall present any one to a Benefice. Moor 269. Plowd. 499. 2 Roll. Abr. 352. Stat. 31 Eliz. See *Advowson*, *Patron*, *Simony*, &c.

Presentee, The Clerk presented to a Church by the Patron: And our Statutes mention the King's *Presentee*, that is he whom the King presents to a Benefice. 13 R. 2. c. 1.

Presentia, Presents, so call'd, because they are given *Præsentim*: And they differ from *Munera*, which are Gifts sent to the Person. Matt. Paris. Anno 1170.

Presentment, Is a meer Denunciation of Jurors, or some Officers, as a Justice of Peace, Constable, &c. (without any Information) of an Offence inquirable in the Court whereunto it is presented. Lamb. Eiren. lib. 4. cap. 5. Or *Presentment* is an Information made by the Jury in a Court, before a Judge who hath Authority to punish any Offence done contrary to the Law: It is that which a Grand Jury finds and presents to the Court, without any Bill or Indictment delivered; and it is afterwards reduced into the Form of an Indictment. 2 Inst. 739. The *Presentment* is drawn up in English by the Jury, in a short Note, for Instructions to draw the Indictment by; and differs from an *Indictment*, in that an Indictment is drawn up at large in Latin, and brought ingrossed to the Grand Jury to find. 2 Lill. Abr. 353. There are *Presentments* of Justices of Peace in their Sessions, of Offences against Statutes, in order to their Punishment in superior Courts; and *Presentments* taken before Commissioners of Sewers, &c. But a *Presentment* of Commissioners of Sewers was quashed, because it did not appear in the *Presentment* by what Authority the Commissioners did sit who took the *Presentment*, or that any of them were of the *Quorum*, as directed by Statute. Hill. 1649. And *Presentments* are made in Courts-Leet and Courts-Baron, before the Stewards thereof; and in the latter of Surrenders, Grants, &c. Also by Constables, Church-wardens, Surveyors of the Highways, &c. of Things belonging to their Offices.

Præses, (Præses) Is used for the King's Lieutenant in any Province, as *President* of Wales, &c.

Præses of the Council, Relates to the Function of the Person, and is the Fourth great Officer of State: He is as ancient as the Reign of K. John; and hath sometimes been called *Principalis Consiliarius*, and other Times *Capitalis Consiliarius*. The Office of *President* of the Council was ever granted by Letters Patents under the Great Seal *durante beneplacito*; and this Officer is to attend upon the King, to propose Business at the Council Table, and report to his Majesty the Transactions there. 21 H. 8. c. 8.

Præses of the Weavers. There is Mention of a *President* of Weavers of Kidderminster-Stuffs. Stat. 22 & 23 Car. 2. c. 1.

Præst Is taken for a Duty paid by Sheriffs upon their Accounts in the Exchequer; or for Money left or remaining in their Hands. 2 & 3 Ed. 6. c. 4.

Prest-Money, Is so term'd from the Fr. *Preſt*, i. e. *Promptus*, *Expeditus*; for that it binds those that receive it to be ready at all Times appointed, commonly meant of Soldiers. 18 H. 6. c. 19. 7 H. 7. c. 1. 3 H. 8. c. 5.

Prestation-Money, (*Præſtatio*, a Performing or Paying) Is a Sum of Money paid by Archdeacons, and other Clergymen, yearly to their Bishop, *pro exteriori Jurisdictione*. And *Præſtatio* was antiently used for other Payments; and sometimes for Purveyance. — *Et quieti ſint a Præſtatione Muragii*, &c. Chart. Hen. 7.

Presumption, (*Præſumptio*) Signifies an Opinion or Belief of a Thing; and is of three Sorts: 1. *Violent Presumption*, which is many Times *plena Probatio*; as if one be found to be killed in a House, and a Man is observ'd to come out of that House with a bloody Sword or Knife, no other Person being at that Time in the House; this is a *violent Presumption*, that that Man was the Murderer, and passeth for Proof. 2. *Probable Presumption*, which is of some Weight, though it hath but a small Effect. 3. *Light Presumption*, *Levis seu temeraria*, which proveth not at all. 1 Inst. 6. If all the Witnesses to a Charter of Feoffment or other Deed be dead, then *violent Presumption*, which stands for a Proof, is continual and quiet Possession: If a Defendant pleads Payment to a Bond, and it appears that the Debt is of very long standing by the Bond, and it hath not been demanded, nor Interest paid for many Years, it shall be *presumed* that the Money is paid, though the Plaintiff hath the Bond in his Custody: Also if a Rent be behind and in Arrear for twenty Years, and the Landlord gives a Receipt for the last Year that is due, all the Rest is *presumed* to be paid, &c. 1 Inst. 6, 373. Wood's Inst. 599. Where divers Houses are let to a Man by one Lease, the Court will *presume* that the Lessee is in Possession of them all, if he be in Possession of any one of them, and the contrary doth not appear to the Court: And so in other Cases, tho' *Presumption* is what may be doubted of, yet it shall be accounted Truth, if the contrary be not proved. 2 Lill. Abr. 354. But no *Presumptions* ought to be admitted against the *Presumptions* of Law; and a Wrong shall never be *presumed*. 1 Inst. 232, 373. *Presumptions* and *Suspitions* in Criminal Cases are Causes of Arrests, &c. 2 Hawk. P. C. 76.

Presumptio Was antiently taken for Intrusion, or the unlawful Seizing of any Thing. Leg. H. 1. cap. 11.

Pretender. The pretended *Prince of Wales* is attainted by Statute 13 W. 3. c. 3. And the Lord Treasurer, &c. out of the Money granted by Parliament is impowered to give 100,000*l.* Reward to any one that shall seize the Pretender, when he shall Land or attempt to Land in England, &c. 1 Geo. Stat. 1.

Pretended Right, (*Fus Prætenſum*) Is where one is in Possession of Land, and another who is out of Possession claims and sues for it; here the *pretended Right or Title* is said to be in him who so claims and sues for the same. Blount,

Pretium Sepulchri, Is applied to those Goods which accrue to the Church when a Corps is buried. Irish Can. Lib. 19. cap. 6.

Pride-gavel, (From *Prid*, the last Syllable of *Lamprid*, and *Gavel*, a Rent or Tribute) In the Manor of Rodeley in the County of Gloucester is a Rent paid to this Day to the Lord, by certain

Tenants, in Duty and Acknowledgment to him for their Liberty and Privilege of Fishing for *Lampreys* or *Lamprids* in the River *Severn*. Tayl. Hist. Gavelk. 112.

Priests, In general Signification are any Ministers of a Church; but in our Law, this Word is particularly used for Ministers of the Church of Rome. *Priests* saying *Mass* shall forfeit 200 Marks, by Stat. 23 Eliz. c. 1. And Persons apprehending a *Romish Priest*, saying *Mass*, shall have 100*l.* from the Sheriff of the County, to be paid within four Months after Conviction of the Offence, &c. And such *Priests*, &c. keeping Schools, are liable to perpetual Imprisonment. 11 & 12 W. 3. c. 4. See *Jesuit*.

Primage, Is a Duty at the Water-side, due to the Master and Mariners of a *Ship*; to the Master for the Use of his Cables and Ropes, to discharge the Goods of the Merchant, and to the Mariners for Loading and Unloading of the Ship or Vessel in any Port or Haven; it is usually about 12*d.* per Tun, or Six pence per Pack or Bale, according to Custom. Merch. Dict.

Primicerius, The First of any Degree of Men; and the Nobility of England, were antiently call'd *Primicerios totius Anglia*. Mon. Angl. Tom. 1. pag. 838.

Primier Seisin, (*Prima Seisina*) The first Possession. It was a Branch of the King's Royal Prerogative, whereby he had the first Possession or Profits for a Year of all Lands and Tenements holden of him in *Capite*, whereof his Tenant died seised in Fee, his Heir being then at full Age; and this the King antiently took, until the Heir, if he were of Age, did his Homage, and if under Age 'till he were so: But since the Taking away of the Tenure in *Capite* by Statute, all Charges of *Primier Seisin* are of Consequence taken away also. Staundf. Prærog. 11. Stat. 12 Car. 2. c. 24.

Primier Serjeant, The King's first Serjeant at Law.

Primo Beneficio, The first Benefice in the King's Gift, &c. See *Beneficio*.

Primogeniture, (*Primogenitura*) Is the Title of an elder Brother, in Right of his Birth: The Reason of which is, *Qui prior est Tempore, Potior est Jure*. Co. Litt. And according to Dodderidge, it was antiently ordained, that all *Knights Fees* should come to the eldest Son by Succession of Heritage, that he succeeding his Ancestors in the whole Inheritance might be the better enabled to maintain the Wars against the King's Enemies, and for Defence of the Realm: And that the *Sorage* Tenure should be partible among the Male Children, to inable them to increase into many Families for the better Furtherance and Maintenance of Husbandry. Leg. Alfred. Dodd. Treat. Nobil. 119.

Prince, (*Princeps*) Is sometimes taken at large for the King himself; but more properly it is the King's eldest Son, who is called *Prince of Wales*. It is said by some Writers, that the King's eldest Son is *Prince of Wales* by Nativity; but others say, the eldest Son of our King is born Duke of Cornwall, and afterwards he is created *Prince of Wales*, though from the Day of his Birth he is stiled *Prince of Wales*, a Title originally given by King Edw. 1. And all his Titles are, *Prince of Wales*, *Duke of Cornwall*, and *Earl of Chester*: Before Edw. 2. who was the first *Prime of Wales*, the eldest Son of the King was called

Lord

Lord Prince; but *Prince* was a Name of Dignity long before that Time in *England*. *Staund. Prærog* 75. The *Prince of Wales*, besides the Principality of *Wales*, Dutchy of *Cornwall*, &c. has a Revenue, settled upon him by Parliament; for by Statute, his late Majesty was empowered to grant to his Royal Highness the *Prince of Wales* his Son, now King, an Annuity of 100,000*l.* per Annum, payable out of the Post-Office and Excise-Duties, &c. 1 *Geo. c. 22*.

Princess. The King was also enabled to grant to the *Princess of Wales* the present Queen, an Annuity of 50,000*l.* a Year, after the Prince's Death, out of the abovesaid Duties; and to grant to her Royal Highness *Somerset-house* Palace, &c. *Stat. Ibid.*

Principal, (Principalium) Is variously used in our Law; as an Heir-Lome, the best Beast, best Bed, Table, &c. which pass to the eldest Child, and are not subject to Partition, are called *Principals*: And the chief Person in the Inns of Chancery is called *Principal* of the House.

Principal and Accessary. The *Principal* is the Person, who actually commits any Crime; and the *Accessary* is he who is assisting to him in the Doing thereof. 2 *Lill. Abr.* 355. In the highest Offences, as in Treasons, &c. all are *Principals*; and so in the lowest, such as Riots, forcible Entries, and other Trespases; in these Cases, there are no Accessaries. 1 *Inst.* 71. By the Common Law, if a *Principal* be pardoned before Judgment, or hath his Clergy, the Accessary may not be tried; but if it be after Attainder, the Accessary shall be arraigned: And where the *Principal* dies before attained, or is acquitted by Verdict, &c. the Accessary shall be discharged: Also if the *Principal* appears not, though the Accessary may be put to Answer, he shall not be tried till the *Principal* is attained, &c. 4 *Rep.* 43. *H. P. C.* 47. *Dalt.* 339. But this is altered by Stat. 1 *Ann. cap. 9*. See *Accessary*.

Principal Money On Mortgages, Bonds, &c. Vide *Scrivener* and *Usury*.

Printing. By Statute, the Printing, Selling or Buying popish or superstitious Books, &c. is liable to Penalties and Forfeitures. 3 *Fac.* 1. c. 5. None shall print heretical or seditious Pamphlets, or tending to the Scandal of the Government, &c. nor print any Books, unless entered in the Register at Stationers-Hall and licensed; Books of Law, by the Allowance of the Lord Chancellor, Chief Justice, &c. Of Divinity, by the Archbishop of *Canterbury*, &c. and History, by a Secretary of State: *Printers* are to shew the Names of Authors, if required; the Number of Printing Presses is limited; and no Person shall print beyond Sea, or use Presses in Vaults, without Notice, &c. And Messengers, by Warrant of Secretary of State, may search for and seize seditious Books. 13 & 14 *Car. 2. cap. 33*. This particular Statute made for regulating Printing, was revived and continued by 4 & 5 *W. & M.* &c. but is now expired. The Archbishop of *Canterbury*, Lord Chancellor, Bishop of *London*, and Chief Justices, &c. on Complaint, have Power to reform unreasonable Prices of Books: Nine Copies of Books printed enter'd at Stationers-Hall, are to be delivered for the Use of publick Libraries: Authors of Books already printed, and the Copies not transferred, and Booksellers, who have already purchased, are to have the sole Right of printing Books for twenty-one Years; and Authors of Books not yet

printed, shall have such Right for fourteen Years: And when the Copies are transferred, after the End of fourteen Years, the Right of Printing, &c. is to return to the Authors for the like Term: Other Persons reprinting, or importing any Book printed, within those Times, without Consent, shall forfeit the Books to the Proprietor, and 1*d.* for every Sheet in Possession, the Book being entered in the Register of the Stationers Company. 8 *Ann. cap. 19*. There are certain Stamp-Duties payable for Pamphlets and Books printed under such and such Sizes, for every Sheet, &c. And *Printers* or Publishers are to put the Names thereto, under the Penalty of 20*l.* &c. *Stat. 10 Ann. Vide Libel*.

Prior, He who was first in Dignity next to the Abbot; or the Chief of a Convent, &c. And there was a Lord Prior of St. John's of Jerusalem. 26 *Hen. 8. c. 2*.

Priors Aliens, (Piores Alieni) Were certain religious Men, born in *France* and *Normandy*, Governors of religious Houses erected for Outlandish Men here in *England*, but they were suppress'd by King *Hen. 5.* and afterwards their Livings were given to other Monasteries and Houses of Learning, and especially towards the Erecting of those two famous Colleges, called the King's Colleges, at *Cambridge* and *Eaton*. 2 *Inst.* 584.

Priors perpetual, And Datary and Renewable, are mentioned in the Statutes 9 *R. 2. cap. 4.* and 1 *Ed. 4. c. 1*.

Priority, (Prioritas) Is an Antiquity of Tenure, in Comparison of another less ancient. *Old Nat. Br.* 94. And we read that the Lord of the Priority shall have the Custody of the Body, &c. *Crompt. Jurisd.* 120. See *Posteriority*.

Priority of Debts and Suits. A *Prior Suit* depending may be pleaded in Abatement of a subsequent Action or Prosecution. A *Prior Mortgage* ought to be first paid off; and Debts first due should be first satisfied; for as the first Creditor advances his Money before his Debtor is incumbered, it is but reasonable he should be paid his Debt before the Discharge of the subsequent Incumbrances: But Debts first due must likewise be first prosecuted; otherwise in some Cases Priority will not be allowed. *Comp. Attorn.* 120. There is no Priority of Time in Judgments; for the Judgment first executed shall be first paid.

Prisage, (Prisagium) Is that Part and Share which belongs to the King, or Admiral, out of such Merchandizes as are taken at Sea by way of lawful Prize, which is usually a tenth Part. — *Prisagium est jus Prisas capiendi*, &c. *Stat. 31 Eliz. c. 5.* *Prisage of Wines* is a Duty or Custom on Wines, payable at certain Ports, as *Southampton*, &c. where the King claims out of every Ship or Vessel laden with Wines, containing twenty Tons or more, two Tons of Wine, the one before, the other behind the Mast, at his Price, which is twenty Shillings for each Ton; but this varies according to the Customs of Places; and at *Boston* every Bark laden with ten Tons of Wine, or above, pays *Prisage*: This Word is almost out of Use, being now called *Butlerage*, because the King's chief Butler receives it. 1 *Hen. 8. cap. 5.* 4 *Inst.* 30. *Calthrop's Rep.* 20.

Prize, (Captio, Præda, from the *Fr. Prendere*) Signifies a Prey or Booty taken from an Enemy in Time of War, &c. If Ships are laden with contraband Goods, both Ship and Goods may be taken as Prize; and Powder, Shot, Guns, Swords,

and

and all other Instruments and Provisions of Armature for Sea or Land, bound for an Enemy from an neuter Nation, &c. shall be taken as *Prise*; so also Money, Corn, Victuals, &c. in Time of Necessity. *Lex Mercat.* 178. Whether a Ship be *Prise* or not, shall be tried in the Admiralty; and no Prohibition shall be granted: And if a Suit be commenced between the Captor of a *Prise*, and a Claimant, and a Decree is obtained either for or against the Claimer; on giving Security, such Sentence or Decree shall be put in Execution, notwithstanding any Appeal, &c. 1 *Sid.* 320. 2 *Keb.* 158. During the late War with *France*, all Vessels with their Ladings, taken as *Prise*, were to be brought into some Port, and put into the Possession of the Commissioners of *Prises*, and after adjudged *Prise*, to be sold by the said Commissioners, and the Product distributed amongst the Captors, &c. But where Vessels were taken in Ports or Havens, they were adjudged a Perquisite of the Admiralty, and the Captors to have what should be thought fit; and if any *English* Vessels seized by the *French* as *Prise*, should be retaken, they were to be restored, paying an eighth Part of the Value for Salvage. *Stat.* 4 & 5 *W. & M.* cap. 25. *Prise* Goods imported shall be subject to the same Duties and Customs as other Goods and Merchandizes. 9 *Ann.* c. 27. See *Privateers*.

Priso, Is used for a Prisoner taken in War. *Hoveden*, pag. 541.

Prison, (*Prisona*) Is a Place of Confinement for the safe Custody of a Person, in order to his answering any Action, Civil or Criminal: And it has been observ'd, that this *Salva Custodia* must be only *Custodia*; for *Carcer ad Homines custodiendos, non ad Puniendo*s dari debet. *Co. Lit. lib.* 3. cap. 7. Any Place where a Man is restrained of his Liberty, is a *Prison*: And when any one is arrested on Process, he is to be committed to *Prison*, or be bound in Recognizance with Sureties, or give Bail, according to the Nature of the Case, to appear at a Day in Court, and answer what is alledged against him. *Dalt.* 421. If one is brought before a Justice of Peace for Suspicion of Felony, where a Felony has been committed, the Justice may send him to *Prison*, or bail him; and if no Felony be done, he hath Power to discharge him. *H. P. C.* 98. But when a Person is committed to *Prison* for Treason, or Felony, he cannot regularly be discharged from *Prison*, till indicted, and acquitted, &c. Though one taken and committed to *Prison* in a Civil Cause, may be released and set at Liberty by the Plaintiff in the Suit. 3 *Inst.* 209. *H. P. C.* 94. But see *Habeas Corpus*, &c. Vide *Gaol*. *Prison-breaking*, and the Punishment thereof. See *Escape*.

Prisoner, (*Prisonarius*, Fr. *Prisonnier*) Signifies one that is confined in *Prison*, on an Action, or upon Commandment: And a Man may be a *Prisoner* upon *Matter of Record*, or of *Fact*; a *Prisoner* on *Matter of Record*, is he who being present in Court, is by the Court committed to *Prison*; and the other is upon an Arrest, be it by the Sheriff, Constable, &c. *Staund. P. C.* 34, 35. A *Prisoner* for the King may not be charged in an Action at the Suit of the Subject, without Leave of the Court. 1 *Lev.* 125, 146. The Court of *King's Bench* hath Power to send for a *Prisoner* out of the *Marshalsea* Court, by Rule of Court, and need not issue an *Habeas Corpus*, as that *Prison* belongs to this Court; but they cannot send for a *Prisoner* out of any other *Prison*, without

Writ of *Habeas Corpus*. *Mich.* 1650. Every Judge of B. R. may remit *Prisoners*, with their Indictments, to the Places where the Offences where-with they are charged were committed; and a *Prisoner* for Debt may be removed from the *Fleet* to the *King's Bench*, and thence to the *Marshalsea*, on something charged against him in the *Habeas Corpus* or Return, or on bringing him into Court. *Dyer* 275. 2 *Lill. Abr.* 357. *Prisoners* in the *King's Bench* and *Fleet* *Prisons*, on mesne Process, &c. are to be actually confined within the said *Prisons*, or the Rules of the same, till they are discharged; and the Profits of the *Marshals* and *Warden's* Places are liable to Sequestration for Payment of Debt on Judgment, upon an Escape, besides the common Remedy: And Judgment may be signed against a *Prisoner* in the *Fleet*, in a Personal Action, entering a Declaration, and leaving a Copy thereof with the *Prisoner*, &c. after a Rule to plead, to be out at 8 Days, &c. *Prisoners* in the *King's Bench* are not to pay above 2 s. 6 d. per Week Chamber-Rent, on Pain of Keepers taking more, to forfeit 20 l. *Stat.* 8 & 9 *W.* 3. cap. 7. And *Prisoners* in the aforesaid *Prisons*, going at large, may be taken up on an Escape Warrant. 1 *Ann.* cap. 6. But *Prisoners* may go out of the Rules, on a Day-Rule of Court, about their Business, so as they do not go into the Country, or to Plays, Diversions, &c. *Trin.* 6 *Ann.* B. R. 2 *Lill.* 366.

Prisoners discharged. The 22 & 23 *Car.* 2. 2 *W. & M.* and 7 & 8 *W.* 3. 1 *Anna*, and 6 *Geo.* were made for releasing, by Justices of Peace in their Sessions, &c. of poor *Prisoners* for Debt, actually in Custody, making Oath that they had no Effects of the Value of 10 l. &c. and who owed not above 100 l. and by the latter Statute 50 l. to any one Person; and by the 7 & 8 *W.* 3. the *Prisoners discharged* under forty Years of Age, were to list themselves in the King's Service during the War against *France*. A Defendant was taken by Process of the Court of B. R. and pray'd the Benefit of being discharged upon *Common Bail*, according to the Statute for discharging poor *Prisoners*; shewing the Certificate of the Gaoler, and the Adjudication of the Justices of Peace, &c. And it was held, that the Justices had no Authority, unless the Defendant was in Custody on such a Day; for a bare being within the Rules will not be sufficient, and this Court will examine the Truth of it, notwithstanding the Certificate, and Adjudication. *Mich.* 5 *Ann.* 3 *Salk.* 330. One being indebted on a Bond of 180 l. conditioned to pay 90 l. and Interest on such a Day, was arrested, and discharged by the Justices, upon the Statute of poor *Prisoners*: But *per Curiam*, there being 20 l. due for Interest, at the Time that Statute was made, by Consequence the Defendant owed at that Time more than 100 l. and therefore the Justices could not lawfully discharge him; so their Order was made void. *Ibid.* And if a *Prisoner* for Debt is discharged by Justices of Peace, as a poor *Prisoner* on the Statutes for Relief of such, where the Debt is above 100 l. &c. and they have no Power to discharge him; this hath been adjudged an Escape. 1 *Salk.* 273.

Privateers, Are a Kind of private Men of War: And that *Privateers* are lawful, there is no Room to question; for if a War be enter'd into on a just Foundation, these cannot be unjust. Persons concern'd in *Privateers* administer at their own Costs a Part of a War, by providing Ships

Ships of Force, and all other military Utenfils; and they have, instead of Pay, Leave granted to keep what they can take from the Enemy, allowing the Admiral his Share, &c. *Privateers* may not attempt any Thing against the Laws of Nations; as to assault an Enemy in a Port or Haven, under the Protection of any Prince or Republick, whether he be Friend, Ally, or Neuter; for the Peace of such Places must be inviolably kept; and therefore by a Treaty made by King William and the States of Holland, before a Commission shall be granted to any *Privateer*, the Commander is to give Security if the Ship be not above 150 Tons, in 1500*l.* and if the Ship exceeds that Burthen, in 3000*l.* that they will make Satisfaction for all Damages which they shall commit in their Courses at Sea, contrary to the Treaties with that State; upon Pain of forfeiting their Commissions, and the Ship is made liable. *Lex Mercat. or Merch. Compan.* 177, 178. Besides these private Commissions, there are *special* Commissions for *Privateers*, granted to Commanders of Ships, &c. that take Pay, who are under a Marine Discipline; and if they do not obey their Orders, they may be punished with Death: And the Wars in latter Ages, have given Occasion to Princes to issue these Commissions, to annoy the Enemies in their Commerce, and hinder such Supplies as might strengthen them, or lengthen out the War; and likewise to prevent the Separation of Ships of greater Force from their Fleets or Squadrons. *Ibid.* By Statute, Ships taken by private Men of War, are to be divided into five Parts; four Parts whereof to go to the Persons interested in the *Privateer*, and the Fifth to his Majesty; and the Ship and Furniture to be enjoy'd by the Owners of the *Privateer*: And as a farther Encouragement, *Privateers*, &c. destroying any French Man of War, or *Privateer*, shall receive for every Piece of Ordnance in the Ship so taken 10*l.* Reward, &c. 4 & 5 *W. & M.*

Privation, (*Privatio*) A Taking away or Withdrawing; most commonly applied to a Bishop or Rector of a Church, when by Death or other Act they are deprived of their Preferments: It seems to be an Abbreviation of the Word *Deprivation*. Co. Lit. 329.

Privatus, Signifies a Friend or Familiar; by Blount.

Privement enfiert, Is where a Woman is with Child by her Husband; but not quick with Child. *Wood's Inst.* 662.

Privies, (From the Fr. *Prive*, i. e. *Familiaris*) Are those that are Partakers, or have an Interest in any Action or Thing; or any Relation to another: As every Heir in Tail is *privy* to recover the Land entailed, &c. *Old Nat. Br.* 117. And there are five several Kinds of *Privies*, viz. *Privies in Blood*, such as the Heir to the Ancestor; *Privies in Representation*, as Executors or Administrators to the Deceased; *Privies in Estate*, between Donor and Donee; Lessor and Lessee, &c. *Privies in respect of Contract*; and *Privies on Account of Estate and Contract* together. 3 *Rep.* 23, 123; 4 *Rep.* 123. *Latch.* 260. If a Fine be levied, the Heirs of him that levied it, are termed *Privies*. If a Lessor grants his Reversion, the Grantee and Lessee are *Privies in Estate*: And *Privies in Contract* extend only to the Persons of the Lessor and Lessee; and where the Lessee assigns all his Interest, here the Lessor and Lessee remain *privy in Contract*, but not in Estate which

is removed by the Assignment. 3 *Rep.* 23. *Privies* in respect of Estate and Contract appears, where the Lessee assigns his Interest, but the Contract between the Lessor and Lessee as to Action of Debt continues, the Lessor not having accepted of the Assignee. 3 *Lev.* 295. But where there are *Privies in Contract*, and this *Privy* is alter'd by Assignment of an Executor, &c. before any Rent due; and after the *Privy* of Estate by the Assignment of the Executor's Assignee, nothing remains whereby to maintain any Action. *Latch.* 260. There are likewise *Privies in Deed*, or in Law; where the Deed makes the Relation; or the Law implies it, in case of Escheats to the Lord, &c. And only Parties and *Privies* shall take Advantage of Conditions of Entry on Lands, &c. 1 *Inst.* 516.

Privilege (*Privilegium*) Is defined to be a private or particular Law, whereby a private Person or Corporation is exempted from the Rigour of the Common Law, or it is some Benefit or Advantage granted or allowed to any Persons contrary to the Course of Law, and is sometimes used for a Place that hath a special Immunity: A *Privilege* is therefore *Personal*, or *Real*; *Personal*, as of Members of Parliament, and of Convocation, and of their menial Servants, not to be arrested in the Time of Parliament or Convocation, nor for certain Days before or after; Peers, Ambassadors and their Servants, &c. *Real*, that which is granted to a Place, as to the King's Palaces, the Courts at *Westminster*, the Universities, &c. that their Members or Officers must be sued within their Precincts or Courts, and not in other Courts. *Cowel.* 2 *Roll. Abr.* 272. *Finch.* 321. Also the Counties Palatine, Cinque Ports, many Cities and Towns, &c. have *Privileges* as to Pleas, that none shall be compelled to appear or answer out of their Jurisdictions. 4 *Inst.* 212. *Crompt. Jurisd.* 137. The King's Servants are *privileged* from Arrests; for that the King shall not be deprived of them, without Leave. *Raym.* 152. A Member of Parliament is *privileged*, as well in his Lands and Goods, as in his Person; because being disturb'd in any of them, he is hinder'd in serving of the Commonwealth, which is to be prefer'd before all private Interests. 2 *Lill. Abr.* 370. The Lord Mayor of London is *privileged* from all Actions, that he may not be hindered in the Government of the City: And so is an Alderman from serving Offices, &c. *Ibid.* *Cro. Car.* 585. *Privileges* are of Parliament, of Courts, and their Officers and Suitors, and of Attornies, &c. 2 *Lill. Abr.* 368. According to Holt Chief Justice, *Privilege* is either of Court, or of Process; as in the Court of Common Pleas, every Person who belongs to that Court, such as Attornies, and their Clerks, &c. shall have the *Privilege* of being sued there, and not elsewhere; and this is the *Privilege* of the Court: But none shall be allowed the *Privilege* of Process, but those who are the Officers of the Court, and are supposed to be attending therein. 3 *Salk.* 283. And there are two Kinds of *Privileges* in the Court of C. B. the one is of the Officers of the Court, to be sued there by Bill; and the other of the Clerks to be sued there by Original. *Ibid.* In the Court of *Exchequer* there are three Sorts of Persons who are *privileged*, i. e. Debtors to the King, Accountants, and Officers; against the First of these Persons, any Man who has a *Privilege* in another Court, as an Officer or Attorney thereof, shall have his *Privilege*, for

the *Privilege* of a Person as Debtor, is but a general *Privilege*: But if an Accountant begin his Suit here, he hath in such Case a special *Privilege*, and no other *Privilege* shall be allowed against him, because of his Attendance to pass his Account, in which the King hath a particular Concern; and it is the same in an Officer of the Court who commences a Suit here, no *Privilege* shall prevail against him: Though where the Account is closed and reduced to a Debt, there the Accountant hath only the general *Privilege* as Debtor; and the like of a Servant to an Officer or Minister of the Court, he has no *Privilege* against a *privileged* Person elsewhere. *Hardr.* 367, 507. By *Hale* Chief Baron, a general *Privilege* of a Person as a Member of the University, or a Clerk in Chancery, doth not take away the particular *Privilege* of the Court of Exchequer, where the Person is Debtor and Accountant to the King. *Ibid.* 189. But one who was Receiver General of the Revenues of the Crown in *W.* being sued in the Common Pleas, brought a Writ of *Privilege* out of the Exchequer, and it was disallow'd by the Court. *Dyer* 328. 2 *Nelf. Abr.* 1296. In the Exchequer it hath been held, that there are two Ways of pleading *Privilege*; one is, if the Party is an Officer on Record, to go to Trial, and at the Trial to produce the Record; and if he is no Officer, but Attendant on the Court, that must be tried by a Jury: The other Way is, if he be an Officer on Record, then to produce a Writ of *Privilege* at the Time of the Plea pleaded, upon which there can be no Issue joined; and being otherwise pleaded, &c. Judgment may be given to answer over. *Mod. Caf.* 305. A Writ of *Privilege* lies for an Officer of the Courts at *Westminster*, that is sued in any other Court than where he attends, to remove the Cause to his own Court. 2 *Inst.* 551. *Stat.* 18 *Ed.* 3. A Defendant pleaded his *Privilege*, that he was an Attorney of *C. B.* and upon Demurrer to this Plea, it was objected, that it ought to be concluded with a *Profert hic in Curia*, the Writ of *Privilege* testifying him to be an Attorney, which is true, and that he ought to have said *prout patet per Recordum*; but that must be in such Case where he sets forth the Writ, and he must plead *Privilege* upon the Writ, or Exemplification of the Record of his Admission, or without it. 2 *Salk.* 545. If *Privilege* of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; if without, he may, and then a *Certiorari* shall be awarded to certify whether he be an Attorney or not. *Ibid.* By Order of the Court of *C. B.* the Clerk of the Warrants is to certify that an Attorney's Name is upon the Roll of Attornies, before he shall have a Writ of *Privilege*; and Writs of *Privilege* are to be signed by the Clerk of the Warrants, to shew the Person is an Attorney of the Court, or they shall not be allowed. *Trin.* 29 *Car.* 2. *Trin.* 9 *W.* 3. And to save Arrest upon Process, an Attorney must deliver his Writ of *Privilege* to the Sheriff, and allow it with him; otherwise the Sheriff will not discharge him upon his Writ of *Privilege*, unless it be on Process issuing out of an inferior Court, but he must plead his *Privilege sub pede sigilli*. *Pract. Solic.* 322. *Privilege* is not to be pleaded in the Negative; as that an Attorney or Clerk, ought not to be sued elsewhere but in such a Court, without saying it is

usual for them to be sued there, &c. and it should not be pleaded too general. 2 *Sid.* 164. But see 2 *Salk.* 543. In Trespass against an Attorney of *C. B.* he pleaded his *Privilege per Attornatum*, to which Plea the Plaintiff demurred; because he ought to have pleaded it in Person, and Pleading by Attorney destroys the very Reason of his *Privilege*, which is his Attending the Court in Person; but the Plea was adjudged good, for he may be sick, or have Business in another Court to attend. *Style* 413. But an Information being brought against a *Custos Brevium* of *B. R.* for several Abuses in his Office, he insisted not to appear in Person, but by Attorney; and it was ruled that he should appear in Person, because he is an Officer of the Court, and is presumed to be always present; and if he doth not appear, Judgment shall be given against him without any other Process. *Sid.* 134. *Privilege* has been allowed for a Clerk in the Office of *Custos Brevium*, and a Writ of *Privilege* signed by the Justices of *C. B.* to exempt him from being pressed, &c. It being the Custom and *Privilege* of that Court, that the Attornies and Clerks shall not be pressed, nor chose into any Office, *sine voluntate*, but ought to attend the Service of the Court. *Cro. Car.* 8. Though it is said an Attorney shall not be excused by *Privilege* from Offices which may be executed by Deputy; only those which require personal Duty, as that of Churchwarden, Constable, &c. *March.* 30. 2 *Lill. Abr.* 374. A Filizer's Clerk claimed to be *privileged* in *B. R.* but was denied it; for tho' the Master may be *privileged*, the Court takes no Notice of the Servant, he having no necessary Dependence on the Court. *Mich.* 23 *Car.* And *Privilege* extends only to such Attornies, &c. who have an immediate Dependence on the Court; and not to their Servants: It hath been held, that although an Attorney doth not practise, he shall have *Privilege* so long as he continues an Attorney upon Record. *Lutw.* 1667. Attornies or Filizers of the Common Pleas, if sued in *B. R.* may plead their *Privilege*, because they owe a personal Attendance to that Court: But a Serjeant at Law, being sued in the Court of *B. R.* cannot plead *Privilege* of *C. B.* for he may sign Pleas, be of Counsel, and Practise in other Courts in *Westminster-Hall*, and is not confined to Practise in the *C. B.* though if he is sued in any inferior Court, he shall have his *Privilege*. 2 *Lev.* 129. 1 *Mod.* 298. And yet formerly a Serjeant at Law claiming his *Privilege* to be sued in the Court of *C. B.* had his *Privilege* allowed; so a Serjeant's Clerk. *Trin.* 6 *Ed.* 6. and 28 *Hen.* 8. *Dyer* 24. *Cro. Car.* 59. A Barrister at Law, attending on the Court, ought to have *Privilege* to be sued in all transitory Actions in *Middlesex*: And an Attorney of *C. B.* &c. may chuse whether he will sue or be sued out of the County of *Middlesex*; because his Attendance is always supposed to be there. 2 *Lill.* 370. Where an Attorney is sued as Executor or Administrator, he shall not be allowed his *Privilege*; nor in a joint Action, with another not *privileged*; though if the Action may be severed, the Want of *Privilege* of one shall not take away the *Privilege* of the other. 1 *Salk.* 2, 245. 2 *Nelf. Abr.* 1295. *Privilege* shall not be allowed to a Man, where his Wife is joined in the Action with him: The Wife of an Attorney of *B. R.* if she be arrested, shall not have *Privilege*; but her Husband is

to put in Bail for her, or for Want thereof she is to be committed to Prison; for the Husband is *privileged* only in Regard of his personal Attendance upon the Court, and his *Privilege* is annexed to his Person, and concerns not his Wife. *Noy* 68. 2 *Lill. Abr.* 371. An Attorney of the Common Pleas was indebted to A. B. who was indebted to C. D. who according to the Custom of London attached the Money in the Attorney's Hands; and he brought a Writ of *Privilege*, which was allowed by the Court, because the Attorney was not indebted to C. D. but only by Custom; and the *Privileges* of those attending the Courts at *Westminster*, shall not be impeached by any Custom whatsoever. 2 *Leon.* 156. But where Money was attached in London, in the Hands of an Attorney of B. R. it was held, he shall not have his Writ of *Privilege*, because the Plaintiff cannot follow his Attachment against him in the *King's Bench*, but only in the Court of London; and if this Court should stay Proceedings there, then there would be a Failure of Justice. 2 *Lill. Abr.* 371, 372. One that hath a Suit depending in B. R. &c. is *privileged* from being arrested in coming to the Court from his House or Lodging, to follow his Cause, and also in going back again directly to his House or Lodging; and if he be arrested in so doing, the Court upon Motion made to inform them of it, will set the Party at Liberty, and punish the Person that arrested him, if he knew the other had a Suit depending here, and came hither to attend it. 2 *Lill.* 371. One that was coming to the Court of King's Bench to attend upon his Cause, was arrested as he was coming, and forc'd to put in Bail; and on Motion making it appear to the Court, he and his Bail were both discharged; and the Party that arrested him had been also punished, had he not alledged that he knew not that the Party arrested came about his Business depending in the Court. *Mich.* 22 *Car. B. R.* An Action of Assault, &c. was brought in the Common Pleas, and the Parties were at Issue, and after the Trial, when the Jury went out to consider of their Verdict, the Defendant in his Action arrested the Plaintiff by Process out of B. R. for an Assault made before that Time on him; and this appearing to the Court, they order'd him to release the Party from the Arrest, and they set a Fine upon him for the Contempt, which he immediately paid in Court: And the Court declared, that the Suitors ought safely to come and go by the *Privilege* of the Court, without Vexation elsewhere. *Goldsb.* 33. One arrested in *Westminster-Hall* *sedente Curia*, may be discharged upon Motion, if the Arrest was on Mesne Process; but not if he was taken in the Execution, tho' even in that Case, the Officer is punishable *per Curiam*. *Bull.* 85. *Privilege* of the Court was pray'd to protect a Witness from being arrested in coming and going from the Court, which was granted. *Hill.* 1655. 2 *Lill.* 370. In Treason, Felony, or Breach of the Peace, no *Privilege* shall be allowed; nor on an Indictment, &c. It has been adjudged, that where Proceedings are merely at the Suit of the King, as upon Indictments or Informations brought by the Attorney General, in such Cases *Privilege* shall not be allowed; but where the Proceedings are at the Suit of the King and the Party, as in case of a common Informer, &c. there the Defendant may have his *Privilege*. 1 *Lutw.* 193. If a *privileged* Person in one Court, do sue a *privileged* Person in

another, in a Civil Action, the Person sued shall not have his *Privilege*. 2 *Leon.* 41. 2 *Lill. Abr.* 368. A *privileged* Person shall not be generally allowed his *Privilege* upon Motion; but he must plead it, and on Pleading it shall be allowed. *Mich.* 23 *Car. B. R.* But there is no Need to plead the *Privilege* of the Exchequer; for it shall be granted upon producing the Red Book of the Exchequer by a Baron of that Court. 1 *Lutw.* 46. And of later Times, the Party hath been admitted to *Privilege* upon Prayer, to the Court. 2 *Lill.* 370. By some Opinions, *Privilege* may be allowed, after Bail put in; and not after Impar lance: By others, that *Privilege* of Attornies may not be pleaded after Bail given in, which allows the Jurisdiction, &c. 3 *Lev.* 343. 1 *Salk.* 1, 2. To sue an Attorney *privileged*, or any Clerk or Officer of the Court of B. R. they are not to be arrested, but be proceeded against as follows: A Declaration is to be filed against the Party *privileged*, and a Copy of it delivered to him, and then Rules given in order for his Plea; and the Declaration and Rules being delivered and served in Time, he will be obliged to plead the same Term; and if he do not appear and plead, after called in Court, &c. he may be forejudged the Court: If such Attorney, Clerk or Officer be Plaintiff, and his Declaration is delivered, and the Rules given in Time, the Defendant is to plead the same Term, and cannot imparl over to the next; which ought to be remember'd, for fear of Executions when not thought of. *Pract. Solic.* 259, 260. In B. R. where an Attorney is Plaintiff, he cannot by his *Privilege* have special Bail where other Persons cannot have it; except it be for Fees, as a Minister of the Court, in which Case he may. In the Court of C. B. if an Attorney is Defendant in any Suit, it is not required that he shall give in Bail, he being at all Times present in the Court, as the Law will suppose; and by giving in Bail, he waves his *Privilege*: Yet by the Usage of the Court, on Attachment at the Suit of an Attorney Plaintiff, though the Debt be but 40s. special Bail shall be given. *Ibid.* 260, 323. A Bill must be filed, tho' an Attorney agrees to appear and dispencc with it; but it may in such Case be filed afterwards: And a Bill cannot be filed against a Person *privileged* in Vacation, for then he is not present in Court. *Hill.* and *Pasch.* 9 *W.* 3. B. R. If without filing a Declaration, an Action is brought against an Attorney, &c. he may bring Attachment of *Privilege*, and supersede the Action. A Declaration against an Attorney runs thus: *Memorandum quod tali die, &c. isto eodem Termino ven. hic in Cur. A. B. per, &c. Attorn. suum & exhibuit Justic. Dom. Reg. hic Quandam Billam suam versus C. D. Gen. unum Attornat. Cur. Dom. Regis de Banco presen. hic in Cur. in propria Persona sua, cujus quidem Bill. Tenor sequitur in hac verba, viz. Justic. Dom. Reg. de Banco scilicet A. B. per, &c. Attorn. suum Queritur de C. D. un' Attorn. Cur. Dom. Regis de Ban. o, &c. de eo quod, &c. (as in other Declarations) Et Damnum habet ad valenc. 20l. Et inde petit Remedium, &c.*

Form of a Writ of Attachment of Privilege.

Georgius, &c. Vic. S. Saltm. Precipimus tibi quod Attachias A. B. & C. D. Si Invenit fuerint in Balliva tua & eos salvo Custod. ita quod habeas Corpora eor. coram nob. apud Westm. die, &c. prox. post, &c. ad Respondend. E. F. Gen. un. Clericorum

F f f f

Rowland

Rowlandi Holt, &c. Capital. Cleric. nostr. ad Placita in Cur. nostr. cor. nob. Irrotuland. assign. juxta Libertat. & Privileg. pro hujusmodi Capital. Cleric. & ejus Clericis à Tempore cujus contrarii Memoria hominum non existit usitat. & approbat. in eadem de Placito, &c. Et h' eas ibi tunc hoc Breve. Tette, &c.

Privileged Places. A Person was arrested in the Temple, and upon a Motion to set it aside, it was insisted for him, that the Temple is privileged from Arrests by the King's Grant; for which the Authority of *Stow's Chronicle* and *Dugdale* were alledged: But by *Holt Chief Justice*, if the King hath made any such Grant to that Society, 'tis void in Law, they having no Court of Justice within themselves: 'Tis true the Temple is *extra-parochial*, and not within any Parish, nor in the City, so as to come within the Customs of the City, but 'tis within the County of the City; and *White Fryars* is within the Jurisdiction of the City: Yet the Court inclined not to countenance Arrests in the Temple, especially in Term-Time; though they would not set aside this Arrest, so the Defendant was held to special Bail. 9 W. 3. B. R. 3 Salk. 285. By an Act made 8 & 9 W. 3. cap. 26. for preventing the many ill Practices used in the privileged Places to defraud Persons of their Debts; the pretended Privilege of *White Fryars*, the *Savoy*, *Salisbury Court*, *Ram Alley*, *Mitre Court*, *Fuller's Rents*, *Baldwin's Gardens*, *Montague Close*, the *Minories*, *Mint*, *Clink*, or *Deadman's Place*, are taken away, and made subject to all Arrests, &c. And the Sheriffs of London or their Officers, are enabled to take the *Posse Comitatus*, and such other Power as shall be requisite, and enter such privileged Places to make any Arrest on legal Process, and in case of Refusal, to break open Doors; and if such Sheriff, Bailiff, &c. shall neglect with such Force to use their best Endeavours for executing any Process, he shall forfeit to the Plaintiff 100 l. to be recovered in any of the Courts at *Westminster*; and if any Person doth resist the Officers in executing any Process, or any who shall be aiding and assisting to them, he shall forfeit 50 l. suffer Imprisonment, and be set in the Pillory, as the Court of Assises, Gaol-delivery, &c. shall think fit: Persons rescuing any one arrested in the aforesaid pretended privileged Places, are to forfeit to the Plaintiff in the Action 500 l. On Nonpayment whereof, within one Month after recovered in the Courts at *Westminster*, and Judgment signed, they shall be transported to the Plantations for seven Years; and returning within that Term, be adjudged guilty of Felony without Benefit of Clergy; also Harbourners and Concealers of such Rescuers knowingly, are liable to Transportation, unless they pay the Plaintiff his Debt for which the Action was brought, with full Costs, &c. The Stat. 9 Geo. cap. 28. enacts, That if any Person within the Place commonly called *Suffolk Place*, or the *Mint*, in the Parish of *St. George* in the County of *Surry*, or the pretended Limits thereof, shall wilfully obstruct or oppose any Persons in the Serving or Executing any Writ, or legal Process, Rule or Order of Court, or Warrant of any Justice of Peace, &c. or assault or abuse any Person, surviving or executing the same, whereby he shall receive Damage or bodily Hurt, the Person offending shall be deem'd Guilty of Felony, and be transported to the Plantations, by such Ways, and for such Time, and under such Pains, as Felons

in other Cases: And upon Complaint to three Justices of Peace, &c. by any Person who shall have a Debt owing from any one who resides in the *Mint*, having a legal Process taken out for Recovery thereof, if the Debt be above 50 l. on Oath thereof, the Justices are empowered to issue their Warrant to the Sheriff of *Surry*, to raise the *Posse*, and to enter the said pretended privileged Place, and arrest the Party, &c. And the Sheriff neglecting or refusing, incurs a Forfeiture of 200 l. Persons resisting the Sheriff, &c. or making a Rescous of a Prisoner; or harbouring or concealing any Prisoner so taken, or Person that rescued him; or who shall exercise any unlawful Jurisdiction, or make or execute any pretended Ordinance for supporting any pretended Privilege, &c. within the said Place, for hindering the due Execution of legal Process; every such Offender shall be guilty of Felony, and be transported: And Persons in Vizards or Disguises, opposing the Execution of any Process in the *Mint*, or abetting any Riot or Tumult there, shall be adjudged guilty of Felony, without Benefit of Clergy, &c. Persons apprehending any Offender, and prosecuting him to Conviction; or an Offender out of Prison, discovering and convicting two of his Accomplices, are intitled to a Reward of 40 l. The Rewards and Charge of raising the *Posse* for enforcing this Act, are to be paid by the Sheriff, and allowed in his Accounts, or repaid by the Treasury, &c. And by this Statute the *Minters* residing in the *Mint* at such a Time, delivering up their Effects upon Oath, for the Benefit of their Creditors, on Petition, and Notice to Creditors, &c. were to be discharged by the Justices in their Quarter-Sessions; and any *Minter* forswearing himself, to be guilty of Felony, &c.

Privy Council, (*Concilium Regis, Privatum Concilium*) Is a most honourable Assembly of the King and Privy Counsellors, in the King's Court or Palace, for Matters of State. 4 Inst. 53. The King sits himself in Council, and appoints Privy Counsellors without Patent or Grant, by putting them on the List, and on their Removal striking them out, which he may do as he pleases: They take an Oath to the King, justly to advise him, to keep Secrecy, &c. Their Number at the first Institution was Twelve; but at this Time is without Limitation, at the King's Will: Next to the Lord President of the Council, the Lord Privy Seal sits in Council, the Secretaries of State, and many other Lords and Gentlemen: And in all Debates of the Council, the Lowest delivers his Opinion first, and the King declares his Judgment last; and thereby the Matter of Debate is determined. 4 Inst. 55. Sir Edward Coke has these notable Conclusions, with respect to the Proceedings of the Privy Council, viz. That it is consistent with Safety, for a Privy Counsellor to give the King Council when demanded; and that the Truest and best Council is ever given to a Prince, when the Question is so evenly stated and propounded, as the Counsellor cannot discern which Way the King himself inclines; that Resolution should never precede Deliberation, nor Execution go before Resolution; and when upon Debate and Deliberation, any Matter is well resolv'd by the Council, a Change of it upon some private Information is neither safe nor honourable. 4 Inst. The Court of Privy Council is of great Antiquity: The Way of Government in England it is said was originally by the King and his Privy Council; tho'

though at present the King and his *Privy Council*, only intermeddle in Matters of Complaint on sudden Emergencies; their constant Business being to consult for the Publick Good, Honour and Welfare of the Realm, in Affairs of State. 4 *Inst.* 53. The Lords and Commons assembled in Parliament, have oftentimes transmitted Matters of high Concern to the King and his *Privy Council*: And Acts of the *Privy Council*, whether Orders or Proclamations, were heretofore of very great Authority in England; and in the Reign of King Hen. 8. that King procured an Act of Parliament to be made, that with the Advice of his *Privy Council*, he might set forth Proclamations, which should have the Force of Acts of Parliament; but that Statute was repealed in the Reign of King Edw. 6. Though Acts of the *Privy Council* still continued of great Authority until the Reigns of King Charles First and Second. And by these were Controversies sometimes determined touching Lands and Rights, between Party and Party; as well as the Suspension of penal Laws, &c. But this seemed to be contrary to the 25 *Ed.* 3. *cap.* 4. and by Stat. 16 *Car.* 1. *cap.* 10. it is declared, that neither the King, nor the *Privy Council*, have Authority by Petition, Bill, &c. to determine or dispose of Lands, Tenements, Hereditaments or Goods and Chattels of any Subject. The King, with the Advice of his Council, publishes Proclamations binding to the Subject; but they are to be consonant to, and in Execution of the Laws of the Land: It is in the Power of the *Privy Council*, to inquire into Crimes against the Government, and they may commit Persons for Treason, and other Offences against the State, in order for their Trial in some of the other Courts; and any one or two of the *Privy Council* may lawfully do it: But they take Cognisance of no private Matters that may be determined by the ordinary Laws in other Courts; yet the Kingdom of Ireland, and the Plantations are in many respects subject to the Control and under the Direction of the *Privy Council* of Great Britain; and Law-Controversies among the Subjects of *Fer-sey* and *Guernsey*, &c. are determined by the *Privy Council*. 3 *Inst.* 182. 4 *Inst.* 53. *Wood's Inst.* 458. By Stat. 33 *H.* 8. *cap.* 23. Persons examined by the *Privy Council*, on Treasons, Murder, &c. done within or without the Realm, may be tried before Commissioners of *Oyer and Terminer* appointed by the King in any County of England: This Statute as far as it relates to Treason committed within the Kingdom, is repealed by 1 & 2 *P. & M.* *cap.* 10. If a Person be killed beyond Sea, out of the Realm, the Fact may be examined by the *Privy Council*, and the Offender tried according to the aforesaid Statute. Conspiracies by the King's Servants, against the Life of a *Privy Counsellor*, &c. is Felony. 3 *H.* 7. *cap.* 14. And any Persons attempting to kill, or unlawfully assault any *Privy Counsellor*, when in the Execution of his Office of *Privy Counsellor*, are guilty of Felony, without Benefit of Clergy, by the Stat. 9 *Ann.* *cap.* 16. And anciently if one did strike another Person in the House of a *Privy Counsellor*, or in his Presence, the Party offending was to be fined. 4 *Inst.* 53. No Person born out of the King's Dominions, except of English Parents, shall be of the *Privy Council*. 12 *W.* 3. *cap.* 2. There is to be but one *Privy Council* in Great Britain. And the *Privy Council* is not dissolved by

the Death of the King; but to continue for six Months, &c. 6 *Ann.* *cap.* 6, 7.

Privy Seal, (*Privatum Sigillum*) Is a Seal that the King useth to such Grants or Things, as pass the Great Seal. 2 *Inst.* 554. First they pass the *Privy Signet*, then the *Privy Seal*, and lastly the *Great Seal* of England; and the Clerks of the *Privy Signet-Office* write out such Grants, Patents, &c. as pass the *Sign Manual*, which being transcribed and sealed with the Signet, is a Warrant to the *Privy Seal*, as the *Privy Seal* is a Warrant to the *Great Seal*. *Wood's Inst.* 457. How the King's Grants, Writings, and Leases, shall pass the three Seals, viz. the *Privy Signet*, the *Privy Seal*, and the *Great Seal*; and the Duties of the Clerks of the *Privy Signet*, and *Privy Seal*, and what Fees shall be paid to them, and many Articles concerning the Passing of the King's Grants, &c. are mentioned in the Statute 27 *H.* 8. *cap.* 11. No Protection can be granted under the *Privy Seal*, but under the *Great Seal*: But a Warrant of the King under the *Privy Seal* to issue Money out of his Coffers, is sufficient; tho' not under the *Privy Signet*. 2 *Inst.* 555. 2 *Rep.* 17. 2 *Roll. Abr.* 183. And the *Privy Seal* is sometimes used in Things of less Consequence, that never pass the *Great Seal*; as to discharge a Recognisance, Debt, &c. No Writs shall pass under the *Privy Seal*, which touch the Common Law. 2 *Inst.* 555. And Matters of the *Privy Seal* are not issuable, or returnable in any Court, &c. 3 *Nelf. Abr.* 211. See *Keeper of the Privy Seal*.

Privien, Was the Name of the Seal of King Arthur, on which the *Virgin Mary* was engraved. *Geoff. of Monm. lib.* 7. *cap.* 2.

Pro, Is a Preposition, signifying for, or in respect of a Thing; as *Pro Consilio*, &c. And in Law *Pro* in the Grant of an Annuity *pro Consilio*, shewing the Cause of the Grant, amounts to a Condition: But in a Feoffment, or Lease for Life, &c. it is the Consideration, and doth not amount to a Condition; and the Reason of the Difference is, because the State of the Land by the Feoffment is executed, and the Grant of the Annuity is executory. *Plowd.* 412. *Wood's Inst.* 231.

Probate, In the Laws of *Canutus*, was used for to claim a Thing as a Man's own. *Leg. Canut. c.* 44.

Probate of Testaments, (*Probatio Testamentorum*) Is the Exhibiting and Proving Last Wills and Testaments before the Ecclesiastical Judge, delegated by the Bishop, who is Ordinary of the Place where the Party dies: And if all the Deceased's Goods, Chattels and Debts owing to him, were in the same Diocese, then the Bishop of the Diocese, &c. hath the *Probate of the Testament*; but if the Goods and Chattels were dispersed in divers Dioceses, so that there were any Thing out of the Diocese where the Party lived, to make what is called *Bona Notabilia*, then the Archbishop of *Canterbury*, or *York*, is the Ordinary to make *Probate* by his Prerogative. *Blount*. The *Probate* of a Will is usually made in the Spiritual Court, and this is done by granting Letters Testamentary to an Executor under the Seal of the Court, by which the Executor is enabled to bring any Action, &c. And if such Letters Testamentary are granted to the Party, who exhibits the Will merely upon his Oath, by swearing that he believeth it to be the Last Will of the Deceased; this is called Proving it in common Form, and such a *Probate* may be controverted at any Time: If the Executor, besides

his own Oath, produces Witnesses to prove it to be the Last Will of the Deceased, and this in the Presence of the Parties who claim any Interest, or in their Absence if summoned and they do not appear; this is termed a *Probate per Testes*, which cannot be questioned after thirty Years. 2 *Nelf. Abr.* 1301. Upon an Issue whether the Deceased made an Executor or no, the *Probate* of the Will was adjudged to be good Proof. 2 *Lill. Abr.* 375. And where a *Probate* of a Will is produced in Evidence at a Trial, the Defendant cannot say that the Will was forged, or that the Testator was *Non compos Mentis*, because it is directly against the Seal of the Ordinary in a Matter where he had a proper Jurisdiction; but the Defendant may give in Evidence that the Seal itself was forged, or that the Testator had *Bona Notabilia*, or he may be relieved on Appeal. 1 *Lev.* 235. *Raym.* 405. Notwithstanding Appeal from a Will, a Person is complete Executor by the *Probate*; though the *Probate* may be traversed, if an Executor Plaintiff do not conclude with a *Profert hic in Curia*, or the Defendant may demand Oyer of the Will. 3 *Bulst.* 72. An Executor being made by the Act of the Party deceased himself, therefore the Law intitles him to the *Probate* of the Will; and the *Probate* cannot be revoked or altered, which would in Effect make a new Will, though it may be suspended by an Appeal: But if Administration be granted to one, this is by the Act of the Court, and if he afterwards become Bankrupt, &c. the Administration may be repealed. 1 *Roll. Rep.* 226. *Show.* 293. 1 *Salk.* 36. 2 *Nelf. Abr.* 1302. By the Statute 21 H. 8. cap. 5. it is ordained, that on *Probate* of Wills, &c. 6d. and no more shall be taken by the Register, where the Goods of the Deceased do not exceed five Pounds Value; and when the Goods of the Deceased are above the Value of 5l. and under 40l. the Fee to the Judge shall be 2s. 6d. and to the Register 1s. and if the Goods exceed 40l. in Value, the Judge's Fee is 2s. 6d. and to the Register 2s. 6d. but this he may refuse, and take a Penny for every ten Lines of the Will, &c. And if the Officer takes more than his due Fees, he shall forfeit 10l. to be divided between the King and the Party grieved. But it hath been held on this Statute, that a Transcript of the Will must be brought to the Register ready ingrossed, and with Wax to be sealed, so that the Register, &c. may have nothing to do but to annex the *Probate* to it; and then no Fee shall be taken for such Transcript. 4 *Inst.* 336. *Co. Entr.* 166. The Power of granting *Probates* and Administrations of the Goods of Persons dying, for Wages or Work done in the King's Docks and Yards, shall be in the Ordinary of the Diocese where the Person dieth, or in him to whom Power is given by such Ordinary, exclusive of the Prerogative Court, &c. Stat. 4 & 5 Ann. cap. 16. See *Executor*, &c.

Probatōr, Is an Accuser, or Approver; or one who undertakes to prove a Crime charged upon another. *Fleta*, lib. 2. cap. 52.

Procedendo, Is a Writ which lieth where an Action is removed out of an inferior Court, to a superior, as the *Chancery*, *King's Bench*, or *Common Pleas*, by *Habeas Corpus*, *Certiorari*, or Writ of *Privilege*; to send down the Cause to proceed upon it, it not appearing to the higher Court that the Suggestion is sufficiently proved. *F. N. B.* 153. 5 *Rep.* 63. 21 *Fac.* 1. cap. 23. And if the Party who sues out a *Habeas Corpus*, or *Certiorari*,

doth not put in good Bail in Time, (where good Bail is required) then there goes this Writ to the inferior Court to proceed *non obstante* the *Habeas Corpus*, &c. 2 *Lill. Abr.* 376. If a *Certiorari*, or *Habeas Corpus*, to remove a Cause, be returned before a Judge, the Judge will give a Rule thereupon to put in good Bail by such a Day; which if the Defendant, upon serving his Attorney with a Copy of the Rule, doth not do, then the Judge will sign a Warrant for a *Procedendo*, to remove the Cause back again where the Action was first laid: Also if Bail be put in at the Time, and it do not prove good, the Judge will grant a Rule for better Bail to be put in by such a Day, or else to justify the Bail already put in; which if the Defendant doth not do, the Judge will then likewise grant a Warrant for a *Procedendo*. 2 *Lill.* 377. Where Bail put in on Removal of a Cause into B. R. is disallowed by the Court, if the Defendant upon a Rule for that Purpose, and Notice given, refuse to put in better Bail, such as the Court shall approve of, a *Procedendo* may be granted; for Disallowing of the Bail makes the Defendant to be in the same Condition as if he had put in no Bail, and until the Bail is put in and filed, the Court is not possessed of the Cause so as to proceed in it. *Mich.* 24 *Car. B. R.* After a Record returned, and the Defendant hath filed Bail in B. R. on a Cause's being removed, a *Procedendo* ought not to be granted; because by giving and filing Bail in this Court, the Bail below is discharged. *Sid.* 313. 2 *Nelf. Abr.* 1304. And it hath been held, that by the *Common Law* if a *Certiorari* be once filed, the Proceedings below can never be revived by any *Procedendo*. *Hill.* 6 *Geo.* 2. *Hawk. P. C.* 294. When a Cause by the *Custom of London* is actionable, and will not bear an Action at the *Common Law*, if upon a *Habeas Corpus* or *Certiorari*, brought to remove such Cause into the Court of B. R. it doth so appear to the Court; the Court will grant a *Procedendo* to authorise the Court of *London* to proceed in the Matter, otherwise the Party that brought the Action would be without Remedy. 2 *Lill. Abr.* 376. This Writ of *Procedendo* is called a *Procedendo in Loquela*.

Procedendo on Aid Prayer. If a Man Pray in Aid of the King, in a real Action, and the Aid be granted; it shall be awarded that he sue unto the King in the *Chancery*, and the Justices in the *Common Pleas* shall stay until the Writ of *Procedendo in Loquela* come unto them: And if it appear to the Judges by Pleading or shewing of the Party, that the King hath Interest in the Land, or shall lose Rent or Service, &c. there the Court ought to stay until they have from the King a *Procedendo in Loquela*: And then they may proceed in the Plea, until they come to give Judgment; when the Justices ought not to proceed to Judgment, without a Writ for that Purpose. *New Nat. Brev.* 342. So in a personal Action, if the Defendant Pray in Aid of the King, the Judges are not to proceed until they receive a *Procedendo in Loquela*. And though they may then proceed and try the Issues joined, they shall not give Judgment until a Writ comes to them to proceed to Judgment. *Ibid.*

Procedendo ad Judicium, Lies where the Judges of any Court delay the Party, Plaintiff or Defendant, and will not give Judgment in the Cause, when they ought to do it. *Wood's Inst.* 570. If Verdict pass for the Plaintiff in *Affise of Novel Disseisin* before the Justices of Assise, and before

before they give Judgment, by a new Commission, new Justices are made; the Plaintiff in the Assise may sue forth a *Certiorari* directed to the other Justices to remove the Record before the new Justices; and another Writ to the new Justices to receive and inspect the Record, and then proceed to Judgment, &c. *New Nat. Brev.* 342, 343. Where the Authority of Commissioners of Oyer and Terminer, &c. is suspended by *Superfedeas*; their Power may be restored by a Writ of *Procedendo*. *Regist.* 124. 12 *Aff.* 21. *H. P. C.* 162.

Processus, (*Processus, à Procedendo ab initio usque ad finem*) Is so called, because it *proceeds* or goes out, upon former Matter, either original or judicial; and hath two Significations: First, it is largely taken for all the Proceedings in any Action, real or personal, civil or criminal, from the Beginning to the End; Secondly, we call that the *Processus* by which a Man is called into any Temporal Court, because it is the Beginning or principal Part thereof, by which the rest is directed; or if taken strictly, it is the Proceeding, after the Original, before Judgment. *Briton* 138. *Lamb. lib.* 4. *Crompt.* 133. 8 *Rep.* 157. *Processus* are *General*, or *Special*; and *Special Processus* is that which is especially appointed for any Offence, &c. by Statute: And there is a very great Diversity of *Processus*. *F. N. B.* *Processus* to call Persons into Court, &c. are to be in the Name of the King; and if it issues from the Court of King's Bench, it ought to be under the *Teste* of the Chief Justice, or of the senior Judge of the Court, if there be no Chief Justice; and if it issueth from any other Court, it is to be under the *Teste* of the first in Commission, &c. *Dalt. ch.* 132. *Finch* 436. *Cro. Car.* 393. All legal Proceedings take Commencement by original Writ, Indictment, or Information; or in *B. R.* by Bill of *Middlesex*, or *Latitat*, which is the original *Processus* of this Court; and is in the Nature of an Original to cause Appearance. 2 *Lill. Abr.* 377. There is no Need of *Processus* upon an Indictment, &c. where the Defendant is present in Court; only where he is absent. 2 *Hawk.* 281. If *Processus* is awarded out of a Court, which hath not Jurisdiction of the principal Cause, it is *coram non Judice* and void: And the Sheriff executing it will be a Trespasser. 2 *Leon.* 89. Proceedings in the superior and inferior Courts must be regularly and formally entered, according to the legal Course; or they may be reversed for Error in *B. R. Pasch.* 24 *Car.* 2. *Lill.* 379.

Procession. In *Cathedral* and *Conventual Churches*, the Members had their stated *Processions*, wherein they walked in their most ornamental Habits, with Musick before them, singing of Hymns, and other suitable Solemnity: And in every Parish, there was a customary annual *Procession* of the Parish Priest, the Patron of the Church, with the chief Flag or holy Banner; and the other Parishioners, to take a Circuit round the Limits of the Parish or Manor, and pray for a Blessing on the Fruits of the Earth; to which we owe our present Custom of *Perambulation*, which in most Places is still called *Processioning*, and *going in Procession*, though we have lost the Order and Devotion, as well as Pomp and Superstition of it.

Processum continuande, Is a Writ for the Continuance of a *Processus*, after the Death of the Chief Justice, or other Justices in the Commission of Oyer and Terminer. *Reg. Orig.* 128.

Prochein Amy, (*Proximus Amicus*) Is used in Law for him that is the *next Friend*, or next of Kin to a Child in his Nonage, and in that Respect is allowed to deal for the Infant in the Management of his Affairs; as to be his Guardian if he hold Lands in Socage, and in the Redress of any Wrong done to him. *Stat. Westm.* 1. *cap.* 48. *Westm.* 2. *cap.* 15. 2 *Inst.* 261. And *Prochein Amy* is commonly taken for Guardian in Socage; but otherwise, it is he that appears in Court for an Infant who sues any Action, and aids the Infant in Pursuit of his Action: For to sue, an Infant may not make an Attorney, but the Court will admit the next Friend of the Infant Plaintiff; and a Guardian for an Infant Defendant: If no Guardian is appointed by the Father, &c. of an Infant, the Course of the Court of *B. R.* hath been to allow one of the Officers of the Court to be *Prochein Amy* to the Infant to sue. *Terms de Ley* 493. 2 *Lill. Abr.* 52. It hath been held, that a Guardian, and *Prochein Amy*, are distinct, though either of them may be admitted for the Plaintiff being an Infant; *Prochein Amy* was never before the Statute *Westm.* 1. and was appointed in Case of Necessity, where an Infant was to sue his Guardian, or the Guardian would not sue for him; for which Reason he may be admitted to sue by *Prochein Amy*, when he is to demand or gain any Thing. 2 *Nels. Abr.* 997. The Plaintiff Infant may sue *per Guardianum*, or *per Proximum Amicum ad prosequendum*; and if the Admission is to sue *per Guardianum*, when it should be *per Proximum Amicum*, it will be well enough, there being many Precedents both Ways: But if he is sued, it must be *per Guardianum*. *Cro. Car.* 86, 115. *Hut.* 92. If an Infant be disturbed by the Chief Lord, so that he cannot bring Assise, his *Prochein Amy* shall be admitted. 48 *Ed.* 3. *cap.* 1. So where the Infant is *Eloined*, &c. 13 *Ed.* 1. *cap.* 15. See *Infant*.

Proclamation, (*Proclamatio*) Is a Notice publickly given of any Thing, whereof the King thinks fit to advertise his Subjects. 7 *R.* 2. *cap.* 6. And in this Sense, none make any *Proclamation* without the King's Authority; except Mayors, or such like Governors of Towns, &c. by Custom or Privilege. *Crompt. Jurisd.* 41. By the Stat. 31 *H.* 8. *cap.* 8. The King's *Proclamation* was to be of the same Effect as an Act of Parliament; not to prejudice Life, Liberty, &c. and Contemners of it to be adjudged Traytors. The King may make a *Proclamation* to his Subjects, *Quoad terrorem Populi*, and put them in Fear of his Displeasure; but not upon any other certain Pain, as Forfeiture of their Lands or Goods, or to undergo the Penalty of a Fine and Imprisonment, &c. *Dalif.* 20. 2 *Lill. Abr.* 381, 382. Yet the King by his *Proclamation* may inhibit his Subjects, that they go not out of the Realm, without License; and if the Subject act contrary thereto, for this Contempt he shall be fined to the King. 12 & 13 *Eliz.* *Dyer* 296. There are *Proclamations* of divers Kinds; and a *Proclamation* is to be pleaded under the Great Seal, without which it doth not bind, &c. *Cro. Car.* 130. Vide *King*, and *Privy Council*.

Proclamation of Courts, Is used particularly in the Beginning or Calling of a Court, and at the Discharge or Adjourning thereof; for the Attendance of Persons, and Dispatch of Business incident thereto: And before a *Parliament* is dissolved, &c. Publick *Proclamation* is to be made, that if any Person have any Petition, he shall

come

come in and be heard; and if no Answer be given, it is intended that the Publick are satisfied. *Lex Constitut.* 156. At the latter End of the *Affises*, there is usually *Proclamation* made, that no more Records of *Nisi prius*, shall be put in to be tried at that *Affises*; after which they will not be received, and all Persons who have not then put in their Records of *Nisi prius* may depart, and are bound to give no longer Attendance at that *Affises*. *Pasch.* 1652. 2 *Lill. Abr.* 381. *Proclamation* is made in *Courts-Baron*, for Persons to come in and claim vacant Copyholds, of which the Tenants died seised since the last Courts; and the Lord may seise a Copyhold, if the Heir comes not in to be admitted upon *Proclamation*, &c. 1 *Lev.* 63.

Proclamation of Exigents. On awarding an *Exigent*, in order to *Outlawry*, a Writ of *Proclamation* issues to the Sheriff of the County where the Party dwells, to make three *Proclamations* for the Defendant to yield himself, or be outlawed. *Stat.* 6 Hen. 8. cap. 4. 31 Eliz. cap. 3. 4 & 5 W. & M.

Proclamation of a Fine. When any Fine of Land is passed, *Proclamation* is solemnly made in the Court of Common Pleas where levied, after the Ingrossing it; and Transcripts are also sent to the Justices of *Affise*, and Justices of the Peace of the County in which the Lands lie, to be openly proclaimed there. 1 R. 3. c. 7.

Proclamation of Nuisances. By Statute, *Proclamation* is to be made against *Nuisances*, and for the Removal of them, &c. 12 R. 2.

Proclamation of Rebellion. Is a Writ, whereby a Man, not appearing upon a *Subpoena*, or an *Attachment* in the *Chancery*, is reputed and declared a *Rebel*, if he render not himself by a Day assigned. See *Commission of Rebellion*.

Proclamation of Recusants. There is a *Proclamation of Recusants*, by which they shall be convicted, on Non-appearance at the *Affises*. 29 Eliz. 3 Fac. 1.

Proclamation of Statutes. Is for their better Observance, and that the People may avoid the Penalties thereof.

Pro confesso. Is where a Bill is exhibited in the *Chancery*, to which the Defendant appears, and is afterwards in Contempt for not answering; when the Matter contained in the Bill shall be taken as if it were confessed by the Defendant. *Terms de Ley* 494. If a Defendant is in Custody for Contempt in not answering the Complainant's Bill, upon a *Habeas Corpus*, which is granted by Order of Court, to bring him to the Bar, the Court assigns him a Day to answer; and the Day being expired, and no Answer put in, a second *Habeas Corpus* is issued, and the Party being brought into Court a further Day is assigned; by which Day, if he answer not, the Bill upon the Plaintiff's Motion shall be taken *Pro confesso*, unless Cause be shewed by a Day; and for Want of such Cause shewed on Motion, the Substance of the Bill shall be decreed to the Plaintiff. *Hill.* 1662. Also after a fourth insufficient Answer made to the Bill of the Complainant, the Matter of the Bill not sufficiently answered unto by the Defendant shall be taken *Pro confesso*, and decreed accordingly.

Proctor. (*Procurator*) Is he who undertakes to manage another Man's Cause, in any Court of the Civil or Ecclesiastical Law, for his Fee: *Qui aliena negotia gerenda suscipit.*

Proctors of the Clergy. (*Procuratores Cleri*) Are those who are chosen and appointed to appear for Cathedral or other Collegiate Churches; as also for the common Clergy of every Diocese, to sit in the *Convocation* House in the Time of Parliament. On every new Parliament, the King directeth his Writ to the Archbishop of each Province, for the Summoning of all Bishops, Deans, Archdeacons, &c. to the *Convocation*, and generally of all the Clergy of his Province, assigning them the Time and Place in the Writ; then the Archbishop of *Canterbury*, upon his Writ received, according to Custom directs his Letters to the Bishop of *London*, as his provincial Dean, first citing himself peremptorily, and then willing him to cite in like Manner all the Bishops, Deans, Archdeacons, &c. and generally all the Clergy of his Province to the Place, and against the Day prefixed in the Writ; but directeth withal, that one *Proctor* be sent for every Cathedral or Collegiate Church, and two *Proctors* for the Body of the inferior Clergy of each Diocese; and by Virtue of these Letters authentically sealed, the said Bishop of *London* directs his like Letters severally to the Bishop of every Diocese of the Province, citing them in like Sort, and willing them not only to appear, but also to admonish the said Deans and Archdeacons personally to appear; and the Cathedral and Collegiate Churches, and the common Clergy of the Diocese to send their *Proctors* to the Place at the Day appointed; and also willet them to certify to the Archbishop the Names of all and every Person so warned by them, in a Schedule annexed to their Letter certificatory: Then the Bishops proceed accordingly, and the Cathedral and Collegiate Churches, and the Body of the Clergy make choice of their *Proctors*; which being done and certified to the Bishop, he returneth all at the Day. *Cowel.*

Procurations. (*Procuraciones*) Are certain Sums of Money which Parish Priests pay yearly to the Bishop or Archdeacon, *ratione Visitationis*: They were anciently paid in necessary Victuals for the Visitor and his Attendants; but afterwards turned into Money: And Complaints were often made of the excessive Charges of the *Procurations*, which were prohibited by several Councils and Bulls; and that of *Clement* the Fourth is very particular, wherein Mention is made that the Archdeacon of *Richmond*, visiting the Diocese, travelled with one Hundred and three Horses, Twenty one Dogs, and three Hawks, to the great Oppression of religious Houses, &c. There are also called *Proxies*; and it is said there are three Sorts of *Procurations*, or *Proxies*; *Ratione Visitationis*, *Consuetudinis*, & *Pacti*; and that the First is of Ecclesiastical Cognisance, but the two last are triable at Law. *Hardr.* 180. A Libel was brought in the Spiritual Court for *Procurations* by the Archdeacon of *York*, setting forth that for ten or twenty Years, &c. there had been due and paid to him so much yearly by a Parson and his Predecessors; who suggested for a Prohibition, that the Duty had been payable, but denied the Prescription, and that the Ecclesiastical Court cannot try Prescriptions; but it was adjudged, that *Procurations* are payable of common Right, as Tithes are, and no Action will lie for the same at Common Law; if he had denied the *Quantum*, then a Prohibition might go. *Raym.* 360. See *Stat.* 34 H. 8. c. 19.

Procuras

Procurator, Is one who hath a Charge committed to him by any Person; in which general Signification it hath been applied to a Vicar or Lieutenant, who acts instead of another; and we read of *Procurator Regni*, and *Procurator Reipublice*, which is a publick Magistrate: Also *Proxies* of Lords in Parliament are in our Law-Books called *Procuratores*; the Bishops are sometimes termed *Procuratores Ecclesiarum*; and the Advocates of religious Houses, who were to sollicite the Interests and plead the Causes of the Societies, were denominated *Procuratores Monasterii*; and from this Word comes the common Word *Proctor*. It is likewise used for him that gathers the Fruits of a Benefice for another Man; and *Procuracy* for the Writing or Instrument whereby he is authorized. 3 R. 2. c. 3.

Procurus, Signifies the Genealogy of a Man. *Matt. Paris. Ann.* 1130.

Protes Homines, Is a Title often given in our old Books to the *Barons* of the Realm, or other military Tenants, that were summoned to the King's Council, and were no more than *Discreti & fideles Homines*, who according to their Prudence and Knowledge were to give their Counsel and Advice.

Proditio, A Word necessary in Indictments of Treason. 2 Hawk. P. C. 224.

Profaneness (*Qu. procul a fano*) Is a Disrespect paid to the Name of God, and to Things and Persons consecrated to him. *Wood's Inst.* 396. And *Profaneness* is punishable by divers Statutes; as for reviling the Sacrament of the Lord's Supper, *profanely* using the Name of God in Plays, &c. *Profaning* the Lord's Day, Curfing and Swearing, &c. 1 Ed. 6. c. 1. 1 Eliz. c. 1. 3 Jac. 1. c. 21. 1 Car. 1. c. 1. 13 Car. 2. c. 9. 6 & 7 W. 3. c. 11.

Profer, (*Profrum, vel Proferum*, from the Fr. *Proferer*, i. e. *Producere*) Is the Time appointed for the Accounts of *Sheriffs*, and other Officers, in the *Exchequer*, which is twice in the Year. *Stat.* 51 H. 3. As to the *Profers* of *Sheriffs*, tho' the certain *Debet* of the Sheriff could not be known before the Finishing of his Account; yet it seems there was anciently an Estimate made of what his constant Charge of the annual Revenue amounted to, according to a *Medium*, which was paid into the *Exchequer* at the Return of the Writ of Summons of the *Pipe*; and the Sums so paid were and are to this Day called *Profe Vicecomitis*: But although these *Profers* are paid, if upon the Conclusion of the Sheriff's Accounts, and after the Allowances and Discharges had by him, it appears that there is a Surplusage, or that he is charged with more than he could receive, he hath his *Profers* paid or allowed to him again. *Hale's Sher. Account* 52. There is a Writ, *De Attornato Vicecomitis pro Profro faciendo*: *Reg. Orig.* 139. And we read of *Profers* in the Statute 32 H. 8. cap. 21. in which Place *Profer* signifies the Offer and Endeavour to proceed in an Action. See *Briton*, cap. 28. and *Fleta*, lib. 1. c. 38.

Profer the Half-Mark, That is to Offer or tender the Half-Mark. Vide *Half-Mark*.

Profert in Curia, Is where the Plaintiff in an Action declares upon a Deed, or the Defendant pleads a Deed, he must do it with a *Profert in Curia*, to the End that the other Party may at his own Charges have a Copy of it, and until then he is not obliged to answer it. 2 Lill. Abr. 382. And if a Man pleads by Virtue of an In-

denture which is lost, on Affidavit made thereof, the Court will compel the Plaintiff to shew the Counterpart, that the Defendant may plead thereto; or will grant an *Imparance*. *Cro. Jac.* 429. When he who is Party or privy in Estate or Interest, or who justifies in the Right of him who is Party or Privy, pleads a Deed; notwithstanding the Party privy claims but Part of the original Estate, yet he must shew the original Deed. 10 Rep. 92, 93. But where a Man is a Stranger to a Deed, and claims nothing in it, &c. there he may plead the Patent or Deed, without a *Profert in Curia*. *Ibid.* A Man may claim under a Deed of Uses, without shewing it; because the Deed doth not belong to him, though he claims by it, but the Covenanters, and he hath no Means to obtain it; and for that it is an Estate executed by the Statute of Uses, so as the Party is in by Law, like unto Tenant in Dower, or by Statute, &c. which may have a Rent-Charge extended, and need not shew the Deed. *Cro. Car.* 442. And in Things executed, or Estates determined, there need not be any *Profert in Curia*. 3 Lev. 204. Also an Assignee of Commissioners of Bankrupts, need not shew the Bond to the Bankrupt, because he comes in by Act of Law, &c. *Cro. Car.* 209. By Statute, no Advantage or Exceptions shall be taken for Want of a *Profert in Curia*; but the Court shall give Judgment according to the very Right of the Cause, without regarding any such Omission and Defect, except the same be specially and particularly set down, and shewn for Cause of Demurrer. 4 & 5 Ann. cap. 16. Where a Deed is pleaded and shewn in Court, the Deed in Judgment of Law remains in Court all the Term wherein it is shewn; and if it be not denied, then at the End of the Term it is delivered to the Party whose it is: And if it be denied, it shall still remain in Court, for if it be found *Non est factum*, it shall be damned. 5 Rep. 74, 75, 47. See *Monstrans de fait*, and *Oyer*, &c.

Profession (*Profectio*) Is used particularly for the Entering into any religious Order, &c. by which a Monk offered himself to God, by a Vow of three Things, viz. Obedience, Chastity, and Poverty, which he promised constantly to observe; and this was called *Sanctæ Religionis Profectio*, and the Monk a *Religious professed*. *New Book Entr.* And in our Law, this Entering into Religion, whereby a Man is shut up from all the common Offices of Life, is termed a *Civil Death*.

Profits. A Devise of the *Profits* of Lands is a Devise of the Land it self. *Dyer* 210. A Husband devised the *Profits* of his Lands to his Wife, until his Son came of Age, this was held to be a Devise of the Lands until that Time: Though if the Land were devised to the Son, and that his Mother should take the *Profits* of it until he come of Age, &c. this would give the Mother only an Authority, and not an Interest. 2 Leon. 221. By Devise of *Profits*, the Lands usually pass; unless there are other Words to shew the Intention of the Testator. *Moor* 753, 758. 2 Nelf. Abr. 1051.

Programma, In the old Saxon signifies a Letter sealed with the King's Seal. *Spec. Sax. lib.* 3. Art. 34.

Prohibition, (*Prohibitio*) Is a Writ issuing out of the Chancery, King's Bench, or Common Pleas, to forbid the Spiritual Court, Admiralty Court, &c. to proceed in a Cause there depending, upon suggesting that the Cognisance thereof belongs

belongs not to the said Courts, but to the Common Law Courts. *F. N. B.* 39, 40, &c. Or it may *prohibit* a Judge of any Temporal Court, from proceeding in any Cause out of their Jurisdictions: And the King's Courts, that may award *Prohibitions*, being informed by the Plaintiff or Defendant, or by any Stranger, that any Court Temporal or Ecclesiastical do hold Plea where they have no Jurisdiction, may lawfully *prohibit* that Court, as well after Judgment as before. *2 Inst.* 229, 601, 602. *4 Rep.* 127. *Finch* 450. This Writ is directed not only to the Judge, but the Parties; and if the Judge of the inferior Court, or the Party, proceeds notwithstanding the *Prohibition*, an Attachment may be had, against them, or Action of the Case: But on a *Prohibition* in the Spiritual Court, the Party may appear, and take a Declaration upon the Suggestion, and go to Trial; and if thereupon it be found against the Plaintiff in the *Prohibition*, a Writ of *Consultation* shall be awarded, with Costs. *2 Lill. Abr.* 384. *Wood's Inst.* 570. *8 & 9 W.* 3. A *Prohibition* is generally a proper Remedy where an inferior Court exceeds its Jurisdiction; and *Prohibitions* are granted either *pro defectu Jurisdictionis*, or *pro defectu Triationis*: In a *Prohibition*, upon Motion for a *Consultation*, it was insisted, that it ought not to be granted without pleading or demurring to the *Prohibition*; but it was held, that anciently in *B. R.* there were no Declarations or Demurrers upon *Prohibitions*, and therefore *Consultations* were granted upon Motions. *1 Vent.* 180. *3 Salk.* 287. In Cases of *Prohibitions*, where they were granted upon a Motion, the ancient Course was, that the Party *prohibited* sued out a *Scire facias*, *Quare Consultatio non debet concedi post Prohibitionem*, in which Writ the Suggestion was recited, and also the *Prohibition* granted thereon *ad Damnum* of the Party: Afterwards, this Practice was altered, and the Course came to be thus, (*viz.*) upon granting a *Prohibition* to the Plaintiff, the Court bound him in a Recognizance to prosecute an *Attachment of Contempt* against the Defendant for suing in the Spiritual Court, &c. after a *Prohibition* granted, and then to declare upon the *Prohibition*; so that he who was the Defendant in that Court, now becomes Plaintiff in the Court above. *Plew.* 472. *3 Salk.* 289. A *Prohibition* lies in all Causes wherein a *Habeas Corpus* doth lie at Common Law; but it is most commonly granted to the Spiritual Courts, where a Cause belongs to the Temporal Jurisdiction: And the Court ought not to deny a Person a *Prohibition* that prays it, if there be Cause therefore; the Granting *Prohibitions* being not a discretionary Act of the Court, but *ex merito Justitiae*; tho' a *Prohibition* will not be granted on Motion the last Day of the Term, but sometimes in such a Case, a Rule has been made to stay Proceedings until next Term. *2 Lill. Abr.* 385, 388. *Raym.* 4, 92. *Prohibition* may be granted to the Court of the Lord Marshal, by the Courts of Common Law, if it exceedeth its Jurisdiction; and it hath been strongly insisted, on, that the Court of the Constable and Marshal may also be *prohibited*, but there having been no Court holden before the Constable and Marshal for many Years past, little is mentioned in our Books on that Head, *2 Hawk. P. C.* 14. The Court of *B. R.* may by the Common Law grant a *Prohibition* to the Court of Admiralty, to stay their Proceedings, if they hold Plea of any Matter which the Jurisdiction of their Court

doth not extend to: And the Defendant in the Court of Admiralty may have a *Prohibition*, after he hath pleaded, although he cannot have it to an inferior Court; for an inferior Court doth not draw the Matter in Question *ad aliud Examen*, but doth proceed therein according to the Common Law; but the Court of Admiralty doth draw the Matter *ad aliud Examen*, that is to try it by the Civil Law; and therefore, and that the Common Law may not be injured, this Court will use their Authority at any Time to stay Proceedings in the Admiralty, though the Defendant by his incautious Pleading hath allowed their Jurisdiction. *Trin.* 23 *Car. B. R.* 2 *Lill. Abr.* 387. Upon a Suggestion that the Admiralty holds Plea upon a Promise, &c. made *infra Corpus Comitatus*, which is not triable there, but at Common Law, a *Prohibition* lies; but the Summise and Suggestion must be absolute and certain, that a Promise was actually made *infra Corp. Comitatus*. for upon an uncertain Suggestion, no *Prohibition* can be granted, and no Issue can be taken upon it though it should be false. *2 Lill.* 384. If the Court of Admiralty proceeds in any Matter, which is not Maritime, although the Thing were done upon the Sea, the Court of *B. R.* will grant a *Prohibition*; the Admiralty having Jurisdiction only in Maritime Causes, *viz.* such as concern Sea Affairs, and not of all Matters done at Sea, as Contracts, Properties, &c. *Ibid.* 387. *Prohibition* doth not lie to the Admiralty to stop Proceedings on a Bond made beyond Sea, sued there; nor for a Suit for Mariners Wages, &c. and a *Prohibition* lies not to that Court in Cases of Felony, which are to be tried there. *3 Leon.* 514. *3 Lev.* 60. *2 Lill.* 389. *Prohibitions* may be granted to the Prerogative Court, to hinder them from granting Letters of Administration contray to Law; or to prevent any other Proceedings, which are not agreeable to the Common Law. *Hill.* 22 *Car. B. R.* But if the Ecclesiastical or Spiritual Courts proceed wholly on their own Canons, they shall not be *prohibited* by the Common Law; for they shall be presumed to be the best Judges of their own Laws: Though if they proceed upon Temporal Matters, or act in Derogation of the Common Law, by questioning a Matter not triable by them, &c. *Prohibition* shall be granted. *2 Roll. Rep.* 439. *1 Bulst.* 159. Where the Ecclesiastical Court hath the sole Cognisance of a Cause, their Proceedings are not examinable at Common Law, tho' erroneous; and no *Prohibition* will lie, but an Appeal to the Delegates. *March* 92. But of Things whereof our Law, and the Ecclesiastical Laws, take Cognisance, the Judges are only to rely upon our Law; and not on the Ecclesiastical Law. *Ibid.* 84. If a Matter is properly determinable in the Spiritual Court, and they make an erroneous Decree, *B. R.* will not grant a *Prohibition*; though if they decree a Matter which they have no Jurisdiction of, this Court will grant a *Prohibition* to annul the Sentence. *2 Lill.* 386. A *Prohibition* may be granted to the Spiritual Court, after Sentence given in a Cause in that Court; but the Court applied to will not do it until they have heard Counsel on both Sides, although before Sentence they grant it upon a bare Suggestion of the Party, if the Matter suggested will bear it; for a Sentence in an Ecclesiastical Court is in the Nature of a Judgment given at the Common Law, and presumed to be given upon mature Deliberation; wherefore

fore their Sentence is not to be made void but by good Advice. *Ibid.* 388. A Libel was exhibited in the Prerogative Court for a Legacy, and a *Prohibition* pray'd, for that the Party lived out of the Diocese, &c. upon the Stat. 23 H. 8. But because the Will was proved in that Court, and the Suit was there, and Sentence given for the Legacy, and upon an Appeal to the Delegates that Sentence was affirmed, and Execution granted thereon; it was held too late for a *Prohibition*. *Cro. Car.* 69. And by Holt Chief Justice, where an Action is commenced in an inferior Court, which hath no Jurisdiction of the Cause; a *Prohibition* will not lie after Sentence. 3 *Salk.* 288. No *Prohibition* shall be allowed after a Consultation duly granted, by the Stat. 50 Edw. 3. cap. 4. which ordains, that but one *Prohibition* shall lie in one Cause: A Consultation being once granted, there shall be no new *Prohibition* upon the same Libel; unless it is apparent that the Consultation was unduly obtained, when it is otherwise. 1 *Leon.* 130. It is a Rule, that a *Prohibition* shall not be granted where the Proceedings in the Ecclesiastical Court are not against the Law of the Land, nor the Liberty of the Subject. *Cro. Jac.* 431. If a Suit is for a Pension, it being merely Spiritual, no *Prohibition* shall be granted. *Cro. Jac.* 666. But where Property, or the Freehold of an Office, &c. comes in Question, a *Prohibition* shall go to the Spiritual Court. 4 *Leon.* 261. *Raym.* 88. And so where a Custom is alledged in the Ecclesiastical Court: Though a bare Prescription is not sufficient for a *Prohibition*, except it concerns a Layman; for it was never granted, where a Parson claimed a Pension by Prescription. 2 *Lev.* 103. 2 *Salk.* 350. If in suing for Tithes, &c. the Boundaries of Parishes come in Question, *Prohibition* lies; because the Bounds of Parishes are triable at Common Law. 1 *Cro.* 228. Though a *Prohibition* was denied, where the Bounds of two Villis in the same Parish were contested. 1 *Lev.* 78. And it hath been adjudged, that where a Thing triable at Law is collateral to the Complaint in a Libel, and of which the Spiritual Court have original Jurisdiction, they shall not be *prohibited*; as where the Libel is for the Tithes of such a Close, here they have an original Jurisdiction of the Cause, *viz.* for Tithes; then the Defendant pleads that it is not his Close, but the Close of another Person; this is triable at Law, but being collateral to the original Cause, it shall be tried in the Spiritual Court. *Sid.* 89. 3 *Nels. Abr.* 12. A Libel for Tithes, the Defendant pleaded an Award, and pray'd a *Prohibition* for that an Award is Matter triable at Law; but a *Prohibition* was denied: And it is the same if a Suit is for a Legacy, and the Defendant suggests Payment for a *Prohibition*, or if an Acquittance is pleaded; no *Prohibition* shall go, because where the Spiritual Court hath a Jurisdiction of the original Matter, if any subsequent Matter should arise, and which is triable at Law, that shall not deprive the Spiritual Court of their Jurisdiction; though if that Court shall adjudge otherwise upon an Acquittance, or an Award, than according to the Common Law, in such Case a *Prohibition* may be had. 1 *Roll. Rep.* 12. *Moor* 413. Ecclesiastical Courts, when the principal Cause is of Ecclesiastical Cognisance, may try Matters triable at Law, which come in incidentally: And it has been ruled, that where a Thing incident to a Suit in the Spiritual Court is of a

Temporal Nature, they must try it in the same Manner in that Court, as it would have been tried at Law, or a *Prohibition* will be granted; but if the Matter incident is of a Spiritual Nature, they are to try it according to their own Law; for Instance; If they require two Witnesses to the Proof of a Revocation of a Will, a *Prohibition* will not lie, because such Proof is required at Law; but if they require two Witnesses to prove a Release, or refuse to admit the Proof of one Witness to the Payment of a Legacy, &c. a *Prohibition* may be granted. 2 *Lev.* 64. *Show.* 158, 172. 3 *Salk.* 288. And if the Spiritual Court refuse a proper Plea to a Libel, &c. the Refusal is a temporal Injury, for which *Prohibition* lieth. *Hob.* 307. *Cro. Eliz.* 655. Where Articles *ex Officio* are exhibited against any one in the Spiritual Court for criminal Matters, and the Party is required to answer upon Oath, he may plead *non tenetur respondere*, and if they will proceed, a *Prohibition* shall be awarded; but not if the Articles are for civil Matters, and they refuse such Plea. *Sid.* 374. 3 *Nels. Abr.* 8. Adjudged, that a Refusal of the Copy of the Libel; or where the Libel against the Defendant in the Spiritual Court is too general, these are good Causes for a *Prohibition*. *Hardr.* 364. It is always granted for denying a Copy of the Libel, because the Party ought to know whether the Matter is within the Jurisdiction or not, and how to answer. 1 *Roll. Rep.* 337. 2 *Salk.* 553. It is never too late to move B. R. for a *Prohibition*, in a Case where the Spiritual Court had no original Jurisdiction. *Mod. Ca.* 252. 1 *Mod.* 273. If a Man promise another 10 l. if he will marry his Daughter; if he marry the Daughter, and the other will not pay the Money, he shall not libel for the same in the Spiritual Court; if he doth, *Prohibition* will lie: But if he promise one with his Daughter in Marriage 10 l. &c. if he doth marry the Daughter, and he do not pay the Money, he may sue for it in the Spiritual Court, because it concerns Matrimony. 22 *Edw.* 3. *lib. Aff.* And if a Person gives Goods in Marriage with his Daughter, and afterwards they are divorced; the Wife may sue in the Spiritual Court for the Goods, and no *Prohibition* lieth thereof. 13 H. 3. *Prohibitions* concerning Marriages, and to dissolve a Marriage, &c. 2 *Lutw.* 1059, 1075. A Parson grants to one by Deed, that he shall be discharged of Tithes of his Lands, and afterwards he sueth in the Spiritual Court for the Tithes, &c. it is said that he shall not have a *Prohibition*, for he may suggest this Matter in the Spiritual Court, to discharge him of the Tithes: But if it were upon a Composition made before Time of Memory, and now the Parson sues for the Tithes of those Lands, there he shall have a *Prohibition* against the Parson, &c. *Mich.* 8 Ed. 4. 14. In a Suggestion for a *Prohibition* to the Ecclesiastical Court in a Cause of Tithes, and other Spiritual Profits, the Suggestion must be made good to the Court by two sufficient Witnesses, within six Months after such *Prohibition* granted; provided the Suggestion doth not contain a Negative. 2 & 3 Ed. 6. cap. 13. 2 *Inst.* 662. By the Statute *articuli Cleri*, for Tithes, (if the Right ariseth not from the Rights of Patronage, or they amount not to a fourth Part, &c.) Oblations, Mortuaries, Commutation of corporal Penance for Money, Defamation, &c. no *Prohibition* shall be granted. 9 Ed. 2. 2 *Inst.* 619. 4 *Rep.* 20. And see 2 *Lutw.* 1043, 1057.

1062, 1066, &c. Before the Reign of King Charles 1. many *Prohibitions* were granted for defamatory Words, in calling Women Whores, &c. but since, such *Prohibitions* have been denied, the Spiritual Court having a Jurisdiction in Cases of Whoredom, they shall not be *prohibited*. 1 *Mod.* 21 *Jones* 246. *Cro. Car.* 229. No *Prohibition* will lie at the Common Law upon a Suit in the Spiritual Court for the Word Whore, because it is of Ecclesiastical Cognisance. 2 *Lev.* 63. But by the Custom of London, it is actionable to call a Woman Whore; and therefore where the Libel is for that Word there, a *Prohibition* will be granted. 2 *Lutw.* 1039. *Stile* 69, 229, 245. A *Prohibition* was moved for to stay a Suit for these Words, *You were such a one's Whore, before he married you*; and on a Suggestion that the Plaintiff gave the Defendant provoking Language, calling him Rogue, &c. but the *Prohibition* was denied, the Provocation being no Bar to the Suit in the Spiritual Court, though it might be a Mitigation of Damages in an Action at Common Law. 3 *Lev.* 137. A Person called a Woman Bitch, Whore, and an old Bawd, and on a Libel in the Spiritual Court, a *Prohibition* was granted; because some of the Words are punishable at Common Law, and some in the Spiritual Court; and if a *Prohibition* should not be granted, the Plaintiff might be doubly vexed. 3 *Mod.* 74. On a Libel for calling a Woman Bawd, it was held, this being an Offence of a mixed Nature, and punishable either at Common Law, or in the Spiritual Court; if the Suit is commenced in that Court, a *Prohibition* shall not go, because the Prosecutor hath determined her Election in which Court to sue; but if it had been for keeping a Bawdy-House, which is an Offence that may be prosecuted in a Leet, a *Prohibition* shall go. *W. Jones* 246. *Palm.* 379, 521. 3 *Nelf. Abr.* 2. Libel for these Words, *You are a Rogue, Rascal, and Son of a Whore*; and the Suggestion for a *Prohibition* was, that they were Words of Heat and Passion; but a *Prohibition* was not allowed; for the Words import that his Mother is a Whore, and he a Bastard, and so both are scandalised, and this is an Ecclesiastical Scandal. 3 *Lev.* 119. One called another Whoremaster, on a Libel, &c. it was urged that this was a Word of Passion, and not defamatory; but adjudged it is the same as calling a Woman Whore, which is an Ecclesiastical Slander. 2 *Salk.* 692. *Prohibition* will not lie upon a Suit in the Spiritual Court by Husband and Wife, for calling the Husband Cuckold; for the Words charge the Wife with Incontinence, and for that Reason she shall have this Suit in the Ecclesiastical Court, to punish the Defamation that subjects her to Penance in the Spiritual Court: But if the Husband had sued solely, then a *Prohibition* might be granted; because he doth not incur such Danger by speaking of the Words. 2 *Lev.* 66. 2 *Lill.* 391. And yet it hath been ruled, where Husband and Wife libelled in the Spiritual Court for calling the Husband Cuckold, that a *Prohibition* shall go; and that they cannot both sue in that Court for that Word. *Hill.* 13 *W.* 3. 3 *Salk.* 288. And to call a Man Cuckold, hath been resolved not to be an Ecclesiastical Scandal, but that Wittal is; for that implies his Knowledge and Consent to the Adultery of his Wife. 2 *Salk.* 692. These Words were spoken of a Parson, he is a lying Fellow, and has lain with all the Women at H. &c. a *Prohibition* was refused; for these Words are scandalous

being spoke of a Parson, though not actionable at Law. 3 *Lev.* 18. But to say of a Parson, He hath no Sense, he is a Dunce, Blockhead, &c. *Prohibition* hath been granted; because a Parson is not punishable in the Spiritual Court for being a Blockhead. 2 *Salk.* 693. So for calling a Parson Fool, &c. in a Thing which doth not concern his Profession. 2 *Lev.* 41. And where a Suit is in the Spiritual Court for Defamation, the Matter ought to be intirely of Ecclesiastical Cognisance; otherwise a *Prohibition* will lie. 4 *Rep.* 20. *Moor* 873. If one call another Drunkard, as this may be punished as well in the Temporal as Spiritual Courts, a *Prohibition* shall be granted. *Cro. Car.* 285. 2 *Roll.* 296. 3 *Salk.* 288. If a Man sue another Person in the County-Court for Debt, &c. amounting to the Sum of 40 s. or above, the Party shall have a *Prohibition* to the Sheriff, that he do not hold Plea thereof, &c. 2 *Lev.* 230. *New Nat. Brev.* 103. And the common Form of a *Prohibition* runs thus: *Rex A. B. &c. salutem. Prohibemus vobis, ne ten. Placitum in Cur. &c. de, &c. unde C. D. querunt, quod E. trahit eos in Placitum coram vobis, &c.* And to the Party himself; *Prohibemus tibi, ne sequ. Placitum in Curia, &c. de, &c. unde C. queritur quod tu trahis eum in Cur. &c.*

Prohibitio de vasso directa Parti, A Writ judicial directed to the Tenant, *prohibiting* him from making Waste upon the Land in Controversy, during the Suit. *Reg. Judic.* 21. And it hath been adjudged, that a *Prohibition* shall be granted to any one who commits Waste, either in the House or Buildings of the Incumbent of a Spiritual Living; or that cuts down any Trees on the Glebe, or doth any other Waste. *Moor* 917. 3 *Nelf. Abr.* 5.

Pro indiviso, Is taken in Law for a Possession or Occupation of Lands or Tenements belonging to two or more Persons, whereof none knows his several Portion; as Coparceners, before Partition. *Bract. lib.* 5.

Proles (Lat.) In English Progeny, are such Issue as proceed from a lawful Marriage; though if the Word be used at large, it may denote others.

Prolocutor of the Convocation, (*Prolocutor Domus Convocationis*) Is an Officer chosen by Persons Ecclesiastical, publicly assembled in Convocation by Virtue of the King's Writ, at every Parliament: And there are two *Prolocutors*, one of the Higher House of Convocation, and the other of the Lower House; the latter of which is chosen by the Lower House, and presented to the Bishops of the Higher House as their *Prolocutor*, that is the Person by whom the Lower House of Convocation intend to deliver their Resolutions to the Upper House, and have their own House especially ordered and governed: His Office is to cause the Clerk to call the Names of such as are of that House, when he sees Cause; to read all Things propounded, gather Suffrages, &c.

Promisse, (*Promissio*) Is when upon a valuable Consideration, Persons bind themselves by Words to do or perform such a Thing as is agreed on; upon which an Action may be grounded: And a *Promise* against a *Promise* is a sufficient Ground for an Action. *Cro. Eliz.* 543, 703, 848. If a *Promise* be to pay a Sum of Money, by several monthly Payments, the *Promise* being intire, a Breach of Payment of the first Month, is a Breach

Breach of the whole *Promise*. 2 Roll Rep. 47, See *Mutual Promise*, and *Action on the Case*.

Promoters, (*Promotores*) Are those who in popular and penal Actions prosecute Offenders, in their Name and the King's, as *Informers* do, having Part of the Fines or Penalties for their Reward: They belonged chiefly to the *Exchequer* and *King's Bench*; and Sir Edward Coke calls them *Turbidum hominum genus*. 3 Inst. 191.

Promulge a Law, (*Primulgare Legem*) Is to declare, publish, and proclaim a Law to the People; and so *Promulged*, *Promulgatus*, signifies published, proclaimed. 6 H. 1. cap. 4.

Proof, (*Probatio*) Is the Trial or making out of any Thing, by a Jury, Witnesses, &c. And *Bracton* says, their is *Probatio duplex*, viz. *Viva voce*, by Witnesses; and *Probatio mortua*, by Deeds, Writings, &c. *Proof*, according to *Lilly*, is either in giving of Evidence to a Jury upon a Trial, or else upon Interrogatories, or by Copies of Records, or Exemplifications of them. 2 Lill. Abr. 393. Though where a Man speaks generally of *Proof*, it shall be intended of *Proof* by a Jury, which in the strict Signification is legal *Proof*. 3 Bulst. 56. The Condition of a Bond was to pay Money as an Apprentice should mispend, upon *Proof* made by the Confession of the Apprentice or otherwise; and it was held, that although generally *Proof* shall be intended to be made at a Trial by the Jury, in this Case it being referred to the Confession of the Party, it is sufficient if he confesses it under his Hand. 2 Cro. 381. 3 Nels. Abr. 15. It hath been insisted upon, that the Law knows no other *Proof* but before a Jury in a judicial Way, and that which is on Record; but if the *Proof* is modified by the Agreement of the Parties, that it shall be in such a Manner, or before such a Person, that Modification which allows another Manner of *Proof* shall be observed, and prevail against the legal Construction of the Word *Proof*. Sid. 313. 2 Lutw. 436. Where in Agreements, &c. required to be proved, no particular Form is directed how the *Proof* shall be made, the Plaintiff may bring his Action, and aver that the Thing was done; and the Defendant may take Issue that it was not done, and then the Plaintiff must prove the Doing it. Brownl. 57, 33. Cro. Eliz. 205. Cro. Jac. 232. A Plaintiff said that a Wager was won by Deceit, the Defendant replied, give me a Shilling, and if you can prove that it was won by me by Deceit, I will give you five Pounds; and in an Action on the Case brought against the Defendant upon his Promise to pay the five Pounds, the Plaintiff alledged *in facto* that he had got the Wager by Deceit, and it was adjudged, that he need not make any other *Proof* of it, but in this Action. 3 Bulst. 56. Cro. Eliz. 205. In Articles, &c. we bind our selves in the Penalty of 100*l.* &c. to be paid upon due *Proof* of a Breach; *Proof* at the Trial will maintain the Action. Lutw. 441. And *Proof* may be in the same Action, in several other Cases. Cro. Jac. 188, 488. *Proof* by Witnesses, &c. See *Evidence*.

Partibus Liberandis, Is an ancient Writ for the Partition of Lands between Co-heirs. Reg. Orig. 316.

Property, (*Proprietas*) Is the highest Right a Man hath or can have to any Thing; and was first introduced, that every Man might know what was his own. Stud. Compan. 159. Before the Flood, there was no such Thing as particular *Property*, but an universal Right instead of it;

every Man might then take to his Use what he pleased, and what he had so possessed himself of, another could not, without manifest Injury, take away from him: But upon the Increase of People, Trade and Industry, *Property* was gained by Purchase, and other lawful Means; for the securing whereof, proper Laws were ordained. *Lex Mercat.* 2. *Property* in Lands and Tenements at this Day, is acquired either by *Entry*, *Discent* by Law, or *Conveyance*; and in Goods and Chattels, it may be gained a great many Ways, tho' it is usually by *Deed of Gift*, or *Bargain and Sale*. 2 Lill. Abr. 400. And there are three Manner of *Properties*, viz. *Property* absolute; *Property* qualified; and *Property* possessory: And an absolute *Proprietor* hath an absolute Power to dispose of his Estate as he pleases, subject to the Laws of the Land. *Ibid.* Every Owner of Goods, &c. hath a general *Property* in them: Though a Legatee of Goods hath no *Property* in the Goods given him by Will until actually delivered him by the Executor, so that he hath the Possession. Mich. 23 Car. B. R. And though by a bare Agreement, a Bargain and Sale of Goods may be so far perfected, without Delivery or Payment of Money, that the Parties may have an Action of the Case for Non-performance, yet no *Property* vests until there is a Delivery; and therefore it is said if a second Buyer gets a Delivery, he has the better Title. 3 Salk. 61, 62. *Property* is of Things in Possession, or Action: In Possession, either generally, when no other can have them from the Owner, or with him, without his Act or Default; or specially, when some other hath an Interest with him, or where there is a *Property* also in another as well as in the Owner; as by Bailment, Delivery of Things to a Carrier, or to an Innkeeper, where Goods are pawned or pledged, distrained, or leased out for a Term, &c. And *Property* in Action is when one hath an Interest to sue at Law for the Things themselves, or for Damages for them; as for Debts, Wrongs, &c. and all these Things, in Possession, or Action, one may have in his own Right, or in the Right of another, as Executor. *Wood's Inst.* 314. A Person hath such a special *Property* in Goods delivered to him to keep, that he may maintain Actions against Strangers, that take them out of his Possession: It is the same of Things delivered to a Carrier; and when Goods are pawned, &c. *Hill.* 22 Car. 2. Lill. Abr. 400, 401. If a Man hires a Horse for a particular Time to ride such a Journey, he hath a special *Property* in the Horse during that Time against all Men, even against the right Owner; against whom he may have an Action if he disturbs him in the Possession. Cro. Eliz. 236. But it hath been adjudged, that if a Man deliver Goods to another to keep for a certain Time, and then to redeliver them to the Owner; if he to whom they were delivered doth sell them in open Market, before the Day appointed for the Redelivery, the Owner may seize them wherever he finds them, because the general *Property* was always in him, and not altered by the Sale. Mich. 7 Jac. Godb. 160. 3 Nels. Abr. 18. And if one delivers a Horse, or other Cattle, or Goods, to another to keep, and he kills the Horse, or spoils the Goods, Action of Trespass lies against him; for by the Killing or Spoiling, the *Property* is destroyed. 5 Rep. 13. Wild Beasts, Deer, Hares, Conies, &c. though they belong to a Man upon Account of his Game and Pleasure,

none can have an absolute Real *Property* in; but if they are inclosed and made Tame, there may be a qualified and possessory *Property* in them. One may have absolute *Property* in Things of a base Nature, as Mastiff-Dogs, Hounds, Spaniels, &c. but not in Things *Fera Natura*, unless when dead. *Dalt.* 371. *Finch.* 176. 11 *Rep.* 50. *Raym.* 16. *Property* in Goods and Chattels, &c. may be forfeited or lost, by Treason, Felony, Flight, Outlawry, by their becoming Deodand, Waif, Estray, &c. *Bac. Elem.* 77, 78.

Property in Highways, &c. He that hath the Land that lies on both Sides of a Highway, hath the *Property* of the Soil of the Highway in him, notwithstanding the King hath the Privilege for his People to pass through it at their Pleasures; for the Law presumes that the Way was at first taken out of the Lands of the Party that owns the Lands lying upon both Sides of the Way: And divers Lords of Manors do claim the Soil as Part of their Waste. *Mich.* 22 *Car. B. R.* 2 *Lill. Abr.* 400. If the Sea, or a River, by violent Incurfion carries away the Soil of Ground in so great a Quantity, that he that had the *Property* in the Soil, can know where his Land is, he shall have his Land; but if his Soil or Land be insensibly, or by little and little, wasted by the Sea or River, he must lose his *Property*, because he cannot prove which is his Land. *Pasch.* 1650. A Tenant hath by Law only a special *Property* in the Trees on the Lands demised, so long as they remain Part of the Freehold; for as soon as they are severed, his *Property* is gone. 11 *Rep.* 82.

Property alter'd. To alter or transfer Men's *Properties* is lawful; but to violate *Property* is never lawful, *Property* being a sacred Thing which ought not to be violated. And every Man (if he hath not forfeited it) hath a *Property* and Right allowed him by the Law, to defend his Life, Liberty, and Estate; and if either be violated, it gives an Action to redress the Injury, and punish the Wrong-doer. 2 *Lill. Abr.* 400.

Prophecies, (Prophetia) Are in our Statutes taken for Foretellings of Things to come, in hidden mysterious Speeches; whereby great Commotions have been often caused in this Kingdom, and Attempts made by those to whom such Speeches promis'd good Success, tho' the Words were mystically framed, and pointed only to the Cognisance, Arms, or some other Quality of the Parties: But these for Distinction-sake, are called *False or Phantastical Prophecies*. 3 *Ed. 6. c.* 15. *False Prophecies*, (where Persons pretend extraordinary Commissions from God) to raise Jealousies in the People, or terrify them with impending Judgments, &c. are punishable at Common Law, as Impostures: And by Statute 5 *Eliz. c.* 15. None shall publish or set forth any false *Prophecy*, with an Intent to raise Sedition, in Pain of 100*l.* for the first Offence, and a Year's Imprisonment; and for the second Offence to forfeit all his Goods and Chattels, and suffer Imprisonment during Life: The Prosecution to be within Six Months. 3 *Inst.* 128, 129. To *prophecy* when the King shall die, hath been antiently held to be Treason. *Roll. Rep.* 88.

Proportion, Proportio. See *De Deoneranda pro Rata Portionis*.

Propoztum, Is used in antient Charters for Purport, Intention, or Meaning. *Chart.* 31 *H.* 3.

Propouners, Are mentioned with *Monopolists* and *Projectors*; and signify the same as *Monopolists*. 3 *Inst.*

Proprietary, (Proprietarius) Is he that hath a *Property* in any Thing: But was heretofore commonly applied to him that had the Profus of an Ecclesiastical Benefice to himself, and his Heirs or Successors; as in Times past *Abbots* and *Priors* had, to them and their Successors. And *Proprietarii Monachi* were those Monks who had any Goods or Substance of their Own. *Mon. Angl. Tom* 3. pag. 307.

Proprietate probanda, Is a Writ to the Sheriff to inquire of the *Property* of Goods distrained, when the Defendant claimeth *Property* upon a *Replevin* sued; for the Sheriff cannot proceed 'till that Matter is decided, and *Property* ought to be tried by Writ: And if it is found for the Plaintiff, then the Sheriff is to make *Replevin*; but if for the Defendant, he can proceed no further. *E. N. B.* 77. *Finch.* 316, 450. 1 *Inst.* 145.

Pro rata, Is as much as *pro Portione*; as Jointenants, &c. are to pay *Pro rata*, i. e. in Proportion to their Estates. 16 *Car. 2. c.* 6.

Prologue, (Prorogare) Signifies to prolong, or put off to another Day. 6 *Hen. 8. c.* 8. *Prorogation* of the Parliament, and *Adjournment* were antiently used as *Synonima's*; but of late there hath been a Distinction, a *Prorogation* making a Session, and an *Adjournment* only a Continuance. Vide *Parliament*.

Protection, (Protectio) Is generally taken for that Benefit and Safety which every Subject hath by the King's Laws; every Man who is a loyal Subject is in the King's *Protection*; and in this Sense to be out of the King's *Protection*, is to be excluded the Benefit of the Laws. 25 *Ed. 3. c.* 22. In a special Signification, a *Protection* of the King is an Act of Grace, by Writ sued out of the Chancery, which lies where a Man will pass over Sea in the King's Service; and by this Writ (when allow'd in Court) he shall be quit of all Manner of Suits between him and any other Person, except Assises of *Novel Disseisin*, Assise of *Darein Presentment*, Attaints, &c. until his Return into England. 2 *Lill. Abr.* 398. *Protection* is an Immunity granted by the King to a certain Person, to be free from Suits at Law for a certain Time, and for some reasonable Cause; and 'tis a Branch of the King's Prerogative so to do: There are two Sorts of these *Protections*, one is *cum Clausula volumus*; and of that *Protection* there are three Particulars; one is called *Quia profecturus*, and is for him who is going beyond Sea in the King's Service; another is *Quia moraturus*, which is for him who is already abroad in the King's Service, as an Ambassador, &c. And another is for the King's Debtor, that he be not sued 'till the King's Debt is satisfied: And the other Sort of *Protection* is *cum Clausula nolumus*, &c. which is granted to a Spiritual Corporation, that their Goods or Chattels be not taken by the Officers of the King, for the King's Service; it may likewise be granted to a Spiritual Person single, or to a Temporal Person. *Reg. Orig.* 23. 3 *Nelf. Abr.* 20. On a Person's going over Sea, in the Service of the King, Writ of *Protection* shall issue, to be quit of Suits 'till he returns; and then a Resummons may be had against him: But one may proceed against the Defendant having such *Protection*, until he comes and shews his *Protection* in Court, and hath it allow'd; when his Plea or Suit shall go *sine die*; though if after it appears that the Party who hath the *Protection*, goes not about the Business for which the *Protection* was granted, the Plaintiff may have a Repeal there-

of,

of, &c. *Terms de Ley* 496. 2 *Lill. Abr.* 398. A *Protection* is to be made for one Year, and may be renewed from Year to Year; but if it be made for two or three Years, the Justices will not allow the same: And if the King grant a *Protection* to his Debtor, that he be not sued till his Debt is paid; on these *Protections* none shall be delay'd, the Party is to answer and go to Judgment, and Execution shall be stay'd. 1 *Inst.* 130. 25 *Ed.* 3. The King granted a *Protection* to one of his Debtors; and upon a Demurrer it was allowed, that by the Statute 25 *Ed.* 3. c. 19. *Protections* of this Kind are expressly, that none shall be delay'd upon them; but the Party shall answer and go to Judgment, and Execution shall stay: And the Court ordered, that when it came to Execution they would advise, so a *Respondeas Ouster* was awarded. *Cro. Jac.* 477. In all *Protections* there ought to be Cause shewn for granting them: If obtain'd pending the Suit, they are naught; and a Person giving Bail to an Action on Arrest, 'tis said may not plead his *Protection*; one may not be discharged out of Prison to which he is committed in Execution, by *Protection* to serve the King, &c. Nor will a *Protection* be allowed where a Person is taken on a *Capias Utlagatum*, after Judgment; for though the *Capias Utlagatum* is at the King's Suit in the first Place, it is in the second Degree for the Subject. *Latch.* 197. 1 *Leon.* 185. *Dyer* 162. *Hob.* 115. But in an *Assumpsit*, a *Protection* under the Great Seal was brought into Court, for that the Defendant was in the Wars in *Flanders*, &c. and it was allow'd, though after an *Exigent*. 3 *Lev.* 332. The Plaintiff in Action cannot cast a *Protection*; for the *Protection* is always for the Defendant, and shall be for him, if it be not in special Cases where the Plaintiff becomes Defendant. *New Nat. Br.* 62. And no *Protection* shall be allowed against the King. 1 *Inst.* 131. There are many Kinds of *Protections*; but they are rarely used, being often ousted by Act of Parliament. *Wood's Inst.* 571.

Protections of Parliament. Peers, and Members of Parliament, &c. by their Privilege, may *protest* their Menial Servants, and those actually employ'd by them in Service; but by a late Order, this extends not to others, on written *Protections*. See *Privilege*.

Protection of the Courts at Westminster. The *Protection of the Court of B. R.* is allowed for any Person who attends his own Business in this Court, or by Virtue of any *Subpoena*; but this is more properly *Privilege*.

Protest, (*Protestari*) Hath two divers Applications; one by Way of Caution, to call Witness, as it were, openly to affirm, that a Man doth not yield his Consent to any Act which may be prejudicial to him, or but conditionally; or that he doth not agree to the Proceeding of a Judge, in a Court wherein his Jurisdiction is doubtful, &c. The other is by Way of Complaint, to *protest* a Man's Bill of Exchange, refused Acceptance or Payment; which is necessary to recover Damages, &c. See *Bill of Exchange*.

Protestando, Is a Word made use of to avoid double Pleading in Actions; it prevents the Party that makes it from being concluded by the Plea he is about to make, that Issue cannot be joined upon it; and it is also a Form of Pleading, where one will not directly affirm or deny any Thing alledged by another or himself: In the first Case, it is where a Man pleadeth a

Thing which he dares not affirm, or that he cannot plead for Fear of Making his Plea double; as in Title to Land by two Descents, the Defendant must plead one of them, and put the Word *Protestando* instead of *dicit*, as to the other, that such a one died seised, &c. And in the last Case, when one is to answer to two Matters, and by the Law he ought to plead but to one; then in the Beginning of his Plea he may say *Protestando*, that such Matter is not true, and add to his Plea, *Pro Placito dicit*; and so he may take Issue upon the other Part of the Matter. *Plowd.* 276. *Finch* 359. *Practif. Attorn.* 1st Edit. pag. 83. A *Protestando* must not be repugnant, &c. And effectual Matters in Bar ought not to be taken in a Plea by *Protestation*: A *Protestando* is sometimes thus; *Protestando non Cognoscendo* such and such Things, *Pro Placito in hac parte dicit*, &c.

Protestant Dissenters, Exempt from Penalties, &c. See *Dissenters*.

Prothonotary, (*Protonotarius*, vel *Primus Notarius*) Is a Chief Officer or Clerk of the Common Pleas and King's Bench; and for the first named Court there are three *Prothonotaries*, and the other hath but one: He of the King's Bench records all Actions Civil; as the Clerk of the Crown Office doth all Criminal Causes in that Court: Those of the Common Pleas, since the Order 14 *Jas.* 1. upon an Agreement entered into between the *Prothonotaries* and *Filizers* of that Court, do enter and inrol all Manner of Declarations, Pleadings, Assises, Judgments, and Actions: They make out all judicial Writs; except Writs of *Habeas Corpus* and *Disfranchis Furator*. (for which there is a particular Office erected, called the *Habeas Corpora Office*). Also Writs of Execution, and of Seisin, of Privilege for removing Causes from inferior Courts, Writs of *Procedendo*, of *Scire facias* in all Cases, and Writs to inquire of Damages; and all Process upon Prohibitions, and on Writs of *Audita Querela*, False Judgment, &c. and they enter Recognizances acknowledged in that Court; and all Common Recoveries; and make Exemplifications of Records, &c. 5 *H.* 4. cap. 14.

Proto-forestarius, Was he whom our antient Kings made chief of *Windsor Forest*, to hear all Causes; a Kind of Lord Chief Justice in Eyre. *Camd. Britan.* 213.

Prover, Anno 28 *Edw.* 1. and 5 *Hen.* 4. See *Probator*.

Providentia, Provisions of Meat and Drink. *Knighton*, anno 1354.

Province, (*Provincia*) Signifies an out Country, govern'd by a Deputy or Lieutenant. *Litt. Dist.* It was used among the Romans for a Country, without the Limits of Italy, gain'd to their Subjection by the Sword; whereupon that Part of France next the Alps was so-called by them, and still retains the Name. But with us, a Province is most usually taken for the Circuit of an Archbishop's Jurisdiction; as the Province of Canterbury, and that of York: Yet it is mentioned in some of our Statutes, for several Parts of the Realm; and sometimes for a County. 32 *H.* 8. c. 23.

Provincial, (*Provincialis*) Of or belonging to a Province; also a chief Governor of a Religious Order, as of Friars, &c. *Stat.* 4 *Hen.* 4. c. 17.

Provision, (*Provisio*) By the Laws of England, as well as the Canon Law, is the Providing a Bishop, or any other Ecclesiastical Person, with a Living, by the Pope, before the Incumbent is dead: It is also called *Gratia expectativa*, or *Man data*.

datum de providendo; the great Abuse whereof heretofore in this Kingdom, occasioned divers Statutes to prevent it. 35 Ed. 3. c. 22. 37 & 38 Ed. 3. 2, 3 & 7 R. 2.

Provisiones. The *Decrees* which were made in a Parliament at Oxford, Anno 1258. are termed *Provisiones*. Contin. Matt. Paris.

Proviso, Is a Condition inserted into any Deed, on the Performance whereof the Validity of the Deed depends; and sometimes it is only a Covenant, *Secundum subjectam Materiam.* 2 Rep. 70. 2 Lill. Abr. 399. The Word *Proviso* is generally taken for a Condition; but it differs from it in several Respects, for a Condition is usually created by the Grantor or Lessor, but a *Proviso* by the Grantee or Lessee; there is likewise a Difference in Placing the *Proviso*, as if immediately after the *Habendum*, the next Covenant is that the Lessee shall repair, *provided* always that the Lessor shall find Timber, this is no Condition; nor is it a Condition, if it comes among other Covenants after the *Habendum*, and is created by the Words of the Lessee, as if the Lessor covenants to scour the Ditches, *Proviso* that the Lessee carry away the Soil, &c. 3 Nels. Abr. 21. It hath been held, that the Law hath not appointed any proper Place in a Deed to insert a *Proviso*; but that when it doth not depend on any other Sentence, but stands originally by it self, and when it is created by the Words of the Grantor, &c. and is restrictive or compulsory, to enforce the Grantee to do some Act, in such Case the Word *Proviso* makes a Condition, though 'tis intermix'd with other Covenants, and doth not immediately follow the *Habendum.* 2 Rep. 70. A *Proviso* always implies a Condition, if there be no Words subsequent which may change it into a Covenant: Also it is a Rule in *Provisoes*, that where the *Proviso* is that the Lessee, &c. shall do, or not do such a Thing, and no Penalty is added to it; this is a Condition, otherwise it is void; but if a Penalty be annexed, it is otherwise. Cro. Eliz. 248. 1 Lev. 155. And where a *Proviso* is a Condition, it ought to do the Office of a Condition, *i. e.* make the Estate conditional, and shall have Reference to the Estate, and be annexed to it; but shall not make it void without Entry, as a Limitation will: A Lease was made for Years, rendring Rent at such a Day, *Proviso* if the Rent be arrear for one Month after, the Lease to be void; the Question was, whether this was a Condition or Limitation; for if it was a Condition, then the Lease is not determined without Entry; adjudg'd, that it was a Limitation, though the Words were conditional, because it appeared by the Lease it self that it was the express Agreement of the Parties that the Lease should be void upon Non-payment of the Rent; and it shall be void without Entry. Moor 291. 1 Nels. Abr. 22, 26. If a *Proviso* be the mutual Words of both Parties to the Deed, it amounts to a Covenant: And a *Proviso* by Way of Agreement to pay, is a Covenant, and an Action well lies upon it. 2 Rep. 72. The Plaintiff convey'd an Office to the Defendant, *Proviso* that out of the first Profits he pay the Plaintiff 500*l.* And it was resolv'd, that an Action of Covenant lay on this *Proviso*; for 'tis not by Way of Condition or Defeasance, but in Nature of a Covenant to pay the Money. 1 Lev. 155. But a Defendant in Consideration of 400*l.* granted his Lands to the Plaintiff for ninety-nine Years, *Proviso* if he pay so much yearly during

the Life of S. T. &c. or 400*l.* within two Years after his Death, then the Grant to be void, and there was a Bond for Performance of Covenants; in Action of Debt brought upon this Bond, it was adjudg'd, that there being no express Covenant to pay the Money, there could be no Breach assigned on this *Proviso.* 2 Mod. 36. In Articles of Agreement to make a Lease, *Proviso* that the Lessee shall pay so much Rent, &c. although there be no special Words of Reservation of Rent, the *Proviso* is a good Reservation. Cro. Eliz. 486. And *Proviso* with Words of Grant added to it, may make a Grant, and not a Condition. Moor 174. Yet in the Case of a Lease for Life, *Proviso* if the Lessee died before the End of Sixty Years, that his Executors should enjoy it for so many Years as would make up the said Sixty Years; it was held, that by this *Proviso* the Lessee had no Estate for Years, nor his Executors any Remainder of a Term, because nothing was limited thereby to the Lessee for Life as a Remainder, to him and his Executors. 1 And. 19. A *Proviso* to make Leases, in a Covenant to raise Uses, upon the general Consideration of Natural Love and Affection to Children, &c. it is said is void; though such a *Proviso* might be good, where the Estate is executed by Fine, Recovery, &c. because of the Transmutation of the Estate, and for that in this Case Uses arise without Consideration. 1 Rep. 176. Moor 144. 2 Lill. Abr. 402. In a Deed, a *Proviso*, that if the Son disturb the other Uses, &c. that then a Term granted to him, and the Uses to the Heirs of his Body, shall be void; this *Proviso* is sufficient to cease the other Uses, on Disturbance. 8 Rep. 90, 91. But a *Proviso* to make an Estate, limited to one and the Heirs Males of his Body, to cease as if he was naturally dead, on his Attempting any Act by which the Limitation of the Land, or any Estate in Tail, should be undone, barred, &c. hath been adjudg'd not good; because the Estate-tail is not determined by the Death of Tenant in Tail, but by his Dying without Issue Male. Dyer 351. 1 Rep. 83. A Testator devised his Lands to one and the Heirs Males of his Body, *Proviso* that if he attempt to alien, then his Estate to cease, and remain to another; the *Proviso* is void. 1 Vent. 521. A *Proviso* that would take away the whole Effect of a Grant, as not to receive the Profits of Lands granted, &c. is void; and so is a *Proviso* that is repugnant to the express Words of the Grant: In a Will, a Testator made another his Executor, provided he did not administer his Estate; adjudged this *Proviso* is void for Repugnancy. Cro. Eliz. 107. Dyer 3. And if a *Proviso* is good at first, and afterwards it happens, that there is no other Remedy but that which was restrain'd; the Remedy shall be had, notwithstanding the Restraint. Wood's Inst. 231. Where a *Proviso* is Parcel of, or abridgeth a Covenant, it doth not make a Condition, but an Exception; when 'tis annex'd to an Exception in a Deed, 'tis an Explanation; and where added at the End of any Covenant, there it extends only to defeat that Covenant. 4 Leon. 72, 73. Moor 105, 471. See Deed.

Proviso, concerning Matters judicial, is where the Plaintiff in an Action desists in Prosecuting his Suit, and doth not bring it to Trial in convenient Time; the Defendant in such Case may take out the *Venire facias* to the Sheriff, which hath in it these Words, *Proviso quod*, &c. To the End, that if the Plaintiff take out any Writ to

that

that Purpose, the Sheriff shall summon but one Jury upon them both; and this is called going to *Trial by Proviso*. *Old Nat. Br.* 159. By the standing Rules of the Court of B. R. if a Plaintiff will not enter his Issue, the Defendant may by Rule compel him to enter it; and if 'tis entered, and he will not carry down the Cause to Trial, the Defendant may carry it down by *Proviso*. 3 *Salk.* 362. Process may be taken out by the Defendant in Criminal Cases by *Proviso* in Appeals, in the same Manner as in other Actions, on the Default of the Appellant; but not in Indictments, nor in Actions where the King is sole Party; and it hath been question'd, whether there can be any such Process in Informations *Qui tam*. 2 *Hawk.* 407, 408.

Provisor, Is taken generally for him that hath the Care of *providing* Things necessary; but more especially in our Laws it signifies one that formerly sued to the Court of Rome for a *Provision*. *Stat.* 25 Ed. 3.

Provisor Monasterii, The Treasurer or Steward of a Religious House. *Cowel.*

Provisor Victualium, The King's Purveyor, who provided for the Accommodations of his Court.

Provoocation, To make Killing a Person Man-slaughter, &c. See *Murder*.

Provost-Marshal, In this Kingdom is an Officer of the King's Navy, who hath Charge of the Prisoners taken at *Sea*: And is sometimes used for like Purpose at Land. 13 *Car.* 2. c. 9.

Proxies, Are Persons appointed instead of others, to represent them. Every Peer of the Realm called to *Parliament*, hath the Privilege of constituting a *Proxy* to vote for him in his Absence, upon a lawful Occasion; but such *Proxies* are to be entered in Person, and sometimes *Proxies* have been denied by the King; particularly *Anno* 6, 27 & 39 Ed. 3. *Marriage Contracts* have been often made by *Proxy*, &c.

Proxies, Also are annual Payments made by Parochial Clergy to the Bishop, &c. on Visitations. See *Procurations*.

Pryk, Is a Kind of Service or Tenure; and according to *Blount*, signifies an old fashioned Spur, with one Point only, which the Tenant holding Land by this Tenure, was to find for the King. — *Per servitium inveniendi unum Equum, unum Saccum, & unum Pryk in Guerra Wallia.* 1 R. 2. And in the Time of K. Hen. 8. Light Horsemen in War were called *Prickers*; because they used such Spurs or *Pryks*, to make their Horses go with Speed.

Publication, Is used of *Depositions* of Witnesses in a Cause in *Chancery*, in order to the Hearing, and Rules may be given to pass *Publication*; which is a Power to shew the *Depositions* openly, and to give out Copies of them, &c. There is also a *Publication* of a *Will*, which is a Solemnity requisite to the Making thereof, by declaring it to be the Last Will of the Testator, in the Presence of such a Number of Witnesses; and a *Will* which hath been made many Years, may be *New published* with Additions, and that makes it equivalent to a new *Will*. 3 *Nelf. Abr.* 27. *Publication of Libels.* Vide *Libels*.

Publick Faith, (*Fides Publica*) In the Reign of King Charles 1. was a Pretence or Cheat, to raise Money of the seduced People, upon what was term'd the *Publick Faith* of the Nation, to make War against the King about the Year 1642. *Stat.* 17 *Car.* 1. c. 18.

Pucelage, (*Pucellagium*) Is used for Virginity, Maidenhead. *Bracton*, lib. 3. In an antient Manuscript it is written *Puellagium*. Mich. 19 Ed. 3.

Puis Darrein Continuance, Is a Plea of new Matter, pending an Action, *post ultimam Continuationem*. See *Plea*.

Puisne, (*Fr.*) Younger, *Puny*; born, or coming after.

Pulla, (*Sax. Pul*) A Pool, or Lake of standing Water. *Mon. Angl. Tom.* 1. pag. 722.

Pulsator, The Plaintiff or Actor; and *Pulsare* signifies to accuse any One. *Leg. Hen.* 1. c. 26.

Pultura, Is an Examination or Demand; and 'tis so called from the Monks, who before they are admitted into a Monastery, *Pulsabant ad fores*, for several Days, and then enter. *Mon. Angl. Tom.* 2. pag. 1035.

Pundfulda, A Pound for Cattle, or Pinfold. *Placita inter Abbat. Glasston.* & Henr. de Hamel, *Anno* 1236.

Punishment, (*Pœna*) Is the Penalty of Transgressing the Laws: And as Debts are discharged to private Persons by Payment; so Obligations to the Publick, for disturbing Society, are discharged when the Offender undergoes the *Punishment* inflicted for his Offence. Kings, and such as have equal Power with them, have a Right to require *Punishment* for Injuries committed against themselves or their Subjects, upon the Violation of national Laws; though the Right of inflicting *Punishments* to provide for the Safety of Society, was originally (before Commonwealths were erected and Courts of Justice ordained) in the Hand of every Man being equal to, and independent of others; but since, it has resided in the Hands of the highest Powers, as Subjection to others hath taken away that primitive Right: However, this Power and natural Right of *Punishing* an Equal, still remains in those Places where the People are not subject to some Form of Government. *Grot. de Jure Belli*, lib. 2. cap. 21. The *Punishments* of Offences are many and various, adapted to the several Degrees of Crimes, and the Countries wherein committed; and in *England* are Beheading, Hanging, Imprisonment, Fine, Amercement, &c.

Pur auter Vie, Is where Lands, &c. are held for another's Life. See *Occupant*.

Purchase, (*Acquisitum, Perquisitum, Purchacium*) Signifies the Buying or Acquisition of Lands, or Tenements with Money, or by Deed or Agreement; and not obtaining by Descent, or hereditary Right: And *Conjunctum Perquisitum* is where Two or more Persons join in the *Purchase*. *Litt.* 12. *Reg. Orig.* 143. One cometh in by *Purchase* when he comes to Lands by legal Conveyance, and he hath a lawful Estate; and not where he hath it by Wrong, as *Disseisin*, &c. And a *Purchase* is always intended by Title, either for some Consideration, or by Gift; (For a Gift is in Law a *Purchase*) whereas Descent from an Ancestor cometh of Course by Act of Law: Also all Contracts are comprehended under this Word *Purchase*. 1 *Inst.* 18. *Dott. & Stud. chap.* 24. If an Estate comes to a Man from his Ancestors without Writing, that is a Descent: But where a Person takes any Thing from an Ancestor, or others, by Deed, Will or Gift, and not as Heir at Law; that is a *Purchase*. 2 *Lill. Abr.* 403. An Heir takes an Estate by Will, in another Manner than the Common Law would have given it; there he takes by *Purchase*, and not by Descent; but then he must be the right Heir. 2 *Lev.* 79.

None

None can generally take as Heir by *Purchase*, which is not a right Heir; nor by Descent, where the Estate was never executed in the Ancestor. *Ibid.* In a new created Estate to right Heirs, they must of Consequence take by *Purchase*. 4 *Mod.* 380. At Common Law a Man could not make his own right Heir take by *Purchase*, without Departing with the whole Fee-simple; but now by Way of Use he may: And where a Remainder of an Estate-tail was vested in a Person as a *Purchaser*, it was held that the Estate should go on in a Course of Descent. 1 *Mod.* 226. 3 *Salk.* 292, 293. If the Father devises Lands to his eldest Son, upon Condition; in such Case, the Son shall be in by *Purchase*, not by Descent. *Cro. Car.* 161. And there is this Difference between *Purchase* and Descent of Lands; if a Person takes by *Purchase*, a Fine, &c. may be no Bar. 3 *Nels. Abr.* 30. Every common *Purchaser* of Land ought at his Peril to take Notice of the Estates and Charges, which are upon the Land he *purchases*; for the Law presumes that no Man will *purchase* Lands without Advice of Counsel. 2 *Leon.* 89. 2 *Lill. Abr.* 403. But there are several Statutes which guard against fraudulent Incumbrances; as the 27 *Eliz.* c. 4. enacts, that Conveyances of Lands made to defraud a *Purchaser*, shall be void: The 29 *Car.* 2. c. 3. makes Judgments of Lands good against *Purchasers bona fide*, only from the Time of Signing by the Judges, &c. And no Judgment shall affect *Purchasers* of Lands, &c. till docketed. 4 & 5 *W. & M.* c. 20. Chancery will relieve the *Purchaser* of a Term, against a dormant Title, when Money hath been laid out upon Improvements. 2 *Lev.* 152. A Man contracted for the *Purchase* of Lands, but before the Conveyance was made, he died, having devised the Land; &c. and it was held the Devise was good; because the Vendor, after the Contract, stood Trustee for the Vendee. 3 *Salk.* 85. And if a Man covenant on a *Purchase* to pay another such a Sum of Money, he making him an Estate in such Land; if the other tender him a Feoffment, and offer to make Livery and Seisin, &c. he may bring an Action for the Money, as if he had actually made a Title. 1 *Ventr.* 148. Natural Persons, incorporate Persons, sole or aggregate, deaf, dumb and blind Persons, Minors, and all reasonable Creatures may *purchase*, except in some Cases; but some have Capacity to *purchase*, and not to hold, as Aliens, Felons, &c. and others have Ability to hold, or not to hold upon a *Purchase*, at the Election of themselves or others, as Infants, and Feme Coverts. 1 *Inst.* 2, 3. 11 *Rep.* 77. 7 *Rep.* 17. See Descent, Heir, &c.

Purchase and Value of Land. Lands are *purchased* at divers Rates in this Kingdom, according to their Situation, &c. An Estate of Fee-simple in Lands, is usually valued in the Country at twenty Years *purchase*. Lands near London yield about twenty-five Years *purchase*; and in Wales, not above eighteen or nineteen. The Fee of Tithes of perpetual Advowsons is worth about twenty-two Year's *Purchase*: And Fee-farm Rents issuing out of Lands, and the Fee of Ground-Rents, are rated at twenty-four or twenty-five Year's *Purchase*. The Fee of Houses in London sells for seventeen or eighteen Years *Purchase*, if in good Repair, and the Ground-Rents are not high; otherwise for less: Houses not in London, but well situated, without any Lands to them, are sold for fifteen

or sixteen Years *Purchase*: For a Lease of a House for thirty Years, about eight Years *Purchase* is given in London; and for one and twenty Years about six Years Value. A Freehold Lease for three Lives absolute, or a Copyhold Estate for the like Term, where the Quit-Rents and Heriots reserved are not higher than usual, is rated at fourteen Years *Purchase*; for the first Life eight, for the Second four, and two for the third Life; or seven, five, and two. A Chattel Lease for three Lives, thirteen Year's *Purchase*. The Exchanging one Life for another is generally one Year's *Purchase*; but if a sickly Life be exchanged for a Healthy one, two or three Year's *Purchase*. A Widowhood in a Copyhold, after the Death of the Husband a third Life, is valued at one Year's *Purchase*. The Fee in Reversion after Lives, is worth nine, seven, and five Year's *Purchase*, after one, two, or three Lives; and more where there is Timber, or the Estate is improveable. *Land Purch. Compan.* 1, 2, 3, 4, &c.

Purgation, (*Purgatio*) Is the Clearing a Man's Self of a Crime, whereof he is publicly suspected, and accused before a Judge: Of which there was formerly great Use in England. And *Purgation* is either *Canonica*, or *vulgaris*; *Canonical Purgation* is that which is prescribed by the Canon Law, the Form whereof used in the *Spiritual Court* is that the Person suspected take his Oath, that he is clear of the Fact objected against him, and bringing his honest Neighbours with him to make Oath, that they believe he swears truly: The *vulgar Purgation*, according to the ancient Manner, was by Fire or Water Ordeal, or by Combat, practised by Infidels as well as Christians till abolished by Canon. *Staundf. P. C. lib.* 2. cap. 48. *Stat. Westm.* 1. c. 2. *Purgation* is one of the Punishments of the Ecclesiastical Courts; but the *Stat.* 13 *Car.* 2. c. 12. having taken away the Oath *ex Officio*, of Persons accusing or *Purging* themselves, &c. some maintain that all the Proceedings of *Purgation* upon common Fame do fall too; though others say, there is still a legal *Purgation* left, but not Canonical. *Wood's Inst.* 506, 507. Vide Clergy, &c.

Purificatio Beate Mariæ Virginis, Mentioned in the Statute 32 *Hen.* 8. c. 21. See *Candlemas*.

Purlieu, or *Purleu*, (From the Fr. *Pur*, i. e. purus, & *Lieu*, locus) Is all that Ground near any Forest, which being added to the ancient Forest by King *Hen.* 2. *Rich.* 1. and King *John*, was afterwards disafforested and severed by the *Stat. Charta de Foresta*, and the Perambulations and Grants thereupon, by King *Hen.* 3. so that it became *Purlieu*, viz. pure and free from the Laws and Ordinances of the Forest. *Manwood's For. Laws*, par. 2, cap. 20. Our Ancestors called this Ground *Purlieu*, *purum Locum*, because it was exempted from that Servitude which was formerly laid upon it: And whereas *Manwood* and *Crompton* call it *Pourallee*, we may derive it from *Pur*, purus, & *Alee*, *Ambulatio*, because he that walketh or courseth within that Circuit is not liable to the Laws or Penalties incurred by them which hunt within the Forest Precincts; but *Pourallee* is said to be properly the Perambulation whereby the *Purlieu* is de-afforested. *Stat.* 33 *Ed.* 1. 4 *Inst.* 303. The Owners of Grounds within the *Purlieu* by Disafforestation, may fell Timber; convert Pastures into arable, &c. inclose them with any Kind of Inclosure; erect Edifices, and dispose of the same as if they had never been afforested; and

and a *Purlieu-Man* may as lawfully hunt to all Intents within the *Purlieu*, as any Man may in his own Grounds that were never afforested: He may keep his Dogs within the *Purlieu* unexpedited; and the Wild Beasts do belong to the *Purlieu-Man* *ratione soli*, so long as they remain in his Grounds, and he may kill them. 4 *Inst.* 303. If the *Purlieu-Man* chase the Beasts with Greyhounds, and they fly towards the Forest for Safety, he may pursue them to the Bounds of the Forest, and if he then do his Endeavour to call back and take off his Dogs from the Pursuit, although the Dogs follow the Chace in the Forest, and kill the King's Deer there; this is no Offence, so as he enter not into the Forest, nor meddle with the Deer so killed: And if the Dogs fasten upon the Deer, before he recover the Forest, and the Deer drag the Dogs into the Forest, in such Case the *Purlieu-Man* may follow his Dogs and take the Deer. 4 *Inst.* 303, 304. But in the Case of Sir Richard Weston, Attorney General, it was said, that there was no *Purlieu* in Law to hunt; that it cannot be by Prescription, and there is nothing in Statutes as to Hunting; and therefore *Purlieu-Men* may only keep out the Deer, but cannot kill them, though they be in their Grounds. 1 *Jones Rep.* 278. See *Moor* 706, 987. And notwithstanding *Purlieus* are absolutely disafforested, it hath been permitted, that the Ranger of the Forest shall, as often as the Wild Beasts of the Forest range into the *Purlieu*, with his Hounds re-chase them back into the Forest. 4 *Inst.*

Purlieu-men, Are those that have Ground within the *Purlieu*, and being able to dispend forty Shillings a Year *Freehold*; who, upon these two Points, are licensed to hunt in their own *Purlieus*, observing what is required. *Manw. For. Laws* 151, 157, 180, 186.

Purparty, (Fr. *Pour part*, i. e. *pro parte*) Is that Part or Share of an Estate, first held in Common by Parceners, which is by Partition allotted to any of them: To make *Purparty* is to divide and sever the Lands that fall to Parceners, which 'till Partition they held jointly, and *pro Indiviso*. Old Nat. Br. 11.

Purpresture, (*Pourprestura*, from the Fr. *Pourprist*, an Inclosure) Is generally when any Thing is done to the Nuisance of the King's Demesnes, or the Highways, &c. by Inclosure, or Buildings; endeavouring to make that Private which ought to be Publick. *Glanvil*, lib. 9. c. 11. 1 *Inst.* 38, 272. When a Man takes to himself, or incroaches any Thing which he ought not, whether it be in Lands, Franchise, or Jurisdiction, it is a *Purpresture*; and some Writers mention three Sorts of *Purprestures*, one against the King, the Second against the Lord of the Fee, and the Third against a Neighbour. *Kitch.* 10. 2 *Inst.* 38. *Purpresture* in a Forest is every Incroachment made therein, by Building, Inclosing, or Using any Liberty, without lawful Warrant to do the same: And if any Inclosures are made in Forests, they may be laid open, &c. *Manwood*, c. 10. *Cro. Jac.* 156. *Purprestures* and Incroachments may be inquired of in the Sheriff's Tourn. *Dalt. Sher.* 393.

Purprisum, (Fr. *Pourpris*) A Close or Inclosure; also the whole Compass or Extent of a Manor-Place. *Mon. Angl. Tom.* 2. fol. 106.

Purpurati, The Sons of Emperors and Kings. *Malmsh. lib.* 3.

Purse, A certain Quantity of Money, containing 500 Dollars, or 125*l.* in *Turky*. *Merch. Dict.*

Pursuivant, (From the Fr. *Poursuivre*, i. e. *Agere, persequi*) Signifies the King's Messenger attending upon him in his Wars, or at the Council-Table, in his Court, or at his Chamber, the Exchequer, &c. to be sent upon any Business or Message. Those that are used in Martial Affairs, are called *Pursuivants at Arms*; whereof there are Four of Special Name among the *Heralds*: And *Stow*, speaking of the Death of the tyrannical King *Rich.* 3. hath these remarkable Words; *His Body was naked to the Skin, not so much as a Rag about him, and he was trussed behind a Pursuivant at Arms, like a Hog, or a Calf, &c.* The Rest of these *Pursuivants* are used upon Messages in Time of Peace, and especially in Matters concerning Jurisdiction. 24 *H. 8.* c. 13.

Purveyance, (Fr. *Pourveyance*, from *Pouvoir, providere*) Is the Providing of Corn, Fuel, Victuals, and other Necessaries for the King's House: And *Purveyor* is an Officer of the King or Queen, that provides such Corn, Victuals, &c. Formerly the King's Court was supplied with Necessaries from the Demesnes of the Crown, which were manured for that Purpose; but this Method being found to be troublesome, was by Degrees disus'd, and afterwards the King appointed Officers to buy in Provisions for his Household, who were *Purveyors*, and claimed divers Privileges by the Prerogative of the Crown. They are mentioned in *Magna Charta*, cap. 22. and other subsequent Statutes: But Misbehaving themselves, several Offences of *Purveyors* were made Felonies; as if they took Things above the Value of 12*d.* against the Will of the Owner, without Warrant, or such Appraisement as was directed, or without Paying for them, &c. And the Name of *Purveyor* became so odious, that it was changed into *Buyer*. 2 *Inst.* 543. 28 *Ed.* 1. c. 2. 5 *Ed.* 3. c. 2. 36 *Ed.* 3. c. 2, 3, &c. Though these Laws having not sufficiently provided against the Oppressions of Persons employed for making Provisions for the King's Household, Carriages, and other *Purveyance*; and the People of many Counties having been obliged to submit to sundry Rates and Taxes, and Compositions to redeem themselves from such Vexations and Oppressions, as it is recited by the 12 *Car.* 2. c. 24. it was enacted by that Statute, that from thenceforth no Sum or Sums of Money, or other Thing, shall be taken, raised, rated, imposed, or levied, for or in Regard of any Provision, Carriages, or *Purveyance* for his Majesty, his Heirs or Successors; and by the said Statute it is ordained, that no Person, by any Warrant or Commission from the King, &c. shall, by Colour of Buying or making Provision or *Purveyance* for his Majesty, or any King or Queen of England, or for their Household, take any Timber, Cattle, Corn, Grain, Malt, Hay, Straw, Victuals, Carriages, or other Things, of any of the Subjects of his Majesty, his Heirs or Successors, without the full and free Consent of the Owner or Owners thereof, had and obtained without Menace or Force; nor shall require any to find Horses, Oxen, Carts, or Carriages, for the Carrying the Goods of his Majesty, &c. without such Consent: And no *Pre-emption* shall be allow'd or claimed in Behalf of his Majesty, in Markets, &c. but they shall be free to all the Subjects to sell, notwithstanding

standing any Pretence of *Purveyance*; and if any shall make Provision or *Purveyance*, or impress Carriages, contrary to this Statute, the Justices of Peace are to commit the Offenders to Gaol 'till the next Sessions, when they shall be indicted, and proceeded against for the same, &c. Stat. 12 Car. 2. c. 24. par. 13 & 14. This absolute and universal Restraint of all Kinds of *Purveyance*, having been found inconvenient, it was enacted by 13 & 14 Car. 2. c. 20. That the Officers of the Navy, &c. may press Carriages for the Use of his Majesty's Navy and Ordnance, according to the Regulations prescribed by that Statute, as at so much *per Mile*; and the like was provided by 1 Jac. 2. c. 10. in Respect to the King's Royal Progresses, &c.

Purview, (Fr. *Pourveu*, a Patent or Grant) Is frequently used by Sir Edw. Coke for the Body, or that Part of an *Act of Parliament* which begins with *Be it enacted*, &c. The Statute 3 H. 7. stands upon a *Preamble* and *Purview*. 2 Inst. 403. 12 Rep. 20.

Putage, (*Putagium*) *Fornicatio ex parte Fœmina; quasi putam agere, à Gall. Putte, i. e. Meretrix.* Amongst our Ancestors this Crime was esteem'd very heinous; for if any Heir Female under Guardianship, were guilty of it, she forfeited her Part to the other Coheirs; or if she were a sole Heiress, the Lord of the Fee had her Lands by Escheat. *Spelm. Glanvil, lib. 7. cap. 12.*

Putativus, *Putative*, Reputed, or commonly esteem'd; oppos'd to what is notorious and unquestionable. — *Pater Pueri Putativus, i. e. the reputed Father of the Child.*

Putura, (*q. Potura*) Is a Custom claimed by Keepers in Forests, and sometimes by Bailiffs of Hundreds, to take Man's Meat, Horse Meat, and Dog's Meat, of the Tenants and Inhabitants within the Perambulation of the Forest, Hundred, &c. and in the Liberty of *Knaresburgh* it was long since turn'd into the Payment of 4 d. in Money by each Tenant. *M.S. de Temp. Ed. 3. 4 Inst. 307.* The Land subject to this Custom is called *Terra Putura*. *Plac. apud Cestr. 31 Ed. 3.*

Pyker or Pycar, A small Ship or Herring-boat. 31 Ed. 3. c. 2.

Q

Quadrata, Signifies any Kind of Square, a Quarter, &c.

Quadragesima, The fortieth Part; also the Time of *Lent*, from our Saviour's *Forty Day's Fast*. *Litt. Dict.*

Quadragesima Sunday, Is the first Sunday in *Lent*; and so called, because it is about the fortieth Day before *Easter*. *Blount.*

Quadragesimalia. In former Days it was the Custom for People to visit their Mother-Church on *Midlent Sunday*, and to make their Offerings at the High Altar; as the like Devotion was again observed in *Whitsun-Week*: But as the Processions and Oblations at *Whitsontide* were sometimes commuted into a rated Payment of *Pentecostals*; so the *Lent* or *Easter* Offerings were changed into a Customary Rate called *Quadragesimalia*, and *Denarii Quadragesimales*, also *Latere Ferusalem*.

Quadrans, A fourth Part of a Penny: And before the Reign of King *Edw. 1.* the smallest Coin was a *Sterling* or Penny, mark'd with a Cross, by the Guidance whereof a Penny might

be cut into Halves for a Half-penny, or into Quarters or four Parts for Farthings; 'till to avoid the Fraud of unequal Cutting, that King coin'd Half-pence and Farthings, in round distinct Pieces. *Matt. Westm. Ann. 1279.*

Quadrantata Terræ, The fourth Part of an Acre. See *Fardingdeal*.

Quadraria, A Place where Men dig Stones; sometimes writ *Quararia*, which we call a *Quarry*, &c. *Mon. Angl. Tom. 2. pag. 133, 177.*

Quadrivium, The Center of four Ways, where four Roads meet and cross each other. By Statute, Posts with Inscriptions are to be set up at such Cross-ways, as a Direction to Travellers, &c. 8 & 9 W. 3. c. 16.

Quadrugata terræ, A Team-Land; or so much Ground as may be till'd with four Horses.

Quæ est eadem, In Pleading is used to supply the Want of a Traverse. 2 *Lill. Abr. 405.* In a *Clausum fregit* such a Day, the Defendant pleads the Plaintiff's Licence to enter on the same Day, and that *virtute inde* he entered; he need not say *Quæ est eadem Transgressio*: So in *Trespas* for Taking of Goods; if the Defendant justifies the same Day and Place: And in *Trespas* and *Battery*, if the Defendant justifies that the same Day and Place the Plaintiff assaulted him, and that what Damages happened to him was of his own Wrong; this is good without *Quæ est eadem Transgressio*, &c. though he doth not directly answer the Assault laid by the Plaintiff; but where he justifies at another Day, or at other Place, then he ought to say, *Quæ est eadem*. 21 *Hen. 7. pl. 52.* A Fact laid to be *Nov. 1.* and a Justification *Nov. 2.* *Quæ est eadem* is well enough without a Traverse, the Day not being material; but it had been naught, if the Day had been material. 1 *Lev. 241.* If a *Trespas* is alleged 10 *Nov.* and Justification the 11 *Nov.* and there be an Averment of *Quæ est eadem*, it is good without making a Traverse. *Lutw. 1457.* Where a Defendant justifies *dicto Tempore* in the Plaintiff's Declaration, he hath no Occasion to say *Quæ est eadem transgressio*; because he agrees with the Plaintiff in the Time and Place mentioned in his Declaration, and gives an Answer to it. *Mich. 5 W. & M. B. R.*

Quæ plura, Was a Writ that lay where an Inquisition had been taken by an *Escheator* of Lands, &c. that a Man died seised of, and all the Land was suppos'd not to be found by the Office or Inquisition; this Writ was therefore to inquire of what other Lands or Tenements the Party died seised: But it is now made useless, since the Taking away the Court of *Wards* and *Offices post mortem*. 12 Car. 2. c. 24. *Reg. Orig. 293.*

Quære, or *Querie*, Is where any Point of Law, or Matter in Debate is doubted; as not having sufficient Authority to maintain it. See 2 *Lill. Abr. 406.*

Querens non invenit Plegium, A Return made by the Sheriff, upon a Writ directed to him with this Clause, *viz. Si A. fecerit B. securum de Clamore suo Prosequendo*, &c. *F. N. B. 38.*

Quæ servitia, A Writ concerning Services, &c. See *Per quæ servitia*.

Quæsta, An Indulgence or Remission of Penance by the Pope; and the Retailers of them were called *Quæstionarii*, and desired Charity for themselves or others. *Matt. Westm. Anno 1240.*

Quæstus, Is that which a Man hath by Purchase; as *Hereditas* is what he hath by Descent.

— Aut

— *Aut habet Hæreditatem tantum, vel Quantum tantum, &c.* Glanv. lib. 7. cap. 1.

Quakers, (From *Tremulus*) Are such who pretend to tremble or *quake*, in the Exercise of their whimsical Religion. *Quakers* to the Number of Five or more, assembling in Religious Worship not authorized by Law, were to forfeit for the first Offence 5 l. for the Second 10 l. &c. by Stat. 13 & 14 Car. 2. c. 1. but they are exempted from the Penalties of that Act by the 1 W. & M. c. 18. The 7 & 8 W. 3. c. 27. enacts, that *Quakers* making and subscribing the Declaration of Fidelity mentioned in 1 W. & M. and owning King *William* to be right and lawful King, shall not be liable to the Penalties of this Act against others refusing to take the Oaths; and not subscribing the Declaration of Fidelity, &c. They are disabled to vote at Election of Members of Parliament: *Quakers*, where an Oath is required, are permitted to make a solemn Affirmation or Declaration, declaring in the Presence of Almighty God the Witness of the Truth, &c. But they are not capable of being Witnesses in a Criminal Cause, nor of serving on Juries, or having Offices in the Government. 7 & 8 W. 3. c. 34. The *Quakers* Affirmation is ordained to be in Force for ever, and the Form of it appointed by 1 Geo. c. 6. and the 8 Geo. c. 6. authorizes the Affirmation of the *Quakers* with the Words, *I do promise and sincerely declare in the Presence of you, &c. without saying in the Presence of God; false and corrupt Affirming incurs the Pains and Penalties of wilful Perjury. Quakers* refusing to pay Tithes, or Church-Rates, Justices of Peace are to determine, and order Costs, &c. 7 & 8 W. 3. 1 Geo.

Quare ius, A Writ judicial which was brought where a Man of Religion had Judgment to recover Land, before Execution was made of the Judgment; it went forth to the Escheator between Judgment and Execution, to make Inquiry whether the religious Person had Right to recover, or the Judgment were obtained by Collusion between the Parties, to the Intent that the Lord might not be defrauded. *Reg. Judic.* 8, 16, 46. *Stat. Westm.* 2. c. 32.

Quam diu se bene gesserit, Is a Clause often inserted in *Letters Patent* of the Grant of Offices, as in those to the *Barons* of the *Exchequer*, &c. which must be intended in Matters concerning their Office; and is nothing but what the Law would have implied, if the Office had been granted for Life. 4 *Inst.* 117.

Quantum meruit, i. e. How much he has deserved, is a Man's Action of the Case, so called, grounded upon the Promise of another, to pay him for doing any Thing so much as he should deserve or merit. If a Man retains any Person to do work or other Thing for him; as a Taylor to make a Garment, a Carrier to carry Goods, &c. without any certain Agreement; in such Case, the Law implies that he shall pay for the same, as much as they are worth, and shall be reasonably demanded; for which *Quantum meruit* may be brought: And if one sue another upon a Promise to satisfy him for Work done, &c. he must shew and aver in his Declaration how much he deserved for his Work. *Compl. Attorn.* A Plaintiff declared, that the Defendant in Consideration that the Plaintiff had found him sufficient Meat, Drink, Washing and Lodging, for several Months last past, promised to pay him as much as he should deserve, and averred that he

deserved so much; upon *Non Assumpsit* pleaded, the Plaintiff had a Verdict; but it was moved in Arrest of Judgment, that the Declaration was short and incertain, as to the Time and Number of Months: Though the Declaration was held good, and the Plaintiff had Judgment. *Mich.* 12 W. 3. B. R. 2 Salk. 557. Where the Word *Quantum* was omitted in the Declaration, *Tantum* hath been adjudg'd sufficient, viz. The Defendant promis'd to pay so much as he deserved; and *Meruisset* signifies as much as *ipse Meruisset*: Also on several Counts, *Quantum habere meruit* was construed to be *Quantum habere meruerit*, to make the Parties mean somewhat, as 'twas plain they did, though this was contrary to the Grammatical Construction; and the Court held that they must take the Words of the Declaration to be the very Words of the Promise, &c. *Pasch.* and *Hill.* 4 Ann. B. R. In a *Quantum Meruit*, bringing Money into Court was denied. *Hill.* 8 Will. 3. B. R. But it was allowed, *ex motione Magistri Raymond.* *Pasch.* 5 Ann. 2 Salk. 597.

Quantum valebat, Is where Goods and Wares sold are delivered by a Tradesman at no certain Price, or to be paid for them as much as they are worth in general; then *Quantum valebat* lies, and the Plaintiff is to aver them to be worth so much: So where the Law obliges one to furnish another with Goods or Provisions, as an Innkeeper his Guests, &c. And for Goods sold, it is the Practice among Clerks to lay three Counts, viz. *Indebitat. Assumpsit*, *Quantum valebat*, and *Simul Computasset*, that the Plaintiff may be sure to hit on one of the Promises, &c. *Practif. Attorn. Edit.* 1. pag. 72, 73.

Quare cum, Are general Words used in original Writs, &c. See *Original*.

Quare ejecit infra Terminum, Is a Writ that lies for a Lessee, where he is cast out of his Farm before his Term is expired, against a Feoffee of the Lands, or the Lessor that ejects him; and the Effect of it is to recover his Term again, and his Damages. *Reg. Orig.* 227. *F. N. B.* 197. *New Nat. Br.* 439. It is said this Writ was devised for the following Cause: If a Man make a Lease of Land for Years, and after he ousts his Lessee, and then makes a Feoffment of the Land unto a Stranger in Fee; now the Lessee cannot have a Writ of *Eject one firma* against the Feoffee, because he did not put him out, and in that Case the Lessee hath no other Remedy but to enter again into the Land; and if the Feoffee do then put him out, the Lessee may bring *Ejectione firme Vi & Armis*; but before Entry made by the Lessee, he had no Remedy against the Feoffee: And therefore, by the Equity of the Statute of *Westm.* c. 24. which enacts, that where it shall happen in one Case a Writ is found, and in the like Case falling under the same Law, and wanting the same Remedy, &c. it is not so, the Clerks of the Chancery are to agree upon a proper Writ, &c. By Reason of that Statute, was this Writ devised. *New Nat. Br.* 439. And if a Person lease Lands for Years, and the Lessor doth suffer a Recovery to be had against him upon a feigned Title, who entereth; the Lessee shall have his Writ of *Quare ejecit infra Terminum*, &c. And the Words of the Writ are, *Occasione cujus Venditionis*; and yet the same is not properly a Sale, but those Words are only of Form. *Ibid.* It is in the Election of the Lessee, or, if he grants over his Term, the second Lessee, to sue a Writ of *Ejectione firme*, or a *Quare ejecit infra*

infra termin. against the Lessor, or his Heir, or against the Lord by Escheat, &c. if they put the Termor out of his Term. 19 H. 6.

Quare Impedit, Is a Writ lying for him who hath purchased an *Advowson*, against a Person that disturbs him in his Right of Advowson by Presenting a Clerk thereto, when the Church is void. *F. N. B.* 32. *Stat. Westm.* 2. c. 5. It differs from *Affise of Darrein Presentment* (or *Ultima Presentationis*) because that lies where a Man or his Ancestor, under whom he claims, have formerly presented to the Church; and this is for him that is the Purchaser himself: But in both these, the Plaintiff recovers the Presentation and Damages; though in the Writ of *Darrein Presentment*, &c. he recovers only the Presentation, not the Title to the Advowson, as he doth in a *Quare Impedit*; for which Reason that *Affise* is seldom brought, and for that the Proceedings in it are very tedious: And where a Man may have *Affise of Darrein Presentment*, he may have *Quare Impedit*. 2 *Inst.* 356. 3 *Nels. Abr.* 31. The Writ *Quare Impedit* is to be brought in Six Months after the Avoidance; and by it a Patron may be relieved, not only in his Presentation to a Church, but to a Chapel, Prebend, Vicarage, &c. And this Writ lies of a Donative, and the special Matter is to be set forth in the Declaration: It also lieth for a Deanery by the King, although it be elective; and for an Archdeaconry, but not for a meer Office of the Church. 1 *Inst.* 344. 1 *Leon.* 205. If the *Quare Impedit* be for a Donative, the Writ shall be *Quare Impedit* to present to the Donative; if 'tis of a Parsonage, then 'tis *Quare Impedit Presentare ad Ecclesiam*; if to a Vicarage, 'tis *ad Vicariam*; if to a Prebend, then 'tis *ad Prebendam*, &c. 3 *Nels. Abr.* 35. If a Bishop be disturbed to collate, where he ought to make Collation, he may have a Writ *Quare Impedit*, and the Writ shall be *quod permittat ipsum Presentare*, &c. and he shall count upon the Collation: And if the King be disturb'd in his Collation by Letters Patent, he shall have *Quare Impedit*, &c. *New Nat. Br.* 73. A Grantee of a next Avoidance may bring this Writ against the Patron who granted the Avoidance. 39 H. 6. It may be brought by Executors, for a Disturbance in *vita Testatoris*; and Executors being disturb'd in their Presentation, may bring *Quare Impedit* as well as their Testator might. *Owen* 99. *Lutw.* 1. Husband and Wife jointly, or the Husband alone without his Wife may have the Writ *Quare Impedit*; and if a Man who hath an Advowson in Right of his Wife, be disturb'd in his Presentation, and dies, the Wife shall bring it on that Disturbance. 14 H. 4. 5 *Rep.* 97. *Quare Impedit* is made a Writ possessory for an Heir at full Age, Reversioner, or Spiritual Person, on an Usurpation in Time of an Ancestor, &c. 13 *Ed.* 1. c. 5. It supposes both a Possession and a Right; and the Plaintiff must alledge a Presentation in himself, or in those under whom he claims; unless it be in Case of Lapse, &c. In the Declaration of the Plaintiff, it is not sufficient for him to alledge, that he, or such a Person from whom he claims, were seised of the Advowson of the Church, but he must alledge a Presentation made by one of them; for if he doth not, the Defendant may demur to the Declaration: And the Reason of this is, that the Defendant, by joining the last Presentation to his own Title, is to make appear, that he hath a Right to present now as well as then. *Cro. Eliz.* 518. 5 *Rep.* 97.

Vaugh. 57. The Writ must be brought in that County where the Church is; the Patron and Incumbent are to be named in it, the one as he may be dispossessed of his Patronage, and the other of his Presentation; and it is usual likewise to make the Bishop a Defendant, to prevent a Lapse, where the Church is void, *pendente lite*: *Quare Impedit* will not lie against the Ordinary and Incumbent, without naming the Patron; because at Common Law the Incumbent could not plead any Thing which concerned the Right of Patronage, and therefore 'tis unreasonable that he alone should be named in the Writ who could not defend the Patronage; but the Stat. 25 *Ed.* 3. c. 7. enables him to plead against the King, and to defend his Incumbency, although he claims nothing in the Patronage; and by that Statute, he shall plead against any common Person; tho' with this Difference, that when the Inheritance of the Patron is to be devested by a Judgment in a *Quare Impedit*, there he must be named in the Writ; but where the next Presentation only is to be recovered, he need not be named: Yet where the King presents without a Title, and his Clerk is inducted, the *Quare Impedit* is to be against the Ordinary and Incumbent, for it will not lie against the King; but if he is Plaintiff, the Writ may be brought against the Patron alone, without naming the Incumbent. 7 *Rep.* 25. 2 *Cro.* 650. *Palm.* 306. The only Plea which the Bishop hath by the Common Law on a *Quare Impedit* is that he claimeth nothing but as Ordinary; he could not counterplead the Patron's Title, or any Thing to the Right of Patronage, nor could the Incumbent counterplead such Title, till the said Stat. 25 *Ed.* 3. by which both the Bishop and the Incumbent may counterplead the Title of the Patron; the one, when he collates by Lapse, or makes Title himself to the Patronage; and the other being *Persona impersonata*, may plead his Patron's Title, and counterplead the Title of the Plaintiff: And it has been adjudg'd, that the Incumbent cannot plead to the Title of the Parsonage, without shewing that he is *Persona impersonata* of the Presentation of the Patron. *W. Jones* 4. *March* 159. 3 *Nels. Abr.* 38. In a *Quare Impedit*, though it was found that the Church was full of another who was a Stranger to the Writ, and it did not appear whether he came in by a better Title than that which was found for the Plaintiff; it was held, that the Plaintiff might have a general Writ to the Bishop, which he is bound by Law to execute, or shall be amerced, &c. and he cannot return that the Church is full of another; for no Issue can be joined between the Bishop and the Plaintiff, because he has no Day in Court. 6 *Rep.* 51. 3 *Leon.* 136. But where a Plaintiff recovered an Advowson in Ejectment, and thereupon had a Writ to the Bishop, there being another Incumbent in the Church, who was not a Party to the Action; adjudg'd, that this Writ would not lie without a *Scire facias* to the Incumbent. *Sid.* 93. If it appears in a *Quare Impedit*, either in Pleading, or by Confession of the Parties, that neither of them have a Title, but that 'tis in the King; the Court may award a Writ to the Bishop for the King, to remove the Incumbent and admit *idoneam Personam ad Presentationem Regis*; but this must be when his Title is very plain. *Hob.* 126, 163. 1 *Leon.* 323. In *Quare Impedit*, the Plaintiff and Defendant are both Actors, so that the Defendant may have a Writ to the Bishop, as well

as the Plaintiff; but not without a Title appearing to the Court; wherefore if the Defendant never appears, the Plaintiff must make out a Title for Form sake, and so must the Defendant if the Plaintiff be nonsuited. *Hob.* 163. If the Plaintiff, after Appearance, in a *Quare Impedit* be nonsuited, it is peremptory; because the Defendant upon a Title made, whereby he becomes Actor, shall have a Writ to the Bishop: And it is the same in Case of a Discontinuance. 7 *Rep.* 27. 'Tis the Nature of a *Quare Impedit* to be final, either upon a Discontinuance or Nonsuit; and a Man cannot have two Suits for the same Thing in this Case against one Person, though he may have several *Quare Impedit*s against several Persons. 7 *Rep.* 27. *Hob.* 137. The Parson, Patron, and Ordinary are sued; the Ordinary disclaims, and the Parson loseth by Default; the Plaintiff shall have Judgment to recover his Presentation, and a Writ issue to the Bishop, &c. with a *Cessat executio*, until the Plea is determined between the Plaintiff and Patron. *Vaugh.* 6. Several were Plaintiffs in a *Quare Impedit*, the Defendant pleaded the Release of one of them pending the Writ; and it was resolv'd, that this Release shall only bar him who made it, and that the Writ shall stand good for the Rest. 5 *Rep.* 97. In a *Quare Impedit* against the Archbishop, the Bishop, and three Defendants; the Archbishop pleaded that he claimed nothing but as Metropolitan; and the Bishop pleaded that he claimed nothing but as Ordinary; and the three Defendants made a Title; but there was a Verdict against them: It was a Question, whether the Writ of Execution should be awarded to the Archbishop, or the Bishop; and it was held, that where neither of them are Parties in Interest, it may be directed to either; but if the Bishop is a Party in Interest, it must be directed to the Archbishop. 6 *Rep.* 48. 3 *Bull.* 174. And if the Archbishop of *Canterbury* be Plaintiff in a *Quare Impedit*, the Writ must be directed to the Archbishop of *York*, &c. *Show.* 329. If the Defendant pleads *Ne disturbat*, which is in Effect the General Issue in a *Quare Impedit*, this will be only a Defence of the Wrong with which he stands charged, and is so far from controverting the Plaintiff's Title, that it as it were confesses it; and the Plaintiff may presently pray a Writ to the Bishop, or maintain the Disturbance in order to recover Damages. *Hob.* 163. There must be a Disturbance to maintain this Action: In a *Quare Impedit*, the Patron declared upon a Disturbance of him to present 1 *November*; the Incumbent pleaded, that 1 *May* next after, the Presentation devolv'd upon the Queen by Lapse, and she presented him to the Church, &c. And upon Demurrer the Plea was held ill; because the Defendant had not confessed and avoided, nor traversed the Disturbance, set forth in the Declaration: And though by the Demurrer the Queen's Title was confess'd, it appearing that it was already executed, and the Defendant having lost his Incumbency by ill Pleading, the Writ shall not be awarded to the Bishop for the Queen to present again, but for the Patron. 1 *Leon.* 194. In all *Quare Impedit*s, the Defendant may traverse the Presentation alledged by the Plaintiff, if the Matter of Fact will bear it; but the Defendant must not deny the Presentation alledged, where there was a Presentation. *Vaugh.* 16, 17. And where a Presentment is alledged in the Grantor and Grantee, the Presentment in the Grantor is only traversa-

ble; for that is the Principal. *Cro. Eliz.* 518. The Courts at *Westminster* are very cautious not to abate the Writ of *Quare Impedit*, for *False Latin*, or Want of Form; yet if the Bishop against whom the Writ is brought, or any of the Defendants are misnam'd, 'tis good Cause of Abatement: If the Patron be not named in the Writ, it may be pleaded in Abatement; though the Death of the Patron pending the Writ doth not abate it, if the *Quare Impedit* is brought against the Bishop, Patron and Incumbent: And if the Incumbent dies, pending the Writ, and a Disturber should present again, and die, *Quare Impedit* would lie upon the first Disturbance by *Journies Accounts*; but the first Writ is abated by the Plaintiff's Death; also if the Plaintiff bring a new Writ within fifteen Days after the Abatement, that shall be a Continuance of the first Writ, and prevent the Defendant's Taking any Advantage: But if the Writ abate for any Fault in the Declaration; the Defendant shall have a Writ to the Bishop to admit his Clerk; and so he shall if Judgment is given upon a Demurrer, &c. *Cro. Eliz.* 324. *Cro. Car.* 651. 7 *Rep.* 57. *Dyer* 240. In a Plea of *Quare Impedit*, Days are given from 15 to 15, or from three Weeks to three Weeks, according to the Distance of Place: And if the Disturber come not in on the great Distress, a Writ is to be sent to the Bishop, that he claim not to the Prejudice of the Plaintiff for that Time; and upon Recovery, Judgment is to be given to the Party to recover the Presentation and Advowson. *Stat.* 52 *H.* 3. c. 12. 2 *Roll.* Abr. 377. And Damages are given in a *Quare Impedit*, by the Stat. of *Westm.* 2. c. 5. though Damages shall not be had against the Bishop, where he claims nothing but as Ordinary, and is no Disturber. 3 *Lev.* 59. Before this Statute no Damages were allowed on a *Quare Impedit*; and the King hath none at this Day, for although he declares *ad damnum*, &c. he is not within that Statute; because by his Prerogative he cannot lose his Presentation. 6 *Rep.* 52. If a Plaintiff hath a Verdict, and the Church is found to be vacant, the Patron may have the Fruits of his Presentation, and so not be intitled to Damages; in which Case, a *Remittitur de Damnis* is entered. 3 *Lev.* 59. There are two Judgments in a *Quare Impedit*, viz. That the Plaintiff shall have a Writ to the Bishop; and this is the final Judgment, that goes to the Right between the Parties, and is the Judgment at Common Law: And Judgment for Damages, since the Stat. of *Westm.* 2. after the Points of the Writ are inquired into; which Judgment is not to be given but at the Instance of the Party. 1 *Mod.* 254, 255. The Points to be inquired of, where the Jury find for the Plaintiff, &c. are, of whom, and upon whose Presentment the Church is full; how long since it was void; the yearly Value of the Church, &c. which being found, Damages are to be given accordingly. 6 *Rep.* 51. A *Quare Impedit* was brought against Two, one of them cast an *Essoin*, and *idem dies datus est* to the other, &c. Then an Attachment issued against them for not appearing at the Day, and Process continued to the *Grand Cape*; which being return'd, and the Parties not appearing, it was ruled that final Judgment should be entered according to the Stat. 52 *H.* 3. But on Motion to discharge this Rule, because the Defendants were not summoned either upon the Attachment or grand Distress, the Summoners being only the feigned Names of

John Doe and *Richard Roe*, the Judgment was set aside; for the Design of the Statute was to have Process duly executed, and that must be with Notice, &c. And where the Right is for ever concluded, this being so fatal, the Process must never be suffered to be a Thing of Course. 1 *Mod.* 248. When one recovers in a *Quare Impedit* against an Incumbent, the Incumbent is so removed by the Judgment, that the Recoveror may present without any Thing farther; but the Incumbent continues Incumbent *de facto*, till such Presentation is made: And if the Plaintiff in this Suit be instituted upon a Writ to the Bishop, the Defendant cannot appeal; if he doth, a Prohibition lies; because in this Case, the Bishop acts as the King's Minister, and not as a Judge. 2 *Roll. Abr.* 365. 1 *Roll. Rep.* 62. If one brings a *Quare Impedit* against the Patron and Incumbent of a Church within six Months, and recovers after the six Months, he shall remove the Incumbent, if named in the Writ. 2 *Roll. Abr.* 375. And the King cannot remove an Incumbent, presented, instituted and inducted, although upon a Usurpation, but by *Quare Impedit* in a judicial Way. 2 *Cro.* 385. See *Presentation*, &c.

Quare Incumbavit, A Writ that lieth against the Bishop, who within six Months after the Vacation of a Benefice, confers it upon his Clerk, whilst two others are contending at Law for the Right of Presentation. *Reg. Orig.* 32. Or it is a Writ brought after a Recovery in a *Quare Impedit*, or Assise of *Darrein Presentment*, against the Bishop that thus admits a Clerk, notwithstanding the Writ *Ne admittas* serv'd on him: For if the Bishop doth incumber the Church before a *Ne Admittas* is issued, then the Party shall have a *Quare Impedit*; as the Ordinary can have no Notice till the *Ne Admittas*. *F. N. B.* 32, 33. *Wood's Inst.* 571. And if a Man hath a Writ of *Right of Advowson* depending between him and another, and the Church is void pendant the Writ, the Plaintiff shall not have a *Quare Incumb.* or *Ne Admittas*, although the Bishop incumber the Church; because the Plaintiff shall not recover the Presentment upon this Writ, but the Advowson: And where he hath Title to present, he may do it; and have *Quare Impedit*, if he be disturb'd. *New Nat. Br.* 108, 109. If the Bishop delay the true Patron in his Presentation, and the Patron sues a *Quare Impedit*, he may thereupon have a *Ne Admittas*; and if the Bishop after the Receipt of such Writ, admit the Clerk of any other Person without a Verdict in a *Fine Patronatus*, the true Patron shall have *Quare Incumbavit* against the Bishop, and thereby recover the Presentment with Damages: Also a Writ is to be directed to the Bishop to disincumber the Church. *F. N. B.* 37. This Writ may be brought after the six Months; and if the Plaintiff be Nonsuit in a *Quare Incumbavit*, he may have another Writ, and vary from his first Declaration, &c. *Ibid.* 48.

Quare non Admissit, Is a Writ which lies against a Bishop, where a Man hath recovered his Advowson, or Presentation in a Writ of *Right of Advowson*, *Quare Impedit*, or other Action, and the Bishop doth refuse to admit his Clerk, upon Pretence of Lapse, &c. 'tis requisite in the Writ to mention the Recovery; and it is to be brought in the County where the Refusal was. *F. N. B.* 47. 7 *Rep.* *Dyer* 40. In a *Quare non Admissit* the Plaintiff shall recover Damages: And if a Plain-

tiff have Judgment in a *Quare Impedit*, and a Writ is awarded to the Bishop; if upon this Writ the Bishop makes a false Return, the Plaintiff may have *Quare non Admissit* against him, and have his Damages. *Dyer* 260. King *Edw.* 1. presented his Clerk to a Benefice in *Yorkshire*, and the Archbishop of that Province refused to admit him; upon which the King brought a *Quare non Admissit*, and the Archbishop pleaded that the Pope had a long Time before provided for that Church, as one having supreme Authority in that Case, and therefore he could not admit the King's Clerk: It was adjudged, that for this Contempt to execute the King's Writ, the Archbishoprick should be seised, &c. 5 *Rep.* 12. If the Bishop refuse the King's Presentee, and doth afterwards admit him, yet the King shall have *Quare non Admissit* for the Refusal; and so it is presumed may a common Person. *New Nat. Br.* 106.

Quare non permittit, Is mentioned as an ancient Writ that lieth for one who hath Right to present to a Church for a Turn against the Proprietary. *Fleta*, lib. 5. cap. 6.

Quarentine or **Quarentain**, (*Quarentena*) Is a Benefit allowed by Law to the Widow of a Man dying seised of Lands, whereby she may challenge to continue in his capital Messuage, or chief Mansion-house, (not being a Castle) by the Space of forty Days after his Decease, in order to the Assignment of her Dower, &c. And if the Heir, or any other eject her, she may bring the Writ *de Quarentena habenda*; but the Widow shall not have Meat, Drink, &c. tho' if there be no Provision in the House, according to *Fitzherbert* she may kill Things for her Provision. *Magn. Carta*, cap. 7. *Bract.* lib. 2. cap. 40. *F. N. B.* 161.

Quarentine, Is also the Term of forty Days, wherein any Persons coming from Foreign Parts infected with the Plague, are not permitted to land or come on Shore, until so many Days are expired. *Stat.* 9 *Ann.* cap. 2. 7 *Geo.* cap. 3. See *Plague*.

Quarentine, Likewise signifies a Quantity of Ground, containing forty *Perches*. *Leg. Hen.* 1. cap. 16.

Quare obstruxit, Is a Writ for a Person obstructed and hinder'd in passing thro' the Land of another, having a Liberty and Right to pass thro' the same. *Fleta*, lib. 4. cap. 26.

Quarter, A Measure of Corn, containing eight Bushels striked. *Stat.* 15 *R.* 2. cap. 4.

Quarterium Frumenti constat ex octo Bussellis. *Fleta*.

Quarterium Anni, A Quarter or the fourth Part of a Year. *Matt. Westm. Ann.* 1259.

Quarterizatio, Is Part of the Punishment and Execution of a Traitor, by dividing his Body into four Quarters.——*Fecit decollari, & Membratim dividi, & quarterisari, & Caput & ejus Quarterias ad Regni certas Civitates transmitti, &c.* *Artic. Ricardi Scrope Archiep. Ebor. apud Angl. Sacr.* par. 2. pag. 366.

Quarter-Sessions, Is a General Court held by the *Justices of Peace* in every County, once every Quarter of a Year; originally erected only for Matters touching the Breach of the Peace, but now its Power is greatly increased and extends much farther by many Statutes: The Holding these Sessions Quarterly was first ordained by the 25 *Ed.* 3. *Stat.* 1. cap. 8. And the particular Times are appointed by 36 *Ed.* 3. c. 12. See *Justices of Peace*.

Quasi

Quash, (*Quassare*, Fr. *Quasser* or *Casser*, i. e. *Cassum facere*) Is to overthrow or annul any Thing. *Bract. lib. 5. 11 Hen. 6. cap. 2.* As if the Bailiff of a Liberty return any Jurors out of his Franchise, the Array shall be *quashed*. *Co. Lit. 156.* And the Court of B. R. hath Power to *quash* Orders of Sessions, Presentments, Indictments, &c. Tho' this *Quashing* is by the Favour of the Court, and the Court may leave the Party to take Advantage of the Insufficiency by Pleading; as they generally do where an Indictment is for an Offence very prejudicial to the Commonwealth, as for Perjury, &c. *2 Lill. Abr. 410. 2 Hawk. P. C. 258.* The Court will not *quash* an Information; but there must be a Demurrer to it, if it be insufficient. *2 Lill. 411. Vide Stat. 7 W. 3. c. 3. See Indictment.*

Quaterymes of Wines, (Fr. *Quatriesme*) A Tax of the Fourth Penny for all Wines retailed.

Quechbord, A Kind of Game, supposed to be what we now call *Shovelbord*, prohibited by the Stat. 17 Ed. 4. c. 3.

Queen, (Lat. *Regina*, Sax. *Civen*, i. e. *Uxor*, a Wife, *sed propter Excellentiam*, the Wife of the King) In our Law is either she that holds the Crown of this Realm by Right of Blood, or who is married to the King; the First of which is called *Queen Regnant*, and the last *Queen Consort*: She that holdeth by Blood is, in Construction of Law, the same with the King, and hath the like regal Power in all Respects; but the *Queen Consort* is inferior to the King and his Subject. *Staundf. Prærog. 10. 3 Inst. 7. 1 Mar. Parl. 2. cap. 1.* To compass the Death of the *Queen* is Treason: Violating the *Queen's* Person, &c. is also Treason; and if she consents to the Adulterer, it shall be Treason in her. *25 Ed. 3. 3 Inst. 9.* The *Queen*, as the King's Wife, partakes of several *Prerogatives* above other Women, *viz.* By the Common Law, the Wife of the King, is a publick Person, exempt from the King; and is capable of Lands or Tenements of the Gift of the King, which no other *Feme Covert* is; she is of Ability, without the King, to purchase, grant, and make Leases; and may sue, and be sued alone, in her own Name only, by *Præcipe*, not by Petition: She may have in herself the Possession of personal Things during her Life, &c. But both Real and Personal Estate goes to the King after her Death; if she doth not in her Life-time dispose of them, or devise them away by Will. *1 Inst. 3, 31, 133. Finch 86. 1 Roll. Abr. 912.* Acts of Parliament relating to her, need not be pleaded; for the Court must take Notice of them, because she is a publick Person. *8 Rep. 28.* If a Tenant of the *Queen* aliens a Part of his Tenancy to one, and another Part to another; the *Queen* may distrain in any one Part for the Whole, as the King may do. *Wood's Inst. 22.* And in a *Quare Impedit* brought by the *Queen*, some say that Plenary is no Plea; no more than in the Case of the King. *Ibid.* But see *2 Inst. 361.* The *Queen* shall pay no Toll, &c. *1 Inst. 133.*

Queen Dowager. No Man may marry the *Queen Dowager*, without License from the King, on Pain to forfeit his Lands and Goods: But if she marry any of the Nobility, or under that Degree, she loseth not her Dignity; but by the Name of *Queen* may maintain an Action. *2 Inst. 18, 50.* The Stat. 25 Ed. 3. making it Treason to violate the *Queen*, extends not to a *Queen Dowager*, but the King's Wife and Companion:

And a *Queen Consort* and *Queen Dowager* shall be tried, in case of Treason, by the Peers. *2 Inst. 50.*

Queen-gold, (*Aurum Regina*) Is a Royal Duty or Revenue belonging to every *Queen* of England, during her Marriage to the King, payable by Persons in this Kingdom and Ireland, upon divers Grants of the King, by Way of Fine or Oblation, &c. being one full tenth Part above the entire Fine, on Pardons, Contracts or Agreements, which becomes a real Debt to the *Queen*, by the Name of *Aurum Regina*, upon the Party's bare Agreement with the King for his Fine and Recording the same. *Lib. Nig. S. a. pag. 43. 12 Co. Rep. 21, 22.*

Que Estate, Signifies which Estate; and is a Plea, where a Man intilling another to Land, &c. saith that the same Estate such other had, he has from him: As for Example, In a *Quare Impedit*, the Plaintiff alledges that two Persons were seised of Lands, whereunto the Advowson in Question was appendant in Fee, and did present to the Church, and afterwards the Church was void: *Que Estate*, that is, which Estate of the two Persons he hath now, by Virtue whereof he presented, &c. *Broke 175. Co. Lit. 121.* A Man cannot plead a *Que Estate* in an Estate-tail, nor can it be pleaded in Estates for Life, or for Years; a *Que Estate* of a Term may not be pleaded, by Reason a Term cannot be gained by Disseisin, as a Fee may; but one may plead a *Que Estate* in a Term in another Person, under whom he doth not claim, and be good; for he is not privy to the Estate of the Stranger, to know his Title. *1 Rep. 46. 3 Lev. 19. 1 Lev. 190. Lutw. 81.* A Thing that lies in Grant, cannot be claimed by a *Que Estate*, directly by itself; yet it may be claimed as Appurtenant to a Manor, by a *Que Estate* in the Manor. *1 Mod. 232.* A Man may not prescribe by a *Que Estate* of a Rent, Advowson or Toll; but he may of a Manor, to which these are appendant. *2 Mod. 144. 3 Mod. 52.* A Person cannot shew a *Que Estate*, without shewing the Deed how he came by it. *Cro. Jac. 673.*

Que est mesme, (Signifying *Verbatim*, the same Thing) Is a Word of Art, in Actions of Trespas, &c. for a direct Justification of the very Act complained of by the Plaintiff as a Wrong: And if where Tenants at Will bringing an Action against their Lord, the Plaintiffs say, that he threatened them in such Sort that he forced them to give up their Lands; to which the Lord pleads, that he said unto them, if they would not depart he would sue them at Law; this being the same *Threatning* that he used, or to speak artificially *Que est le mesme*, the Defence is good. *Kitch. 236.*

Querela, An Action or Declaration preferred in any Court of Justice; whence comes *Querens* or Complainant, and the Word *Quarrel* against any Person. And *Quietos esse à Querelis* was to be exempted from the customary Fees paid to the King or Lord of a Court, for Liberty to prefer such an Action; but more usually to be free from Fines and Amercements imposed for common Trespasles and Defaults. *Chart. K. Hen. 2. to Bernard de S. Wallery. Kennet's Gloss. See Plaint.*

Querela coram Rege & Concilio, &c. A Writ whereby one is called to justify a Complaint of Trespas made to the King himself, before the King and his Council. *Reg. Orig. 124.*

Querel

Querela frescæ Forciæ, Is a Writ of *Fresh Force*. Vide *Fresh Force*.

Quest, An Inquest or Inquisition, upon the Oaths of an impanelled Jury. *Cowel*.

Questus est nobis, Is the Form of a Writ of Nuisance ordained by Statute, lying against him to whom the House or other Thing that occasion'd the Nuisance is sold or alienated. *Stat. 13 Ed. 1. c. 24*. See *Quod permittat*.

Quia improvide, Seems to be a *Superfedeas* granted in the Behalf of a Clerk of the Chancery, who is sued contrary to the Privilege of that Court in C. B. and prosecuted to the *Exigent*; and in many other Cases, where a Writ is unwarily and erroneously sued out, or misawarded. *Dyer 33*.

Quid juris clamat, Is a Writ judicial, issuing out of the Record of a *Fine*, before it is ingross'd; and it lies for the Grantee of a Reversion or Remainder, when the particular Tenant will not attorn. *Reg. Judic. 36, 37*. After the *Fine* is ingrossed, the Cognisee shall not have a *Quid juris clamat* against the Tenant for Life: But the Course is, when he in the Reversion upon the Writ of Covenant sued against him, maketh Recognisance of the Reversion by *Fine*, &c. then upon that the Cognisee may have this Writ against the Tenant for Life; and if he be sick or not able to travel, a *Dedimus Potestatem* shall be granted to take his Cognisance, and to certify the same into C. B. When after Plea pleaded, the Tenant may make Attorney; and if he be adjudged to attorn, a *Disfringas ad attornandum* shall be awarded against him, &c. *New Nat. Br. 328*.

Quid pro quo, Signifieth what for what; and is used in the Law, for the giving of one Thing of Value for another Thing, being the mutual Consideration and Performance of both Parties to a Contract. *Kitch. 184*.

Quietantia, A Quittance, or Acquittance. See *Acquietantia*.

Quietare, To quit, discharge, or save harmless; a Word often found in old Deeds and Conveyances.

Quiete clamare, Is to quit Claim, or renounce all Pretensions of Right and Title.—*De una virgata terra in M. Ricardus & Aldreda remiserunt & Quiete clamaverunt de se & heredibus, &c. pradiſt. A. & hered. suis &c. pro hac autem Remissione Quieta clamacione idem A. dedit, &c. Braſt. lib. 5*.

Quietus, (Freed or Acquitted) Is a Word made Use of by the Clerk of the Pipe and Auditors in the Exchequer, in their Acquittances or Discharges given to *Accomptants*; usually concluding with *abinde recessit quietus*, which is called a *Quietus est*: A *Quietus est* granted to the Sheriff, shall discharge him of all Accounts due to the King. *Stat. 21 Jac. 1. cap. 5*. And these *Quietus's* are mentioned in the Acts of General Pardon. *12 Car. 2. c. 11. and 14 Car. 2. c. 21*.

Quietus Redditus, Rent acquitting the Tenant from all other Services, &c. See *Quit-Rent*.

Quinquagesima Sunday, Is what we call *Shrove-Sunday*; about the fiftieth Day before Easter. *Britt*.

Quinqueportus, The Cinque Ports; which are *Hastings, Romney, Dover, Sandwich, &c.* See *Cinque Ports*.

Quinzieme or Quinzime, A French Word signifying a *Fifteenth*; with us it is a *Tax*, so called,

being raised after the Rate of the *Fifteenth Part* of Men's Lands or Goods. *10 R. 2. cap. 1. 7 Hen. 7. cap. 5*. Though it is said to be a Mistake, that this was a Tax of the *Fifteenth Part* of all Lands; for it was of the Goods only, and was first granted by the Parliament. *18 Ed. 1*. And the Way of collecting it, was by two *Affessors* appointed in every County by the King; and they deputed others in every Hundred, who made a true Valuation of every Man's Goods, and then caused the *Fifteenth Part* to be levied. *Blount. See Fifteenths*.

Quinzime, Is sometimes used for the *Fifteenth Day* after any Feast; as the *Quinzime* of St. John Baptist. *13 Ed. 1*.

Quintal, One hundred Pound Weight of Fish, &c.

Quintane, (*Quintena*) Was a Roman military Sport or Exercise, by Men on Horseback, formerly practis'd in this Kingdom to try the Agility of the Country Youth: It was a Tilting at a Mark made in the Shape of a Man to the Navel, in his Left-hand having a Shield, and in his Right-hand a wooden Sword, the Whole made to turn round, so that if it was struck with the Lance in any other Part but full in the Breast, it turn'd with the Force of the Stroke, and struck the Horseman with the Sword which it held in its Right-hand: This Sport is recorded by *Matt. Paris. Anno 1253*.

Quint-exact, (*Quinto exactus*) Is the last Call of the Defendant who is sued to *Outlawry*; and if he do not then appear, he is by the Judgment of the Coroners return'd outlawed. *31 Eliz. cap. 3*.

Quintam, Is where an Information is exhibited against any Person on a *Penal Statute*, at the Suit of the King and the Party who is Informer, where the Penalty for Breach of the Statute is to be divided between them; and the Party Informer prosecutes for the King and himself. *Finch 340*. When the whole Sum is given by Statute to any Person who will sue for the same, the Prosecutor may bring Action *Qui tam*, or sue in his own Name, &c. *2 Lill. Abr. 59*. See *Information*.

Quit-claim, A Release, &c. See *Quiete clamare*.

Quit-Rent, (*Quietus Redditus, quasi Quiet Rent*) Is a certain small Rent, payable by the Tenants of Manors, in Token of Subjection, and by which the Tenant goes quiet and free: In ancient Records, it is called *White Rent*; because paid in Silver Money, to distinguish it from Rent-Corn, &c. *2 Inst. 19*.

Quoad hoc, Is often used in Law Pleadings and Arguments, to signify *As to this Thing named, the Law is so, &c.*

Quod Clerici non Eligantur in Officio, Is a Writ that lies for a Clerk, who by Reason of Lands he is possess'd of, is made Bailiff, Reeve, or such like Officer. *Reg. Orig. 187*.

Quod cum, In Indictments, &c. as *A. B.* was indicted *Quod cum C. D.* he had done such a Thing: And this being by way of Recital, and not positively, is not good. *2 Hawk. P. C. 227. 3 Salk. 188*. In Forgery, a *Quod cum* has been held well enough, where it was but an Inducement to the Fact; and when the Inducement came to charge the Offence, it did it in a particular Manner; but 'tis otherwise in Action of Trespass, &c. for there 'tis only Recital. *Trin. 2 Anna.*

Quod

Quod ei deforcat, A Writ for Tenant in Tail, Tenant in Dower, by the Curtesy, or for Term of Life, having lost their Lands by Default, against him that recovers, or his Heir. *Reg. Orig.* 171. *Stat. Westm.* 2. cap. 4. And *Quod ei Deforcat* may be brought against a Stranger to the Recovery; as if a Man recover by Default, and maketh a Feoffment, this Writ may be had against the Feoffee: If a Woman lose by Default, and taketh Husband, she and her Husband shall have the *Quod ei Deforcat*; but where Tenant in Tail loseth by Default, and dieth, his Heirs shall not have a Writ of *Quod ei Deforcat*, but a *Formedon*: And if Husband and Wife lose by Default the Land of the Wife, which she holdeth for Term of Life, and the Husband dieth, she may not have this Writ, for *Cui in vita* is her Remedy; and when one bringeth *Quod ei Deforcat*, he counts that he was seised of the Land in his Demesne, as of Freehold, or in Tail, &c. without shewing of whose Gift he was seised; also he ought to alledge *Esplees* in himself, and then the Defendant is to deny the Right of the Plaintiff, &c. and shew how that at another Time he recovered the Land against the Plaintiff, by *Formedon*, or other Action; and shall say in the End of his Plea, *Quod ipse paratus est ad manutenendum jus & Titulum suum predict. per Donum, &c. unde petit Judic.* &c. *New Nat. Br.* 347, 349. If Tenant in Tail, or such other Tenant who hath a particular Estate, lose by Default, where he is not summoned, &c. he may have either a *Writ of Disceit*, or *Quod ei Deforcat*. *Ibid.*

Quod permittat, Is a Writ which lieth against any Person who erects a Building, though upon his own Ground, so near to the House of another, that it hangs over, or becomes a Nuisance to it. 2 *Lill. Abr.* 413. Formerly where a Man built a Wall, a House, or any Thing which was a Nuisance to the Freehold of his Neighbour, and afterwards died; in such Case, he who received any Damage thereby, sued a *Quod permittat* against the Heir of him that did the Nuisance; and the Form of it was *Quod permittat proferre murum, &c.* 3 *Nelf. Abr.* 44. The Writ was given by the Statute *Westm.* 2. And at Common Law an Assise of Nuisance did not lie against the Alienee of a wrong Doer, for the Purchaser was to take the Land in the same Condition that it was conveyed to him; but by the said Statute of *Westm.* Damages are given against the Person who sold the Land, if the Nuisance be not abated on Request, &c. tho' this doth not extend to the Alienee of the Alienee. 3 *Nelf.* 45. *Lutw.* 1588. This Writ is seldom brought, being turn'd into Action on the Case. *Vide Nuisance.* *Quod permittat* lies also for the Heir of him that is disseised of his Common of Pasture, against the Heir of the Disseisor, being dead. *Terms de Ley* 507. And according to *Broke*, this Writ may be brought by him whose Ancestor died seised of Common of Pasture, or other like Thing, annexed to his Inheritance, against the Deforcor: If a Man is disturbed by any Person in his Common of Pasture, so that he cannot use it, he shall have a *Quod permittat*; so of a Turbary, Piscary, Fair, Market, &c. *New Nat. Br.* 272, 273, 275, 276. And a Parson may have a *Quod permittat* against a Disseisor, &c. in the Time of his Predecessor. 13 *Ed. 1. c.* 24. See *Quare Impedit*.

Quo jure, Is a Writ to compel a Man to shew by what Title he claims Common in the Land of another Person, brought by such other. *F. N. B.* 128. It is a Writ of Right in its Nature, and lieth against several Tenants; but they must make several Defences and Titles, &c. *New Nat. Br.* 284.

Quo minus, Lies for the King's Farmer or Debtor in the Court of *Exchequer*, because by the Detaining of his Debt, he is the less able to pay the King. *Terms de Ley*. It issues out of the *Exchequer*, to take the Body of the Defendant, as the *Capias* in the *Common Pleas*; and the *Latitat* in the *King's Bench*; and runs into *Wales*, where no Writ does out of those Courts, except it be the *Capias Utlagatum*: And though formerly it was allowed only to such Persons, as were Tenants or Debtors to the King; at this Day the Practice is become general for the Plaintiff to surmise that for the Wrong which the Defendant doth him, he is less able to satisfy his Debt to his Majesty; which Surmise gives Jurisdiction to the Court of *Exchequer*, to hear and determine the Cause. *Pract. Excheq.* 225. If a privileged Person of the *Exchequer* Court sue out a *Quo minus* in any Action in which the King is Party, the Sheriff in Execution thereof may, after Request to open Doors, break them open, &c. *Pract. Solic.* 194.

Quorum, (*Lat.*) Often occurs in our Statutes, and *Commissions* both of the Peace and others, but particularly in *Commissions* to Justices of Peace; and a Justice of the *Quorum* is so called, from the Words in the Commission, *Quorum A. B. unum esse volumus*: As where a Commission is directed to five Persons, whereof *A. B.* and *C. D.* to be Two: In this Case *A. B.* and *C. D.* are said to be of the *Quorum*, and the Rest cannot proceed without them. They are usually Persons of greater Quality or Estates than the common Commissioners. 3 *Hen. 7. c.* 3. 32 *Hen. 8. cap.* 43.

Quorum nomina. In the Reign of King *Hen. 6.* the King's Collectors, and other Accomptants, were much perplexed in passing their Accounts, by new extorted Fees, and forced to procure a then late invented Writ of *Quorum nomina*, for the Allowance and Suing out their *Quietus*, without the Allowance of the King. *Chron. Angl.*

Quota, A Tax to be levied in an equal Manner. *Chart. Ric.* 2.

Quo Warranto, Is a Writ which lies against any Person or Corporation, that usurps any Franchise or Liberty against the King, without good Title; and is brought against the Usurpers to shew by what Right and Title they hold or claim such Franchise or Liberty: It also lies for Misuser, or for Nonuser of Privileges granted; and by *Bracton*, it may be brought against one that intrudes himself as Heir into Land, &c. *Old Nat. Br.* 149. *Finch* 322. 2 *Inst.* 279. The Statute of *Quo Warranto* is the 18 *Ed. 1.* which is commented upon. 2 *Inst.* 494, 495, &c. And the Attorney General may exhibit a *Quo Warranto* in the Crown-Office against any particular Person, Body Politick or Corporate, who shall claim or use any Franchises, Privileges or Liberties, not having a legal Grant or Prescription for the same; and compel them by Process to appear in the Crown-Office, and shew Cause or set forth by way of Pleading, what Title they have to the Privileges claimed, and Issue shall be joined

and tried thereon by *Nisi Prius*, or the Plea be determined by the Judges on Demurrer, as in other Cases: But though on Demurrer, &c. the Question be determined for the Defendant, yet he has no Costs allowed him; if against him, he must be fined for the Usurpation, and pay large Costs to the Prosecutor. *Instit. Legal.* 147, 148, 157. But *vide Stat. 9 Ann.* It hath been adjudged, that the Stat. 4 & 5 W. & M. cap. 18. by which Informations in the Crown-Office are not to be filed without express Order in open Court, &c. being a remedial Law extends to Informations in the Nature of a *Quo Warranto*, which always suppose a Usurpation of some Franchise; and it is the general Practice not to make such an Order for an Information, without first making a Rule upon the Person complained of to shew Cause to the contrary; and this Rule is grounded on an Affidavit of the Offence, &c. and if the Person on whom the Rule is made and personally serv'd, do not at the Day given satisfy the Court by Affidavit, that there is no reasonable Cause for the Prosecution, the Court generally grants the Information; and upon special Circumstances, will grant it against those who cannot be personally serv'd with such Rule; as if they purposely absent themselves, &c. But if the Party on whom such a Rule is made, shew to the Court a reasonable Cause against such Prosecution; as against a *Quo Warranto* Information, that his Right in the Franchise in Question hath been already determined on a *Mandamus*; or been acquiesced in many Years; or that it depends on the Right of others which hath not been tried; or that the Franchise no way concerns the Publick, but is wholly of a private Nature, &c. the Court will not generally grant the Information. 2 *Hawk. P. C.* 262, 263. A *Quo Warranto* was brought for Vexation, on Forty-eight Points; and the Court on Motion, ordered that the Prosecutor shall waive that *Quo Warranto*, and bring a new one, and therein insist only upon three Points; but that he might proceed to Trial upon his new *Quo Warranto*, in such Time as he might have done upon the old. *Hill. 22 Car. B. R. 2 Lill. Abr.* 414. A *Quo Warranto* requires to know of the Defendant by what Authority he claims the Liberties, and charges him with the wrongful Usurpation of them: In a *Quo Warranto* to shew by what Authority a Person claimed to have a Court-Leet, and alleging farther *quod usurpavit Libertatem sine aliqua concessione*, &c. The Defendant pleaded *Non usurpavit*, and it was objected that this was no good Plea, for that the Answer to a *Quo Warranto* is either to claim or disclaim; but the better Opinion was, that by this Plea the Defendant had answered the Usurpation, though it did not shew by what Title he had claimed. *Godb.* 91. In *Quo Warranto* for using a Fair and Market, and taking Toll, Issue was taken, whether they had Toll by Prescription or not; and it was found that they had; and it was moved in Arrest of Judgment, that here was a Discontinuance, because there was no Issue as to the other Liberties claimed: But it was held, they were too soon to make this Objection, and that there can be no Discontinuance against the King before Judgment; for by Virtue of his Prerogative, the Attorney General may proceed to take Issue upon the Rest, or may enter a *Nolle Prosequi*; but if he will not proceed, the Court may make a Rule on him *ad replicandum*, and then there may be a

special Entry made of it. *Hardres* 504. 3 *Nelf. Abr.* 43. A Motion was made for an Information in Nature of a *Quo Warranto* against a Mayor and Aldermen, to shew by what Authority they admitted Persons to be Freemen of the Corporation, who did not inhabit in the Borough: The Motion was said to be in Behalf of the Freemen, who by this Means were encroached upon; and an Information was granted, there being no other Way to try it, nor to redress the Parties concerned. 1 *Salk.* 374. *Quo Warranto* Information may be brought against a Person voting in the Election of a Mayor, or other Chief Magistrate of a Corporation, that hath no Right to do it; upon Affidavit made that the Defendant voted in such an Election, and that the Dependent the Prosecutor believes he had no Right to do it, &c. And by Stat. 9 Ann. If any Person shall usurp, intrude into, or unlawfully hold or execute the Office of Mayor, Bailiff, or other Office in any Town Corporate or Place in England, the proper Officer of the Court of King's Bench, &c. may exhibit Informations in the Nature of a *Quo Warranto*, at the Relation of any Person desiring to prosecute, who shall be mentioned in such Informations to be the Relator against such Usurper, and proceed as usual; and if the Right of divers Persons may properly be determined in one Information, one Information shall serve, and the Defendants shall appear and plead as of the same Term, &c. the Information is filed, unless the Court give further Time; and the Prosecutor shall proceed with all convenient Speed: And if the Defendants be found guilty of an Usurpation, &c. the said Courts may as well give Judgment of Ouster, as fine the Defendants; and also give Judgment that the Relator shall recover his Costs: And if Judgment be given against the Relator, the Defendants shall have Costs to be levied by *Capias ad Satisfaciend. Fieri facias*, &c. In a *Quo Warranto*, the Judgment is final, because that is a Writ of Right; but Judgment on Information, in Nature of a *Quo Warranto*, is not conclusive: The Proceedings in one are Summons, and Judgment that the Liberties be seised, if the Defendant doth not appear; but in the other the Process is a *Venire facias* and *Distingas*. *Sid.* 86. *Kelw.* 139, &c. 3 *Nelf. Abr.* 43. Upon *Quo Warranto*, when the Liberties are seised *quousque*, &c. and they do not replevy them, the Course is that Judgment final be given, *Nisi* they plead within such a Time. *Comberbach* 18, 19. Wherever Judgment is given for the King on a *Quo Warranto*, for Liberties usurped, the Judgment is *Quod extinguatur*, and that the Usurpers *Libertates*, &c. *nullatenus intrumittant*; and in such Case the Writ must be brought against particular Persons: But where the *Quo Warranto* is for a Liberty claimed by a Corporation, there it is to be brought against the Body Politick; and the Liberties may be seised, but the Corporation still subsists. 4 *Mod.* 52, 58. A Judgment of Seizure cannot be proper where a Thing is dissolved: And by the Judgment in the *Quo Warranto* against the City of London, which was *quod Libertates & Franchisia capiantur & seisantur in manus Regis*, the Corporation was not dissolved; for it implied that they were not extinguished. *Ibid.* It has been observed, that frequent and violent Prosecutions on *Quo Warranto*'s in Behalf of the Crown, have been fatal to both King and People.

R. Rabb,

R.

Rabbi, In the *Greek* signifies Magister or Master. *Litt. Diff.*

Rachetum, (From the Fr. *Racheter*, i. e. *Redimere*) The Compensation or Redemption of a Thief. — *Nullus capiat Rachetum de Latrocinio.* 1 Stat. Rob. K. Scot. c. 9.

Rachimburgi, Saith Blount are Judges. *Leg. Canut. c. 103.*

Rack, An Engine to extort Confession from Delinquents: And John Holland Earl of Huntingdon, being by King Hen. 6. created Duke of Exeter, and made Constable of the Tower of London, he and William de la Poole Duke of Suffolk and others, intending to have introduced the *Civil Laws* in this Kingdom, for a Beginning brought into the Tower the Rack or Brake, allowed in many Cases by the Civil Law. 3 *Inst.* 35.

Rack-Rent, Is the full yearly Value of the Land let by Lease, payable by Tenant for Life or Years, &c. *Wood's Inst.* 185.

Rack-Vintage, A second Vintage, or Voyage made by our Merchants for Rack'd Wines, i. e. Wines drawn from the Lees. *Stat. 32 Hen. 8. cap. 14.*

Raderhenstres, Are *Liberi Homines*. *Domesday.* 1 *Inst.* 5.

Radman or Readman, (From Sax. *Read*, Counsel) A Counsellor. *Domesd.*

Ragman, Is a Statute of Justices assign'd by King Ed. 1. and his Counsel, to hear and determine all Complaints of Injuries done throughout the Realm, within the five Years next before Michaelmas, in the fourth Year of his Reign.

Ragman's Roll, *Reffius Ragimund's Roll*, so called from one Ragimund a Legat in Scotland, who calling before him all the beneficed Clergy-men in that Kingdom, caused them upon Oath to give in the true Value of their Benefices; according to which they were afterwards taxed by the Court of Rome: And this Roll, among other Records, being taken from the Scots by our King Ed. 1. was redelivered to them in the Beginning of the Reign of King Ed. 3. Sir Richard Baker in his Chronicle saith, That Ed. 3. surrendered by his Charter all his Right of Sovereignty to the Kingdom of Scotland, and restored divers Instruments of their former Homages and Fealties, with the famous Evidence called *Ragman's Roll*. *Bak. Chron.* 127.

Ramilla, Little Branches, or Loppings of Trees, cut off or blown down. *Mon. Angl. Tom.* 1. pag. 809.

Ran, (Sax.) Is open or publick Theft; an open Spoiling a Man, so manifest that it cannot be denied. — *Ran dicitur aperta Rapina, quæ negari non potest.* *Lamb.* 125. *Leg. Canut. cap. 58.* Consonant whereto it is to this Day vulgarly said by one, who taketh the Goods of another injuriously and violently, that he hath taken or snatch'd all he could, *Rap* and *Ran*.

Range, (From the Fr. *Ranger*, i. e. to order, array, or dispose of) Is used in the Forest Laws as a Verb, as to range; and as a Substantive, as to make Range. *Chart. Forest.* c. 6.

Ranger, A sworn Officer of the Forest, to inquire of Trespasses, and drive the Beasts of the Forest out of the deafforested Grounds into the Forest, &c. He is made by Patent, and hath a Fee paid yearly out of the *Exchequer*, and cer-

tain Fee Déer. *Chart. Forest. cap. 7. Manwood's For. Laws, p. 50.* See *Forest*.

Ransome, (Fr. *Rancon*, i. e. *Redemptio*) Is properly the Sum paid for redeeming a Captive or Prisoner of War; and sometimes taken in our Law for a Sum of Money paid for the Pardoning some great Offence, and setting the Offender at Liberty who was under Imprisonment. *Stat. 1 H. 4. cap. 7. 11 Hen. 6. cap. 11.* Fine and Ransom go together, and some Writers tell us that they are the same; but others say, that the Offender ought to be first imprisoned, and then delivered or ransomed in Consideration of a Fine. 1 *Inst.* 127. *Dalt.* 203. And Ransom differs from *Amerciament*, being a Redemption of a Corporal Punishment due to any Crime. *Lamb. Eiren.* 556.

Rape, (*Rapus vel Rapa*) Is a Part of a County, signifying as much as a Hundred, and oftentimes contains in it more Hundreds than one: As all *Suffex* is divided into six Rapes only, viz. The Rape of Chichester, Arundel, Bramber, Lewis, Pevensey and Hastings; every of which, besides Hundreds, hath a Castle, River, and Forest belonging to it. *Camd. Britan.* 225, 229. These Rapes are incident to the County of *Suffex*; as *Lathes* are to *Kent*; and *Wapentakes* to *Yorkshire*, &c.

Rape of the Forest, (*Raptus Forestæ*) Trespass committed in the Forest by Violence; and is reckoned among those Crimes, whose Cognizance belonged only to the King. — *Inter delicta numeratur, quorum cognitio ad unicum Regem spectat.* *Leg. Hen. 1. c. 10.*

Rape of Women, Is an unlawful and carnal Knowledge of a Woman, by Force and against her Will: A Ravishment of the Body, and violent deflouring her; which is Felony by the Common and Statute Law. *Co. Lit.* 190. And the Word *Rapuit* is so appropriated by Law to this Offence, that it cannot be expressed by any other; even the Words *Carnaliter cognovit*, &c. without it, will not be sufficient. 1 *Inst.* 124. 2 *Inst.* 180. There must be Penetration and Emission, to make this Crime; and it is said Emission may be Evidence *prima facie* of Penetration, tho' not full Evidence: If there be no Penetration and Emission, an Attempt to ravish a Woman, though it be never so outrageous, will be an Assault only. 1 *Hawk. P. C.* 108. It was a Question before 18 *Eliz. c. 7.* whether a Rape could be committed on the Body of a Child of the Age of six or seven Years; and a Person being indicted for the Rape of a Girl of seven Years old, although he was found guilty, the Court doubted whether a Child of that Age could be ravished; if she had been nine Years old she might, for at that Age she may be endowed. *Dyer* 304. By the Stat. 18 *Eliz.* whosoever shall carnally know and abuse any Woman Child under the Age of ten Years, he shall suffer as a Felon, without Benefit of Clergy: And upon an Indictment for this Offence, it is no way material whether such Child consented, or were forced; but it must be proved that the Offender entered her Body, &c. 3 *Cro.* 332. *Dalt.* 393. In Rapes, it is no Excuse or Mitigation of the Crime, that the Woman at last yielded to the Violence, and consented either after the Fact or before, if such her Consent was forced by Fear of Death or of Duress; or that she was a common Strumpet, for she is still under the Protection of the Law, and may be forced: But it was anciently held, to be no Rape to force a Man's own Con-

cubine; and it is said by some to be Evidence of a Woman's Consent, that she was a common Whore. 1 *Hawk.* 108. 1 *Inst.* 123. Also formerly it was adjudged not to be a *Rape* to force a Woman, who conceived at the Time; because if she had not consented, she could not have conceived: Though this Opinion hath been since question'd, by Reason the previous Violence is no way extenuated by such a subsequent Consent; and if it were necessary to shew that the Woman did not conceive to make the Crime, the Offender could not be tried till such Time as it might appear whether she did or not. 2 *Inst.* 190. The sooner Complaint is made of a *Rape* the better: In *Scotland* it ought to be complained of the same Day or Night it is committed; and our Law mentions forty Days: It is a strong Presumption against a Woman, that she made no Complaint in a reasonable Time after the Fact. 1 *Inst.* 123. 7 *Inst.* 59. *H. P. C.* 117. On a Bill of Conspiracy, &c. where a Defendant did not indict the Plaintiff for a *Rape*, in a short Time after the Injury supposed to be done, but concealed it for Half a Year, and then would have preferred an Indictment against him; this was resolved to be malicious, and that there not being *Recens prosecutio* argued a Consent. 3 *Nelf. Abr.* 45. A Woman ravish'd may prosecute, and be a Witness in her own Cause. 3 *Rep.* 37. Yet a Woman's positive Oath of a *Rape*, without concurring Circumstances, is seldom credited: If a Man can prove himself to be in another Place, or in other Company, at the Time she charges him with the Fact, this will overthrow her Oath; so if she is wrong in the Description of the Place, or swears the Fact to be committed in a Place whereto it was impossible the Man could have Access at that Time; as if the Room was lock'd up, and the Key in the Custody of another Person, &c. Aiders and Abettors in committing a *Rape*, may be indicted as principal Felons, whether Men or Women; and the Lord Audley was indicted and executed as a Principal, for assisting his Servant to ravish his own Wife, who was admitted a Witness against him. *Dalt.* 107. *State Trials*, Vol. 1. p. 265. Of old Time, *Rape* was Felony, and punished with Death; especially if the Party ravished were a Virgin, unless such Virgin would accept of the Offender for her Husband, in which Case she might save his Life by marrying him; for if she demanded him for her Husband before Judgment pass'd, he escaped Punishment; but by the Stat. *Westm.* 2. her Election is taken away: Afterwards it was look'd upon as a great Misdemeanor only, and not Felony, but dreadfully punish'd, viz. by the Loss of Eyes, and Privy Members; and by the Statute of *Westm.* 1. 3 *Ed.* 1. cap. 13. it was reduced to Trespass, subjecting the Offender to two Years Imprisonment, and a Fine at the King's Will: But the Stat. *Westm.* 2. c. 34. made it Felony again; and it is excluded from the Benefit of the Clergy, by 18 *Eliz.* *Rape* was excepted out of the general Pardon. 2 *W. & M.* c. 16, &c. See *Appeal of Rape*.

Raptu heredis, Is an antient Writ lying for the Taking away an Heir, holding in Socage; of which there are two Sorts, one when the Heir is married, the other when not. *Reg. Orig.* 163.

Rase, (*Rasarium*) Seems to have been a Measure of Corn now disus'd: Toll shall be taken

by the *Rase*, and not by the Heap or Cantel. *Ordin. for Bakers*, &c. cap. 4. *Pat.* 12 *Ed.* 3.

Rate-Tithe, Is where any Sheep or other Cattle are kept in a Parish for less Time than a Year, the Owner must pay Tithe for them *pro Rata*, according to the Custom of the Place. *F. N. B.* 51.

Ratian, A foreign Measure, containing about four Bushels; but more commonly a Day's Allowance of Forage for Man or Horse in an Army. *Lex Mercat.*

Ratification, (*Ratificatio*) A Ratifying or Confirming: It is particularly used for the Confirmation of a Clerk in a Prebend, &c. formerly conferred upon him by the Bishop, where the Right of Patronage is doubted or supposed to be in the King. *Reg. Orig.* 304.

Ratio, A Cause or Judgment given therein; and *ponere ad rationem* is to cite one to appear in Judgment. *Walsingh.* 88.

Rationabile Estoverium, Was Alimony heretofore so called. *Rot.* 7 *Hen.* 3.

Rationabili parte, A Writ of Right for Lands, &c. See *Reſto de Rationabili parte*.

Rationabili parte Bonozum, Is a Writ that lies for the Wife, after the Death of her Husband, against the Executors of the Husband denying her the third Part of his Goods after Debts and Funeral Charges paid. *F. N. B.* 222. And it appears by *Glanville*, that by the Common Law of *England*, the Goods of the Deceased, his Debts first paid, shall be divided into three Parts; one Part for the Wife, another Part for his Children, and the Third to the Executors: And this Writ may be brought by the Children, as well as the Wife. *Reg. Orig.* 142. But it seems to be used only where the Custom of the Country serves for it; and the Writs in the Register rehearse the Customs of the Counties, &c. *New Nat. Br.* 270, 271. As to Children bringing this Writ, their Marriage is no Advancement, if the Father's Goods be not given in his Life-time; but where a Child is advanced by the Father, this Writ will not lie. *Ibid.*

Rationabilibus divisiis, A Writ lying where two Lords, in divers Towns, have *Seigniories* or Lordships joining together, for him that finds his Waste by little and little to have been incroached upon, against the other that hath made the Incroachment, to rectify the Bounds and *Divisions*; in which Respect *Fitzherbert* says it is in its Nature a *Writ of Right*: And the *Old Nat. Br.* calls it a Kind of *Justicies*, that may be removed by a *Pone* out of the County-Court into the *Common Pleas*. *F. N. B.* 128. *Reg. Orig.* 157. *New Book Entries*.

Rationale, A Priest's Garment, worn by the Pope and Bishops, as a Token of the highest Virtue, *Que gratia & Ratione perſecitur*. See *Pectorale*.

Rabishment, (*Fr. Ravissement*, i. e. *Direptio*, *raptio*) Signifies an unlawful Taking away either of a Woman, or an Heir in Ward; and sometimes it is used in the same Sense with *Rape*.

Rabishment de gard, Was a Writ that lay for the Guardian by Knights-Service, or in Socage, against a Person who took from him the Body of his Ward. *F. N. B.* 140. By the Stat. 12 *Car.* 2. c. 24. this Writ is taken away, as to Lands held by Knights-Service, &c. but not where there is Guardian in Socage, or appointed by Will: And the Mayor and Aldermen and Chamberlains of

London

London who have the Custody of Orphans, if they commit any Orphan to another, he shall have a Writ of *Ravishment* of Ward against him who taketh the Ward out of his Possession. *New Nat. Br.* 317.

Ray, Is a Word appropriated to Cloth, never colour'd or dy'd. 11 *Hen.* 4. c. 6.

Razure, Of a Deed, so as to alter it in a material Part, without the Privy of the Party bound by it, &c. will make the same void: And if it be razed in the Date, after the Delivery, it is said it goes through the Whole. 5 *Rep.* 23, 119. Where a Deed by *Razure*, Addition or Alteration, becomes no Deed, the Defendant may plead *Non est factum* to it. *Ibid.*

Reafforested, Is where a Forest which had been *disafforested* is again made Forest; as the Forest of *Dean* is by the Stat. 20 *Car.* 2. c. 3.

Realty, Is an Abstract of *Real*, as distinguished from *Personalty*.

Reason, It has been observ'd, is the very Life of the Law; and that what is contrary to it, is unlawful: When the *Reason* of the Law once ceases, the Law it self generally ceases; because *Reason* is the Foundation of all our Laws. *Co. Lit.* 97, 183. If Maxims of Law admit of any Difference, those are to be preferred which carry with them the more perfect and excellent *Reason*. *Ibid.*

Reasonable Aid, Was a Duty claimed by the Lord of the Fee of his Tenants holding by Knights-Service, to marry his Daughter, &c. Stat. *Westm.* 2. cap. 24. See the Stat. 12 *Car.* 2. cap. 24.

Reattachment, (*Reattachiamentum*) Is a second Attachment of him who was formerly attached and dismissed the Court without Day, by the not coming of the Justices, or some such Casualty. *Broke. Reg. Orig.* 35. A Cause discontinued, or put without Day, cannot be revived without *Reattachment* or Resummons; which if they are special, may revive the whole Proceedings; but if general, the original Record only. 2 *Hawk.* 200. And on a *Reattachment*, the Defendant is to plead *de novo*, &c. See *Day*.

Rebate, Is an Abating what the Interest of Money comes to, in Consideration of prompt Payment. *Merch. Diff.*

Rebellion, (*Rebellio*) Among the *Romans*, was where those who had been formerly overcome in Battle, and yielded to their Subjection, made a second Resistance: But with us it is generally used for the Taking up of Arms traiterously against the King, whether by natural Subjects, or others when once subdued; and the Word *Rebel* is sometimes applied to him that wilfully breaks a Law; likewise to a Villain disobeying his Lord. Stat. 25 *Ed.* 3. cap. 6. 1 *R.* 2. c. 6. There is a Difference in our Law between *Enemies* and *Rebels*; for *Enemies* are those that are out of the King's Allegiance; and therefore Subjects of the King, either in open War, or *Rebellion*, are not the King's *Enemies*, but *Traitors*. And *David Prince of Wales*, who levied War against *K. Ed.* 1. because he was within the Allegiance of the King, had Sentence pronounced against him as a *Traitor* and *Rebel*. *Fleta*, lib. 1. cap. 16. Private Persons may arm themselves to suppress *Rebels*, *Enemies*, &c. 1 *Hawk.* P. C. 136.

Rebellious Assembly, Is a Gathering together of twelve Persons, or more, intending or going about to practise or put in Use unlawfully, of their own Authority, any Thing to change the

Laws or Statutes of the Realm; or to destroy the Enclosures of any Ground, or Banks of any Fish-Pond, Pool or Conduit, to the Intent the same shall lie waste and void; or to destroy the Deer in any Park, or any Warren of Conies, Dove-houses, or Fish in any Ponds; or any House, Barns, Mills, or Bays; or to burn Stacks of Corn; or abate Rents, or Prices of Victuals, &c. Stat. 1 *Mar.* cap. 12. 1 *Ed.* 6. See *Assembly unlawful*.

Rebinare, Was to give a second Stirring or Ploughing to Arable Land that lay fallow, to prepare it for sowing Wheat, &c. or to plough the Ground a third Time for that Purpose.

—*Tempus Rebinandi erit post Festum Nativitatis Sancti Johannis Baptista cum terra pullulaverit post carucam.* *Fleta*, lib. 2. c. 73.

Rebutter, (From the Fr. *Bouter*, i. e. *Repellere*, to put back or bar) Is the Answer of the Defendant in a Cause to the Plaintiff's *Surrejoinder*: And the Plaintiff's Answer to the Defendant's *Rebutter* is called a *Surrebutter*; but 'tis very rarely that the Parties go so far in Pleading. *Pract. Attorn. Edit.* 1. pag. 86. *Rebutter* is also where a Man by Deed or Fine grants to Warranty any Land or Hereditament to another; and the Person making the Warranty or his Heir, sues him to whom the Warranty is made, or his Heir or Assignee, for the same Thing; if he who is so sued, plead the Deed or Fine with Warranty, and pray Judgment if the Plaintiff shall be received to demand the Thing which he ought to warrant to the Party, against the Warranty in the Deed, &c. this is called a *Rebutter*. *Terms de Ley* 511. And if I grant to a Tenant to hold without Impeachment of Waste, and afterwards implead him for Waste done, he may debar me of this Action by shewing my Grant; which is *Rebutter*. *Co. Entr.* 284. 1 *Inst.* 365.

Recaption, (*Recaptio*) Signifies the Taking a second Distress of one formerly distrained, during the Plea grounded on the former Distress; and it is a Writ to recover Damages for him whose Goods being distrained for Rent, or Service, &c. are distrained again for the same Cause, hanging the Plea in the County-Court, or before the Justices. *F. N. B.* 71, 72. Stat. 47 *Ed.* 3. cap. 7. And a *Recaption* lieth where the Lord distrains other Cattle of the Tenant than he first distrained, as well as if he had distrained the same Cattle again, if it be for one and the same Cause; but 19 *E.* 3. Issue was taken whether the Cattle were other Cattle of the Plaintiff, &c. *New Nat. Br.* 161. If the Lord distrain the Cattle of a Stranger for the same Rent, and not his Cattle who was first distrained; neither the Stranger, nor the Party first distrained, shall have the Writ of *Recaption*: And if the Lord distrain for Rent or Service, and afterwards the Lord's Bailiff takes a Distress on the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a *Recaption* against the Lord, or against the Bailiff, although the Bailiff maketh Cognizance in Right of the Lord, &c. for it may be the Lord had no Notice of that Distress, or the Bailiff had not Notice of the Distress took by the Lord; though in such Case, Action of Trespass lies; and if the Lord agree to the Distress taken by his Servant or Bailiff, the Tenant may have this Writ against the Lord. *Ibid.* 159. A Man is distrained within a Liberty, and sues a *Replevin* there by Plaint or Writ, and pendant that Plaint in the Liberty he is distrained again

again for the same Cause, by the Person who distrained before; he shall not upon that Distress bring a Writ of *Recaption*, because the Plaintiff is not pendent in the County-Court before the Sheriff, nor in C. B. before the Justices: But if the Plaintiff be removed by *Pone* or *Re. ordare* out of the Liberty before the Justices, then the Party distrained may have a *Recaption*, &c. And if a Person be convicted before the Sheriff in a Writ of *Recaption*, he shall not only render Damages to the Party, but be amerced for the Contempt; and by the Justices be fined. 39 Ed. 3. For Damage feasant Beasts may be distrained as often as they shall be found upon the Land; because every Time is for a new Trespass and a new Wrong, and no *Recaption* lies.

Receiver, (*Receptor*) Is by us as with the *Civilians* commonly used in the evil Part, for such as receive stolen Goods, &c. And the *Receiving* a Felon, and concealing him and his Offence, makes a Person accessory to the Felony. 2 Inst. 183. But a *Receiver* of a Felon, &c. must have Notice of the Felony either express or implied, which is to be expressly charged in the Indictment; and the Felony must be complete at the Time of the Receipt, and not become so afterwards by Matter subsequent: If a Person knowing of one to have been guilty of Felony, barely receive him and permit him to escape, without giving him any Advice, Assistance or Encouragement, it is a high Misdemeanor, but no capital Offence; and a Wife, in Regard to the Duty and Love which she owes her Husband, may receive him when he hath committed Felony; but no other Relation will exempt the *Receiver* of a Felon from Punishment. S. P. C. 41. H. P. C. 218, 219. 2 Hawk. P. C. 122, 319, 320. By Statute, if any Person shall receive or buy knowingly any stolen Goods, or conceal Felons knowing of the Felony, he shall be accessory to the Felony, and suffer Death as a Felon. Stat. 5 Ann. c. 31. Such *Receivers*, &c. may be transported by 4 Geo. cap. 11.

Receiver, Annex'd to other Words, as *Receiver of Rents*, signifies an Officer belonging to the King, or other great Personage. *Crompt. Jurisd.* 18. See *Account*.

Receiver of the fines, Is an Officer who receives the Money of all such as compound with the King upon *Original Writs* sued out of the Chancery. *West. Symb. par. 2. sect. 106. Stat. 1 Ed. 4. c. 1.*

Receiver General of the Dutchy of Lancaster, An Officer of the *Dutchy-Court*, that gathers in and collects all the Revenues, Fines, Forfeitures and Assessments, within the said *Dutchy*, or what else is there to be received arising from the Profits of the Dutchy Lands, &c. 39 Eliz. c. 7.

Receiver General of the Muster-Rolls, Is mentioned in the Stat. 35 Eliz. c. 4.

Receivers General of the Revenue. The *Receivers* of the Revenues, are within three Months to pay in their Receipts, on Pain of Forfeiture of Place, and 4 s. per Pound, &c. 34 & 35 Hen. 8. cap. 2. Also *Receivers* are to be bound with Sureties for true accounting, and to render Accounts yearly, &c. under Penalties. 7 Ed. 6. c. 1. *Receivers* of the Revenue Actions may be brought against, and not be staid by Privilege of Parliament. 2 Ann. cap. 18. If a *Receiver General* of Taxes be robbed, Oath is to be made by three in Company, to recover, &c. 6 Geo.

Receiver General of the Court of Wards and Liveries, Was an Officer belonging to that Court; but that Court being taken away by the Stat. 12 Car. 2. cap. 24. this Officer is of Course out of Doors.

Recital, (*Recitatio*) Is the Rehearsal or making Mention in a Deed or Writing of something which has been done before. 2 Lill. Abr. 416. A *Recital* is not conclusive, because it is no direct Affirmation; and by feign'd *Recitals* in a true Deed, Men might make what Titles they pleas'd, since false *Recitals* are not punishable. 1 Inst. 352. 2 Lev. 108. *Wood's Inst.* 225. If a Person by Deed of Assignment recite that he is possessed of an Interest in certain Lands, and assign it over by the Deed, and become bound by Bond to perform all the Agreements in the Deed: If he is not possessed of such Interest, the Condition is broken; and though a *Recital* of it self is nothing, yet being joined and considered with the rest of the Deed, it is material. 1 Leon. 112. The *Recital* of one Lease in another, is not a sufficient Proof that there was such a Lease as is recited. *Vaugh.* 74. But the *Recital* of a Lease in a Deed of Release, is good Evidence of a Lease against the Relessor and those who claim under him. *Mod. Ca.* 44. A new reversionary Lease shall commence from the Delivery, where an old Lease is recited, and there is none, &c. *Dyer* 93. 6 Rep. 36.

Recluse, (*Reclusus*) Is he who being enter'd into a religious Order, is shut up, and stirs not out of the House or Cloyster. *Litt.* 92.

Recognition, (*Recognitio*) Signifies an Acknowledgment; and it is the Title of the first Chapter of the Stat. 1 Jac. 1. whereby the Parliament acknowledged the Crown of England, on the Death of Queen *Elizabeth*, rightfully to have descended to King *James*.

Recognitione annullenda per Vim & Duriem facta, Is a Writ to the Justices of C. B. for the Sending a Record touching a *Recognizance*, which the *Recognizor* suggests was acknowledged by Force and Duress; that if it so appear, the *Recognizance* may be disannulled. *Reg. Orig.* 183.

Recognitors, (*Recognitores*) Are the Jury impanelled upon an *Affise*; so called, because they acknowledge a Disceisin by their Verdict. *Bract.* lib. 5.

Recognizance. (*Fr. Reconnaissance, i. e. Recognitio, Obligatio*) Is a Bond or Obligation of Record, acknowledged to the King, &c. And of *Recognizances* some are for Debt, some for Bail; and others to appear at the Sessions or Affises to prosecute Felons, and to be of the good Behaviour, &c. For Debt, or Bail, they are taken or acknowledged before the Judges, a *Master in Chancery*, &c. And to appear at the Affises, or Sessions, they may be taken by *Justices of Peace*; which *Recognizances* are to be returned by the Justices to the Sessions, or an Information lies against them. 2 Lill. Abr. 417. All *Recognizances* must be made in *Latin*, and the Conditions of them, where they have such, are to be in *English*; and when a *Recognizance* of the Peace is made, the Condition is to be read to the Parties bound, calling them by their Names thus: *You A. B. do acknowledge to owe unto our Sovereign Lord King George, &c.* And then it is to be ingrossed on Parchment, and the Justice is to subscribe it. *Dalt.* 479, 480. In these *Recognizances*, the Principal is bound in double the Sum of the Sureties; and the usual Number of Sureties are Two, and

and the usual Penalty 40 l. at least ; though if the Party be a very dangerous Person, a Justice may insist upon a *Recognizance* of 1000 l. Penalty. *Style* 322. *Recognizances* in general are of several Sorts ; one is founded on the Stat. 23 H. 8. cap. 6. By which Statute, the Chief Justices of the King's Bench, and Common Pleas in Term-Time, or in their Absence out of the Term, the Mayor of the Staple at Westminster, and the Recorder of London jointly, have Power to take *Recognizances* for the Payment of Debts in this Form, *Noverint Universi, &c.* They are to be sealed with the Seal of the Cognizor, and of the King appointed for that Purpose, and the Seal of one of the Chief Justices, &c. And the Recognizees, their Executors and Administrators shall have the like Process and Execution against the Recognizors, as upon Obligations of Statute-staple. 2 *Inst.* 678. The Execution upon a *Recognizance* or Statute, pursuant to the Stat. 23 Hen. 8. is called an *Extent* ; and the Body of the Cognizor, (if he be a Layman) and all his Lands, Tenements and Hereditaments, into whose Hands soever they come, are liable to the Extent : Goods (not of other Persons in his Possession) and Chattels, as Leases for Years, Cattle, &c. that are in his own Hands, and not sold *bona fide* and for valuable Consideration, are also subject to the Extent. 3 *Rep.* 13. But the Land is not the Debtor, but the Body ; and the Land is liable only in Respect that it was in the Hands of the Cognizor at the Time of the Acknowledgment of the *Recognizance*, or after ; and the Person is charged, but the Lands chargeable only. *Plowd.* 72. Lands held in Tail shall be chargeable only during Life, and not affect the Issue in Tail, unless a Recovery be passed : Copyhold Lands are subject to the Extent, only during the Life of the Cognizor : The Lands a Man hath in Right of his Wife, shall be chargeable but during the Lives of the Husband and Wife together ; and Lands which the Cognizor hath in Jointenancy with another, are liable to Execution during the Life of the Cognizor, and no longer ; for after his Death, if no Execution was sued in his Life, the surviving Jointenant shall have all ; but if the Cognizor survive, all is liable. 2 *Inst.* 673. If two or more join in the *Recognizance*, &c. the Lands of all ought equally to be charged : And where a Cognizor, after he hath enter'd into a *Recognizance* or Statute, doth convey away his Lands to divers Persons, and the Cognissee sues Execution upon the Lands of some of them, and not all : In this Case, he or they whose Lands are taken in Execution, may by *Audita Querela* or *Scire facias* have Contribution from the rest, and have all the Lands equally and proportionably extended. 3 *Rep.* 14. *Plowd.* 72. This Kind of *Recognizance* may be used for Payment of Debts ; or to strengthen other Assurances. *Wood* 288. If a *Recognizance* is to pay 100 l. at five several Days, viz. 20 l. on each Day, immediately after the first Failure of Payment, the Cognissee may have Execution by *Elegit* upon the *Recognizance* for the 20 l. and shall not stay till the last Day of Payment is past ; for this is in the Nature of several Judgments. 1 *Inst.* 292. 2 *Inst.* 395, 471. When no Time is limited in a Statute or *Recognizance* for the Payment of the Money, it is due presently ; as in case of a Bond. *Law Secur.* 61. A *Recognizance* for Money lent, though it is not a perfect Record until entered upon the Roll ;

yet when entered, it is a *Recognizance* from the first Acknowledgment, and binds Persons and Lands from that Time. *Hob.* 198. But by Stat. 29 Car. 2. cap. 3. no *Recognizance* shall bind Lands in the Hands of Purchasers for valuable Consideration, but from the Time of Inrollment, which is to be set down in the Margin of the Roll : And *Recognizances*, &c. in the Counties of York and Middlesex, shall not bind Lands unless registered. 2, 5, 6 & 7 Ann. Also the Clerk of the *Recognizances* is to keep three several Rolls for the Entering of *Recognizances* taken by the Chief Justices, &c. and the Persons before whom the *Recognizances* are taken, and the Parties acknowledging are to sign their Names to the Roll, as well as to the *Recognizance*. 8 Geo. cap. 25. By *Recognizances* of Debt, and Bail, the Body and Lands are bound ; though some Opinions are, that the Lands of Bail are bound from the Time of the *Recognizance* entered into ; and some, that they are not bound but from the Recovery of the Judgment against the Principal. 2 Leon. 84. Cro. Jac. 272, 449. In the Court of B. R. all *Recognizances* are entered as taken in Court ; but in C. B. they enter them specially where taken, and their *Recognizances* bind from the Caption, but those in B. R. from the Time of their Entry : In C. B. a *Scire facias* may be brought on their *Recognizances* either in London or Middlesex ; on those in B. R. in the County of Middlesex only. 2 Salk. 659. 3 Nels. Abr. 46. A *Recognizance* of Bail in C. B. is entered specially ; the Bail are bound to pay a certain Sum of Money, if the Party condemn'd doth not pay the Condemnation, or render his Body to Prison ; And in B. R. *Recognizances* are enter'd generally ; that if the Party be condemn'd in the Suit or Action, he shall render his Body to Prison, or pay the Condemnation Money, or the Bail shall do it for him. Pasch. 23 Car. B. R. 2 Lill. Abr. 417. It was formerly a Question whether a *Capias ad satisfaciend.* would lie upon a *Recognizance* taken in Chancery ; but adjudged, that immediately after the *Recognizance* is acknowledged, it is a Judgment on Record ; and then by the Stat. 25 Ed. 3. cap. 17. a *Capias ad satisfaciend.* will lie, it being a Debt on Record. 2 Bulst. 62. If a *Recognizance* be made before a Master in Chancery for a Debt ; or to perform an Order or Decree of the Court ; if the Condition be not perform'd, an Extent shall issue ; or a *Scire facias* is the proper Process, for the Recognisor to shew what he can say why Execution should not be had against him ; upon which and a *Scire fec.* or two *Nibils* return'd, and a Judgment thereupon, the proper Execution is an *Elegit*, &c. Cro. Jac. 3. Where a Man is bound by *Recognizance* in the Chancery, and the Cognisor hath certain Indentures of Defeasance ; if the Recognissee will sue Execution on the *Recognizance*, the Recognisor may come into the Chancery, and shew the Indentures of Defeasance, and that he is ready to perform them, and thereon he shall have a *Scire facias* against the Recognissee, returnable at a certain Day ; and in the same Writ, he shall have a *Superfedeas* to the Sheriff not to make Execution in the mean Time. New Nat. Br. 589. If a Person is bound in a *Recognizance* in Chancery, or other Court of Record, and afterwards the Recognissee dieth ; his Executors may sue forth an *Elegit*, to have Execution of the Lands of the Recognisor : And if the Sheriff return that the Recognisor is dead, then a special *Scire facias*

facias shall go against the Heir of the Recognisor, and those who are Tenants of the Lands which he had at the Day of the Recognizance enter'd into. *Ibid* 590. One of the best Securities we have for a Debt is the Recognizance in Chancery, acknowledged before a Master of that Court; which is to be sign'd by such Master, and afterwards inrolled: And the King may by his Commission give Authority to one to receive a Recognizance of another Man, and to return the same into Chancery; and on such a Recognizance, if the Recognisee do not pay the Debt at the Day, the Recognisee shall have an *Elegit* on the Conuſance so taken, as if it were taken in the Chancery. *Pract. Solic.* 131. *New Nat. Br.* 589. In case Lands are mortgaged, without giving Notice of a Recognizance formerly had, if the Recognizance be not paid off and vacated in Six Months, the Mortgagor shall forfeit his Equity of Redemption, &c. 4 & 5 *W. & M. c.* 16. Recognizances may be discharged by Defeazance on Condition, upon Performance of such Condition; by Release; Payment of the Money; Delivery up of the Recognizance, &c.

Form of a Recognizance in Chancery, for Debt.

A. B. de, &c. in Com', &c. coram Domino Rege in Cancellar. sua personalit. constitut. Recogn. se debere C. D. de, &c. Centum libr. bona & legalis Moneta Magn. Britan. solvend. eidem C. D. aut suo certo Attorn. Executor. Administrator. vel Assign. suis in Festo Sancti Johannis Baptistæ, &c. post dat. hujus Recognitionis; Et nisi ita fecerit, vult & concedit pro se hered. Executor. & Administrator. suis quod dicta summa Cent. libr. levetur & recuperetur de Maneriis Messuagiis Terr. Tenement. Bonis Catall. & Hereditamentis ipsius A. B. hered. Executor. vel Administrator. suorum ubicunque fuerint invent. per presentes ad solum opus & usum prefat. C. D. Executor. vel Administrator. suorum. Teste dict. Dom. Reg. apud Westm. die, &c. Anno Regni Dom. nostri Georgii secund. Dei Gra. Magn. Britan. Franc. & Hibern. Regis Fidei Defensor', &c. Primo, Ann. Dom. 1727.

A Recognizance for Breach of the Peace.

South'ton ff. **M**emorandum, quod Die & Anno, &c. A. B. de, &c. in Com. pradi. & C. D. de, &c. & E. F. de, &c. venerunt coram me J. S. Arm. unum Jusficiar. Dom. Regis ad Pacem in Com. prad. conservand. Assign. & Recognoverunt se debere dict. Dom. Reg. videl. prad. A. B. in Quadragint. libris & C. D. & E. F. separatim in vigint. libr. bona & legal. Monet. Magn. Britan. de Bonis & Catallis terris & tenementis suis separatim Fieri & Levare ad opus dict. Dom. Reg. hered. & successor. suor', si defecerit in Conditione infraſcript'.

The Condition of this Recognizance is such, That if the above-bound A. B. shall personally appear at the next General Quarter-Sessions of the Peace to be held at, &c. for the County of S. aforesaid, to make Answer unto all such Matters as shall be then and there objected against him by G. H. for and concerning the Breach of the Peace, and to do and receive what shall be enjoined by the Court; and if in the mean Time the said A. B. keep the Peace of our Sovereign Lord the King, as well towards his Majesty as his Subjects, and par-

ticularly towards the said G. H. &c. That then, &c. Or else, &c.

Capit. & Cogn. die & anno supradict.
Coram me J. S.

Recognizor, Is the Party that enters into the Recognizance; as the Person to whom it is made, or one is bound thereby, is the *Recognizee*.

Reconciliari, A Church is said *Reconciliari* when it is consecrated again after it hath been polluted, or in the Possession of Pagans or Hereticks. *Matt. Westm. Anno* 1015.

Record, (*Recordum*, from the Lat. *Recordari*, to remember) Signifies an authentick Testimony in Writing, contained in Rolls of Parchment, and preserv'd in a Court of Record. *Britton, c.* 27. It is a Writing in Parchment, wherein are inrolled Pleas of Land, or Common Pleas, and criminal Proceedings in Courts of Record; and Records are restrained to such Courts only, and do not extend to the Rolls of inferior Courts, the Registries of Proceedings whereof are not properly called Records. 1 *Inst.* 260. 2 *Lill. Abr.* 418. And there are said to be three Sorts of Records, viz. A Record judicial, as an Attainder, &c. a Record ministerial upon Oath, being an Office or Inquisition found; and a Record made by Conveyance and Consent, as a Fine, or a Deed inrolled. 4 *Rep.* 54. But it has been held, that a Deed inrolled, or a Decree in Chancery inrolled, are not Records, but a Deed and a Decree recorded; and there is a Difference between a Record and a Thing recorded. 2 *Lill.* 421. Records being the Rolls or Memorials of the Judges, import in themselves such incontrollable Verity, that they admit of no Proof or Averment to the contrary, inſomuch that they are to be tried only by themselves; for otherwise there would be no End of Controversies: But during the Term wherein any judicial Act is done, the Roll is alterable in that Term, as the Judges shall direct; when the Term is past, then the Record admitteth of no Alteration, or Proof that it is false in any Instance. 1 *Inst.* 260. 4 *Rep.* 52. A Matter of Record is to be proved by the Record it self, and not by Evidence, because no Issue can be joined upon it to be try'd by a Jury like to Matters of Fact; and the Credit of a Record is greater than the Testimony of Witnesses. 21 *Car. B. R.* Tho' where Matter of Record is mix'd with Matter of Fact, it shall be tried by a Jury. *Hob.* 124. A Man cannot regularly aver against a Record; yet a Jury shall not be estopped by a Record to find the Truth of the Fact: And it was adjudg'd by the Court, that upon Evidence, 'tis at the Discretion of the Court to permit any Matter to be shewn to prove a Record. 1 *Ventr.* 362. *Allen* 18. 3 *Nels. Abr.* 48, 49. The Judges cannot judge of a Record given in Evidence, if the Record be not exemplified under Seal: But a Jury may find a Record although it be not so, if they have a Copy prov'd to them, or other Matter given in Evidence sufficient to induce them to believe that there was such a Record. 2 *Lill. Abr.* 421. Judges may reform Defects in any Record, or Variance between Records, &c. And a Record exemplified or inrolled, may be amended for Variation from the Exemplification. *Stat.* 8 H. 6. A Record of an Issue made up ready for Trial of a Cause, on Motion and Leave of Court, may be amended so as not to deface the Record; and notwithstanding it be entered for Trial, on paying Costs to the Defen-

Defendant: But the Court will not give Leave to amend it, if it may not be done without defacing or much altering the *Record*. *Mich. 22 Car. B. R. 2 Lill. 420.* The Court of B. R. will amend a *Record* removed thither out of C. B. and also *Records* removed out of inferior Courts, as to Faults and Misprisions of Clerks, &c. which are adjudg'd amendable by the Statutes of *Feoffails*; though formerly B. R. would not amend *Records* out of inferior Courts, but the Law in this Case is now altered by the Stat. 4 & 5 Ann. 2 *Lill. Abr. 421, 422.* If the Transcript of a *Record* be false, the Court of B. R. will upon Motion, order a *Certiorari* to an inferior Court, to certify how the *Record* is below; and if it be upon a Writ of Error out of the *Common Pleas*, they will grant a Rule to bring the *Record* out of C. B. into this Court, and then order the Transcript to be amended in Court, according to the Roll in C. B. And a *Record* cannot be amended without a Rule of the Court, grounded upon Motion. *Ibid.* Where a *Record* is so drawn, that the Words may receive a double Construction, one to make the *Record* good, and another to make it erroneous; the Court will interpret the Words that Way which will make the *Record* good, as being most for the Advancement of Justice: So where a Letter of a Word in a *Record* be doubtful, that it may be taken for one Letter or another, the Court will construe it to be that Letter that is for upholding the *Record*. *Hill. 21 Car. B. R.* A *Record* that is ras'd, if legible, remains a good *Record* notwithstanding the Rasure; but he that ras'd it is not to go unpunish'd for his Offence. *Mich. 1649.* And in Case of a Rasure in a Judgment, done by Practice to hinder Execution, the *Record* hath been ordered to be amended, and a special Entry thereof to be made; but though the *Record* by this Means be made perfect, the Offender may be indicted for Felony; for not only such an Alteration whereby a Judgment is actually reversed, but also such whereby it is reversible, whether it be or be not afterwards amended by the Court, is within the Act 8 H. 6. c. 12. making it Felony to take away, or avoid any *Record*, &c. 2 *Roll. Rep. 81. 1 Hawk. P. C. 113.* The Court will not supply a Blank left in a *Record*, to make it perfect, when before it was defective; as this would be to make a *Record*, which is not the Office of the Court to do, but to judge of them. 2 *Lill. Abr. 420.* When a subsequent *Record* hath any Relation to one that is precedent; in such Case it must appear in Pleading, &c. to be the same without any Variation. 3 *Lutw. 905.* And the *Record* of the Court of an Act made in *presenti*, ought to be always in the present Tense. 2 *Saund. 393.* *Records* are to be pleaded intire, and not Part of them, with an *inter alia* referring to the *Record*; and so should a Special Verdict find a *Record*, unless a Judgment be pleaded, or you declare upon a Judgment in a superior Court, when the Plaintiff may say *recuperavit* generally; but not in an inferior Court, for there all the Proceedings must be set forth particularly. *Mich. 22 Car. B. R.* When a *Record* is pleaded, it is to conclude *prout patet per Recordum*, or the other Side may answer *Nul tiel Record*; but this being only Matter of Form, may be sometimes help'd by a general Demurrer; and Writs are Matter of *Record*, but they need not be so pleaded. 1 *Salk. 1. 1 Lev. 211. 3 Nelf. Abr. 49.* If a *Record* is to be read in Court, the Counsel at the Bar must open the

Effect of it, after read by the Clerk of the Court, by Custom and Practice; though the Court may suffer it to be read afterwards if they please, and after Reading, &c. it is then by Rule of Court ordered to be set down for a *Concilium*. *Hill. 23 Car. B. R. 2 Lill. Abr. 421.* *Records* certified out of inferior Courts, on Writs of Error, and the Judgments on such *Records* are to be entered in B. R. for until then the *Records* are not perfected: And if a *Record* once comes into B. R. by Writ of Error, it never goes out again; but a Transcript of it may go to the House of Lords, upon a Writ of Error there. 2 *Lill. 422.* Attornies are to enter the whole *Record* upon the Roll, after a Cause is tried, before the next Term after the Trial, on Pain of 20 s. That the *Record* may be spoken to the next Term, if there be Cause, and the Client not be delay'd. *Hill. 1649.* Justices of Assise, Gaol-Delivery, &c. are to send all their *Records* and Processess determined to the Exchequer at Michaelmas in every Year; and the Treasurer and Chamberlains on Sight of the Commissions of such Justices, are to receive the same *Records*, &c. under their Seals, and keep them in the Treasury. Stat. 9 Ed. 3. c. 5. A *Record* of a Cause made up for Trial begins. — *Placita coram Dom. Reg. apud Westm. de Termino, &c. Anno Regn. Dom. Georgii nunc Magn. Britan. &c.* And then, South'ton. ff *Memorandum quod alias scilt. Term. &c. ult. preterit. coram Dom. Reg. apud Westm. ven. A. B. per, &c. Attorn. suum, &c.* See Trial.

Recordare facias Loquelam, Is a Writ directed to the Sheriff to remove a Cause depending in an inferior Court, to the King's Bench or *Common Pleas*; and it is called a *Recordare*, because it commands the Sheriff to make a *Record* of the Proceedings in the County-Court, and then to send up the Cause. *F. N. B. 71. 2 Inst. 339.* It is in the Nature of a *Certiorari*; on which, the Plaintiff may remove the Plaint, in the County-Court, without Cause; but the Defendant cannot remove it without Cause shewn in the Writ, as upon a Plea of Freehold, &c. If the Plaint is in another Court, neither the Plaintiff or Defendant can remove it without Cause. *Wood's Inst. 572.* If a Plea is discontinued in the County, the Plaintiff or Defendant may remove the Plaint into the *Common Pleas* or *King's Bench* by *Recordare*, and it shall be good, and the Plaintiff may declare upon the same, and the Court hold Plea thereof. *New Nat. Br. 158.* The Form of this Writ in the Register is, *Et Recordum illud habeas, &c.* But in a *Recordare* to remove a *Record* out of the Court of ancient Demesne, the Writ shall say *Loquelam & Pro. essum, &c.* And there is a Writ to call a *Record*, &c. to an higher Court at *Westminster*, called *Recordo & Processu mittendis*. Tab. Reg. Orig.

Recorder (Recordator) Is a Person whom the Mayor or other Magistrate of any City or Town Corporate, having Jurisdiction, and a Court of *Record* within their Precincts by the King's Grant, do associate unto them for their better Direction in Matters of Justice, and proceedings according to Law: And therefore he is, for the most Part, a Counsellor or other Person well versed and experienced in the Law.

Recovery (Recuperatio, from the Fr. *Recoverer* i. e. *Recuperare*) In a legal Acceptation, signifies an Obtaining any Thing by Judgment or Trial at Law: And there is a *true Recovery*, and a *feigned* one. A *true Recovery* is an actual or real *Re-*

covery of a Thing, injuriously taken away or detained, or the Value thereof, by Judgment in the ordinary Course; as if a Man sue for Land or any other Thing movable or immovable, and have a Verdict and Judgment for him. *Recuperatio, id est, ad rem per Injuriam extortam sive detentam, per Sententiam Judicis Restitutio.* Co. Litt. 154. A feigned Recovery, which is the Recovery intended here, is *factio Juris*, or a formal Act by Consent, used for the better Assurance of Lands and Tenements, &c. It is a feigned Suit and Judgment upon a real Action brought in the Common Pleas Court, by one against another that is seised of the Freehold, to destroy Estates-tail, Remainders and Reversions, and to bar the former Owners thereof. 1 Inst. 154. Accom. Conv. 1 Vol. 108. And it is called a Common Recovery, because it is a common Path to that End for which it was ordained, viz. to cut off Estates-tail, &c. Also it is by Custom become a Common Conveyance of Lands; and is much favoured by the Law, many of the Inheritances of the Kingdom depending upon these Assurances. 5 Rep. 40, 41. These Recoveries suppose a Recompence in Value, to all Persons that lost the Estate; and shall not be taken so strictly as real Recoveries are. 2 Lill. Abr. 423. The Force and Effect of a Recovery, is to destroy all Estates, and Incumbrances derived out of them, that one may sell, give or devise the Estate in Fee, or in what Manner he pleases; and the Recompence adjudged over shall go in Succession of the Estate, as the Land lost should have done, and then it would not be reasonable for the Heir, &c. to have the Land and Recompence in Value also; therefore he loseth the Land, and must trust to the Recompence. 1 Rep. 62. 3 Rep. 61. 6 Rep. 42. This supposed Recompence is the Reason why a Common Recovery is a Bar to all that are in Remainder or Reversion, as well as the Issues in Tail; whereas a Fine bars only the Heirs in Tail, and not those in Remainder or Reversion, unless upon Non-claim in due Time. Wood's Inst. 252. A Common Recovery is the best Assurance (except an Act of Parliament) that a Man can have; and it may be had of such Things, for the most Part, as pass by a Fine: An Use may be raised upon a Recovery, as well as on a Fine, &c. and the same Rules are generally to be observed and followed for the guiding and directing the Uses of a Recovery, as are observed for the Guidance and Direction of a Fine. West. Symb. sect. 2, 3. 1 Rep. 15. There must be three Persons at least to make a Common Recovery; i. e. a Recoveror, a Recovee, and a Vouchee; the Recoveror is the Plaintiff or Demandant, that brings the Writ of Entry *sur Disseisin*, &c. The Recovee is the Defendant or Tenant of the Land, against whom the Writ is brought, and he must be perfect Tenant of the Freehold; and the Vouchee is he whom the Defendant or Tenant voucheth or calls to Warranty of the Land in Demand, either to defend the Right, or yield him other Lands in Value according to a supposed Agreement. 1 Inst. 101. Now to suffer a Recovery, the Tenant of the Freehold agrees with the Demandant (usually some Friend) that he shall bring his Action real against him, as though the Demandant had good Right to the Land, and the Tenant no Right of Entry to the same, but on a Disseisin which a Stranger had unjustly made; though the Demandant never had Possession thereof, nor the Stranger: The Tenant appearing to the Writ vouches to Warranty A. B.

the Cryer of the Court, or the Bag-bearer of Writs to the *Custos Brevium*, who is called the common Vouchee, and is supposed to warrant the Title; this Vouchee appears, as though he would defend the Title, and the Demandant exhibits a Declaration against him, who thereupon prays a Day to make his Defence; but on the Day given by the Court he makes Default, and the Plaintiff or Demandant hath Judgment to recover the Land against the Defendant or Tenant in Tail, and he to recover in Value against the common Vouchee; whereupon issues a Writ of *Seisin* for the Possession of the Lands, &c. Yet this Recovery in Value is only imaginary, because the common Vouchee hath no Lands to render in Value; though it is taken for a Bar of the Tail for ever, and is said to be good in Conscience as well as Law, notwithstanding the Stat. Westm. 1. cap. 2. wherein it is provided, that the Will of the Donor shall be observed. Dr. & Stud. cap. 26. 10 Rep. 37, 38. 1 Inst. 224. To every Recovery there must be a good Tenant to the *Præcipe*, or it will be void. 2 Lill. Abr. 425. This Tenant to the *Præcipe* is made by Lease and Release, Fine, &c. And if the Tenant to the *Præcipe* gains a Freehold before Judgment, it is sufficient: Also where a *Præcipe* was made by a Fine, and a Common Recovery suffered, and afterwards in a Writ of Error that Fine was reversed; though this was assigned for Error to reverse the Recovery, it was adjudged that the Recovery was good, for there was a Tenant to the *Præcipe* at that Time. 2 Salk. 568. There is no Occasion of setting forth a Lease and Release to make a Tenant to the *Præcipe*, because where a Man claims under a Common Recovery it shall be intended that there was a good Tenant to the *Præcipe* till the contrary is shewn; and rather than the Recovery shall fail, they shall be intended to be Tenants to the *Præcipe* by Disseisin, especially if it is alledged in the Pleadings that they are Tenants *liberi Tenementi*. 3 Rep. 59. 2 Mod. 70. *Adtunc tenens* is a sufficient Averment in the Pleading a Common Recovery; but it is not so when in the same Sentence a Matter is set forth which is contradictory and inconsistent with it. 1 Mod. 418. A Defendant pleaded a Title under a Common Recovery, in which he set forth the Lease and Release to make the Tenant to the *Præcipe*, the Writ of Entry, and the Proceedings upon it, the Judgment, Writ of *Seisin*, &c. And it was a Question, whether it might have been pleaded in a shorter Manner, (viz.) That A. was Demandant in the Writ of Entry, and B. and C. Tenants; that the said Tenants vouched to Warranty L. D. and he vouched the Common Vouchee; and thereon *Taliter processum fuit*, that Judgment was given for the Demandant to recover against the Tenants, and that they should recover against L. D. *ad valentiam*, and that he should recover against the Common Vouchee. 2 Lill. 1539. In such short Pleading it is necessary to shew that the Recovery was executed, either by Entry, or by Return of the Writ of *Seisin*; for till then the Estate is not altered. 1 Jones 10. 3 Nels. Abr. 57. A Deed and the Recovery make but one Conveyance: When precedent Indentures are made, and afterwards a Recovery is suffered, no Averment can be taken by Parol that the Recovery was to other Uses than those in the Indenture; though nothing vests till the Recovery is had: Upon an Indenture subsequent, an Averment may be taken, that other Uses than in the Indenture were declared and limited before and

at the Time of the *Recovery*. 9 Rep. 10. 1 Mod. 250. If the Uses of a *Recovery* are declared by a Deed bearing Date afterwards, there a Stranger shall be admitted to plead other Uses before the Deed; but an Heir at Law shall not. 2 Lill. Abr. 428. Formerly it was doubted, whether Declarations of Fines and *Recoveries* after had and levied were good in Law, the Stat. 29 Car. 2. of *Frauds and Perjuries*, requiring Writing to pass Estates at the very Time of the Conveyance: But now all Declarations of Uses, of Fines or *Recoveries*, by any Deed made by the Party who is by Law enabled to declare such Use, after the Suffering such *Recovery*, &c. shall be good and effectual in Law. 4 & 5 Ann. c. 16. A Common *Recovery* is either with *single*, *double*, or *treble Voucher*; in the *Recovery* with single Voucher, the Writ of Entry is to be brought against Tenant in Tail in Possession, and he is to vouch the common Vouchee: In a *Recovery* with double or treble Voucher, the Estate must be discontinued by Fine, Feoffment, Lease and Release, &c. and a Tenant made of the Freehold of the Land; and then the Writ is to be brought against that Tenant, the Conusee, Feoffee, &c. and he is to vouch the Tenant in Tail, and he the common Vouchee, &c. And this *Recovery* with double Voucher is the most common and safest Way of Proceeding. 1 Inst. 102, 372. Wood's Inst. 251. The *Recovery* with single Voucher bars the Tenant in Tail, and his Heirs only, of such Estate-tail which is in his Possession, with the Remainder depending upon it, and the Reversion expectant, which others have; and of all Leases and Incumbrances derived out of such Remainder or Reversion: A *Recovery* with double Voucher bars the first Voucher and his Heirs of every such Estate as at any Time was in him, or any of his Ancestors, whose Heir he is of such Estate; and all others of Right to Remainders and Reversions, dependant and expectant upon the same, and all Leases and Incumbrances derived out of them; and it will also be a Bar of the Estate whereof the Tenant was then seised in Reversion or Remainder, &c. The *Recovery* with treble Voucher is to make a perpetual Bar of the Estate of the Tenant, and of every such Estate of Inheritance as at any Time had been in the first or second Vouchee, or their Ancestors, whose Heirs they are of such Estate; and as well of every Reversion thereon dependant, as of all Leases, Estates, Charges, and Incumbrances derived out of any such Reversion or Remainder. 3 Rep. 5. 10 Rep. 37. 2 Roll. Abr. 204. Noy 81, 82. A Tenant in Tail cannot be restrained from suffering a Common *Recovery*. 10 Rep. 38, 41. If there be Tenant for Life, Remainder in Tail, Remainder or Reversion in Fee; and Tenant for Life is impleaded by Agreement, and vouch Tenant in Tail, and he vouch over the common Vouchee; this shall bar the Remainder and Reversion in Fee; though he in Remainder or Reversion did never assent to the *Recovery*: And if Tenant for Life surrender to him in Remainder in Tail, he may bind the Remainder and Reversion expectant upon his Estate. 1 Rep. 15. 3 Rep. 60. 1 Inst. 362. But if Tenant for Life alone suffer a *Recovery*, without the Assent of him in Remainder, the *Recovery* will be void: And if a *Recovery* be had against Tenant for Life, and a Remainder-man in Tail, (not being vouch'd by Tenant for Life) and they vouch the common Vouchee; the *Recovery* thus suffered doth not bar

the Intail, nor the Remainder over, neither are the Issue in Tail barr'd by it. Cro. Eliz. 670. If Tenant for Life suffers a Common *Recovery* by Consent and Covin, between such Tenant and the *Recoveror*; this is a Forfeiture of his Estate, and he in the Reversion may enter presently: And all *Recoveries* had by Agreement of the Parties by Covin, against Tenants in Tail after Possibility of Issue extinct, Tenants by the Curtesy, or for Term of Life or Lives, &c. shall be void against them in Remainder or Reversion, and their Heirs, &c. Wood's Inst. 251. Stat. 14 Eliz. c. 8. This Statute extendeth not to any *Recovery*, except it be by Agreement and Covin; and it was never the Intent of the Act to extend to such a *Recovery* in which a Tenant in Tail was vouch'd. 1 Rep. 15. Tenant for Life, Remainder in Tail, Remainder in Fee; the Tenant for Life suffered a Common *Recovery*, in which the Issue in Tail was vouch'd, &c. And it was objected, that the Remainder-Man in Fee was not barred by this *Recovery*, because the Statute 14 Eliz. enacts, that *Recoveries* suffered by Tenant for Life, shall be void against those in Reversion or Remainder, and the *Proviso* in that Statute extends to bind only those in Remainder who assent to the Record; but as the Tenant in Tail was vouch'd in this *Recovery*, it was adjudged, that he in Remainder in Fee was barred, as he would have been if the Tenant in Tail had been the first Tenant to the *Præcipe*, instead of the Tenant for Life; which Judgment was affirm'd in Error in the Exchequer Chamber. Moor 690. A Father devised his Lands to his Son B. for Life, and after his Decease, to the Issue of his Body, &c. And for Want of such Issue, Remainder over; B. suffered a Common *Recovery*, and as to the Estate that B. had, two Judges held, he had only an Estate for Life, because such an Estate was expressly devised to him; but Hale Ch. Just. held, that he had an Estate-tail by Implication, and by consequence the *Recovery* was well suffered; for the Words *Issue of his Body*, and those which follow, viz. *For Want of such Issue*, make an Estate-tail by Implication; though Judgment was given according to the Opinion of the Judges, which was afterwards reversed in the Exchequer Chamber, by the Opinion of the Chief Justice. 2 Lev. 58. 1 Vent. 214, 225. 3 Salk. 296. A *Recovery* had against Tenant in Tail of the King's Gift, the Reversion or Remainder being in the King, shall not be a Bar; nor shall the Remainder or Reversion, which at the Time of the *Recovery* is in the King, be barred by a *Recovery*. 34 & 35 H. 8. c. 20. But by the Stat. 34 H. 8. the Estate-tail is not preserved, where a Reversion or Remainder is in the King, except it was created by the Crown, and not where it was made by a common Person; for before that Statute a common *Recovery* barred an Estate-tail made by the King. Dyer 32. 2 Rep. 15. A Feme Covert, with her Husband, is bound by a *Recovery*; but as in a Fine she ought to be examined. 3 Cro. 307. It is not absolutely necessary for the Judges to examine a Feme Covert, per Rolle Ch. Just. when she joins with her Husband to suffer a *Recovery* of her own Lands; it shall be suppos'd she doth it freely and voluntarily: But it is prudential to do it, because it may happen that the Feme may be brought to it by Fraud or Force. 2 Lill. Abr. 424. The Case upon a Special Verdict in Ejectment was; There was Tenant for Life, Remainder to Husband and Wife, and

their Heirs, and the Husband and Wife suffered a *Recovery*; it was objected, that the Heirs of the Wife were not barred by this *Recovery*, by Reason she was not Tenant to the *Præcipe*, neither did it appear that she was examin'd; but it was resolv'd, that she is concluded to speak against this *Recovery*, as she join'd with her Husband in it, and the *Record* is perfect, and she being Party and Privy to the *Recovery*, her Heirs shall be bound thereby. *Style* 319. Husband and Wife, Jointenants for Life, Remainder to the Heirs of the Body of the Husband, Remainder to A. B. in Tail, the Husband alone suffered a *Recovery*; and it was held a Bar only as to a Moiety of the Lands, for by the *Recovery* the Jointure was severed, and the other Moiety was the Freehold of the Wife, so that the *Recovery* could not bar the Estate-tail or Remainder, as to that Moiety. 3 *Rep.* 3, 4, 5. *Moor* 210. 4 *Leon.* 93, 222. But when the Husband and Wife have not a joint Estate of Inheritance, and they join in a Fine to make a Tenant to the *Præcipe*, and the *Recovery* is suffered by the Husband alone; that shall be a good Bar to the Remainder. 3 *Rep.* 6. A Husband and Wife, Tenants in special Tail, Remainder to B. in Tail, Remainder to C. in Fee; the Husband alone levied a Fine to D. and died, leaving Issue, the Wife entered, she is in of her Estate-tail; and though the Issue in Tail were barred by the Fine, yet by her Entry B. and C. are remitted to their several Remainders; and if she suffers a *Recovery*, which she lawfully may, because she hath the whole Estate-tail, those Remainders are barred. *Hob.* 259. 3 *Nelf. Abr.* 55. An Infant, it hath been held, cannot suffer a Common *Recovery* by Guardian; though if he obtains a Privy Seal for that Purpose, he himself may. 10 *Rep.* 43. *Hob.* 196. But a Guardian was allowed by Order of the Court to an Infant, that a *Recovery* might be suffered against him as Vouchee; and he was brought into Court, and vouch'd, and his Guardian appeared and vouched the common Vouchee. *Cro. Eliz.* 172, 471. *Hob.* 197. And adjudg'd, that a Common *Recovery* suffered by an Infant by Guardian, shall bind him; and when the Vouchee in a Common *Recovery* is within Age, the Infancy must be try'd by Inspection, &c. *Cro. Car.* 307. 1 *Sid.* 322. 1 *Inst.* 380. Mortgagees cannot suffer a *Recovery* to bind the Mortgageors; nor can Tenant for Years levy a *Recovery*, for Want of a Freehold. *Wood's Inst.* 251. Where an Estate-tail is barred by a *Recovery*, all Things depending upon it are barred, as well as the Estate it self; but nothing which is collateral: And therefore a *Recovery* will not bar the Right of a Mortgagee, unless he is vouched, &c. 3 *Salk.* 297. And if Tenant for Life, with Power to make a Jointure on Wife, suffers a Common *Recovery*, his Power is extinguished: Though 'tis otherwise where a Power is collateral; as for Instance, where an Executor has Power to sell. *Ibid.* Tenant in Tail mortgages for Years, and afterwards marries, and suffers a *Recovery* for his Wife's Jointure; this *Recovery* shall enture to make good the Mortgage, tho' design'd only for the Marriage Settlement: And so it is in the Case of a Judgment; for a *Recovery* shall make good all his precedent Acts. *Chanc. Rep.* 120. 2 *Lill. Abr.* 425. If there be a Limitation of Uses upon Condition, and the *Cestuy que Use* suffers a *Recovery*, that will not destroy the Condition, the Estate being charged with it; and the *Recoveror* can on-

ly have the Estate, as he that suffered the *Recovery* had it. 1 *Mod.* 109. A Tenant in Tail grants a Rent-Charge, and suffers a *Recovery*, the *Recovery* shall not avoid the Rent-Charge; though it doth a Reversion: Because the Estate of him that suffers the *Recovery* is charg'd with the Rent. 1 *Mod.* 109. 1 *Cro.* 598. If he in Remainder grants a Rent-Charge, a *Recovery* suffered by Tenant in Tail shall bar it; for the *Recoveror* comes in, in the Continuance of that Estate which is not subject to the Rent, but is above all those Charges. 1 *Mod.* 109. Tenant in Tail, Remainder in Tail, he in Remainder granted a Rent-Charge, and the Tenant in Tail suffered a Common *Recovery*, and died without Issue; it was adjudg'd, that it shall bind not only the Remainders, and all Charges made by them, but also the Reversioners and all Grants by them. 1 *Rep.* 62. *Recoverors, &c.* may distrain for Rents and Services, and have Actions of Debt for Rent, and Waste, &c. as those against whom the *Recovery* was had; and Termors are to enjoy their Terms, &c. *Stat. 7 H. 8. c. 4.* A Lease for Years made by him who after suffers a *Recovery*, is good, and shall not be defeated by the *Recovery*; but otherwise where the *Recovery* is by a good Title. 2 *Leon.* 65. It was a Doubt by 9 *Eliz.* that if there was a Tenant in Tail, Remainder for Years, and Tenant in Tail suffers a *Recovery*, whether the Lease for Years be barred, or no? Because it was said that no Recompence can go to this, being a Chattel: But it was ruled, that this Lease should be barred, and that so the constant Experience had been. 2 *Lev.* 30. 1 *Mod.* 110. A *Recovery* bars only where there is a Privy in Law; as the Issue of Tenant in Tail, and he in Remainder, Reversion, &c. *Carter* 53. Strangers are not barr'd by a *Recovery* and Nonclaim, as they are in a Fine. 3 *Rep.* 5. Nor shall a *Recovery* bar the Heir, who claims as a Purchaser, and not by Discent; or where there is an executory Estate, which depends upon Contingencies; but it will bar a contingent Remainder. *Lutw.* 1224. 3 *Salk.* 297. The Testator had Issue three Sons, A. B. and C. and devised his Lands to B. his second Son, paying so much to C. and if B. died without Issue, living A. then to A. upon the like Condition; B. suffered a *Recovery*, and it was held that this *Recovery* should not bar A. because he had only a Possibility to have the Estate if he survived B. dying without Issue, which cannot be touched by a *Recovery*. 2 *Cro.* 590. A Party who suffered a *Recovery*, died the first Day of Michaelmas-Term, between Five and Six in the Morning, upon which Day the *Recovery* was suffered; and adjudged good. 1 *Rep.* 93, &c. 2 *Lill.* 425. And most Errors in a *Recovery* are amendable by the Court the first Term after the *Recovery* had: But for gross Error in the Proceedings in Matter of Substance, a *Recovery* may be avoided by Writ of Error; as when an Infant or Feme Covert, without her Husband, suffers a *Recovery*, &c. and it may be also avoided by Pleading, that it was by Covin against Tenant for Life to disinherit him in Reversion; or that he against whom the Writ is brought is no Tenant of the Freehold by Right or Wrong; or he that hath the Estate is neither Party nor Privy to the *Recovery*; or because another hath some Estate in the Thing whereof the *Recovery* is had, &c. Also by Motion to the Court, and praying a *Vacat* of the Judgment, a *Recovery* may be falsified

fed and avoided. 8 Rep. 162. 1 Inst. 104. Recoveries may be avoided, as any other Conveyance, if suffered by Fraud to deceive Purchasers, &c. And to suffer a Recovery in another Person's Name, not Privy or Consenting to the same, is Felony without Benefit of Clergy. 21 Jac. 1. c. 26. Common Recoveries are suffered in the Common Pleas by the Tenants and Vouchers personally in Court, or by Attornies; and sometimes by Attorney in the Country on a *Dedimus Pote-statem*, or Commission out of Chancery: They may be suffered at the *Assises* and *Great Sessions* in *Wales*; and in the Counties Palatine of *Lancaster*, *Chester*, and *Durham*. 34 & 35 H. 8. c. 16. 27 Eliz. c. 9. And Recoveries may be had in a Court-Baron, by Custom. *Kitch.* 176. In C. B. the *Præcipe*, naming the Demandant and the Tenant, the Quantity and Quality of the Land, &c. is delivered to one of the *Serjeants* at the Bar, who will count upon it; and then the *Prothonotary* marks it, after which it is carried to the *Cursitor* of the County, and he makes out the *Writ of Entry*, &c. and the Recovery is pass'd through the several Offices. *Clerk's Remembr.* 212, 213.

A *Præcipe* for suing forth a Recovery.

South'ton ff. **P** *Recipe A. B. Gen. quod fuste, &c. reddat C. D. Gen. un. Messuag. duo Gardin. Centum Acr. Terr. quingent. acr. Pastur. &c. cum pertin. in, &c. qua clam', &c.*

Ten. in propr. Person. voc. ad
Warr. E. F. Ar. qui presens voc.
G. H. Gen. qui presens voc. Johan.
Cook.

The *Writ of Entry* is return'd thus:

Pleg. de Prof. { Johannes Doe.
Richardus Roc.
Sum. { Johannes Denn.
Richardus Fenn.
T. B. Ar. Vic.

Form of a *Writ of Seisin* on a Recovery.

G *Georgius, &c. Vic. South'ton salutem. Scias quod C. D. in Cur. nostr. coram Justic. nostris apud Westm. Recuperavit seisinam suam vers. A. B. &c. de un. Messuag. &c. in, &c. per Breve nostrum de Ingressu super Disseisinam in le post, Et ideo tibi Præcipim. quod præfat. C. plenar. Seisinam de Messuag. præd. cum pertin. sine dilatione habere fac. Et qualiter hoc Præcept. nostrum fueris execut. constare fac. Justic. nostris apud Westm. indilate Et habeas, &c. Telle, &c.*

A Deed to lead the Uses of a Recovery.

T *HIS Indenture tripartite, made, &c. Between A. B. of, &c. of the first Part, C. D. and E. F. of, &c. of the second Part, and G. H. and J. K. of, &c. of the third Part, witnesseth, that the said A. B. for the Docketing, Barring and Cutting off all Estates-tail and Remainders in Tail, of and in the Messuage, Tenement, Lands and Hereditaments herein after mentioned, and for the Settling and Assuring of the same, to and for the Uses, Intents and Purposes herein after limited, expressed and declared,*

*and in Consideration of 5 s. to him in Hand paid by the said C. D. and E. F. the Receipt whereof is hereby acknowledged, and for divers other good Causes and Considerations him the said A. B. in this Behalf moving, hath granted, bargained and sold, released and confirmed, and by these Presents doth grant, bargain and sell, &c. unto the said C. D. and E. F. (in their actual Possessions now being, by Virtue of a Bargain and Sale to them thereof made for one whole Year, &c.) All that Messuage or Tenement, and all those Lands, &c. situate, lying and being, &c. And all Ways, &c. And the Reversions, Remainders, Rents and Services thereof, or incident thereunto. To have and to hold the said Messuage, Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof with the Appurtenances unto the said C. D. and E. F. and their Heirs for ever, To the Intent and Purpose that the said C. D. and E. F. shall and may become perfect Tenants of the Freehold of the said Messuage, Lands and Premises, and shall and may stand and be seised thereof until a good and perfect Common Recovery with double Vouchers over, may be duly had, suffered and executed of the said Messuage, Tenement, Lands and Premises, according to the usual Course of Common Recoveries for the Assurance of Lands and Tenements in such Cases used and accustomed. And thereupon it is covenanted, concluded and agreed, by and between all the said Parties to these Presents, for themselves and their and every of their Heirs by these Presents in Manner following, (that is to say) That the said C. D. and E. F. shall and will before the End of Michaelmas-Term next coming, permit and suffer the said G. H. and J. K. to sue forth and prosecute against them the said C. D. and E. F. One *Writ of Entry sur Disseisin en le post* returnable before his Majesty's Justices of the Court of Common Pleas at Westminster, thereby demanding against the said C. D. and E. F. the said Messuage, Tenement, Lands, Hereditaments and Premises herein before-mentioned, by such Name and Names, Number of Acres, Quantities, Qualities, Terms and Descriptions in the said *Writ* to be contained, and in such Manner and Form as by Counsel learned in the Law shall be advised, unto and upon which said *Writ* of Entry so to be prosecuted and sued forth, the said C. D. and E. F. shall appear gratis and vouch to Warranty the said A. B. which said A. B. shall appear either in Person or by Attorney lawfully authorised, and enter into Warranty, and after his Entry into Warranty, shall vouch to Warranty the common Vouchee, who shall likewise appear and imparl, and afterwards make Default, and depart in Contempt of the Court, so that Judgment may be thereupon had and given for the said G. H. and J. K. to recover the said Messuage or Tenement, Lands, Hereditaments and Premises against the said C. D. and E. F. And for the said C. D. and E. F. to recover in Value against the said A. B. and for the said A. B. to recover in Value against the common Vouchee; to the End one perfect Common Recovery, with double Voucher, may be thereupon had and suffered, and all and every other Thing and Things be done and perfected, needful and convenient for the having and suffering the same Recovery, according to the Course of Common Recoveries in such Cases used; and the same Recovery is also to be executed by one *Writ of Habere facias Seisinam* accordingly. And it is hereby further covenanted, concluded and agreed, by and between all the said Parties to these Presents for themselves and every of them, their, and every of their Heirs, that the said Recovery so as aforesaid, or in any other Manner to be had and suffered of the said Messuage, Tenement, Lands, Hereditaments and Premises above-mentioned, shall be and enure, and shall*

shall be deemed, adjudged and taken, and is meant and intended, and by all the said Parties to these Presents is hereby declared to be and enure, and the said G. H. and J. K. and their Heirs, from and immediately after the suffering the same, shall stand and be seised of all and singular the said Messuage, Tenement, Lands, and Hereditaments above-mentioned, and every Part and Parcel thereof with the Appurtenances, to and for the only proper Use and Behoof of the said A. B. his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever. In Witness, &c.

Form of a Deed of Conveyance by Fine and Recovery.

THIS Indenture tripartite, made, &c. Between A. B. of, &c. and E. his Wife, C. D. of, &c. and M. his Wife, of the first Part, E. F. of, &c. and G. H. of, &c. of the second Part, and J. K. of, &c. and L. M. of, &c. of the third Part, witnesseth, that for and in Consideration of the Sum of, &c. to the said A. B. and E. his Wife, and C. D. and M. his Wife, in Hand paid by the said J. K. and L. M. the Receipt whereof they do hereby acknowledge, and in Consideration also of 5 s. of, &c. to the said A. B. and E. his Wife, and C. D. and M. his Wife in Hand paid by the said E. F. and G. H. the Receipt whereof they do also hereby acknowledge; and the said A. B. and C. D. for the Barring, Docketing, Cutting off and Destroying of all Estates-tail and Remainders over, now in Being in and upon the Messuage, Lands, Tenements and Hereditaments herein after mentioned, and for Conveying and Assuring the same Premises, to the only proper Use and Behoof of the said J. K. and L. M. and their Heirs; they the said A. B. and C. D. have, and each of them hath covenanted and granted, and by these Presents do, and each of them doth covenant and grant, to and with the said E. F. and G. H. their Heirs and Assigns, that they the said A. B. and E. his Wife, and C. D. and M. his Wife, shall and will on this Side, and before the End of, &c. Term next coming, before his Majesty's Justices of the Court of Common Pleas at Westminster, in due Form of Law, levy and acknowledge unto the said E. F. and G. H. and their Heirs, or to the Heirs of one of them, one Fine sur Conuzance de Droit come ceo, &c. with Proclamations to be thereupon had according to the Form of the Statute in that Case made and provided, of all that Messuage or Tenement, &c. and also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises above-mentioned, and of every Part and Parcel thereof with the Appurtenances, by such Name and Names, Quantity and Number of Acres and Things, and in such Manner and Form as by the said E. F. and G. H. or their Counsel learned in the Law shall be reasonably devised or advised and required: Which said Fine so to be had and levied in Manner aforesaid, and all and every other Fine and Fines already had, or at any Time hereafter to be had, levied, sued or prosecuted of the said Premises, or any Part thereof, by it self, or jointly with any other Lands or Tenements, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person or Persons before the said, &c. Term, as for and concerning all and singular the said Premises above-mentioned, with the Appurtenances, shall be and enure, and shall be adjudg'd, esteem'd and taken to be and enure, to and for the only proper Use and Behoof of the said E. F. and G. H. their Heirs and Assigns, to the Intent and Purpose that they may become perfect Tenants of the Freehold of the said Premises: Yet nevertheless to this further End, Intent, and Purpose,

that they the said E. F. and G. H. shall and will on this Side, and before the End of the said next, &c. Term, permit and suffer the said J. K. and L. M. to sue and prosecute one or more Writ or Writs of Entry Sur Disseisin en le poss, returnable before his Majesty's Justices of the said Court of Common Pleas against them the said E. F. and G. H. of all and singular the said Premises above mentioned, and of every Part and Parcel thereof with the Appurtenances, by such Name and Names, Quantity and Number of Messuages, Acres and Things, and in such Sort, Manner and Form, as by the said J. K. and L. M. shall be thought fit and convenient; unto and upon which said Writ of Entry so to be brought, the said E. F. and G. H. shall appear, and vouch to Warranty the said A. B. and E. his Wife, and C. D. and M. his Wife, who shall likewise appear, either in their several Persons, or by their Attornies lawfully authorized, and enter into the said Warranty, and after their Entry into the said Warranty, shall vouch over the common Vouchee, who shall also enter into the said Warranty and imparl, and afterwards make Default, To the End one perfect Common Recovery shall and may of all and singular the said Premises above-mentioned be had, prosecuted and executed in all Things, according to the usual Form of Common Recoveries for Assurance of Lands, Tenements and Hereditaments in such Cases used and accustom'd; and the same Recovery shall in due Form of Law be executed by one Writ of Habere facias Seisinam accordingly. And it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof is, and it is hereby so declared, that the said Recovery so, or in any other Manner to be had and suffered, and all and every other Recovery and Recoveries to be had, suffered and executed of the said Premises, or any Part thereof, by or between the said Parties to these Presents, or by or between them or any or either of them, and any other Person and Persons, on this Side and before the End of, &c. Term next coming, and the full Force and Execution of them, and every of them, and all other Conveyances and Assurances of the said Premises, or any Part thereof, had, or to be had, or made between the said Parties, or any of them, shall be and enure, and shall be adjudged, esteemed and taken to be and enure, to and for the only proper Use and Behoof of the said J. K. and L. M. their Heirs and Assigns for ever. And each of them the said A. B. and C. D. for himself severally and apart, and not jointly, and for his several and respective Heirs and Assigns, doth severally and apart, and not jointly, covenant and grant to and with the said J. K. and L. M. their Heirs and Assigns, that they the said A. B. and E. his Wife, and C. D. and M. his Wife are, or some or one of them now is lawfully and rightfully seised of a good, sure, perfect, and indefeasible Estate of Inheritance in Fee-simple, or Fee-tail, of and in the said Premises above-mentioned, with the Appurtenances, in their, or some, or one of their own Rights or Right, without any Condition, Mortgage, Limitation of Use or Uses, or other Matter or Thing to alter, charge, change, and determine the same. And also, that they the said J. K. and L. M. their Heirs and Assigns, shall and may from Time to Time, and at all Times hereafter for ever, peaceably and quietly enter into, have, hold, occupy, possess, and enjoy, all and singular the said Premises above-mentioned, and every Part and Parcel thereof with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption, and Denial of them the said A. B. and E. his Wife, and C. D. and M. his Wife, their Heirs and Assigns, or any of them, and of all and every other Person and Persons whatsoever claiming, or to claim by, from, or under

under them, or any or either of them, or by, from, or under, &c. deceased. And further, That they the said A. B. and E. his Wife, and C. D. and M. his Wife, and their Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premises above-mentioned, or any Part thereof, by, from, or under them, or any or either of them, or under the said, &c. shall and will at any Time or Times hereafter upon the reasonable Request, and at the Costs and Charges of the said I. K. and L. M. their Heirs and Assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Grants, Acts, and Assurances, in the Law whatsoever, for the further, better, and more perfect granting, conveying, and assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said I. K. and L. M. their Heirs and Assigns, To the only proper Use and behoof of the said I. K. and L. M. their Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, as by the said I. K. and L. M. their Heirs or Assigns, or their or either of their Counsel learned in the Law shall be reasonably devised or advised and required. In Witnesses, &c.

Recoupe, (from the Fr. *Recouper*) To cut again, and in our Law we use it for to Defalc or Discount; as if a Person hath a Rent of ten Pounds issuing out of certain Lands, and he disseises the Tenant of the Land, in an *Affise* brought by the Disseisee, the Disseisor shall *recoupe* the Rent in the Damages.

Recreant, (Fr.) Cowardly, Faint-hearted; and was formerly a Word very reproachful. *Fleta. lib. 3.*

Reclat, Signifies to cite a Criminal to Justice. — *Quo Judio deducendi sunt illi qui Reclati sunt de Latrocinio, Mordro, &c.* Hoved. 655.

Reclat, Claim of Right, or an Appeal to the Law for Recovery thereof.

Reditudo, Right or Justice; and sometimes it signifies legal Dues, a Tribute, Duty or Payment. *Leg. Edw. Confess. cap. 30. Si quis Dei Reditudines per vim deinceat, emendet, &c. viz.* If any one doth violently detain the Rights of God (i. e. Tithes and Oblations) let him be fined or amerced, to make full Satisfaction. *Leg. Hen. 1. cap. 6.*

Recto, Is used for a Writ of Right, which is of so high a Nature, that whereas other Writs in Real Actions are only to recover the Possession of the Lands, &c. in Question; this aims to recover the Seisin, and the Property, and thereby both the Rights of Possession and Property are tried together. 1. *Inst.* 158. It hath two Species; Writ of Right Patent, and Writ of Right Close: The first is so called, because it is sent open, and is the highest Writ of all others, lying for him that hath a Fee-simple in the Lands or Tenements sued for, against Tenant of the Freehold at least, and in no other Case. *F. N. B.* 1, 2, &c. But this Writ of Right Patent seems to be extended farther than originally intended; for a Writ of Right of Dower, which lies for Tenant in Dower, is Patent, as appears by *Fitzherb. Nat. Br.* 7. And the like may be said in some other Cases. *Table Reg. Orig.* Also there is a Special Writ of Right Patent in London, otherwise term'd a Writ of Right according to the Custom, which lieth of Lands or Tenements within the City, &c. And the Writ of Right Patent is like-

wise called *Breve magnum de Recto. Reg. Orig. 9. Fleta, lib. 5. cap. 32.* A Writ of Right Close is brought where one holds Lands and Tenements by Charter in ancient Demesne, in Fee-simple, Fee-tail, or for Term of Life, or in Dower, and is disseised; and is directed to the Bailiff of the King's Manors, or to the Lord of ancient Demesne, if the Manor is in the Hands of a Subject, commanding him to do Right in his Court: This Writ is also called *Breve parvum de Recto. F. N. B.* 11 *Reg. Orig. 9. Britton, cap. 120.* And he who holds Land in ancient Demesne by Copy of Court-Roll, if he be ousted, shall not have the Writ of Right Close, but is to sue by Bill in the Lord's Court, &c. If a Person seised in Fee-simple dies seised of such Estate, and a Stranger doth abate and enter into the Land, and deforce the Heir; the Heir may sue a Writ of Right Patent against the Tenant of the Freehold of the same Land, or an *Affise* of Mortdancestor. 11 *Aff.* 17. And in a Writ of Right Patent, the Demandant is to count of his own Seisin, or of the Seisin of his Ancestor; if one bring the Writ as Heir unto his Ancestor, he must lay the Seisin and *Epleas* as in Pernancy of the Profits of the Lands in his Ancestors; and where it is brought by a Bishop or Body Politick, Seisin of the Ecclesies is to be laid in themselves, or in their Predecessors. *New Nat. Br.* 10. Where a Writ of Right Close is directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon it; a Writ shall issue requiring him to hold his Court, &c. And if the Lord hold his Court, but will not do the Demandant Right, or delay it, the Plea may be removed by a Writ called a *Tolt* into the County-Court of the Sheriff; and from thence by *Recordare* into the Common Pleas. *Ibid.* 6, 7. A Writ of Right may be tried in the Lord's Court, between Kinsmen who claim by one Title from their Ancestor. And *Glanville* seems to make every Writ whereby a Man sues for any Thing due unto him, a Writ of Right. *Glan. cap. 10, 11, 12.*

Form of a Writ of Right.

Georgius, &c. A. B. Dom. &c. salutem. Praecipimus tibi, quod sine dilatione plenum Rectum teneas, C. D. de &c. de uno Messuag. & Viginti acr. terr. cum pertin. in &c. qua clamat tenere de Te per liberam servitium unius denar. per Ann. pro omni servitio, quod E. F. de &c. ei deinceat, &c. ne amplius inde clamorem audiamus pro defectu Recti. Teste, &c.

Writ of Right may be had after an *Affise*, Writ of Entry sur Disseisin, &c. or other Real Action, where the Demandant is barred by Action tried; and so if he lose by Default in a Writ of Right, before the Mise is join'd, &c. But if a Person once loseth his Cause upon a Writ of Right by Trial and Judgment, &c. he is without Remedy, and shall be finally concluded. *New Nat. Br.* 12.

Recto de Advocatione Ecclesiae, Is a Writ lying where a Man hath Right of Advowson, and the Parson of the Church dying, a Stranger presents his Clerk to the Church, the Party that hath Right not having brought his Action of *Quare Impedit* nor *Darrein Presentment*, but suffered the Stranger to usurp upon him: And it lieth only where an Advowson is claimed in Fee

to him and his Heirs. *F. N. B.* 30. 4 *Ed.* 3. c. 18.

Recto de Dote, A Writ of *Right of Dower*, which lies for a Woman that hath received Part of her Dower, and demands the Residue in the same Town, against the Heir of the Husband, or his Guardian. *F. N. B.* 7, 8, 147. 1 *Inst.* 32, 38.

Recto de Dote unde nihil habet, Is where the Wife hath receiv'd no Part of her Dower; as in Case a Man having Lands or Tenements, hath made no Assurance of any Part thereof to his Wife, so that she is driven to sue for her Thirds against the Heir or his Guardian. *F. N. B.* 6. 20. *H.* 3. c. 1.

Recto quando Dominus remittit, Is a Writ that lieth where Lands or Tenements in the Seigniorship of any Lord, are in Demand by a Writ of *Right*. If the Lord holdeth no Court at the Prayer of the Demandant or Tenant, but sends to the King's Court his Writ to put the Cause thither for that Time (saying to him at other Times the Right of his Seigniorship) then this Writ shall issue out for the other Party; and hath its Name from the Words therein contained. *F. N. B.* 16.

Recto de Rationabili parte, A Writ lying between Privies in Blood, as Brothers in *Gavelkind*, Sisters, and other Coparceners, for Land in Fee-simple. If there be two Sisters, and the Ancestor dieth seised of Land in Fee, and one of the Sisters enters into the whole, and deforces the other Sister, she who is deforced shall have the Writ of *Right de Rationabili parte*; And if where there are two Sisters, after the Death of the Ancestor they enter and occupy in common as Coparceners, and then one of them deforce the other Sister to occupy that which is appendant or appurtenant to the Messuage, &c. which they have in Coparcenary; she that is deforced shall have this Writ. Also if the Ancestor were disseised of Lands, and dieth, and one Sister entereth into the whole Land, and deforceth her Sister, she shall have the Writ against her other Sister: For it lieth as well upon a Dying seised of the Ancestor, if one Sister enter upon all, as where the Ancestor doth not die seised; and it is a Writ of *Right Patent*, &c. *F. N. B.* 9. *New Nat. Br.* 19, 20. In this Writ the Demand shall be of a certain Portion of Land, to hold in Severalty; and Voucher and View do not lie in it, because of the Privy of Blood; but in a *Rationabili parte* the View was granted, 15 *H.* 5. For that the Ancestor did not die seised, &c. The Process in the Writ, after removed into *C. B.* is *Summons*, *Grand Cape*, & *Petit Cape*, &c. *Ibid.*

Recto sur Disclaimor, Is a Writ that lies where the Lord, in the Court of *Common Pleas*, avows upon his Tenant, and the Tenant *disclaims* to hold of him; upon which *Disclaimer* the Lord shall have this Writ, and if he avers and proves that the Land is holden of him, he shall recover the Land for ever: This Writ is grounded on the Statute of *Westm.* 2. cap. 2. *Old. Nat. Br.* 150.

Rector, (*Lat.*) Signifies a Governor; and *Rector Ecclesie parochialis*, Is he that hath the Charge or Cure of a Parish Church. It has been held, that *Rector Ecclesie parochialis* is one who hath a Parsonage where there is a Vicarage endowed. And when Dioceses were divided into Parishes in this Kingdom, the Clergy who had the Charge

in those Places were called *Rectors*; and afterwards, when their *Rectories* were appropriated to Monasteries, &c. the Monks kept the great Tithes; but the Bishops were to take Care that the *Rector's* Place should be supplied by another, to whom he was to allow the small Tithes for his Maintenance, and this was the *Vicar*. *Count. Pars. Comp.* 75. — *Rector tantum jus in Ecclesia parochiali habet, quantum Prælati in Ecclesia Collegiata.*

Rectory, (*Rectoria*) Is taken *pro integra Ecclesia parochiali, cum omnibus suis juribus, prædiis, decimis, aliisque proventuum Speciebus.* *Spelm.* Also the Word *Rectoria* hath been often applied to the *Rector's* Mansion, or Parsonage House. *Paroch. Antiq.* 549. See *Parsonage*.

Rectum, Right; and anciently it was used for a Trial or Accusation. *Bract. lib.* 3. *Stare ad Rectum*, i. e. to stand Trial at Law, or *Præsto esse ad Jusitiam*.

Rectum. *Esse ad Rectum in Curia Domini* is the same with *Stare ad Rectum*. *Leg. H.* 1. c. 43.

Rectum, *Stare ad Rectum*, To stand or abide the Justice of the Court. *Hoved.* 655.

Rectum Rogare, Is to petition the Judge to do Right. *Leg. Ine.* cap. 9.

Rectus in Curia, i. e. Right in Court, is he that stands at the Bar, and no Man objects any Offence against him. *Smith de Repub. Angl. lib.* 2. cap. 3. And when a Person outlawed hath reversed the Outlawry, so that he can participate of the Benefit of the Law, he is said to be *Rectus in Curia*.

Recusants, Are such as adhere to the Pope as supream Head of the Church, and who refuse or deny Supremacy to the King. At the Reformation, those were deem'd *Recusants* who disputed the Authority of the Crown in Causes Ecclesiastical, and denied the King's Supremacy; but the Acts of Parliament made against *Recusants*, particularly the 35 *Eliz.* describe a *Recusant* to be one that does not repair to some Church or Chapel, or usual Place of Common Prayer, to hear Divine Service. Afterwards, the Receiving the Sacrament of the Church was made a farther Test of Conformity; and by the 25 & 30 *Car.* 2. a Declaration against Transubstantiation was required, to distinguish Papists and Popish *Recusants* from Protestants: At this Day all Persons are judged Popish *Recusants* convicted, who refuse the Oaths of Allegiance and Supremacy, or Abjuration; and are liable to suffer and forfeit accordingly, viz. they incur a *Premunire*, whereupon they forfeit all their Goods and Chattles, with their Lands, &c. *Read. Stat.* 4. Vol. pag. 315. *Recusants* convicted, above the Age of sixteen Years, are to go to their Places of Abode or Settlement, and not travel above five Miles from thence, without License from the King, three of the Privy Council, or four Justices of the Peace, with the Assent of the Bishop of the Diocese, or the Lieutenant, or a Deputy Lieutenant of the County, on Pain of forfeiting their Goods, &c. And not having Lands worth twenty Marks *per Ann.* or Goods to the Value of 40 *l.* if they do not make the Submission of Conformity mentioned in 35 *Eliz.* c. 2. being required by a Justice of Peace, they may be compelled to abjure the Realm; which Abjuration must be certified to the next Assizes; and 'tis Felony if they do not depart within the Time limited by the Justices, or departing and returning again without the King's License: But if any Person offend-

offending against that Act, shall before Conviction, come to some Parish Church on a Sunday, and make a publick Declaration of his Conformity, he shall be discharged from all Penalties, &c. though if such Offender afterwards relapse and become a *Recusant* again, he shall lose the Benefit he might otherwise have had upon his Submission: And *Recusants* required by Process to make their Appearance, shall not incur any Forfeiture for travelling on such Occasions, 35 *Eliz.* As to the Licencing a *Recusant* to travel, the Bishop, Lieutenant, or Deputy Lieutenant, who gives his Assent to it, must be a distinct Person from the Justices of Peace that gave the License; and therefore if one and the same Person be a Justice of Peace, and Deputy Lieutenant, he cannot act in both Capacities; but if he sign and seal the License as a Justice of Peace, the Assent of some other Deputy Lieutenant, &c. must be had. And it is a good Exception to a License by four Justices, that no particular Cause of the *Recusants* travelling is expressed in it, *Cro. Jac.* 352. *Cawley* 210. A Person was indicted for *Recusancy*, but conformed before Conviction: And so again the second Time, and was indicted a third Time for a Relapse; and on Motion, that it might be certified into the *Exchequer*, because by the Stat. 35 *Eliz.* he is to lose all the Benefit which he was to have by his former Conformity, the Relapse was certified accordingly, 1 *Bull.* 133. Justices of Peace in their Sessions are to cause Proclamation to be made, that Popish *Recusants* shall render themselves to the Sheriff or Bailiff of the Liberty where they are, before the Assises or Sessions, &c. And if they do not, the Default being recorded, shall be taken as a sufficient Conviction. 3 *Jac.* 1. c. 4. And Constables and Churchwardens of every Parish, or one of them, or if there be none such, the Constable of the Hundred there, are to present once a Year at the Quarter-Sessions such *Recusants* as shall absent from the Church for a Month together; the Forfeiture of which is 20 *l.* per Month, &c. *Stat. Ibid.* If a *Recusant* shall conform, and not receive the Sacrament once a Year at least; he shall forfeit for the first Year 20 *l.* for the second 40 *l.* and every Default after 60 *l.* And if after he hath once received it, he make Default therein by the Space of one Year, he shall forfeit 60 *l.* to be recovered at the Quarter-Sessions by Indictment, and divided between the King and the Prosecutor: But the Husband is not chargeable with the Offence of the Wife, nor the Wife for the Husband after his Death. *Ibid.* It hath been adjudged, that a Writ of Error will not lie on a Conviction of a *Recusant*, for not rendering himself to the Sheriff, &c. because the Conviction is no Judgment, but the Statute gives Process upon it for the Forfeiture: So that if there be any Faults in it, the same is to be quashed in the *Exchequer*, the Party first conforming. *Raym.* 433. An Information *tam quam* was brought against a Defendant, setting forth that before and on such a Day he was a *Recusant* Convict, and that afterwards he conform'd, &c. and for three Years after had not received the Sacrament, and so demanded 60 *l.* for every Year. Upon Not guilty pleaded, the Plaintiff had a Verdict; and thereupon it was moved that the Information was uncertain, because neither the Time was alledged, nor how, or in what Court, nor before whom the Conviction

was; and the Informer demands the Penalty for three Years, when by Statute no Informer can demand a Penalty upon a Penal Law, but by an Information exhibited within a Year after the Offence: But it was resolved, that the first Exception had been good on a Demurrer; but the Defendant having pleaded Not guilty, all the Circumstances of his Conviction were admitted, and that nothing remain'd to be try'd but the Fact: And as for the second Exception, it was good against the Informer for his Part, but should not prejudice the King, 2 *Cro.* 365. 3 *Nelf. Abr.* 59. The Stat. 23 *Eliz.* c. 1. gives several Remedies against *Recusants*; one for the King alone, and there the Prosecution must be by Indictment in *B. R.* The other for a common Person, and that is to be by Action of Debt, Bill, Plaint, or Information. And the 28 *Eliz.* c. 6. was made for the Benefit of the Crown upon Indictments, and doth not extend to Informations; therefore such Informations may be brought in any Court of Record. *Hob.* 204. Where the Defendant is indicted on the Statute of *Recusancy*, Conformity is a good Plea; but not where an Action of Debt is brought. 1 *Mod.* 213. A *Recusant* certified into the Court of *King's Bench*, according to the 23 *Eliz.* shall give Security for his good Behaviour, &c. 2 *Bull.* 155. See *Papists.*

Ræd, (Sax. *Ræd*) Is an old Word signifying Advice: And *Redbana* is one who advised the Death of another.

Red Book of the Exchequer, (*Liber rubens Scaccarii*) Is an ancient Record, wherein are registered the Names of those that held Lands per *Baroniam* in K. Henry the 2d's Time. *Ryley* 667. It is a Manuscript Volume of several Miscellany Treatises, in the Keeping of the *King's Remembrancer* in his Office in the *Exchequer*; and hath some Things (as the Number of the Hides of Land in many of our Counties, &c.) relating to the Times before the Conquest. There is likewise an Exact Collection of the Escuages under King *Hen. 1.* *Rich. 1.* and King *John*; and the Ceremonies used at the Coronation of Queen *Eleanor*, Wife to King *Hen. 3d.* &c.

Reddendum, Is used substantively for the Clause in a Lease, whereby the Rent is reserved to the Lessor; and anciently Corn, Flesh, Fish, and other Viſuals, were for the most part reserved on Leases. 2 *Rep.* 72. *Wood's Inst.* 226. In Debt for Rent, the Plaintiff declared upon a Lease made 25 *Aug.* 11. *Will.* 3. of a Messuage, &c. for seven Years, to commence from the 24th Day of January, *Reddendum* quarterly at Michaelmas, St. Thomas's Day, Lady-Day, and Midsummer, three Pounds ten Shillings, the first Payment to be made at Michaelmas then next; and assign'd for Breach that fourteen Pounds of the said Rent was in Arrear for one Year ending 24 December, Anno 13. *Will.* And upon Demurrer to this Declaration, it was objected that on this Lease there was no Year could be ended on the 24th of December, but on St. Thomas's Day, according to the *Reddendum*; which was held to be true, because where special Days are limited in the *Reddendum*, the Rent must be computed from those Days, and not according to the *Habendum*; and that the Rent is never computed from the *Habendum*, but when the *Reddendum* is general, i. e. paying quarterly so much; so the Plaintiff had Leave to discontinue, &c. 1 *Salk.* 141. See *Deed*, & *Reservation*.

Reddidit se, Is where a Man procures Bail for himself to an Action in any Court at Law, if the Party bailed at any Time before the Return of the second *Scire Facias* against the Bail, renders himself in Discharge of his Bail, they are thereby discharged. 2 *Lill. Abr.* 430. A *Capias ad satisfaciend'* was return'd *Non est Inventus* against the Principal, and one *Scire Fac.* and a *Nichil*; and upon the second *Scire Fac.* he renders himself, and was received: But if there had been a *Scire Fac.* and Judgment thereupon, he had come too late. *Cro. Jac.* 109. If a Defendant renders himself to the Marshal of B. R. upon any Action in that Court, in Discharge of his Bail, the Defendant's Attorney is forthwith to give Notice of such Render to the Plaintiff's Attorney, and shall make Oath thereof, &c. And a *Reddidit se* will not discharge the Bail, unless the Attorney who is concern'd for the Defendant, or his Bail, enters it in the Marshal's Book; and having given Notice thereof to the Attorney for the Plaintiff, brings the Bail-piece to the Secondary, who upon producing of a Note from the Marshal or his Clerk, that the Defendant is in Custody, will discharge it; and until this is done, the Plaintiff may notwithstanding proceed to Judgment and Execution against the Bail; for till the Bail-piece is discharged, there is a Record still remaining in Court against them. 15 *Car. 2.* 2 *Lill.* 431. A *Reddidit se* of the Principal, in Discharge of the Bail, is no Plea in a Writ of Error; for the Recognizance is not to render the Body, but to pay the Debt adjudged. 3 *Jac. 1.* c. 8. *Vide* Bail.

Redditarius, A Renter; and *Redditarium* hath been used for a Rental of a Manor, or other Estate. *Cartular. Abbat. Glaston. M.S.* 92.

Reddition, (*Redditio*) A Surrendring or Restoring; being also a judicial Confession and Acknowledgment that the Land or Thing in Demand belongs to the Demandant, and not to the Person so surrendring. *Stat. 34 & 35. H. 8.* c. 24.

Redecima, The Tenth of the Tenth. *Mon. Angl. Tom. 2.* pag. 199.

Redelivery, Is a Yielding and Delivery back of a Thing: If a Person has committed a Robbery, and stolen the Goods of another, he cannot afterwards purge the Offence by any *Redelivery*, &c. 1 *Inst.* 69. *H. p. c.* 72.

Redemise, Is a Regranting of Lands demised or leased. See *Demise* & *Redemise*.

Redemption, (*Redemptio*) A Ransom, or Commutation; and by the old *Saxon* Laws, a Man convicted of a Crime paid such a Fine, according to the Estimation of his Head, *pro Redemptione sua*.

Redeable, (from the *Sax. Redevair, debere*) signifies bound or obliged to another, for some Benefit received. *Blount*.

Redisseisin, (*Redisseisina*) Is a *Disseisin* made by him, who once before was found and adjudged to have disseised the same Man of his Lands or Tenements; for which there lies a special Writ called a *Writ of Redisseisin*. *Old Nat. Br.* 106. *F. N. B.* 188. The *Writ of Redisseisin* lieth where a Person doth recover by *Assise of Novel Disseisin* any Lands, Rent, or Common, &c. and is put in Possession thereof by Verdict and Judgment, and afterwards he is disseised of the same by him by whom he was disseised before. Statute of *Merton*, c. 3. *New Nat. Br.* 417. Also this Writ lies against him who committed the *Redisseisin*,

and another who was not Disseisor, if he be Tenant of the Land; and if a Man do recover by *Redisseisin*, and after he is disseised again by the Person who made the first *Redisseisin*, he shall have a New Writ of *Redisseisin*; and so once *Redisseisin* after another, every Time he is re-disseised. *Ibid.* 418. 420. And the *Redisseisin* being found on the Sheriff's Inquisition, the Party who did it is to be committed to Prison, and the Lands resealed; and he who recovereth in *Redisseisin*, shall have double Damages, &c. *Stat. Westm. 2.* c. 26. And the Punishment for *Redisseisin* see in the Statute 52 *H. 3.* c. 8. See *Post-Disseisin*.

Redubbing, Are those that buy stolen Cloth, and turn it into some other Colour or Fashion, that it may not be known again. *Britton, cap.* 29. 3 *Inst.* 134.

Re-entry, (from the *Fr. Rentrer*, i. e. *reversus intrare*) Is the Resuming or Retaking a Possession lately had; as if a Man makes a Lease of Lands, &c. to another, he thereby quits the Possession; and if he covenants with the Lessee, that for Non-payment of the Rent at the Day, it shall be lawful for him to re-enter; this is as much as if he conditioned to take again the Land into his own Hands, and to recover the Possession by his own Act, without the Assistance of the Law: But Words in a Deed give no *Re-entry*, if a Clause of *Re-entry* be not added. *Wood's Inst.* 140. One may reserve a Rent on Condition in a Feoffment, Lease, &c. That if the Rent is behind he shall re-enter, and hold the Lands till he is satisfied, or paid the Rent in Arrear; and in this Case, if the Rent is behind, he may re-enter; though when the Feoffee, &c. pays or tenders on the Land all the Arrears, he may enter again. *Lit.* 327. 1 *Inst.* 203. And the Feoffor, &c. hath only an Interest, not the Freehold, to take the Profits in the Nature of a Distress: Here the Profits shall not go in part of Satisfaction of the Rent; but 'tis otherwise if the Feoffor was to hold the Land till he was paid by the Profits thereof. *Ibid.* All Persons that would re-enter upon their Tenants for Non-payment of Rent, are to make a Demand of their Rent; and to prevent the *Re-entry*, Tenants are to tender their Rent, &c. 1 *Inst.* 201. If there is a Lease for Years, rendring Rent with Condition, That if the Lessee assigns his Term, the Lessor may re-enter; and the Lessee assigneth, and the Lessor receiveth the Rent of the Assignee, not knowing or hearing of the Assignment, he may re-enter notwithstanding the Acceptance of the Rent. 3 *Rep.* 65. 1 *Cro.* 553. A Feoffment may be made upon Condition, That if the Feoffor pay to the Feoffee, &c. a certain Sum of Money at a Day to come, then the Feoffor to re-enter, &c. *Lit.* 322.

Re-exchange, Is the like Sum of Money paid by the Drawer of a Bill of Exchange which is return'd, for the Exchange of the Sum mentioned in the Bill back again to the Place whence it was drawn. *Lex Mercat.* 98.

Revertent, Is a second Extent upon Lands or Tenements, on Complaint that the former Extent was partially made, &c. *Broke* 313.

Refare, (From the *Sax. Reaf, or Refan*) To bereave, take away, or rob. *Leg. H. 1.* c. 83.

Refectio, A Dinner or Supper; sometimes taken for a Duty incumbent to provide Suppers, &c. The Word is derived from *Reficio*, to refresh.

Refectory, (*Refectorium*) Is that Place in *Monasteries* where the Monks used to eat: So the Halls in *Colleges* and *Inns of Courts*, wherein the Scholars and Students eat and refresh themselves, may properly be called *Refectories*. Cowel.

Reference, In the Acceptation of Law is, where a Matter is referred by the Court of *Chancery* to a *Master*; and by the *Courts at Law* to a *Prothonotary* or *Secondary*, to examine and report to the Court. 2 *Lill. Abr.* 432. In *Chancery*, by Order of Court, Irregularities, Exceptions, Matters of Account, &c. are referred to the Examination of a *Master* of that Court. In the Court of *B.R.* Matters concerning the due Proceedings, or undue Proceedings in a Cause, by either of the Parties, are proper Matters of Reference unto the *Secondary*, and for him in some ordinary Cases to compose the Differences betwixt them; and in others to make his Report how the Matters do stand, that the Court may settle the Differences according to their Rules and Orders. *Pasch.* 1650. If a Matter in Difference between the Plaintiff and Defendant be referred to the *Secondary*, and one of the Parties will not attend at the Time appointed, after Notice thereof given, to hear the Business referred; the other Party may proceed in the Reference alone, and get the *Secondary* to make his Report without hearing of the Party not attending. 2 *Lill.* 432. See *Report*.

Referendary, (*Referendarius*) Is the same Officers abroad as *Masters of Request* were to the King among us; they were those who exhibited the Petitions of the People to the King, and acquainted the Judges with his Commands. And there was such an Officer in the Time of the English Saxons here, viz. *Ego Augemundus Referendarius approbavi*, &c. And we read of a *Referendarius Angliae*. Spelm.

Refugium, A Sanctuary or Privilege of the Church.—*Cum omni sua Libertate & Refugio Ecclesie Sancti Petri*, &c. *Mon. Angl. Tom.* 3. pag. 122.

Refullus, For *Refluxus*; and perhaps *Refullum Aquæ* is the High-water Mark, or so high as the Water comes at full Sea. *Mon. Angl.*

Refusal. An Executor may refuse an *Executorship*; but the *Refusal* ought to be before the *Ordinary*. If an Executor be summoned to accept or refuse the *Executorship*, and he doth not appear upon the Summons and prove the Will, the Court may grant Administration, &c. which shall be good in Law till such *Executor* hath proved the Will; but no Man can be compelled to take upon him the *Executorship*, unless he hath intermeddled with the Estate, 1 *Leon.* 154. *Cro. Eliz.* 858. Where there are several Executors, and they all refuse, none of them shall administer afterwards; but if there is a *Refusal* by one, and the other proves the Will, the *Refusing* Executor may administer when he will, during the Life of his Co-executor. 5 *Rep.* 28. 2 *Nels. Abr.* 63. There is a Difference where there is but one Executor, and where there are more Executors than one, as to *Refusal* of an *Executorship*; for if there is but one, and in such Case he administer, he cannot refuse afterwards; and if once he refuse he cannot administer afterwards: As for Instance; The Testator being possessed of Lands, &c. for a Term of Years, devised the same to the Lord Chief Justice Catline, and made him Executor, and died: Afterwards the Executor wrote a

Letter to the Judge of the Prerogative Court, intimating that he could not attend the *Executorship*, and desiring him to grant Administration to the next of Kin to the Deceased, which was done accordingly; and after this, the Executor entred on the Lands, and granted the Term to another; but it was adjudged void, because the Letter which he wrote was a sufficient *Refusal*, and he may not once refuse, and afterwards take upon the *Executorship*. *Moor* 272. An Executor after a *Caveat* entred against the Will, took the usual Oath of an Executor, and afterwards refused to prove the Will; and it was held, that having taken the Oath of Executor, the Court could not admit him to refuse afterwards, but ought to grant *Probate* to him notwithstanding the *Caveat*, on another's Contesting for the Administration, &c. 1 *Ventr.* 335. There is a *Refusal* of a Clerk presented to a Church, for Illiterature, &c. And if a Bishop once refuses a Clerk for Insufficiency, he cannot accept of him afterwards, if a new Clerk is presented. 5 *Rep.* 58. 1 *Cro.* 27. In *Actions of Trover and Conversion*, a Demand of the Goods and *Refusal* to deliver them must be proved, &c. 10 *Rep.* 56. 1 *Danv. Abr.* 20.

Refutantia, An Acquittance; or a Renouncing of all future Claim.—*Visis Libris, Instrumentis, Registris, Refutationibus, aliisque Evidentiis*, &c. Thorn. Anno 1389.

Regal, (*Regalis*) Royal, or Kingly; like a King. *Lit. Dist.*

Regale Episcoporum, The temporal Rights and legal Privileges of a Bishop. *Mandatum est Roberto de B. quod faciat habere Episcopo Norwicensi totum Regale quod ad Episcopatum suum pertinet*. Brady's Append. to the History of England. pag. 108.

Regal fishes, Are *Whales* and *Sturgeons*; to which some add *Porpusses*. The King by his Prerogative ought to have every Whale cast on Shore in all Places within this Realm, (except granted to Subjects by Special Words) as a *Royal Fish*: And 'tis said the King himself shall have the Head and Body to make Oil and other Things; and the Queen the Tail to make Whale-Bones for her Royal Vestments. *Pat.* 1. *Edw.* 1. *Stat.* 17. *Edw.* 2. cap. 1. 1 *Eliz.* cap. 5.

Regalia, (*Lat.*) Royalties, the Royal Rights of a King, which the *Civilians* say are six, 1. Power of Judicature. 2. Power of Life and Death. 3. All Kind of Arming. 4. Masterless Goods, as Waifs, Estrays, &c. 5. Assessments, and 6. The Value of Money, &c. Also the Crown, the Scepter, four several Swords, the Globe, and other such like Things, used at the Coronation of our Kings, are called *Regalia*. *Stat.* 13. *Eliz.* cap. 16. And *Regalia* is sometimes taken for the Dignity and Prerogative of the King. Likewise *Regalia* is applied to those Rights which the Church enjoys by the Grants and Concessions of Kings: And sometimes to the Patrimony of the Church; and those Lands and Hereditaments that have been given by our Kings thereto. *Mon. Angl. Tom.* 2. pag. 231.

Regardant, (*Fr. i. e.* Seeing, Marking, or Vigilant) As a *Villain Regardant*, was one who had the Charge to do all base Services within the Manor, and to see the same freed of Annoyances; and therefore called *Regardant* to the Manor. *Co. Lit.* 120.

Regard, (*Regardum*, *Fr. Regard*, i. e. *Aspectus*) Signifies generally any Care, or looking on; and

in a special Signification is used only in Matters of the Forest, and there two Ways, one for the Office of the *Regarder*, the other for the Compass of Ground belonging to the *Regarder's* Charge, which is the whole Forest, viz. All that Ground which is Parcel of the Forest; for there may be Woods within the Limits of the Forest, that are no Part thereof, and those are without the *Regard*. *Crompt. Jurisd.* 175, 199. *Manw. par. 2. cap. 7.*

Regarder, (*Regardator*, Fr. *Regardeur*, *Spectator*) Is the Officer of the King's Forest, who is sworn to make the *Regard* of it, as has been used in ancient Time; and to view and inquire of all Offences of the Forest, as well of *Vert* as of *Venison*; and of Concealments of any Offences or Defaults of the Foresters, and all other Officers of the King's Forest, relating to the Execution of their Offices, &c. *Crompt. Jurisd.* 153. *Manwood*. This Officer was ordained in the Beginning of the Reign of King *Hen. 2d.* And the *Regarders* of the Forest must make their *Regard*, before any General Sessions of the Forest, or Justice-Seat can be holden; when the *Regarder* is to go through the Forest, and every Bailiwick, to see and inquire of the Trespasses therein; *ad videndum, ad inquirendum, ad imbreuiandum, ad Certificandum*, &c. *Manw. part 1. pag. 194.* A *Regarder* may be made either by the King's Letters Patent; or by any of the Justices of the Forest, at the General Eyre, or such Time as the *Regard* is to be made, &c. *Manw.*

Rege inconsulto, Is a Writ issued from the King to the Judges not to proceed in a Cause which may prejudice the King until he is advised. King *James 1st*, granted the Office of *Superfedeas* in C. B. to one *Mitchel*, and thereupon *Brownlow*, chief Prothonotary, brought an *Assise* against him; and the Defendant *Mitchel* obtained the King's Writ to the Judges, reciting the Grant of this Office, commanding them not to proceed *Rege inconsulto*: And it was argued against the Writ, that the Court might proceed, because the Writ doth not mention that the King had a Title to the Thing in Demand, nor any Prejudice which might happen to the King if they should proceed: The Cause was compromised. *Moor* 844.

Regio Mensu, A Writ whereby the King gives his Royal Assent to the Election of a Bishop. *Reg. Orig.* 294.

Registrar, (*Registrarius*) Is an Officer that writes and keeps a *Registry*; and *Register* is also the Name of a Book, wherein are entred and set down most of the Forms of *Writs* Original and Judicial used at Common Law, called the *Register of Writs*: Sir *Edward Coke* affirms, That this *Register* is one of the most ancient Books of the Common Law. *Co. Lit.* 159.

Register of the Parish Church, (*Registrum Ecclesie Parochialis*) Is that wherein *Baptisms*, *Marriages*, and *Burials* are registred in each Parish every Year; which was instituted by the Lord *Cromwel*, Anno 13 *Hen. 8.* while he was Vicar General to that King.

Registry, (*Registrum* from the old Fr. *Gister*, i. e. in *Lecto reponere*) Is properly the same with *Repository*; and the Office, Books, and Rolls wherein the Proceedings of the *Chancery*, or any *Spiritual Court* are recorded, &c. are called by this Name.

Registry of Deeds. The *Registrying* of *Deeds* and Incumbrances is a great Security of Titles

to Purchasers of Lands and Mortgagees; and some Laws have been made requiring the same. By the 2 *Ann. cap. 4.* A *Registry* is to be kept of all *Deeds* and *Conveyances* affecting Lands executed in the West-Riding of *Yorkshire*, and a publick Office erected for that Purpose; and the *Register* is to be chosen by Freeholders having 100 *l. per Annum*, &c. The 6 *Ann. cap. 35.* ordains, that a Memorial and *Registry* of all *Deeds*, *Conveyances*, *Wills*, &c. which affect any Lands or Tenements, shall be made in the East-Riding of the County of *York*, and the *Register* is to be sworn by the Justices in Quarter-Sessions, and every Leaf of his Book signed by two Justices. By 7 *Ann. cap. 20.* A Memorial and *Registry* is to be made of all *Deeds* and *Conveyances*, and of all *Wills* whereby Lands are affected, &c. in the County of *Middlesex*, in like Manner as in *Yorkshire*. And by these Statutes, *Deeds*, *Conveyances* and *Wills* shall be void against subsequent Purchasers or Mortgagees, unless registred before the *Conveyances* under which they claim: Also no Judgment, Statute, or Recognizance, shall bind any Lands in those Counties, but from the Time a Memorial thereof shall be entred at the *Register's* Office; but the Acts do not extend to Copyhold Estates, Leases at a Rack-Rent, or to any Leases, not exceeding 21 Years, where the Possession goes with the Lease; nor to any Chambers in the Inns of Court.

Registry of Papists Estates. Papists are to register their Estates, or on Default shall forfeit them. 1 *Geo. cap. 55.* And all Persons refusing to take the Oaths, are obliged to register their Estates as Papists, &c. 9 *Geo. cap. 24.* See *Papists*.

Regius Professor, Is a Reader of Lectures in the Universities, founded by the King: K. *Hen. 8.* was the Founder of five Lectures in each University of *Oxford* and *Cambridge*, viz. of *Divinity*, *Greek*, *Hebrew*, *Law* and *Physick*, the Readers of which are called in the University Statutes *Regii Professores*.

Regrator, (*Regratarius*, Fr. *Regrateur*) Signifies him that buys and sells any Wares or Victuals in the same Market or Fair: And by Statute, *Regrators* are particularly described to be those who buy or get into their Hands in Fairs or Markets, any Grain, Fish, Butter, Cheese, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pigeons, Conies, or other dead Victuals whatsoever, brought to a Fair or Market to be sold there, and do sell the same again in the same Fair, Market, or Place, or in some other within four Miles thereof, *Stat. 5 & 6. Ed. 6. cap. 14.* 13 *Eliz. cap. 25.* *Regrating* is a Kind of *Huckstry*, by which Victuals are made dearer; for every Seller will gain something, which must of Consequence enhance the Price. 3 *Inst.* 195. And in ancient Time, both the *Ingrosser* and *Regrator* were comprehended under the Word *Forestaller*. *Ibid.* *Regrators* are punishable by Loss and Forfeiture of Goods, and Imprisonment, in Proportion to the first, second, or third Offence, &c. Vide *Forestaller*.

Regula, The Book of Rules, Orders or Statutes in a Religious Convent; and sometimes it is used for the Martyrology, or Obituary. *Regulars* are Monks or Canons, who profess to live under some Rule of Obedience.

Regulus,

Regulus, Is a Word often mentioned in the Councils of the *English Saxon Kings*, and used for *Comes*; as the *Subregulus* was the *Viccomes*: *Offa Rex Merciorum, Uthredus Regulus, & Aldredus Subregulus, &c.*

Rehæere facias seisinam, *Quando Vicecomes liberavit seisinam de majore parte, quam deberet*, is a judicial Writ; of which there is another of the same Name and Nature. *Reg. Judic. 13, 51, 54.*

Rehabilitation, (*Rehabilitatio*) A Restoring to former *Ability*; and is one of those Exactions claimed by the *Pope* heretofore in *England*, by his *Bull* or *Brief*, for *re-enabling* a spiritual Person to exercise his Function who had been disabled. *Stat. 25 Hen. 8. c. 21.*

Rejoinder, (*Rejunctio*) Is where the Defendant in any Action makes Answer to the Plaintiff's *Replication*: It is an Exception or Answer thereto, and it ought to be a sufficient Answer to the *Replication*, and follow and enforce the Matter of the Bar pleaded. *2 Lill. Abr. 433.* The Defendant is not to *rejoin* upon such Words as are not contained in the Declaration, or *Replication*; and if the Defendant do in his *Rejoinder* depart from his Plea pleaded in Bar, the *Rejoinder* is not good, because this is uncertain, and to say and unsay, which the Law doth not allow. *Mich. 22 Car. B. R.* Where a *Replication* is pleaded, which is issuable, the Clerk of the Papers when he makes up the Paper-Book, doth of Course make up the *Rejoinder*, and joins the Issue in it; and if the *Rejoinder* be issuable, he hath the Making up of the *Surrejoinder* to it, and the Issue thereupon. *2 Lill. 433.*

Relation, (*Relatio*) Is where, in Consideration of Law, two different Times or other Things are accounted as one; and by some Act done the Thing subsequent is said to take Effect by *Relation* from the Time preceding; as if one deliver a Writing to another, to be delivered to a third Person, as the Deed of him who made it, when such third Person hath paid a Sum of Money; now when the Money is paid, and the Writing delivered, this shall be taken as the Deed of him who made and delivered it; at the Time of its first Delivery, to which it has *Relation*. *Terms de Ley 515.* A Judgment had in full Term shall have *Relation* to the first Day of the Term, which is the *Effoin-Day*; but this must be understood of a Judgment given after Appearance; and if it be upon Default, then the *Quartus dies post* is the Day. *Cro. Car. 73. 1 Bulst. 33.* Judgments shall have *Relation* to the first Day of the Term, as if given on that very Day, unless there is a *Memorandum* to the contrary; as where there is a Continuance till another Day in the same Term. *3 Salk. 212.* A Verdict was given in a Cause for the Plaintiff, and there was a Motion in Arrest of Judgment within four Days; the Court took Time to advise, and in four Days afterwards the Plaintiff died: It was adjudged, that the Favour of the Court shall not prejudice the Party, for the Judgment ought to have been given after the first four Days; and though 'tis given after the Death of the Party, it shall have *Relation* to the Time when it ought to have been given. *1 Leon. 187.* Rule was had for Judgment, and two Days after the Plaintiff died; yet the Judgment was enter'd, because it shall have *Relation* to the Day when the Rule was given, which was when the Plaintiff was alive. *Posb. 132.* The Defendant in a Suit after the *Teste* of the *Fieri facias*, and before the Sheriff

had executed it, sold the Goods, and delivered them to the Buyer; and it was resolved, that the Sheriff might take them in Execution in the Hands of the Buyer; for when such Execution is made, it shall have *Relation* to the *Teste* of the *Fi. fa* *1 Leon. 304.* Sale of Goods of a Bankrupt, by Commissioners, shall have *Relation* to the first Act of Bankruptcy; and be good, notwithstanding the Bankrupt sells them afterwards. *1 Jac. 1. cap. 15. Wood's Inst. 311.* And if a Man buys Cattle in a Market that are stolen, and selleth them out of the Market, though the Cattle are afterwards brought into the Market, and the second Bargain confirm'd, and Money paid, &c. this Bargain will not be good; for it shall have *Relation* to the Beginning, which was unlawful. *Dyer 99.* Fines being but common Assurances shall be guided by the Indenture precedent; and the Execution thereof shall have *Relation* to the original Act. *2 Cro. 110.* A Bargain and Sale to A. B. and before it was inrolled, the same Bargainor levied a Fine to the Bargainee, and afterwards and within the six Months the Deed was inrolled; adjudged that the Bargainee was in by the Fine, and not by the Deed inrolled, because though the Inrollment shall have *Relation* to the Delivery of the Deed, that is only to protect the Lands from all Incumbrances to be made by the Bargainor to others after the Deed, and before the Inrollment, but not to divest any lawful Estate made by him before. *4 Rep. 70.* After an Indenture of Bargain and Sale is inrolled, it relates to the Delivery; nothing passes till Inrollment, but then it relates *3 Nels. Abr. 68.* But generally in Cases at Common Law, there is no *Relation*; as between the Feoffment of Lands and Livery and Seisin; or between the Grant of a Reversion and the Attornment, which is only the Assent of the particular Tenant, and shall not relate to the Grant. *Ibid.* Tho' if one distrains for Rent as Bailiff, when in Truth he is not; if he in whose Name he took the Distress will afterwards assent to it, he shall not be a Trespasser, for the Assent shall have *Relation* to the Time of the Distress taken. *2 Leon. 196.* Letters of Administration relate to the Death of the Intestate, and not to the Time when they were granted. *Stile 341.* It is a Rule in Pleadings, Grants, &c. *Ad proximum antecedenz fiat Relatio*; but that Rule hath an Exception, (*viz.*) *nisi impediatur sententia*: And it hath been held that this Rule hath many Restrictions, i. e. *Fiat Relatio*, so as there is no Absurdity or Incongruity; and therefore it is always *secundum subjectam materiam*. *Hardr. 77. 3 Salk. 199.* A Person granted *Totam illam portionem Decimarum* in B. with all other his Tithes in B. then or late in *Occupatione* of F. C. here the Words in *Occupatione* of F. C. have *Relation* to the whole Sentence, and not only to the precedent Words, with all other his Tithes, because the Pronoun *illam* relates as well to the Tenure of the Tithes, as to the Place where they arise. *4 Rep. 34.* In Debt upon Bond condition'd that if F. M. died before *Midsummer Day*, without Issue Male of her Body then living, that in such Case the Bond should be void: The Defendant pleaded that before *Midsummer Day*, she did die without Issue Male then living; and the Question was, whether the Adverb *then* should relate to *Midsummer Day*, or to the Death of F. M. And it was agreed, that it might relate to either; but because it happened in Fact that she had a Son living at her Death,

which

which Son died before *Midsummer* Day, therefore the Words *then living* shall relate to that Day, and not her Death; and because it is most beneficial to the Obligor that it should be so. *Dyer* 17. 3 *Nelf. Abr.* 65.

Relator, (*Lat.*) A Rehearer, or Teller; also apply'd to an Informer. *Stat. 9 Ann. c. 20.* See *Quo Warranto*.

Release, (*Relaxatio*) Is an Instrument, whereby Estates, Rights, Titles, Entries, Actions, and other Things, are extinguished or abridged, and sometimes enlarged. *West's Symb. par. 1. lib. 2.* Generally it is a giving up or discharging of the Right or Action which any Man hath or claimeth against another, or his Lands, &c. and is usually made by the Words; Have *Remised*, *Released*, and *Quit-claimed*, or other Words to the like Purpose: He that *releaseth* is the *Releasor*, and he to whom the *Release* is made is called the *Releasee*. *Lit.* 445. 1 *Inst.* 264. *Releases* are of two Kinds, *viz.* a *Release* as to Lands, (called *Lease and Release*) and of Goods and Chattels; and a *Release* of Actions, whether Real, Personal or Mix'd. *Lit.* 492. And they are also either in *Fact* *express'd*, or *implied in Law*: In *Fact* or *express'd*, is that which the very Words expressly declare, and the Act of the Party *releasing*, by Deed: In *Law* or *implied*, is that *Release* which the Law makes, and which acquits by way of Consequent or Intendment of Law, and is sometimes by Writing, and sometimes without. 1 *Inst.* 264. *Perkins* 71. When an Obligee or Creditor, makes the Obligor or Debtor his Executor, who accepts thereof; this is a *Release* in Law by Writing: But if an Obligor is made Administrator to the Obligee, this is no *Release* in Law; and when he is made Executor, though this is a *Release* in Law of the Action, the Duty remains, and it shall be Affets in his Hands. 8 *Rep.* 136. If a Feme Obligee or Creditor takes the Obligor or Debtor to Husband, it is a *Release* in Law without Writing; but not if a Feme Executrix takes the Debtor to Husband, for that would be a Wrong to the Dead. *Ibid.* If a Charge or Duty grow by Record, the *Release* must be upon Record; and if by Deed, the *Release* is to be by Deed. 1 *Inst.* 298. And it is to be observed, That no Right passeth by a *Release*, but the Right which the Releasor had at the Time of the *Release* made; if he has no Right, the *Release* is void. *Litt.* 446, 450. Rights and Titles to Goods and Chattels, Actions Real, Personal, &c. may be *released*: Also Conditions annexed to Estates, Powers of Revocation of Uses, Warranties, Covenants, Rents, Services, Commons, and other Profits to be taken out of Lands, may be discharged and extinguished by *Release*. 1 *Rep.* 112. 2 *Rep.* 51. 10 *Rep.* 48. A Condition cannot be *released* upon Condition; but the *Release* will be good, and the Condition void. 1 *Inst.* 237, 265. A Man may not *release* a Personal Thing, as an Obligation, upon a Condition subsequent; because a Personal Thing once suspended, is extinguished for ever. 1 *Roll. Abr.* 412, 490. If a Person *releases* upon Condition, the Condition will be void; but a *Release* may be delivered as an Escrow, to be a Man's Deed when such a Thing is performed, which makes it in the Nature of a Condition. *Keilw.* 88. A *Release* of an Action or Right cannot be for a Time: It will enure for ever, if made but for an Hour. 1 *Inst.* 274. *Lit.* 467. A Duty certain may be *released* before the Day of Performance of the Condi-

tion; but a Duty uncertain at first, upon a Condition precedent to be made certain afterwards, being in the mean Time but a mere Possibility, cannot be *released*. 5 *Rep.* 70. 10 *Rep.* 11. *Cro. Eliz.* 580. As a Man may *release* any Debt or Duty due to himself; so a Person may *release* any Thing or Wrong done to his Wife, before or after the Marriage: A *Release* by the Husband of his Wife's Suit in the Ecclesiastical Court for Defamation, is a good *Release* as to the Costs, but not as to the Defamation; for the Court may give Sentence that the Defendant shall make a corporal Satisfaction by Penance and Submission, which the Husband cannot *release*. *Cro. Car.* 161. If the Wife is Executrix to another, the Husband may *release* any Debt or Duty due to the Testator; which the Feme Executrix cannot to the Prejudice of her Husband. 5 *Rep.* 27. A Wife is divorced *causa Adulterii*, the Husband may *release* a Duty to the Wife. *Cro. Eliz.* 909. Regularly the *Release* of an Infant is void; yet an Infant Executor may *release* a Debt duly paid to him as Executor. *Ibid.* An Executor before Probate of the Will, may *release* a Debt due to the Testator, because he hath an absolute Interest of the Debt in him. 5 *Rep.* 27. 9 *Rep.* 39. If a Man *releaseth*, and after taketh out Administration, this is no Bar to him; by Reason at the Time of the *Release* made, he had not so much as a Right of Action in him. 5 *Rep.* 28. A Merchant of Ireland entered into a Bond there to one in London, which Bond was afterwards brought to London, the Obligee died Intestate in England, and his Son obtained Administration in Ireland, and *released* the Debt to the Obligor; after this the Widow of the Intestate obtained a Prerogative Administration herè, and sued the Obligor, and recovered notwithstanding the *Release*, the Administration granted to the *Releasor* being wrong; for it ought to be granted where the Bond was, and not where the Debt began. *Dyer* 305. Where there are two joint Executors, and one alone doth *release* a Debt due to the Testator, before Judgment, this will bar the other Executor; but not if the *Release* is after Judgment. 1 *Cro.* 648. If divers Persons join in an Action to recover any Personal Thing, of which they are to have the joint Benefit or Interest, there the *Release* of one of them shall bar all the Rest; as where there are two Plaintiffs in Debt, &c. and one of them doth *release* to the Defendant, this is also a Bar to the other Plaintiff: But where they are to discharge themselves of a Personal Thing, it is otherwise; for if there is a Judgment against three, and they bring a Writ of Error, and the Defendant in Error pleads the *Release* of one of them, this is no Bar to the other, because they are all compelled by Law to join in a Writ of Error, which is brought not to recover any Personal Thing, but to discharge themselves of a Charge imposed by the Judgment. 6 *Rep.* 25. A Defendant being in Execution brought a Writ of Error in B. R. and before the Judgment was affirmed, he obtained a *Release* of all Actions, Debts, Duties, Executions, &c. and afterwards the Judgment was affirmed; and upon a *Scire facias* against the Bail, they pleaded this *Release*: It was the Opinion, that both the Debt and Bail were discharged. 2 *Bulstr.* 231: But before Judgment given against the Principal, there can be nothing due from the Bail, to be *released* or barr'd. 5 *Rep.* 71. Where two are bound jointly in a Bond

R E

a Bond or Obligation, and the Obligee releases to one of them, this shall discharge the other; and no Relief shall be had in Equity thereupon. 1 *Inst.* 232. 1 *Cro.* 648. A Release by a Lord to one Jointenant, shall extend to both of the Jointenants: If two commit a Trespass against a Man, his Release to one of them shall discharge the other; for against joint Trespassers there can be but one Satisfaction. 1 *Inst.* 232. 2 *Roll. Abr.* 410. *Hob.* 66. And when a Promise is of two Parts, a Release of one Part will be a Release of the other Part. 1 *Inst.* 232. Trover was brought against two, and one pleads a Release, and the other Not guilty; the Jury find him Guilty who pleaded Not guilty, and also the Release for the Party who pleaded it: The Judgment was thereon stay'd, because a Release to one joint Trespasser is a Release to all the Rest; though they may sever in Pleading, yet one Jury shall assess Damages for all: And the Plaintiff having joined and made him a Defendant with one to whom he had released, the Release shall extend to discharge him who pleaded Not guilty. 2 *Lill. Abr.* 439. In an Affise by two, the Release of one of the Parties is no Bar for the Lands, nor for the Damages which ensue the Reality. *Cro. Eliz.* 649. And a Release of an Action by one Churchwarden is not good; nor can both of the Churchwardens release to the Prejudice of the Church. 1 *Danv. Abr.* 788. A Release of all manner of Actions, discharges all Real, Personal and Mix'd Actions, and Causes of Action subsisting at the Time of the Release: And a Release of all Actions Real or Personal releases Mix'd Actions; but by a Release of all Actions Real and Personal, a Writ of Error is not released; nor is it a Bar to an Execution, if the Party is not put to a *Scire facias*, though a Release of all Suits, will be a Bar to an Execution, except in the Case of the King: A Release of all Actions bars only in civil Actions; not in Appeal of Death, &c. *Litt.* 406. 1 *Inst.* 285. 4 *Rep.* 63. 8 *Rep.* 152. Release of all Actions generally, is better than to say all Actions Real and Personal. 2 *Lill. Abr.* 437. In Debt for Arrears of an Annuity, the Defendant pleads a Release of all Actions before the Day of Payment; and it was held to be an ill Plea, because a Release cannot discharge a Duty not then in Being. 1 *Inst.* 292. *Cro. Eliz.* 897. An Annuity, or Rent payable at a Time to come, cannot be discharged by a Release of all Actions; but one may release the Rent, &c. before the Day, by special Words. *Wood's Inst.* 278. A Release of all Actions, barreth not a Right, if there be other Means to come at it. 8 *Rep.* 159. Release of all Quarrels, Controversies, &c. amounts to a Release of all Actions; but if a Man making such a Release, be dispossessed of his Goods, he may take his Goods again, though he has released; for such a Release doth not bar the Right; it is the same in Release of all Actions. 1 *Inst.* 292. 4 *Rep.* 63. 11 *Rep.* 82. A Release of all Actions will not discharge a Covenant before broken; before Breach there is not any Duty or Cause of Action: By a Release of all Covenants, a Covenant not broken may be released. 1 *Rep.* 112. 5 *Rep.* 71. Upon a Bond for Performance of Covenants, the Obligee before any Breach releases all Covenants, and afterwards a Covenant is broken, the Obligation is not forfeited but discharged. 3 *Leon.* 105. A Release of all Statutes, discharges all Statutes; Release of Errors, all Writs of Error, &c. 1 *Inst.* 76. A Defendant pleaded that after

R E

a Bond, &c. by him given, the Plaintiff released to him all Errors, and all Actions, Suits, and Writs of Error; and upon Demurrer it was insisted that the Obligation makes the Duty, and the Release of all Actions shall be a good Bar; but adjudged that this was a special Release, and extends only to the Errors, and that the Debt on the Bond was not released. *Hetl.* 9, 15. 3 *Nelf. Abr.* 76. By Release of all Debts, Debts upon Specialties, Executions, &c. are discharged; and by Release of all Actions and Duties, a Release which was in Question was held to be released. 1 *Inst.* 291. *Owen* 71. A Release of all Dues or Duties, will release personal Actions, and Executions, not bar a Writ of Account, there being nothing certainly due before the Account made: A Release of all Actions will be a good Bar in Account; though a Release of all Accounts, shall be extended only to Account. 8 *Rep.* 153. 2 *Roll. Abr.* 404. The Release of all Demands is the best Release of all, and the most effectual to bar Actions, Rights, &c. and includes in it most of the others: By this Release, all Rights, and Titles to Lands, Conditions before broken or after, Contracts, Covenants broken, Rents, Annuities and Arrearages of Rents and Annuities, Debts, Duties, Obligations, Recognizances, Statutes, Judgments, Executions, &c. all manner of Actions Real and Personal, &c. are barred and discharged. *Litt.* 508. 1 *Inst.* 291: 5 *Rep.* 71. 8 *Rep.* 153. *Dyer* 56. But a Release of all Demands doth not extend to such Writs, where nothing is demanded. 8 *Rep.* 152. And it hath been resolved, that a Release before any Rent due, of all Demands that the Releasee had or should have against the Releasee, shall not release the accruing Rent not being then due. 1 *Inst.* 291. 1 *Lev.* 29. 2 *Lev.* 210. A Release of all Demands may discharge all Rent actually due, but not the growing Rent afterwards due, and which is incident to the Reversion; and if the Release be pleaded in Bar to the whole Rent, when 'tis good only for Part, the Plea is ill. 2 *Salk.* 578. In Award, that all Suits should cease, and that the Defendant should pay 10 *l.* and the Plaintiff on Payment thereof should release all Demands, &c. It was held, that if the Plaintiff would not receive the 10 *l.* because he would not be obliged to release, and the Defendant tendered and he refused, the Plaintiff was as much obliged to release upon the Tender, as if he had actually received the Money. 1 *Salk.* 74, 75. One in Consideration that the Plaintiff had lent him 10 *l.* and assign'd over a Bond to him, and had promised to release him from all Demands; he promised that if the Money was not received upon the Bond, he would at such a Time pay 20 *l.* the Plaintiff avers all done on his Part, and that the 20 *l.* was not paid: And the Defendant pleads the Release; but it was not good, the Release being Part of the Consideration, without making of which the Plaintiff could not maintain his Action: Also it doth not release what is future. *Cro. Jac.* 623. 2 *Lill. Abr.* 439. Release of all Demands doth not avoid Obligations subsequent to the Release; yet where a Man is bound in an Obligation to pay 10 *l.* at Michaelmas, a Release of all Actions and Demands before Michaelmas, will be a good Discharge. *Lit.* 512. Notwithstanding the Plaintiff could not have his Action till after Michaelmas, it is *Debitum in presenti*, and although *solvendum in futuro*. *Ibid.* 5 *Rep.* 28. If a Man makes a Release of

R E

of all Demands to the personal Estate of another, this doth not *release* a Bond; for a Bond is not a Demand to the personal Estate before Judgment, &c. And there is a Difference between a *Release* of all Demands to the Person, and to the personal Estate. *Yelv.* 214. 2 *Salk.* 575. A Statute was acknowledged 3 *Octob.* and by a *Release* dated the 2 *Octob.* the Cognisee *released* to the Cognisor all Debts and Demands, *usque Confectionem* of the *Release*, which was delivered the 4th Day; adjudged that the Statute was discharged, because the Day of the Delivery is *dies Confectionis* of the *Release*; and that being after the Statute acknowledged, it must *release* it; but if it had been a *Release* of all Demands *usque Datum* of the *Release*, it had not been *released*. *Dyer* 307. *Release usque Diem dati* of a Bond, &c. excludes the Day whereon made. 2 *Mod.* 280. If a *Release* be made on a particular Occasion, that shall restrain the Generality of the Words. 3 *Lev.* 275. *Raym.* 399. 2 *Mod.* 277. A general *Release* of all Demands, &c. relating to a particular Person or Thing, shall not bar by the general Words, but only for that Purpose. 2 *Lev.* 214, 215. 3 *Nelf. Abr.* 77, 78. If a Bond be entered into to *A.* to the Use of another; this Bond cannot be *released* by *A.* And if an Obligee in Trust for another *releases* to the Obligor all Demands, upon his own Account; this doth not *release* the Obligation. 1 *Lev.* 235, 272. In Debt on a single Bill made to *W. R.* to the Use of him and *L. R.* In this Case *L. R.* may not *release* or sue, because he is not a Party to the Deed. *Ibid.* Where *A.* is bound to *B.* and then *B.* the Obligee reciting the Bond covenants not to sue the Obligor, or to save him harmless; this is an absolute *Release*, and if it is to save him harmless upon a Contingency, then 'tis a conditional *Release*. 2 *Salk.* 573. But such a Covenant with one Obligor will not *release* another. *Ibid.* An Acknowledgment under Hand and Seal that a Debt is satisfied, is a good *Release* of the Debt. 9 *Rep.* 52. And how a *Release* is to be pleaded by the Defendant, that the Plaintiff *Actionem habere non debet*, &c. see 2 *Lutw.* 1178. *Release of Lands, Vide Lease and Release.*

Form of a general Release.

K NOW all Men by these Presents, That I *A. B.* of, &c. Have remised, released, and for ever quit-claimed; and by these Presents do for me, my Heirs, Executors and Administrators, remise, release, and for ever quit claim unto *C. D.* of, &c. his Heirs, Executors and Administrators, all and all manner of Action and Actions, Cause and Causes of Action and Actions, Suits, Bills, Bonds, Writings, Obligations, Debts, Dues, Duties, Rekonings, Accounts, Sum and Sums of Money, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, both at Law and in Equity, or otherwise howsoever, which against him the said *C. D.* I ever had, now have, or which I, my Heirs, Executors and Administrators, shall or may have, claim, challenge or demand, for or by Reason or Means of any Act, Matter, Cause, or Thing, from the Beginning of the World to the Day of the Date of these Presents. In Witness, &c.

Relegation, (*Relegatio*) Signifies a Banishing or Sending away, for a Time only: As *Abjuration* is a Forfeiting the Realm for ever. *Co. Litt.* 133.

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Relief, (*Relevium, Relevatio*, from the Lat. *Relevare*) Is a certain Sum of Money that every Freehold Tenant being at full Age payeth unto his Lord at the Death of his Ancestor, on his Entrance upon or taking Possession of the Inheritance; by Payment whereof, the Heir *relieves* and as it were raiseth up again his Lands, after they were fallen down into his Superior's Hands. 1 *Inst.* 76. *Compl. Cop. Sett.* 25. And to explain this Word; first, a feudatory or beneficiary Estate in Lands was granted only for Life; and after the Death of the Tenant it returned to the chief Lord, for which Reason it was called *Feudum caducum*, *viz.* fallen to the Lord by the Death of his Tenant; afterwards these feudatory Estates being turn'd into an Inheritance by the Assent of the chief Lord, when the Possessor of such an Estate died, it was termed *Hereditas caduca*, i. e. fallen to the Lord, but to whom the Heir having paid a Sum of Money, he did then *relevare Hereditatem caducam* out of the Lord's Hands, and the Money thus paid was denominated a *Relief*: But this is understood after the Conquest; for in the Time of the Saxons, there were no *Reliefs*, but *Heriots* paid to the Lord at the Death of his Tenant. *Blount.* We may read in the Laws of *Will. 1.* called the *Conqueror*, and of *King Hen. 1.* that *Reliefs* were anciently paid by Earls, Barons, &c. yet the Payment was very uncertain, till the Statute of *Magna Charta*, c. 3. by which it was made certain, *viz.* it was declared to be the fourth Part of the annual Revenue which was required by Law to support the Dignity of the Person; as the Son of a Knight was to pay for a *Relief* 5 *l.* the fourth Part of 20 *l.* *per Ann.* a Son of a Baron to pay 100 Marks, the fourth Part of 400 Marks *per Ann.*; the Son of an Earl 100 *l.* the fourth Part of 400 *l.* a Year; and of a Duke 200 *l.* which is the fourth Part of 800 *l.* *per Ann.* such Estates being at that Time reputed sufficient to support these Dignities; and of others, according to the ancient Custom of Fees. 9 *Rep.* 122. 3 *Nelf. Abr.* 79, 81. The Heir of every Ancestor who held by *Knights-Service*, was to pay a *Relief*; and wherever there was a Title of Wardship, there was likewise a *Relief* to be paid; but the Lands must come to the Heir by Discent, otherwise no *Relief* was due; for many Bishops and Abbots had Baronies, and yet they paid no *Relief*, because they came in by Succession, not by Discent. *Ibid.* A *Relief* may be due by *Tenure*; as for Instance; A Man may hold Land of *A. B.* as of such a Manor by Rent, and a customary *Relief* of one Year's Value, &c. 3 *Bulst.* 323. And there is *Relief-Service*, and *Relief-Custom*: The *Relief-Service* is that which is paid upon the Death of any Freeholder: And *Relief-Custom* is that which is paid on the Death or Alienation of a Freeholder, according to the Custom of the Place. *Coke's Compl. Cop. Sett.* 25. 1 *Inst.* 83. But *Reliefs* are more properly divided into a *Relief* at the Common Law, and by Custom; a *Relief* being no Service, but an Incident to and the Fruit of it. 2 *Lill. Abr.* 440. 3 *Rep.* 60. *Reliefs* are paid by Freeholders only: In many Places, the *Relief* is Half a Year's, or a Year's Rent and Profit of the Land; and in some, double the Rent of that Year; and for this the Lord may distrain, but cannot have an Action of Debt, though his Executors or Administrators may bring an Action of Debt for it, and cannot distrain. 1 *Inst.* 83. And Debt lies by an Executor against an Executor of an Heir, who

who was to pay a *Relief*. *Cro. Eliz.* 883. Acceptance of the Rent of a new Tenant is no Bar of a *Relief* due from a former Tenant. *Cro. Eliz.* 886. 3 *Rep.* 66. *Moor* 643. And an Avowry for a *Relief* is good, without shewing particularly how due; because a *Relief* is incident to every Tenure, *de communi jure*; and if separated, must be shewn on the other Side. 3 *Lev.* 145. See *Latch.* 37, 129.

Religion, (*Religio, à religando*) Signifieth Piety, Devotion, and the Worship of God: And there are many Temporal Laws, made for the Support of *Religion*. The Law hath so tender a Regard for the Interests of the King and of *Religion*, that an Indictment will lie for doing any Thing which plainly appears immediately to tend to the Prejudice of either of them; and be good, though it do not expressly complain of it as a common Grievance. 1 *Hawk. P. C.* 198. Offences tending to subvert all *Religion* and Morality, which are the Foundation of Government, are punishable by the temporal Judges by Fine and Imprisonment, and also such corporal Punishment as the Court in Discretion shall think fit; and seditious Words in Derogation of the establish'd *Religion*, are indictable, as tending to a Breach of the Peace. *Ibid.* 7. So also profane Scoffing of the Scripture; Impostures in Religion, &c. By Statute, no Person in Authority to execute spiritual Jurisdiction, has Power to adjudge any Matters of *Religion* to be Heresy, but such as have been so adjudg'd by canonical Scripture, by one or more of the general Councils, or shall be adjudg'd by the Parliament with the Assent of the Convocation. 1 *Eliz. cap. 1.* The 13 *Eliz.* establishes the Thirty-nine *Articles of Religion*, to be subscribed by the Clergy, &c. But Protestant Dissenters are exempted from subscribing the 34, 35 and 36th *Articles*, by 1 *W. & M. c.* 18. Persons educated in the Christian *Religion*, who by Writing or Speaking, deny any one of the Persons in the Holy Trinity, to be God; or asserting there are more Gods than one; or who shall deny the Christian *Religion* to be true; or the Old and New Testament to be writ by divine Authority, are render'd incapable to hold any Office or Employment; and being convicted of a second Offence, are disabled to prosecute any Action, to be Executor, Guardian, &c. and subject to Imprisonment for three Years. 9 & 10 *W. 3. cap. 32.* If any Person shall come into a Church, Chapel, or Congregation for *Religion*, and disturb the same, or misuse the Teacher, on Conviction at the Quarter-Sessions he shall forfeit 20 *l.* 1 *W. & M.* But no Assembly for Religious Worship, is to be allow'd till the Place of Meeting is certified to the Bishop of the Diocese, or Justices of Peace in Quarter-Sessions. *Ibid.*

Religious Houses, Are Houses set apart for the Use or Exercise of *Religion*, and other pious charitable Uses; as Monasteries, Hospitals, &c.

Religious Men, (*Religiosi*) Such as enter into some Monastery or Convent, there to live devoutly: And in ancient Deeds of Sale of Lands, the Purchasers were often restrained by Covenant from giving or alienating it *viris Religiosis*, so the End the Land might not fall into *Mortmain*. Cowel.

Religious Orders, For the Qualification of Clergy. See *Ordination*.

Relinquishment, Is a forsaking, abandoning, or giving over. It hath been adjudged, that a

Person may *relinquish* an ill Demand in a Declaration, &c. and have Judgment for that which is well demanded. *Stile* 175. In Assise the Count was of a Messuage, and four Acres of Land in B. and the Jury having a View only of the Land, the Demandant *relinquish'd* his Plaint to the House. *Dyer* 66. But on Assise where the Plaint was for Fifty-three Shillings and Four Pence Rent, no Part of that Rent could be *relinquish'd*, because a Rent is an intire Thing. *Ibid.* 61. In a Writ of Annuity, where the Jury found the Arrears, but did not assess Damages or Costs, which could never be supply'd by a Writ of Enquiry; the Plaintiff was admitted to *relinquish* and release the Damages, and had Judgment for the Arrears. 11 *Rep.* 56.

Reliques, (*Reliquia*) Are some Remains, such as the Bones of the Dead, preserv'd by those that are living, as sacred Memorials of them: They are forbidden to be used or brought into England, by several Statutes; and Justices of Peace are empower'd to search Houses for popish Books and *Reliques*, which when found are to be defaced and burnt, &c. 3 *Jac. 1. cap. 26.*

Remainder, (*Remanentia*) Is an Estate limited in Lands or Tenements, to be enjoyed after the Estate of another expired; as if one grant Land for Term of Years, or Life, and afterwards the same to *remain* to another Person and his Heirs. *Bract. lib. 2. cap. 23.* 2 *Lill. Abr.* 441. It is also defined to be the Residue of an Estate in Land, depending upon a particular Estate, and created together with the same; and if a Man seised in Fee, lets Lands or Tenements for Years, the *Remainder* over to another for Life, in Tail; or in Fee; here is first a particular Estate for Years, created out of a Fee, and afterwards the Residue disposed of, which we call a *Remainder*; though the particular Estate, and all the *Remainders*, make but one Estate in Law. 1 *Inst.* 49, 143. *Plowd.* 25, 35. And where it depends upon a Lease for Life or Years, Livery is to be made on the Lease, or the *Remainder* will not pass. *Ibid.* *Remainders* and *Reversions* are so called, because they are Estates in Expectancy only; they are a present Interest, yet stand in a Degree remov'd from the Possession till the particular Estate is determined: And as by a Reversion, after the appointed Term, the Estate returns to the Donor or his Heirs; so by a *Remainder*, it goes to some third Person or a Stranger. *Wood's Inst.* 152. *Spelm.* If a Man make a Lease for Life, with *Remainder* to his Heirs, or *Remainder* to himself and his Heirs, or to himself and the Heirs of his Body, the *Remainder* is void, and his Estate is not altered: But 'tis otherwise if he convey the Land by way of Use, with such Limitation; as if he make a Feoffment to the Use of himself for Life, *Remainder* to the Heirs Males of his Body; this is an Entail executed in him; and so it is if he covenant to stand seised in the same Manner. 1 *Ventr.* 378. 1 *Mod.* 159. 3 *Salk.* 292. A Lease was made for Life, and afterwards the Lessor reciting that Lease, demised the *Remainder* to another; *Habendum* the said *Remainder*, after the Determination of the first Lease, for twenty Years; and it was held, that the Reversion did pass by the Name of the *Remainder*: And if a Man grant Lands to another Person, and to the Heirs of his Body; and for Want of such Issue, that the Lands shall revert to the Grantor; by these Words the *Remainder* doth pass.

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pass. *Dyer* 46. 3 *Nelf. Abr.* 90. And a Lessor by Deed, reciting that *A. B.* held a Close of him at Will, granted the same Close to him for Life, rendering Rent to the Lessor, and by the same Deed granted the Reversion to another in Fee; adjudged, that *A. B.* had an Estate for Life by way of Confirmation, and that the other had a good Estate in *Remainder*, but not in Reversion. 1 *And.* 23. Though an Estate at Will is not such a particular Estate, whereon a *Remainder* may depend. *Wood* 150. In Deeds, by limiting *Remainders*, the Reversion may pass: There being a Grandfather, Father, and Son, &c. the Grandfather levied a Fine to the Use of himself for Life, *Remainder* to the Father in Tail, and *Remainder* to the right Heirs of the Grandfather; here the Grandfather had an Estate in Fee, expectant upon the Determination of the Estate-tail, as a Reversion, and not in *Remainder*. 2 *Rep.* 91. And a Feoffment was made in Fee by a Man to the Use of himself for Life, *Remainder* over to the Use of *A. B.* for Life, *Remainder* to the right Heirs of the Feoffor; and it was resolved, that the Fee-simple was in the Feoffor in the Nature of a Reversion, not of a *Remainder* to his Heirs, as it proceeded from himself, and was his own Act. 1 *And.* 256. 3 *Nelf. Abr.* 90. The following Rules are to be observed, in the Creation of *Remainders*: There must be a particular Estate precedent made at the same Time, that the *Remainder* may depend upon it; and the particular Estate must continue till the *Remainder* shall vest; the *Remainder* is to commence in Possession, at the very Time the particular Estate ends, for there must not be a Mean between; and pass out of the Lessor executed or executory at the Time of the Possession taken by the particular Tenant; but it cannot depend upon a Matter *ex post facto*: Also a *Remainder* may depend upon a Condition, that is not repugnant or against Law, and then it will pass either executed or executory; the Person to whom the *Remainder* is limited, is to be capable of it at the Time it was created, or by common Possibility during the particular Estate; and the Thing whereof a *Remainder* shall be created, must be *in esse* before and at the Time of the Appointment and Creation thereof. 1 *Rep.* 66, 129, 130. 2 *Rep.* 51. 3 *Rep.* 20. 1 *Inst.* 378. *Noy's Max.* 31. But in some Cases, there may be a *Remainder*, without a particular Estate *in esse* to support it; as in the Case of an Use in *Remainder*, by the Statute of Uses. 2 *Lill. Abr.* 443. And if the *Remainders* are limited by a Devise, they are good without a particular Estate; though not where the Estate passes by Livery and Seisin; for when the particular Estate is defeated, the Livery is gone, and all the Estates which depend upon it. *Dyer* 126. *Plowd.* 403. A *Remainder* must be created with the particular Estate, and be limited for a certain Estate: A Cognisor levied a Fine to the Use of himself for Life, and afterwards to the Use of his two Daughters, till his Son returned from beyond Sea, or came of Age, or died, which should first happen; and then *Remainder* to his Son, &c. This was a good *Remainder*, and did not depend upon any Uncertainty, because though his Returning or Coming of Age was uncertain, yet his Death is certain. *Cro. Eliz.* 269. A Person conveys Lands to the Use of himself for ninety-nine Years, if he lived so long, *Remainder* to his first, second, or third Son, &c. this *Remainder* is not good, for

Want of a Freehold to support the same; a Freehold being necessary to support every contingent *Remainder*; and 'tis against the Rules of Law that a *Remainder* can be supported by a Term for Years, or by any Thing less than a Freehold. 2 *Lill.* 446. *Moor* 486, 718. 4 *Mod.* 54. 2 *Salk.* 679. One may make a Lease for Years to one, so long as he shall live of those Years; *Remainder* to another for the Rest of the Years: But he cannot give a Term for Years to one for Life; and after the Expiration of the said Term, *Remainder* to another. 1 *Rep.* 153. 2 *Roll. Abr.* 415. Though in a Devise, or Last Will and Testament, a Lease for Years may be given to one for Life, or so long as he shall live; and after to another during the Residue of the Term. 8 *Rep.* 94. 10 *Rep.* 47. 1 *Roll. Abr.* 610. A Rent may be devised to one for Life, with *Remainder* over. 2 *Salk.* 577. All contingent *Remainders* before the Stat. 10 & 11 *W.* 3. were to be supported by particular Estates for Life, &c. and to vest either before, or at that very Instant when the particular Estates were determined; and if the Contingencies happened before those particular Estates were determined, then the *Remainders* were void. 3 *Nelf. Abr.* 84. A Testator being seised of Lands devised them to *H.* his Nephew, eldest Son of his Brother *R. L.* for Life, *Remainder* to his first Son in Tail, *Remainder* to *R.* the second Son of *R. L.* with several *Remainders* over: *H.* enter'd by Virtue of this Devise, and died before his Son was born, leaving his Wife with Child of a Son, and *R.* the second Son of *R.* enter'd as in *Remainder*, and about six Months afterwards the Son of *H.* was born; and adjudged, that this being a contingent *Remainder* to that Son, who was not born when his Father, who had the particular Estate for Life, died, it was therefore void; and *R.* being the next in *Remainder*, and entering before the Son of *H.* was born, it was vested in him by Purchase; this Judgment was affirmed upon a Writ of Error in *B. R.* But it was reversed in the House of Lords, for it being a Case arising upon a Will, it shall be construed according to Equity, and agreeable to the Intention of the Testator, which could never be to disinherit the Heir of his Family upon such a Nicety in the Law. 4 *Mod.* 282. And because such Cases might often happen, it was enacted by the 10 & 11 *W.* 3. cap. 16. That where any Estate is limited in *Remainder*, to any Person who shall be born after the Decease of his Father, such Person shall take in the same Manner as if born in the Lifetime of his Father; although no Estate is limited to Trustees after the Father's Decease, to preserve such contingent *Remainders* to such after-born Son, &c. A Person not *in esse* may take a *Remainder* by way of Purchase, if he be *in esse* before the particular Estate ends; and it has been held, that the *Remainder* shall be in Abeyance, until the Birth of the Child. 2 *Lill. Abr.* 404. A Feoffment was made to the Use of Husband and Wife for their Lives, *Remainder* to the first Son in Tail, *Remainder* to the Husband and Wife, and to the Heirs of their two Bodies, they having then no Son: In this Case, the Husband and Wife are Tenants in Tail; but when a Son is born, then the Estate is opened again, and they are Tenants for Life, *Remainder* to the Son in Tail, *Remainder* to them in Tail; and the Reason is, because all these Estates were created by one and the same Conveyance; wherefore the *Remainder* shall vest in the Husband and Wife till

till the Contingency happens, when the Estates shall be open and disjoin'd, to let in the contingent *Remainder* to the Son, which before were united in the Husband and Wife: But where the *Remainder in esse* comes to the particular Estate by any Means whatsoever, after the original Conveyance, it is otherwise. 1 *Inst.* 28. 2 *Sand.* 385. Tenant for Life, with *Remainder* to his Wife for Life, *Remainder* to his first and second Son, &c. in Tail, *Remainder* to the right Heirs of the Tenant for Life; who afterwards committed Treason, and then his Son was born, and the Father was attainted: It was adjudged, that whether the Son was born before or after the Attainder, the contingent *Remainder* to him was not discharged by the Vesting of the Estate in the Crown, during the Life of the Father; because of the intermediate Estate to the Wife for Life, which supported that *Remainder*. 2 *Salk.* 576. Ruled by *Hale Chief Justice*, that where *W. R.* is Tenant for Life, *Remainder* to *R. R.* for Life, *Remainder* to *C. W.* for Life, *Remainder* to *L. L.* and the Heirs of his Body: If *W. R.* and *R. R.* join in a Fine, the Right of Entry of *C. W.* preserves the contingent Estate over: And if there be Tenant for Life, *Remainder* to his first, second and third Son, the like *Remainder* to others, and their Sons, &c. one of which hath Issue a Son, and then he and the others join in a Fine to Tenant for Life, who after makes a Feoffment; by this, the *Remainders* are not destroy'd, as there is a Son of one of the *Remainder* Men born, who has a Right of Entry left in him, which will support the *Remainders*. 1 *Mod.* 92. *Contingent Remainders* are where the Estate is to take Place upon an uncertain Event; and are preserved by making a Feoffment, &c. to the Use of *A. B.* for Life, *Remainder* to the Use of the Feoffees, for the Life of *A. B.* and so on for the contingent *Remainders*, when he that hath the first Estate cannot destroy the *Remainder*. 1 *Ventr.* 189, 10 *Rep.* 85. A contingent *Remainder* doth not depend upon a Reversion, which comes after; but upon the Estate, which precedes it: And may be destroy'd by levying a Fine, suffering a Recovery, or otherwise destroying the particular Estate upon which the contingent Estate depends, before the Contingency happens. 2 *Lill.* 446. Also where the particular Estate is drown'd in the Reversion, the contingent *Remainder* depending upon it is gone. 2 *Saund.* 382. If Feoffees, who have only an Estate during the Life of a Son, &c. where divers *Remainders* are limited over, make a Feoffment in Fee to him, by the Feoffment all the future *Remainders* are destroyed, because the Estate for Life on which they were supported, was forfeited by it. 1 *Rep.* 120. Land was devised to the Father for Life, *Remainder* to the next Heir Male of the Father, and to the Heirs Males of his Body; the Father made a Feoffment with Warranty; and it was held, that by the Feoffment of the Tenant for Life, the *Remainder* was destroy'd; for the particular Estate for Life being determined by the Feoffment, by Consequence he in *Remainder* ought to enter for the Forfeiture; and here the immediate *Remainder* being limited to the next Heir Male, he could not enter as such, as he cannot be Heir whilst his Father is living. 1 *Rep.* 66. There are cross *Remainders* in Wills and Deeds; as where the Testator deviseth an Estate to two Persons, and that each shall be the other's Heir, &c. but such cross *Remainders* are seldom or never al-

lowed by Implication: And though they are permitted between two Persons, they are rarely amongst three or more; unless it plainly appears by the Will that the Testator so intended. 2 *Roll. Rep.* 281. 3 *Nelf. Abr.* 98. If a Man devise one Acre of Land to *A.* the eldest Son, and the Heirs Males of his Body, another Acre to *B.* the second Son in like Manner, and another Acre to *C.* the third Son in the same Manner; and if they all die without Issue of their or any of their Bodies, or either of them, *Remainder* over; here are cross *Remainders* among all the three Sons, by reason of the Words or any of their Bodies, &c. *Dyer* 303. 1 *Ventr.* 224. Three Things one shall have by a *Remainder*, by Conveyance at the Common Law: A *Remainder* vested; Possession in Law; and Possession in Fact. *Plowd.* 25. 2 *Lill.* 445. A Man makes a Conveyance to the Use of himself for Life, *Remainder* to the eldest Child; he hath Issue a Daughter, and afterwards a Son; as soon as the Daughter is born, the *Remainder* is vested in her, and shall not be devested by the Birth of the Son. 2 *Leon.* 219. In a Limitation of a *Remainder*, the Word *Puer* may be construed either a Son, or Daughter; but in a Family Settlement, it shall be intended a Son, where the Sons are always preferred: And where a Tenant in Tail suffered a Recovery to Uses, with *Remainder Seniori Filio* of his Body in Tail, &c. and afterwards the same Person and his Wife levied a Fine to Uses, *Remainder* to the eldest Child of the Husband, *Remainder* over; after which the Husband had Issue a Daughter, and a Son after that, and then the Father died; adjudged that the Son shall have the Land, and not the Daughter, by reason of the first Limitation. *Bendl.* 29 *Dyer* 337. *T. S.* being seised of Land which descended to him as Heir on the Part of his Mother, levied a Fine thereof to *A.* and *B.* to the Use of them and their Heirs, in order to make them Tenants of the *Præcipe*; upon which a common Recovery was had, and the Uses declared to the said *T. P.* for Life, *Remainder* to his Wife for Life, *Remainder* to his first and second Son, &c. in Tail, with *Remainder* to his own right Heirs; afterwards *T. P.* and his Wife died without Issue; and in Ejectment the Question was, whether this Limitation of the *Remainder* to the right Heirs of *T. P.* did create a new Estate in him descendible to the Heirs general; but it was resolved, that the *Remainder* shall be to the Heirs of *T. P.* on the Part of his Mother, according to the antient Estate and Use which he had before the Fine and Recovery, as it did arise immediately out of the Estate which moved from him. 2 *Salk.* 590. A *Remainder* may not be limited after a Fee-simple; because the whole Estate is in the Grantee, &c. and one Fee-simple cannot remain upon another. 1 *Plowd.* 29. *Raym.* 29. Tenant in Tail cannot limit a *Remainder* over by Deed; for an Estate for his own Life, is as long as he can grant: But where there is an Estate-tail, with Condition, that if the Tenant in Tail aliens in Fee, Fee-tail, &c. then the Estate to cease, and the Land to remain to another; this is a void *Remainder*; the Alienation vests the Estate in the Alienee, or the Donor. 2 *Rep.* 52. 1 *Lutw.* 832. *Wood's Inst.* 150. A Proviso will not make a *Remainder*; but it may determine it. *A.* leased to *B.* for Life, *Remainder* to *C.* Provided that if *A.* had a Son who should live to such an Age, then the Estate should re-

main to his Son in Tail ; he had such a Son, and it was held that he should not have the Estate. *Cro. Eliz.* 360. 2 *Lill. Abr.* 444. He in *Remainder* of an Estate vested, may grant, or devise the same ; and if one in *Remainder* make a Lease to commence at a Day to come, and afterwards grants his Estate in *Remainder* to another, it shall be charged with this Lease in the Hands of the Grantee, although the Lands were never in the Possession of the Grantor. 3 *Nelf. Abr.* 92. Action of the Case lies for him in *Remainder* against a Copyholder for Life committing Waste, &c. 3 *Lev.* 130. A Person in *Remainder* may have a Writ of Intrusion, if any do intrude after the Death of Tenant for Life : And the Writ *Ex gravi Querela* lies to execute a Devise in *Remainder*, after the Death of Tenant in Tail, without Issue. *Nat. Br.* 441, 453. An Entry is requisite to avoid a *Remainder* for Life : And a Claim of a *Remainder* by Force of a Condition, must be upon the Land. 2 *Rep.* 53. A Bargain and Sale made off from the Land, is not sufficient to make a Claim, and then to pass a *Remainder*. 2 *Rep.* 54. A *Remainder* limited after an Estate which is void, is also void : And where a Limitation is impossible and void, all the *Remainders* after are void. 1 *Saund.* 150. 2 *Lev.* 157. One that takes an Estate by way of *Remainder*, must not be a Party to the Deed : For a *Remainder* a Man may take, though he is not a Party to the Conveyance ; but not present Estates. *Cro. Eliz.* 10. 2 *Lill.* 444. If any Persons, for whose Lives any Estates are granted, be absent abroad, and no Proof made of their being living, they shall be accounted as dead ; and those in *Remainder* may move the Lord Chancellor to order Persons to be produced, or enter, &c. *Stat.* 19 *Car.* 2. and 6 *Ann.* See *Executory Devise* and *Recovery*.

Remanet in Custodia. Entry of an Action in the *Marshal's Book*, by *reman. Custod.* where a Man is actually in Custody, is a good Commencement of an Action in B. R. 3 *Salk.* 150.

Remedy, (Remedium) Is the Action or Means given by Law, for the Recovery of a Right ; and when ever the Law giveth any Thing, it gives a *Remedy* for the same : There is a Maxim, *Lex semper dabit Remedium.* *Stud. Compan.* 177, 179. *Remedies* are favourably extended, and sometimes to be had without Action or applying to the Courts of Justice, viz. by Accord and Agreement of the Parties, *Arbitrament* ; *Retaking Goods* wrongfully taken away ; taking *Distresses* for Rent ; *Entry on Lands*, to regain Possession, &c. *Wood's Inst.* 528, 529, 530.

Remembrancers, (Rememoratores) Formerly called *Clerks of the Remembrance*, are Officers of the *Exchequer* ; of which there are Three, distinguished by the Names of the *King's Remembrancer*, the *Lord Treasurer's Remembrancer*, and the *Remembrancer of First-Fruits* : Upon whose Charge it lies, to put the Lord Treasurer and the Justices of that Court in *Remembrance* of such Things as are to be called upon and dealt in for the King's Behoof and Benefit. The *King's Remembrancer* enters in his Office all Recognizances taken before the Barons for any of the King's Debts, for Appearance, &c. and he takes all Bonds for such Debts, and makes out Process for the Breach of them ; also he writes Process against the Collectors of Customs, Subsidies, Excise, and other publick Payments for their Accounts : All Informations upon penal Statutes are entered and sued in his Office ; and he makes

the Bills of Composition on penal Laws, and takes the Stallment of Debts : And all Matters upon *English Bills* in the *Exchequer Chamber* remain in the Office of this *Remembrancer*. He has deliver'd into his Office the Indentures, Fines, and other Evidences, that concern the Passing any Lands to or from the King. In *Crastino animarum* yearly he reads in open Court the Statute for Election of Sheriffs, and gives them their Oath ; and he also reads in Court the Oath of all the Officers of the Court, when they are admitted. Writs of Prerogative or Privilege, for Officers and Ministers of the Court, are made out by him ; and so Commissions of *Nisi prius*. by the King's Attorney's Warrant, on Trial of any Matters within his Office at the Assises in the Country ; he hath the Entering of Judgments of Pleas, &c. And all Differences touching Irregularities in Proceedings, shall be determined by the King's *Remembrancer* ; who is to settle the same, if he can, and give Costs where he shall find the Fault ; but if not, the Court is to determine it, &c. By Order of Court, his Majesty's *Remembrancer*, or his Deputy, are diligently to attend in Court, and to give an Account touching any Proceedings as they shall be required ; and they enter the Rules and Orders of the Court. The *Treasurer's Remembrancer* issues out Process of *Fieri facias* and Extents, for Debts to the King ; and against Sheriffs, Escheators, &c. not accounting ; he makes the Record whereby it appears whether Sheriffs and other Accountants, pay their *Profers* due at *Easter* and *Michaelmas* ; and he makes another Record, whether Sheriffs and other Accountants keep their Days prefixed : There are also brought into his Office all the Accounts of Customers, Controllers, and Accountants, to make Entry thereof on Record. All *Estreats* of Fines, Issues and Amerciaments, set in any Courts at *Westminster*, or at the Assises or Sessions, are certified into his Office ; and by him delivered to the Clerk of the *Estreats* to make out Process upon them ; and he may issue Processes for Discovery of Tenures ; and all such Revenue as is due to the Crown by Reason thereof, &c. The *Remembrancer of the First-Fruits*, his Office is to take all Compositions, and Bonds for the Payment of the First-Fruits and Tenths ; and he makes Process against all such Persons as do not pay the same. *Stat.* 35 *Eliz.* cap. 5. 5 *R.* 2. cap. 14. 37 *Ed.* 3. cap. 4.

Remitter, (From the Lat. Remittere, to restore or send back) Is where a Man hath two Titles to Land, and he comes to the Land by the last Title, but that proving defective, he is restored to and judg'd in by Force of his elder or surer Title, by Operation of Law. *Litt.* 659. 1 *Inst.* 347. If Land descend to him, that has Right to it before, he shall be *remitted* to his better and more ancient Title, if he will : And a *Remitter* must be to a precedent Right ; for regularly to every *Remitter*, there are two Incidents, viz. an ancient Right, and a defeazible Estate of Freehold coming together. *Doct. & Stud.* c. 9. *Wood's Inst.* 528. Tenant in Tail makes a Feoffment in Fee upon Condition, and dieth, and his Issue being within Age enters for the Condition broken by Virtue of the Feoffment ; he shall be first in as Tenant in Fee-simple, and be *remitted* as Heir to his Father : But if the Heir be of Age, he shall not be *remitted* ; but is to bring his Writ of *Formedon* against the Feoffee. 1 *Inst.* 202, 349. And

And if Tenant in Tail infeoff his Son or Heir apparent, who is within Age, and after dies, that is a *Remitter* to the Heir: Though if he were of full Age at the Time of such Feoffment, it is no *Remitter*, because it was his Folly, that he being of full Age would take such a Feoffment. *Litt.* 665. If a Husband alien Lands that he hath in Right of his Wife, and after take an Estate again to him and his Wife for their Lives, this is a *Remitter* to the Wife, for the Alienation is the Act of the Husband, and not of the Woman; yet if the Alienation be by Fine in a Court of Record, such a Taking again afterwards to the Husband and Wife, shall not make the Wife to be in her *Remitter*, she being excluded by the Fine for ever. *Terms de Ley* 519. When the Entry of a Person is lawful, and he takes an Estate in the Land for Life, or in Fee, &c. (except it be by Matter of Record, or otherwise to conclude or estop him) he shall be *remitted*. 1 *Inst.* 363. And a *Remitter* to one in Possession may be a *Remitter* to another in Remainder; if the Remainder be not bound, which estops it. *Cro. Car.* 145. If there be Tenant in Tail, Remainder in Fee to A. B. and the Tenant in Tail continueth, and takes back an Estate in Fee; and then devises the Lands to his Wife for Life, with Remainder to W. R. for Years, Remainder to the same A. B. in Fee, and dies, and his Wife enters and dies: It has been held, that he in Remainder in Fee may enter and avoid the Term for Years to W. R. because he is *remitted* to his first Remainder in Fee; and a *Remitter* avoids a Lease for Years, without Entry. *Noy* 48. A Father was Tenant for Life, Remainder to his Son for Life, Remainder to the right Heirs of the Body of the Father; he and his Son conveyed the Lands to the Uncle in Fee, who died without Issue, so that the Son who was Heir in Tail to the Father, was now Heir at Law to the Uncle, and the Fee descended on him; the Wife of the Uncle brought Dower, but the Son being *remitted* to his former Estate, no Dower accrue to the Wife, for the Estate of which she claims Dower is gone. 1 *Leon.* 37. 9 *Rep.* 136. Lands were purchased by a Man and settled upon himself and his Wife in Tail, and they had Issue two Sons; then he made a Feoffment to the Use of himself for Life, Remainder to the Wife for Life, Remainder in Fee to his second Son: The Wife after his Death entered, and made a Feoffment to the Issue of the second Son; and then the eldest Son entered for a Forfeiture, upon the Stat. 11 H. 7. c. 20. and it was adjudg'd a Forfeiture, by Reason the Wife having two Titles, one as Tenant in Tail, and the other as Tenant for Life, by her Entry she is *remitted* to her Estate for Life, so that the Feoffment made by her is a Forfeiture of her Estate. *Sid.* 63. 3 *Nelf. Abr.* 100. If Tenant in Tail make a Feoffment to the Use of himself and his Heirs, he shall not be *remitted*; but his Issue shall. *Ibid.*

Renant, Or rather *Reniant*, i. e. *Negans*; from the Fr. *Renier*, *negare*, to deny or refuse. 32 H. 8. cap. 2.

Render, (Fr. *Rendre*, viz. *Reddere*) Signifies to yield, give again, or return: A Fine with *Render* is where Lands are *render'd* back by the Cognisee to the Cognisor. And there are certain Things in a Manor that lie in *Prender*, that is, which may be taken by the Lord or his Officers when they happen, without the Tenant's Leave, such as *Escheats*, &c. and certain that lie in *Render*,

i. e. must be *rendered* or answered by the Tenant, as Rents, Heriots, and other Services: Also some Services consist in *Seisance*; and some in *Render*. West. Symb. par. 2. Perkins Reserva. 696.

Renegate, or *Renegado*, Which we corruptly call *Runnegate*, is one who was a *Christian*, and afterwards *negat Christum* and apostatized to Mahometism: This is mentioned in *Hoveden* by the Name of *Reneez*. *Hoved.* Anno 1192.

Renegeld, Is a Kind of Rent or Tenure. — Per *Renegeld Johannes S. Ar. clamat habere de qualibet Bovata terra infra feodum de A. 1 d. Rot. Plac.* in *Itin.* apud *Cestriam.* 14 H. 7.

Renobant, (From *Renovo*) To renew, or make again: The Parson sued one for Tithes to be paid of Things *Renovant*, &c. 2 *Cro.* 430.

Rent, (*Redditus*) Is a Sum of Money, or other Consideration, issuing yearly out of Lands or Tenements. 1 *Inst.* 141. It must be certain, or that which may be reduced to a Certainty; and regularly it is to be reserv'd out of a corporeal Inheritance, whereunto the Grantor may have Recourse to distrain, and not granted out of a Common, Piscary, &c. or such like incorporeal Inheritances; but as to incorporeal Inheritances, the Reservation may be good by Way of Contract, to have Action of Debt. 1 *Inst.* 47, 143. A Grant of a *Rent* out of a Hundred, is void; for the *Rent* cannot issue out of it, nor doth an Assise lie for it, because it cannot be put in View: And a Fair is but a Franchise, out of which a *Rent* may not be reserved. 5 *Rep.* 3, 4. A *Rent* may be reserved out of a Reversion or Remainder of Lands; for the apparent Possibility that they may come in Possession. *Cro. Eliz.* 792. But the Profits of the Land, which are the Thing it self, may not be reserved as *Rent*; notwithstanding the *Rent* be out of the Profits. 1 *Inst.* 206. *Rents* are to be reserved to the Lessor or Feoffor, &c. it being a Maxim in Law, that the *Rent* must be reserved to him from whom the Land moveth. 1 *Inst.* 143. There are several Kinds of *Rents*; as a *Fee-farm Rent*, *Quit-Rent*, *Rack-Rent*, *Old Rent*, and *improv'd Rent*, &c. but the common Division of *Rents* is into three Sorts, viz. *Rent-Service*, *Rent-Charge*, and *Rent-Seck*. *Litt.* 213. *Rent-Service* is accompanied with some corporeal Service, as Fealty, &c. and is where upon a Gift in Tail, or Lease for Life, or Years, a Man reserves to himself a certain *Rent*, whilst the Reversion of the Lands continues in him; this is a most certain Mark to know it to be a *Rent-Service*, and if this *Rent* be behind at the Day on which it ought to be paid, the Landlord by the Common Law may distrain for it, without any particular Covenant, &c. If there be no Reversion left in the Grantor, he cannot distrain for the *Rent*; yet Debt will lie for it as a Sum in Gros, where there is no Reversion. 1 *Inst.* 87, 141, 142. *Litt.* 213. 2 *Lev.* 80. And where an annual Sum is appointed to be paid to a Stranger, it is not a *Rent* but a Sum in Gros. 1 *Leon.* 362. *Rent-Charge* is when a Person by Deed maketh his Estate over to another in Fee, or by Gift in Tail, the Remainder in Fee, or a Lease for Life, Remainder over in Fee, or any other Grant where the whole Estate passeth, and by the same Deed reserveth to him and his Heirs a certain *Rent*; and covenanteth that if the *Rent* be behind, it shall be lawful for him and his Heirs to distrain, &c. such a *Rent* is called a *Rent-Charge*, because the Lands are charged with such Distress by Force of the Deed, and not

by the Common Law, as in the Case of a *Rent-Service*: It must be a Conveyance in Fee, either in Possession or Remander, or a Grant of the whole Estate, to make a *Rent-Charge*; for the Reversion is not to be in the Feoffor, as is requisite in the *Rent-Service*: But if one seised of Land, Grants by Deed an yearly *Rent* issuing out of it to another Person in Fee, Fee-tail, for Term of Life, or Years, with Clause of Distress, it is a *Rent-Charge*; also if one seised of Lands in Fee, binds his Goods and Lands for the Payment of an yearly *Rent*, this is a good *Rent-Charge*, with Power to distrain: So that a *Rent-Charge* may be either by Reservation or Grant. *Litt.* 217, 218. *1 Inst.* 143, 144, 147. If a Man hath a *Rent-Service* or *Rent-Charge*, and grants it to another by Deed for Life, rendring *Rent* it is void; because a *Rent* cannot be charged with another *Rent*. *Kelw.* 161. A *Rent-Charge*, of what Nature soever it be, is grantable over: And a *Rent* is not a Thing meerly in Action. *1 Inst.* 292. *3 Nelf. Abr.* 111. Lands are charged with a *Rent-Charge*, and after the Owner of these Lands makes a Lease thereof, and covenants with the Lessee to save him harmless: If afterwards the Lessee pays the *Rent* to the Grantee of the *Rent-Charge*, voluntarily and without Compulsion, *per Holt Ch. Just.* in such Case he pays it in his own Wrong, and must pay it again to the Lessor; though if he is distrained for the *Rent-Charge* and his Goods are taken, whereby he is compelled to pay the *Rent*, it is otherwise, and this is a Breach of the Covenant, and not before. *3 Salk.* 109. *Rent-Seck*, or dry *Rent*, is where a Man by Deed passeth his Estate to another, and reserves to him and his Heirs a certain *Rent*; or granteth a *Rent* issuing out of his Lands, without any Clause of Distress in the Deed: Now he cannot distrain, by Reason he hath not Seisin of the *Rent*, and no Distress is incident to it, there being no Reversion or particular Charge to enable him to it: But if the King hath a *Rent-Seck*, he may distrain for it. *Litt.* 217, 233, 235. An Affise will lie of a *Rent-Seck* for a Grantee, if he hath had Seisin; but if there hath been no Seisin, it is said he is without Remedy: Non-payment of a *Rent-Seck* upon Demand is a Denial in Law, whereof the Grantee may have an Affise; provided he hath had Seisin of the *Rent* before. *Cro. Eliz.* 505. *2 Lill. Abr.* 449. The Difference between a *Rent-Charge* and a *Rent-Seck* is, that there is a Clause of Distress annex'd to one, and no such Clause to the other; and therefore the one is a Charge on the Land, but for the other the Grantee hath no Remedy, but to charge the Person of the Grantor in a Writ of *Annuity*; and he must have Seisin of the *Rent*, which is to be created by Grant, and not by Devise; also the first Payment that gives Life to the *Rent-Seck*, ought to be made by the Tenant of the Freehold; likewise he should attorn, or he cannot have Affise. *6 Rep.* 56. If a *Rent* be granted in Fee, with a Clause of Distress only for the Life of the Grantee, there it is a *Rent-Charge* for his Life, and after his Death his Heirs shall have it as a *Rent Seck*; though if the Clause of Distress be for Years, then 'tis a *Rent-Seck*, as well during his Life as afterwards. *7 Rep.* 23. *3 Nelf. Abr.* 113. To these three Sorts of *Rents* may be added a *Rent* reserv'd upon a Lease at Will; called a *Rent distrainable of Common Right*: And in Action of Debt for *Rent* upon a Lease at Will, the Plaintiff must set forth, that

the Defendant entered and was possessed, and prove it, because the *Rent* is due only by the Occupation; but on a Lease for Years, the *Rent* is due on the Contract; and if the Lessee never enters, he must pay the *Rent*. *1 Inst.* 141. *1 Salk.* 209. A Man may have a *Rent* by Prescription; and there are *Rents*, but not properly called so, reserved by Contract or Deed, which creates them with Clause of Distress, without a Tenure, against the natural Course of the Law; though such *Rent* is rather a Penalty: In all Cases, by late Statutes, a Landlord may distrain for his *Rent* upon any Contract. *1 Inst.* 144, 213. *Litt.* 345. *Wood's Inst.* 185, 598. *Rent* will not be barred by Fine levied by Tenant in Tail; but remains a collateral Charge on the Land. *2 Lev.* 30. And where a Donor grants a *Rent* out of a Reversion, it may not be barred by Recovery against the Tenant in Tail; though if a Man makes a Gift in Tail, reserving a *Rent*, it may. *Cro. Car.* 598. If a Lease for Years, or Life, or Gift in Tail, be made to one with Reservation of *Rent*; and the Lessor or Donor grant the Reversion over generally to another, the *Rent* passeth to the Grantee, although no Mention be made of it in the Grant; the *Rent* being incident to the Reversion: But though a *Rent* be incident to the Reversion, it is not inseparably incident; the Reversion may be granted, so as not to pass the *Rent*. *1 Inst.* 143, 317. *Rents* may be devised by Will, in the same Manner as Lands: A Testator seised of Lands in Fee, made a Lease thereof rendring *Rent*, and afterwards devised the *Rent* to another; and adjudged, that the Executor and not the Heir shall have it; because 'tis but a Chattel in the Devisee. *2 Cro.* 144. *Dyer* 5. A Lease is made for Years of Land in Fee-simple, rendring *Rent* to the Lessor, his Executors and Assigns, during the Term; the Heir shall have the *Rent*, it running with the Reversion: And if a Lessor dies before the Day of Payment of *Rent*, it shall go to his Heir, as incident to the Reversion; but if it becomes due in the Lessor's Life-time, it will go to the Executors. *12 Rep.* 36. *10 Rep.* 127. *Raym.* 213. *2 Saund.* 367. If the Lessor dies upon the Day of Payment, and the *Rent* is unpaid, the Heir shall have it; for the *Rent* is not due till the last Minute of the Day: But if it be paid that Morning before the Lessor dies, his Executor shall retain it against the Heir. *10 Rep.* 127. *1 Inst.* 212. One seised of Lands in Fee makes a Lease of the same Land for ten Years, yielding to him and his Heirs a yearly *Rent* of 20*l.* at the Feast of St. Michael, or within one Month after; now if the Lessor dieth between the Feast of St. Michael and the End of the Month, the *Rent* must be paid to the Heir, and not the Executor; because this was not due until the End of the Month. *10 Rep.* 127. *1 Saund.* 287. If a Lease is made for Years, paying a yearly *Rent* at Michaelmas and Lady-day, or within twelve Days after, it is said the Tenant or Lessee hath twelve Days after the twelve Days, to pay the said *Rent*; for the twelfth Day after the Feasts was a Day of Payment: But if the Clause in the Lease had been, that if the *Rent* is behind for the Space of twelve Days next after either of the said Feast-Days of Payment, the Lease to be void, &c. here the Tenant hath but the twelve Days allowed him. *10 Rep.* 129. *4 Rep.* 27. A Man seised in Fee of Lands, lets them for Years, and reserves a *Rent* to himself, not to him and his Heirs, the *Rent* shall determine by his

his Death, if he dies within the Term: So if he reserves a *Rent* to him and his Assigns, the Reservation is good only during his Life. *Wood's Inst.* 186. Though if he reserves a *Rent* generally, without shewing to whom it shall go, it will go to his Heirs. *1 Inst.* 47. *5 Rep.* 111. An Heir shall have the *Rent*, where he is named in the Grant: And if the *Rent* is reserved to the Lessor, his Heirs and Assigns, the Assigns of the Reversion shall enjoy it, if the *Rent* is incident to the Inheritance. *2 Cro.* 282. *Plowd.* 167. *1 Inst.* 47. Where a Tenant for Life lets a Lease for Years, if he shall so long live, under certain *Rent*, and the Tenant for Life dieth before a Quarter-Day, or Day of Payment, the Tenant is discharged of the *Rent* for that Quarter by the Act of God: But this may be guarded against by dividing the *Rent*, and making it payable weekly, &c. tho' it be not usually received otherwise than quarterly; or by Covenant in the Lease, to oblige the Tenant to pay the Executors of the Lessor for so much of the Profits as shall be received) in Proportion to the whole *Rent* till his Death, if he die before any Day of Payment. *10 Rep.* 127, 129. Without this Care, the Tenant may receive the Profits of the Lands and detain the *Rent* too, by quitting the Estate upon the Death of his Landlord, who did not live till the *Rent* was due; and thereby barring those in Remainder and Reversion, &c. of the *Rent*, because he was not their Tenant at the Day of Payment: And this has been often done by the Tenants of Bishops and Parsons, and of Widows endowed, or having Jointures of Land for Life, &c. If a *Rent* upon a Lease for Years of Land is reserv'd and made payable at four Quarter-Days, the Lessor may have Action of Debt after the first Day of Failure; for every Quarter's *Rent* is a several Debt, and distinct Actions may be brought for each Quarter, and it is not like Debt for Part of the Money on Contract. *5 Rep.* 81. *10 Rep.* 128. *2 Vent.* 129. Thus it is of a Covenant or Promise to pay 100 *l.* at five several Days, after the first Default; though if one leaseth a Stock of Cattle, or other personal Goods, and the *Rent* is to be paid at several Days, the Lessor must stay till all the Days are expired, because it is all but one personal Contract. *4 Rep.* 94. *1 Inst.* 292. An Action for one Quarter's *Rent*, when two Quarters were due, so that the Plaintiff sued for less than was his due, without shewing how the Rest was satisfied, which 'twas objected the Law would not allow, has been adjudged good on Demurrer, every Quarter being a several Debt; but not if it appears by the Plaintiff's own shewing that *Rent* for a whole Year is due, and he brings an Action only for Half a Year, &c. *2 Vent.* 129. *3 Nels. Abr.* 117. In Debt for *Rent*, the Plaintiff demands more in his Declaration than is due, he may remit Parr, and have Judgment for the Residue. *2 Lill.* 449. Action of Debt may be brought for *Rent* due for a Copyhold and Freehold together. *3 Lev.* 39. *Cro. Eliz.* 851. Also for *Rent* upon a Lease of Land, and a Flock of Sheep. *3 Lev.* 150. Assignee of *Rent* upon a Lease for Years, shall have Debt for it. *1 Lev.* 22. And Covenant for *Rent* lies against the Lessee after an Assignment, by the Grantee in Reversion; and this, although Notice and Acceptance of the *Rent* had been pleaded, as it is upon an express Covenant. *3 Lev.* 233. A Lessee for Years rendring *Rent*, assign'd his Term in Parcel of the Land, and that Assignee made

another Assignment of that Parcel; and it was held, that the Lessor might have an Action of Debt against the first Lessee for the whole *Rent*, because the Privy of Contract remain'd between them, and that the *Rent* should not be apportioned. *Dyer* 4. *2 Leon.* 121. If a Lease be made of three Acres of Land of equal Value, paying such a *Rent*, and afterwards the Lessor grants the Reversion of one Acre to another, the Grantee shall have the proportionable *Rent*, for though 'tis but one Lease and one *Rent*, yet because the Reversion is severable the *Rent* shall attend upon it and be likewise severable. *8 Rep.* But in a Lease of a Warren which extended into three Villis, where the Lessor granted the Reversion of that Part which lay in one of the Villis to another, and the Lessee attorn'd; adjudg'd that the Grantee shall not have any Part of the *Rent*, nor the Grantor neither, because an intire Contract cannot be apportioned, and therefore the *Rent* is determined. *Moor* 115. Action of Debt was brought for *Rent* on a Lease of three several Acres of Land, for three several Terms, paying *Rent pro Terminis predictis*. And it was insisted, that the *Rent* could not issue out of all, because they were several Terms; but the Court ruled, that it was an intire Lease, and that the *Rent* issued out of all the Lands; and if one of the Terms determines, it shall be paid out of the Residue. *Dalif.* 139. The Husband after the Wife's Death is liable to pay the *Rent* in arrear, upon a Lease to the Wife: And any Man who in Right of his Wife, shall have any real Estate in *Rents*, &c. which shall be due and in arrear at her Death, may after her Death bring Debt for those Arrears. *1 Lev.* 25. *4 Rep.* 50. An Action of Debt lies for *Rent* in arrear upon a Lease for Life, or Years; at Common Law it lay not on Leases for Life, but now by Statute it may be brought. *8 Ann. c.* 17. Debt may be brought for Part of *Rent* due, and a Distress taken for the other Part; so as to make both the Person and Land liable: If Tenant in Fee, or in Tail die, his Executor may have Action of Debt by the Stat. *32 H.* 8. for *Rent* in arrear, or he may distrain; but before this Act the Executor had no Remedy at Common Law: So it was in the Case of a Tenant *pur auter Vie*, for his Executor had no Remedy till the Death of *Cestui que Vie*; and now he may distrain or have an Action of Debt for the *Rent* arrear. *1 Cro.* 471. *3 Salk.* 333. If Tenant for Life die, his Executor might bring Action of Debt for the *Rent* in arrear, and this was his Remedy at Common Law; but a new Remedy is given by this Statute, and that is to distrain: Though if there be a Grantee of a *Rent* for twenty Years, if he so long live, and there is *Rent* in arrear, and then the Grantee dies; his Executor cannot distrain for the Arrears within the Statute, but must keep to his Remedy at Common Law. *3 Salk.* 304. Where the Lord gain'd a *Rent* of the Tenant by Incroachment, upon a Distress taken for it, the Tenant could not help himself in *Replevin*, before the Statute *32 H.* 8. *c.* 3. because he could not traverse the Tenure; but was compell'd to bring the Writ *Ne injuste vexes* against the Lord, and there he might traverse the Tenure: Since that Statute, the Lord in this Avowry must alledge Seisin of the *Rent* for forty Years past; which the Tenant may traverse. *4 Rep.* 8. *10 Rep.* 88. *9 Rep.* 33. In Debt for *Rent* upon a Lease for Years, the Defendant pleaded an Invasion by Enemies,

Enemies, who drove him and his Cattle from the Lands demised, so that he could not enjoy the same; but it was adjudged against him; for he did not plead that the Army were all Aliens and unknown: And if a Man covenants to pay *Rent*, and it happens that the Lands are overflowed with Water, he is still chargeable with the *Rent*, because he might have provided against this Accident by his Contract; and though there was no express Covenant in this Lease to pay the *Rent*, the Reservation is a Covenant in Law, and a Duty is created by it, and the Law will not protect him against his own Agreement. *Style* 47. If no Place is appointed for Payment of *Rent*, the Law appoints it to be upon the Land. *4 Rep.* 72. Demand of *Rent* is also to be on the Land, &c. and to warrant a Distress, the Demand may be at any Time after due; but it is not so for Re-entry. *1 Inst.* 201. *Dyer* 25. Tender of the *Rent*, which must be the whole *Rent* due, may be upon any Part of the Lands let. *Ibid.* Acceptance of *Rent*, in some Cases, will give Affirmance to a voidable Lease, and bar Entries for Conditions broken, &c. *Vide the Heads.*

Rental, A Roll wherein the *Rents* of a *Manor* are written and set down, and by which the Lord's Bailiff collects the same: It distinguishes the Lands and Tenements, and the Names of the Tenants, the several *Rents* arising, and for what Time, usually a Year. *Comp. Court Keep.* 475.

Rents of Assise, The certain *Rents* of Freeholders, and ancient Copyholders, so called, because they were *assised*, and different from others that were uncertain, paid in Corn, &c. *2 Inst.* 19. *Rents resolute* are such *Rents* as were anciently payable to the Crown from the Lands of Abbies and Religious Houses; and after the Dissolution of the Abbey Lands which were demised to others, the said *Rents* were still reserved to the Crown: They are reckoned among the *Fee-farm Rents*, to be sold by the Stat. *22 Car. 2. c. 6.*

Reparatione facienda, Is a Writ that lies in divers Cases; one whereof is where there are Tenants in Common or Jointenants of a House, &c. which is fallen to Decay, and one of them is willing to repair it, but the others are not: In this Case the Party willing to repair the same, shall have this Writ against the others. *F. N. B.* 127. And if a Man have a House adjoining to my House, and he suffer his House to lie in Decay to the Annoyance of my House; I may have a Writ against him to repair his House: So if a Person have a Passage over a Bridge, and another ought to repair the Bridge, who suffers it to fall to Decay, &c. *New Nat. Br.* 281.

Repastum, A Repast or Meal of Meat given to servile Tenants, when they labour'd for their Lord. *Paroch. Antiq.* 401.

Repeal, (From the Fr. *Rappel*, i. e. *Revocatio*) Signifies the same with revoke; as the *Repealing* of a Statute is the Revoking or Disannulling it. *Raft*. A Deed or Will may not stand good as to Part, and be repealed for the Rest. *Style* 241. And a Defendant in a Suit cannot repeal or revoke his Warrant of Attorney, given to an Attorney to appear for him, &c. *2 Lill. Abr.* 452.

Repleader, (*Replacitare*) Is to plead that again which was once pleaded before. *Broke*. On an immaterial Issue in a Cause, *Repleader* may be awarded; and *Repleader* is to be had where the Pleading hath not brought the Issue in Question, which was to be tried: Also if a Verdict be gi-

ven where there was no Issue join'd, there must be a *Repleader* to bring the Matter to Trial, &c. *2 Lill. Abr.* 460. In Debt on a Sheriff's Bond, for the Defendant's Appearance in *B. R.* upon the Return of the Writ, the Defendant pleaded that he had appeared *secundum*, &c. and upon this they were at Issue; and there being a Verdict for the Plaintiff, a *Repleader* was allow'd, because the Appearance was not triable by a Jury, but by the Record. *1 Leon.* 90. *3 Nelf. Abr.* 123. It was held by the Court of *B. R.* that at Common Law, a *Repleader* was granted before Trial, because a Verdict did not cure an immaterial Issue; but that now a *Repleader* ought never to be awarded before Trial, because the Fault in the Issue may be help'd by the Statutes of *Feoffails*: That if a *Repleader* is denied where it should be granted, or *e converso*, 'tis Error; and the Judgment in *Repleader* is general, (*viz.*) *Quod Partes replacitent*: They must begin again at the first Fault, which occasioned the immaterial Issue; if the Declaration and the Bar, and the Replication be all ill, they must begin *de novo*; but if the Bar be good, and the Replication ill, they must begin at the Replication; and no Costs are allow'd on either Side; and a *Repleader* cannot be awarded after a Default. *Trin.* 2 *Ann.* 2 *Salk.* 579. Though a *Repleader* is allow'd after a Verdict; it has been adjudg'd not to be awarded after a Demurrer: (But a *Repleader* hath formerly been granted after a Demurrer, and likewise after the Demurrer argued) and that a *Repleader* can never be awarded after a Writ of Error; but only after Issue join'd, &c. *Latch.* 147. *3 Lev.* 440. *Mod. Ca.* 102. See the Form of a *Repleader*. *Lutw.* 1622.

Replegiare, Is to redeem a Thing detained or taken by another, by putting in legal Sureties. See *Replevin*.

Replegiare de averiis, A Writ brought by one whose Cattle are distrain'd, or put in the Pound upon any Cause by another Person, on Surety given to the Sheriff to prosecute or answer the Action at Law. *F. N. B.* 68. *Reg. Orig. Stat.* 7 *H. 3. cap.* 4.

Replevin, (*Plevina*, à *Replegiare*) Is a Remedy grounded and granted upon a *Distress*, being a *Re-deliverance* of the Thing distrained to remain with the first Possessor, on Security or Pledges given by him to try the Right with the Distrainer, and to answer him in a Course of Law. *1 Inst.* 145. If one doth distrain another's Cattle or Goods for Rent, Service, Damage-feasant, &c. the Owner, upon giving Security to the Sheriff that he will pursue his Action against the Party distraining, and return the Cattle or Goods again, if the Taking shall be adjudg'd lawful, may have a Writ of *Replevin* or *Replegiari facias*; whereby the Sheriff is commanded to return the Cattle or Goods to the Owner, 'till the Right of the Distress is determined: And the Person that is distrain'd is to be Plaintiff in the *Replevin*, and the Person distraining the Defendant or Avowant; for his Justification of the Distress is term'd an *Avowry*. *1 Inst.* 268. *Replevins* are by Writ at Common Law; or upon *Plaint* in the Sheriff's Court by Statute, for the Party's more speedy having again of his Cattle and Goods distrained; and the Sheriff ought to take two Sorts of Pledges, one by the Common Law, *viz.* *Plegii de Prosequendo*; and another by the Statute, i. e. *Plegii de Retorno Habendo*: And *Replevin* lies either in the

the *King's Bench* or *Common Pleas*, by Writ; also it lieth in the County-Court, and Court-Baron by Plaint; and a Hundred-Court may hold Plea of *Replevins*, but they are not to be granted out of Court. 1 *Inst.* 145. *Dyer* 246. If the Cattle or Goods are not delivered upon a first *Replevin*, the Party distrained shall have an *Alias* and a *Pluries Replevin*. *F. N. B.* 69. The Sheriff may act by Virtue of the Writ of *Replevin*, or *ex Officio* by Precept to his Bailiff: And the Sheriff may take a Plaint on the Statutes, and make a *Replevin* presently, and enter it in the County-Court afterwards. 2 *Inst.* 139. 52 *H. 3. c. 21.* By the Statute 52 *H. 3.* If Beasts are taken and wrongfully with-holden, the Sheriff upon Complaint may deliver them, if they were not taken within Liberties: And if within Liberties, and the Bailiffs thereof will not deliver them, the Sheriff shall cause them to be delivered in *Replevin*. The Stat. *Westm.* 2. 13 *Ed. 1. c. 2.* enacts, That Lords of Hundreds or Courts-Baron, shall have Power to hold Plea of *Replevin*; and Sheriffs, Bailiffs, &c. are to take Pledges of the Plaintiff to prosecute his Suit, and return the Distress, if it be awarded; or they shall answer the Lord for the Price of the Cattle; and if a Bailiff is not able to restore them, his Superior shall do it. By 1 *Ph. & Mar. c. 12.* the Sheriff at his first County-Court, within two Months after he has his Patent, is to depute and proclaim in the Shire-Town, Deputies to make *Replevins*, &c. The 21 *H. 8. c. 19.* ordains, that upon a *Replevin* sued, an Avowry may be made by the Lord, or Cognisance and Justification by his Bailiff, &c. on the Land holden of the same Lord, without naming any Person certain to be Tenant thereof; and the like Law is upon every Writ sued of second Deliverance: In a *Replevin* Damages and Costs are given the Defendant, such as the Plaintiff would have had if he had recovered in the Action, &c. By the 17 *Car. 2. c. 7.* In *Replevin*, &c. if the Plaintiff be nonsuit, the Defendant may make Suggestion in the Nature of an Avowry for Rent, and on Prayer a Writ shall be awarded to the Sheriff to inquire of the Sum in arrear, and the Value of the Distress; and on the Return thereof, the Defendant shall recover the Arrears, or the Value of the Distress with Costs, &c. And by 4 & 5 *Ann. c. 16.* The Plaintiff in a *Replevin*, with Leave of Court, may plead as many several Matters thereto as he shall think necessary for his Defence: Provided, if any such Matter upon Demurrer join'd shall be adjudg'd insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict be found upon any Issue for the Plaintiff or Defendant, Costs shall also be given, unless the Judge certify that the Party had a probable Cause to plead such Matter: These two last Statutes relate to *Replevins* in the Courts at *Westminster*. The most usual Method to obtain a *Replevin* is by Plaint: But one cannot claim Property in a *Replevin* by his Bailiff or Servant, where *Replevin* is by Plaint in the County-Court; though one may claim Property in a Court of Record, by a Bailiff or Servant. 1 *Lev.* 90. And the Action of *Replevin* may be removed out of the County-Court, by *Pone*, if it was sued out by Writ; and by *Recordare*, where the *Replevin* is upon Plaint, returnable into *B. R.* or *C. B.* there to be tried. *F. N. B.* 69, 70. The Plaintiff in *Replevin* must have a general or special Property in the Goods, for he who claims no Property in the Thing distrained shall not have *Re-*

plevin; but if the Defendant in the *Replevin* claims the Property, the Sheriff cannot proceed till it is inquired into and decided before him by the Writ *Proprietate Probanda*, whereon if found for the Defendant, he can proceed no further, as he may if found for the Plaintiff; though the Plaintiff may afterwards *replevy* by Writ, and if the Sheriff returns the Property claim'd, it shall be put in Issue and tried in *C. B.* 1 *Inst.* 145. *Finch* 316, 317. If any Thing touching the Freehold comes in Question, the Sheriff likewise must proceed no further. *Wood's Inst.* 553. When a Plaint in *Replevin* is removed into *C. B.* &c. and the Plaintiff makes Default, or is Nonsuit, before or after Declaration, or Judgment is given against him, the Defendant in *Replevin* shall have the Writ *Retorno Habendo* of the Goods taken in Distress; so if he pursue not his Action of *Replevin*, &c. And the Plaint being removed, if the Plaintiff in *Replevin* is nonsuited before or after Avowry made, the Defendant may again distrain his Cattle for the same Cause he distrained the first; yet the Plaintiff may sue out a Writ of *Second Deliverance* upon the same Record, which will revive the first Suit: And after this Second Deliverance and Trial thereupon, or if the Plaintiff be again Nonsuit upon a Declaration, then there must be awarded a *Returnum irreplevibile* to the Defendant, and then he may make his Avowry, or Plea in Justification of his Distress to ground a Writ to inquire of Damages; or he may hold the Beasts till he is satisfied. *Raym.* 33. *E. N. B.* 72. *Wood's Inst.* 553. If the Defendant makes Default, the Plaintiff shall have Judgment to recover all in Damages; as well the Value of the Cattle, as Damages for the Taking of them, and his Costs. *F. N. B.* 69. *Mich.* 8 *H. 8.* No Writ of *Second Deliverance* lies in *Replevin* after a Judgment upon a Demurrer, or after a Verdict given; but in these Cases the Judgment must be entered with a Return irreplevibile; though on a Nonsuit a Second Deliverance will lie, because there is no Determination of the Matter, and there a Writ of Second Deliverance lieth to bring the Matter into Question: But in the Case of a Demurrer and Verdict, the Matter is determined by Law. *Mich.* 7 *W. B. R.* 2 *Lill. Abr.* 457. The Plaintiff in a Second Deliverance was nonsuited, and a Writ of Inquiry of Damages awarded, and also a *Retorno Habendo*, upon which the Sheriff return'd *Averia Elongata*; whereupon a *Withernam* was granted, and all the other of the Plaintiff's Cattle were delivered to the Defendant; and some Time after the Plaintiff came into Court, and paid the Damages and Costs, on which the Court granted him a Special Writ to restore his Cattle; but there was no Allowance for the Keeping of the Cattle, it being intended their Labour was worth the Charges. 3 *Leon.* 323. *Litt. Rep.* 54. If Cattle distrain'd are put into a Castle, the Sheriff must nevertheless make *Replevin* and Deliverance; and if Occasion be, he may take the Possession or Power of the County with him for that Purpose: And where the Cattle are driven out of the County, &c. so that the Sheriff cannot make *Replevin*, a Writ of *Withernam* shall go to the Sheriff to take so many of the Distrainer's or Defendant's Cattle, &c. 1 *Roll. Abr.* 565. A Defendant in *Replevin* may plead Property in the Cattle in a Stranger, either in Bar or in Abatement; and where the Plea in Abatement is to the Point of the Action, as Property is, there

the Defendant shall have a Return without making an Avowry for it; for whether the Property was in him or a Stranger, he ought to have a Return, because he had the Possession of the Cattle, which were illegally taken from him by the Plaintiff in *Replevin*: But where the Plea in Abatement is of a collateral Matter, he must make an Avowry to have the Return. 1 *Salk.* 94. 3 *Nelf.* 129. The general Issue in *Replevin* is *Non Cepit*; but the Defendant may plead Property in himself, in Bar or Abatement to the Action; though if he plead Property in a Stranger, he must conclude in Abatement, and 'tis to be observ'd, that upon the general Issue Property cannot be given in Evidence, therefore it must be pleaded there. *Ventr.* 249. 3 *Salk.* 307. *Replevin* was brought for Taking and Detaining a Mare and Colt; the Defendant pleaded Not guilty as to the Taking, *infra sex annos ultimo elapsos*; and upon Demurrer it was insisted, that the Plea was good, because in Effect 'tis *Non Cepit*, and if he is not guilty of the Taking, he could not be guilty of the Detaining; and if this Plea be not allowed, the Statute of Limitations can never be a Bar in *Replevins*; but the Plea was adjudg'd ill, because it doth not answer the Detaining, and probably the Cattle might be pounded where the Plaintiff could not come to *replevy* them, which is an illegal Detainer, tho' the Taking might be legal. *Sid.* 81. The Plaintiff is to lay his *Replevin* in the *Detinuit* or *Detinet*; if in the *Detinet*, the Plaintiff hath his Goods again, and Damages for the Taking; if 'tis brought in the *Detinuit*, he shall only recover for the wrongful Taking, for that Word being in the *preterperfect Tense*, implies that the Plaintiff had his Goods again: So that if in *Replevin* the Writ be in the *Detinet*, and the Plaintiff declare in the *Detinuit*, the Declaration is ill, the Variance being material. 2 *Lutw.* 1147, 1151. A *Replevin* ought to be certain, in setting forth the Number and Kinds of Cattle distrained, or it will not be good; because if it be uncertain the Sheriff cannot tell how to make Deliverance of the Cattle, if a Writ be directed to him to do it. *Trin.* 23 *Car. B. R.* And in a Declaration in *Replevin* for Taking of Cattle, if the Time and Place of Taking be not named, the Declaration is naught for Uncertainty: The Declaration must be not only of a Taking in a Vill or Town, but in *quodam loco vocat*, &c. or the same will not be good on Demurrer; but such a Declaration in Action of Trespass is good. *Hob.* 16. 3 *Salk.* 308. In *Replevin* for Taking several of his Beasts in *quibusdam locis* called A. and B. upon a Demurrer to this Declaration it was held ill; the Plaintiff ought to shew how many were taken in one Place, and how many in another Place. *Litt.* 37. And if the Plaintiff alledge two Places, and the Defendant answers only one, it is a Discontinuance. 1 *Salk.* 94. Plaintiff in *Replevin* declared, that the Defendant took his Cattle *apud R.* omitting the Words *in quodam loco ibidem*; and on a Demurrer it was ruled, that the Effect of this Suit is the Taking the Cattle, and not the shewing the Place where they were taken; for the Plaintiff might not know the Place, &c. and in this Action the Avowant is Actor, and best knows where the Cattle were taken, and therefore it ought to be shewed by him. 1 *Brownl.* 176. 3 *Nelf. Abr.* 125. Count in a *Replevin*, for Breaking of the Plaintiff's Doors and Locks, and Carrying away his Goods and Cattle; the Defendant

avows for a Rent-Charge, and says nothing of the Breaking of the Doors, &c. *Per Cur.* He need not answer it in this Action; though in Action of Trespass, he must. *Trin.* 7 *W.* 3. *B. R.* 2 *Lill. Abr.* 456. In a *Replevin* for Taking of four Beasts, the Defendant had Judgment for a Return, and he then surmised that forty Beasts were taken and impounded, and were not all delivered back, and pray'd that the Sheriff should make a Deliverance to him of forty, &c. But resolv'd, that the Plaintiff having declared but of four Beasts taken, and he the Defendant agreed that Four only were taken by Avowing for them, he was therefore without Remedy: Yet he might in his Avowry have shewn that forty Beasts were taken, and have avowed for all, and prayed a Return of all of them, although the Plaintiff had not declared for so many. *Cro. Jac.* 611. In *Replevin*, the Avowry was for Rent arrear, and the Avowant had Judgment; and in a Writ of Error brought in *B. R.* the Error assign'd was, that Part of the Rent became due after the Distress taken, *viz.* the Distress was made three Days before *Michaelmas*, and the Defendant avowed for *Michaelmas* Rent; and it was adjudg'd ill, being for more than was due at the Time of the Distress taken: The Avowant ought to have abated his Avowry *quoad* the *Michaelmas* Rent, and taken Judgment for the Rest; but he got the Roll amended in *C. B.* and so it was here. 2 *Salk.* 580. If the Jury in trying of an Action of *Replevin* do not inquire as well of the Value of the Cattle distrained for Rent, that they may be sold according to the Statute, as also of the Rent due, there shall be no Writ of Inquiry to supply it. 1 *Lev.* 255. A Verdict was found in *Replevin*, Part for the Plaintiff with Damages and Costs; and Part for the Defendant: But in Avowry for Rent, Part was found for the Plaintiff and Damages and Costs, and Part for the Avowant; and adjudg'd, that the finding Damages and Costs for the Plaintiff was void, but that Part being found for the Avowant he shall have a Return with Damages and Costs. *Lutw.* 1194. *Cro. Jac.* 473. It is a proper Conclusion of a Plea in *Replevin*, &c. to say *Unde petit judicium & return. Averiorum*; without saying any Thing of Damages, because they are given by the Statute: And the Defendant must suggest Matter to have a Return, &c. which Suggestion is only to bring his Case within the Statute of *H. 8.* for Damages; for before that Statute at Common Law the Defendant had no Damages; and this Suggestion being for a particular Purpose, is not traversable. 1 *Salk.* 94. A Second Deliverance may be a *Superfedas* to the Return. *Habend.* but 'tis not so to the Writ of Inquiry for Damages; because they are not given for the Thing for which the Defendant avowed, but by Virtue of the Stat. 21 *H. 8.* as a Recompence to the Avowant for his Expence and Trouble. *Ibid.* In Action of *Replevin*, the Defendant avowed for Damage-feasant, and had a Verdict; adjudg'd, that he shall have a Return. *Habend.* for the Cattle, and a *Capias ad satisfaciend.* for the Damages: But if the Party tender the Costs and Damages, the Sheriff ought not afterwards to execute the Return. *Habend.* And if for Want of such Tender, the Sheriff doth execute it, and after the Costs and Damages are paid, a Writ *Si constare poterit*, &c. lies, upon suggesting that the Costs are paid, to deliver the Distress, &c. 3 *Cro.* 162. 3 *Salk.* 54. If a Man take Cattle for Damage-feasant, and the other renders

tenders Amends, and he refuseth it, &c. on a *Replevin* sued for the Cattle, Damages shall be recovered by the Plaintiff for the Detaining of them; and not for the Taking, which was lawful. *New Nat. Br.* 154, 155. And if a Lord distrains his Tenant's Cattle wrongfully, and afterwards the Cattle return back unto the Tenant, the Tenant shall have a *Replevin* against the Lord for those Cattle, and recover Damages for the wrongful Distraining of them; because he cannot have Action of Trespass against his Lord for that Distrain. *Ibid.* A *Replevin* is triable by either Plaintiff or Defendant, without *Proviso*: And if a Man do distrain Cattle in one County, and drive the Cattle into another County, the Party may sue a *Replevin* in which of the Counties he will; but not in both the Counties. *Ibid.* *Replevin* may be had, where Cattle are taken that agist or manure Land; if one distrain a Cow which afterwards hath a Calf, &c. it may be brought for both: Also it lies for Wood cut, and any Goods or Chattels; for generally whatever is distrain'd, may be *replevied*: But no *Replevin* lieth of Goods taken beyond the Seas, though brought afterwards into England. *Show.* 91. A *Replevin* may not be had against the King, nor where he is Party, or the Taking was in his Right. 3 *H.* 7. An Infant may bring *Replevin*; and Executors or Administrators shall have it *de bonis Testatoris*: Husband and Wife shall join in a *Replevin*, for a Distress taken on the Wife's Lands; and for Goods and Chattels taken of the Wife when sole, the Husband alone may have it: If the Beasts of several Men are taken, they must have *Replevin* severally, and not join; unless they are Jointenants or Tenants in Common. *Land Purch. Compan.* 174, 175. If a Man whose Goods are distrained thinks himself wrong'd, and would have the Goods or Cattle restored, he may obtain them by *Replevin*; but if he be only desirous of a reasonable Satisfaction for them, he may bring an Action of Trespass or Trover, &c. See *Avowry*.

A *Plaint* entered in *Replevin*.

A. *B. queritur versus C. D. de Averiiis suis injuste capt. in Dom. sua vel in Libero Tenemento suo in Parochia, &c.*

Pleg', &c.

Form of a Writ de Replegiare de Averiiis.

REX, &c. *Præcipimus tibi quod Jusse & sine dilatione Replegiari fac. A. B. Averia sua quæ C. D. cepit & injuste detinet, ut dicitur, & Postea eum inde juste deduci fac', ne amplius inde clamorem audiamus pro defectu justitiæ, &c.*

Replevy. Tenants having their Goods taken as a *Distress* for Rent, are to *replevy* them in five Days, or they may be appraised and sold, by Stat. 2 *W. & M. Sess.* 1. c. 5. Where Property is claim'd in *Replevin*, and notwithstanding the Party doth *replevy*, Trespass will lie, &c. *Mod. Ca.* 69. 2 *Lill.* 459. *Replevy* is used for the Bail-ing a Man. Stat. *Westm.* 1. c. 11. Vide *Homine Replegiando*.

Replevith. Signifies to let one to m. i. prise upon Surety. 3 *Ed.* 1. c. 11.

Replication. (*Replicatio*) Is an Execution or Answer made by the Plaintiff in a Suit to the Defendant's *Plea*: And it is also that which the

Complainant *replies* to the Defendant's Answer in *Chancery*, &c. *West's Symb.* par. 2. The *Replication* is to contain Certainty, and vary from the Declaration, but must pursue and maintain the Cause of the Plaintiff's Action; otherwise it will be a Departure in Pleading, and going to another Matter. 1 *Inst.* 354. Though as a faulty Bar may be made good by the *Replication*; so sometimes a *Replication* is made good by a *Rejoinder*, but if it wants Substance, a *Rejoinder* can never help it. 2 *Lill. Abr.* 462. A *Replication* being intire, and ill in Part, is ill in the Whole: But if there be three *Replications*, and one of them is superfluous; and the other Two sufficient, and the Defendant demurs generally, the Plaintiff may have Judgment upon those which are sufficient. 2 *Saund.* 17. 1 *Saund.* 338. Where the Defendant pleads in Bar, and the Plaintiff *replies* insufficiently; if the Defendant demurs specially upon the *Replication*, and the Action is of such a Nature that a Title is set forth in the Declaration or Count, as in a *Formedon*, &c. Judgment may be given for the Plaintiff upon the insufficient Bar of the Defendant: And where the Title doth not appear 'till set forth in the *Replication*, and that is insufficient, there Judgment shall be had for the Defendant for the ill *Replication*. *Gorb.* 138. 1 *Leon.* 75. 3 *Nelf. Abr.* 133. If the Bar is naught, and the *Replication* likewise, the Plaintiff shall never have Judgment. *Hob.* 13. *Style* 356. So if there is a Variance between the Declaration and the *Replication*, though there be a Verdict, &c. *Goldf.* 158. *Replications* conclude with *hoc paratus est verificare*, or to the Country. 1 *Lutw.* 98.

Report. (From the Lat. *Reportare*) Is a publick Relation, or bringing again to Memory, of Cases judicially argued, debated, resolv'd or adjudg'd in any of the King's Courts of Justice, with the Causes and Reasons of the same as delivered by the Judges. *Co. Litt.* 295. There are likewise *Reports* of another Nature; as when the *Chancery*, or other Court, refers the Stating some Case, &c. to a Master of Chancery, or other Referee, his Certificate therein is called a *Report*: Upon which the Court makes an absolute Order. *Pract. Solic.* 67. A Master in Chancery, having an Order of Reference, is to issue his Summons for the Parties to attend him at a certain Time and Place; when and where they may come with their Counsel, Clerk or Solicitor to defend themselves, and maintain or object against his *Report* or Certificate, &c. And Masters are to draw their *Reports* briefly and as succinctly as may be, preserving the Matter clearly for the Judgment of the Court; without Recital of the several Points of the Orders of Reference, or the Debates of Counsel before them; unless it be in Cases doubtful, when they may shortly represent the Reasons which induce them to what they do. *Ibid.* *Reports* and Certificates of Masters in Chancery are to be filed with the Register in four Days after the Making and Signing; and to be confirmed by the Court, to which Exceptions may be made, &c. Vide *Reference*.

Reposicion of the Forest. (*Repositio Forestæ*, i. e. A Re-putting to) Was a Statute whereby certain Forest-Grounds being made *Purview* upon View, were by a second View put to the Forest again. *Manwood*, par. 1.

Repositus. Signifies any Thing laid up in Secret or Private.

Representation (*Representatio*) Is a Personating of another; as Executors, &c. *represent* the Person of the Testator. *Co. Lit.* 209.

Representative, A Deputy or Parliament Man. *Litt. Dist.*

Reprisal, (*Reprisalia*) Is the Retaking of one Thing for another, derived from the Fr. *Reprise*, i. e. *Recaptio*, vel *Resumptio*; and is all one in the Common and Civil Law. King Hen. 4. Enacted, That Application being made to the Keeper of the Privy Seal, by Persons injured in the Loss of Shipping at Sea contrary to Treaties, &c. on Evidence shewn, he shall sign *Letters of Request* to demand Restitution and Reparation; which if not made in convenient Time, the Lord Chancellor of England is to grant *Letters of Reprisal*, to obtain the same by Force, and for the Indemnity of the Persons interested: And this is confirmed by the Stat. 4. H. 5. cap. 7. Also there are two Sorts of *Reprisals*, Ordinary and Extraordinary; the Ordinary *Reprisals* are to arrest and take the Goods of Merchant Strangers within the Realm; and the other is for Satisfaction out of the Realm, and is under the Great Seal, &c. *Lex Mercat.* 120. If any Person shall be killed, wounded, spoiled, or any ways damaged in a hostile Manner, in the Territories of any King or Potentate, to whom *Letters of Request* are transmitted, and no Satisfaction shall be made, there is no Necessity to resort to the ordinary Prosecution, but *Letters of Reprisal* shall issue forth; and the Prince against whom the same are issued, is obliged to make Satisfaction out of the Estates of the Persons committing the Injuries; and in Case of a Deficiency there, it will then be adjudged a common Debt on his Country. But where Misfortunes happen to Persons, or their Goods, residing in a foreign Country in Time of War, *Reprisals* are not to be granted: In this Case they must be contented to sit down under the Loss, for they are at their Liberty to relinquish the Place on the Approach of the Enemy, when they foresee the Country is subject to Spoil and Devastation; and if they continue, they must partake of the common Calamity. *Lex Mercat.* or *Merch. Compan.* 174, 175. *Reprisals* may be granted on unjust and illegal Prosecutions abroad; where wrong Judgment is given in Matters not doubtful, which might have been redress'd either by the ordinary or extraordinary Power of the Country or Place, and which was apparently deny'd, &c. See *Letters of Marque*.

Reprises, (Fr. *Resumptions*, or Taking back) Is used for Deductions and Payments out of a Manor or Lands, as Rent-Charges, Annuities, Fees of Stewards, &c. And therefore when we speak of the clear yearly Value of a Manor or Estate in Land, we say it is so much *per Annum ultra Reprises*, besides all *Reprises*.

Reprive, (from the Fr. *Repris*) Signifieth to take back or suspend a Prisoner from the Execution of the Law for that Time. *Terms de Ley* 527. Every Judge that hath Power to order an Execution, hath Power to grant a *Reprive*; and oftentimes Execution is staid upon Condition of Transportation. But no Prisoner convicted of any Felony, for which he cannot have his Clergy, at the Sessions of the Old Baily for London and Middlesex, &c. ought to be *reprived* but in open Sessions; and not otherwise, without the King's express Warrant, not by Order of any Justices of Goal-Delivery. *Kel.* 4. 2 Hawk.

P. C. 463. *Wood's Inst.* 662. If a Woman is condemn'd for Treason or Felony, and she is found by an Inquest or Jury of Matrons impanelled by the Sheriff, &c. to be Quick with Child, Execution shall be respited, and the Woman *reprived* 'till her Delivery; though she shall take this Favour but once; and she cannot save her self by this Means from pleading upon her Arraignment, nor from having Judgment pronounc'd against her on her Conviction. *S. P. C.* 198. *H. P. C.* 272. *Finch* 478.

Repugnant, (*Repugnans*) Is what is contrary to any Thing said before: And *Repugnancy* in Deeds, Grants, Indisements, Verdicts, &c. will make them void. 3 *Nelf.* 135. 2 *Hawk.* *P. C.*

Reputation, (*Reputatio*) Is defined by Sir Edw. Coke to be *vulgaris Opinio ubi non est veritas*; and he tells us that *vulgaris Opinio est duplex*, viz. *Una orta inter graves & Discretos & qua vultum veritatis habet*; altera orta inter leves & vulgares homines absque specie veritatis. 4 *Rep.* 104. That is not *Reputation* which this or that Man says; but that which generally hath been, and many Men have said or thought. 1 *Leon.* 15. A little Time is sufficient for the gaining of a *Reputation* which needs not a very ancient Pedigree to establish it; for general Acceptation will produce a *Reputation*. 2 *Cro.* 308. 1 *Leon.* But it has been held, that common *Reputation* cannot be intended of an Opinion which is conceived of four or five Years standing; but of long Time. 2 *Lill. Abr.* 464. And some special Matter must be averr'd to induce a *Reputation*. *Ibid.* Land may be reputed Parcel of a Manor; tho' not really so. 1 *Ventr.* 51. 2 *Mod.* 69. 3 *Nelf. Abr.* 137. And there is a Parish and Office in *Reputation*, &c.

Reputation or Fame, Is under the Protection of the Law, as all Persons have an Interest in their good Name; and Scandal and Defamation are injurious to it, though defamatory Words are not actionable, otherwise than as they are a Damage to the Estate of the Person injured. *Wood's Inst.* 37.

Request, Of Things to be done: Where one is to do a Collateral Thing, agreed on making a Contract, there ought to be a *Request* to do it. 2 *Lill. Abr.* 464. If a Duty is due, it is payable without *Request*: On a Promise to pay a Duty precedent on *Request*, there needs no actual *Request*; but upon a Promise for a Penalty or Collateral Sum, there should be an actual *Request*, before the Action is brought. *Cro. El.* 74. 1 *Saund.* 33. 1 *Lev.* 289. If a Debt is before a Promise, a *Request* is not necessary, for then a *Request* is not any Cause of the Action; though a Promise generally to pay upon *Request*, the Action arises upon *Request* and not before. *Cro. Jac.* 201. 1 *Lev.* 48. Action of Debt, for Money due on a Bond, may be brought without alledging a special *Request*; and if the Action is for Debt, not appointed to be paid upon *Request*, there needs no special *Request* to be laid in the Declaration; otherwise if it is of a Thing collateral. *Cro. Eliz.* 229, 523. A Man promises to re-deliver upon *Request*, such Goods as were delivered to him; if an Action of Detinue is brought, the Plaintiff need not alledge a special *Request*, because the Action is for the Thing it self: But if an Action of the Case is had for these Goods, then the *Request* must be specially alledged; as it is not brought for the Thing it self, but for Damages. *Sid.* 66. 3 *Salk.* 309. If a Promise is made to pay Money to the Plaintiff upon *Request*

quest, no special *Request* is required. But where there are mutual Promises between two Persons to pay each other Money upon *Request*, if they do not perform such an Award; the *Request* is to be specially alledged. And if there is a Promise to pay Money to a Man upon *Request*, and he dies before any *Request* made, it shall be paid to his Executors; but not till the *Request* is made. 3 Salk. 309. 3 Bulst. 259. When a Person promises to pay a precedent Duty, the general Allegation *Licet sapius requisit* is sufficient, because there was a Duty without a Promise: As for Instance; If one buys or borrows a Horse, and promises to pay so much upon *Request*: But where the Promise is collateral, as to pay the Debt of a Stranger upon *Request*, &c. the *Request* is Part of the Agreement, and traversable, there being no Duty before the Promise made; and for that Reason the *Request* must be specially alledged, for the bringing the Action will not be a sufficient *Request*. Latch. 93. 3 Leon. 200. 1 Saund. 35. 3 Salk. 308. If a Debt or Duty arises either upon Bond or Contract, *Licet sapius requisitus* is good; *contra* where it becomes a Duty by the *Request* it self, when it is to be alledged specially. 3 Nelf. Abr. 144. It has been adjudged, that where the Thing is a Duty before any *Request* made, a *Request* is only alledged to aggravate Damages, and such *Request* is not traversable; but if the *Request* makes the Duty, as in Assumpsit to do such a Thing upon *Request*, there the Day, &c. of the *Request* ought to be alledged, because it is traversable. Palm. 389. An Assumpsit to do a Thing upon *Request*, a *Request* must be alledged; and a special *Request* must be laid to be made such a Day, at such a Place; where the Duty is not upon Bond, &c. If a *Request* is to be specially made, the Day and Year when made should be specially alledged. 1 Lutw. 231. 2 Lill. Abr. 466. Cro. Car. 280. But where a Person is not restrained to make the *Request* by a Time limited, if made at any Time during his Life, it has been held to be good. Cro. Eliz. 136. And a *Request* at any other Time than named may be given in Evidence. Sid. 268. A Defendant pleaded the Statute of Limitations in an Action on a Promise to pay so much on *Request*, &c. And upon Demurrer the Plaintiff had Judgment; for though the Promise was within the Statute, yet the Duty was not, being no Duty till the *Request* was made, and the Action being then brought within Time after the Breach, 'tis good. Cro. Car. 98. At a Trial the Defendant would have the Plaintiff prove the *Request*; but it was ruled that he need not; for not being traversed in the Plea, 'tis admitted. 1 Lev. 166. In a special Action on the Case for keeping a Passage stopp'd up, so that the Plaintiff could not come and cleanse his Gutter, &c. after a Verdict for the Plaintiff, it was objected in Arrest of Judgment, that the Plaintiff ought to have set forth a *Request* to the Defendant to open the Passage; and this was held a good Objection after a Demurrer, but not after a Verdict. 1 Mod. 27. Unreasonable *Requests* are not regarded in Law; and there is no Difference where a Thing is to be done upon *Request*, and reasonable *Request*. Dyer 218. Cro. Car. 176. 3 Nelf. Abr. 140. 142.

Requests Court of, The Place where held being anciently called *Camera Alba*, is taken away by Act of Parliament. See Court of *Requests*.

Here County. Writs shall be delivered in the full County, or *Here* County. Stat. 2. Ed. 3. cap. 5. Vide *Rier* County.

Resceit, (*Receptio*) Is an Admission or Receiving a third Person to plead his Right in a Cause commenced between two other Persons; as where an Action is brought against Tenant for Life or Years, or any other particular Tenant, and he makes Default, in such Case he in the Reversion may move that he may be received to defend his Right, and to plead with the Demandant: *Resceit* is likewise applied to the Admittance of a Plea, where the Controversy is between two Persons. Broke 205. Co. Lit. 192. 3 Nelf. Abr. 146. He in Reversion may come into Court, and pray to be received in a Suit against his particular Tenant. Stat. 13. R. 2. cap. 17. And 'tis said a Wife shall be received, in Default of her Husband. 2 Lill. Abr. 467. But *Resceit* is admitted only for them who have Estates depending upon particular Estates for Life, Tenants by the Curtesy, or after Possibility, &c. and not for him in Remainder after an Estate-tail, which is perdurable. 1 And. 133. And Husband and Wife were Tenants for Life, Remainder to another in Fee; a *Formedon* was brought against the Husband, who made Default after Default; and thereupon the Wife pray'd that she might be received to defend her Right, but it was denied by the Court; because if the Demandant should recover against her Husband, it would not bar her Right if she survived him, and therefore it would be to no purpose. Then he in Remainder prayed to be received, which at first the Court doubted, by Reason if the Husband should recover, he might falsify such Recovery; and because his Estate did not depend upon the Estate of the Husband alone, but upon the Estate of Husband and Wife; but at last he was received. 1 Leon. 86.

Resceit of Homage, (*Receptio Homagii*) The Lord's receiving Homage of his Tenant, at his Admission to the Land. Kitch. 148.

Rescous, (*Rescussus*, from the Fr. *Rescousse*, i. e. *Liberatio*) Is an illegal Taking away and setting at Liberty of a Distress taken, or a Person arrested by Process or Course of Law: And where a Man has taken a Distress, and the Cattle distrained as he is driving them to the Pound happen to go into the House of the Owner; if he that took the Distress demand them of the Owner, and he delivers them not, this is a *Rescous* in Law. Co. Lit. Also it is used for a Writ which lies for this Fact, called *Breve de Rescussu*, F. N. B. 101. Reg. Orig. 105. *Rescous* is a forcible Resistance and a Rescuing of any Thing, or of a Person arrested, and procuring an Escape against Law. 1 Inst. 160. And there must be a Distress, or an Arrest, or there cannot be a *Rescous*. Wood's Inst. 191. If a Distress is taken without Cause, as where no Rent is due; or if one distrains out of his Fee, or in the Highway, or distrains *Averia Caruca*, where there is a sufficient Distress besides; or if the Landlord distrains any Thing that is not distrainable, one may make *Rescous*: And this may be done by the Tenant, when any Thing of his is wrongfully distrained; or by a Stranger, when his Goods are distrained without just Cause, &c. But if the Distress was made upon good Cause, the Owner cannot make *Rescous* as they are going to the Pound; and notwithstanding the Distress be without Cause, if it be im-

impounded, the Owner cannot break into the Pound to rescue the Distress. 1 *Inst.* 47, 160. 4 *Rep.* 11. Where the Owner of the Cattle, before Distress, tenders his Rent, and a Distress is afterwards taken, it is wrongful, and the Tenant may make *Rescous*; though if he tender after the Distress, it is otherwise; he cannot make *Rescous*, the Taking being lawful. 1 *Inst.* 160. 2 *Inst.* 107. 8 *Rep.* 147. A Tender of Amends to a Bailiff is not good; for he cannot deliver the Distress when once taken. *Wood* 192. In *Rescous*, the Plaintiff declared that he had distrained forty Sheep of the Defendant's, and eighty Sheep of another Person's Damage feasant, and that the Defendant took, chased and rescued all of them; the Defendant justified the putting his forty Sheep in the Place where, &c. having Right of Common there, and that the Plaintiff *de injuria sua propria* chased them, and that the Defendant would have taken them from him, but they ran among the other eighty Sheep of the Stranger, and he folded them, and because he could not sever them, he chased them to the Fold, *qua est eadem Rescussio*: And upon Demurrer the Plaintiff had Judgment, because tho' the Defendant had some Colour to rescue his own Sheep, he had none to rescue the Sheep of the other Person. 2 *Cro.* 468. Unlawful *Rescous* of Goods distrained, and Pound-Breaches, incur treble Damages; recoverable by Statute on Action of the Case. 2 *W. & M.* Goods were levied on a Writ of *Fieri facias*, and the Sheriff returned that they were rescued from him by *A. B. contra voluntatem*; adjudged, that no *Rescous* can be on a *Fi. fac.* for that lies only on a *Capias* against the Person himself; but the Party injured may have an Action on the Case against *A. B.* who made the *Rescous*. *Hetley* 145. In *Rescous* of one arrested, it has been held, that the Plaintiff, at whose Suit an Arrest is made upon mesne Process, may have his Action against the Rescuers; and he cannot bring it against the Sheriff. And where a Person is rescued, taken upon a *Capias ad satisfaciend.* Action lies for the Plaintiff, as well against the Rescuers as the Sheriff. *Cro. Fac.* 486. *Cro. Car.* 109. On Action for an Escape on mesne Process, if the Sheriff pleads a *Rescous* it shall be good; but not upon an Execution, where the Sheriff may raise the *Possesse Comitatus* to secure the Prisoner; or when the Prisoner is in Gaol. 2 *Lev.* 144. 3 *Lev.* 46. 2 *Inst.* 105, 193. But a Sheriff return'd a *Rescous* of the Person whom he had taken by mesne Process; and it was ruled no good Return, for he might upon that Process, raise the *Possesse Comitatus*. *Noy.* 40. 2 *Cro.* 419. 3 *Nelf. Abr.* 149. The Sheriff cannot return a *Rescous* made upon a Special Bailiff, not known to the Country; it ought to be upon the Sheriff's known Bailiff. 2 *Lill. Abr.* 468. And the Return of a *Rescous* must be, that the Party was rescued out of the Custody of the Sheriff, and not of the Bailiff; though the Fact was that he was rescued out of the Bailiff's Custody; for the Sheriff is the Officer, and the Bailiff is but his Servant; yet a Return of a Rescue out of the Custody of the Sheriff's Bailiff hath been held sufficient. 1 *Lev.* 214. 2 *Lev.* 26. And it hath been resolved, that if an Action on the Case is brought for a *Rescous*, it is well enough for the Plaintiff to declare *secundum veritatem facti*; but if the Defendant is indicted, it must be *secundum veritatem Legis*, viz. That the Pri-

soner was rescued out of the Custody of the Sheriff. 5 *Mod.* 216. Rescuers may be indicted, or Action may be brought against them; but if on an Indictment of *Rescous*, the Place where, and Time when the *Rescous* was made be not express'd, it is not good. *Trim.* 23 *Car. B. R.* The Sheriff return'd a *Rescous*, but did not set forth the Place where it was made; this was held insufficient, though he shewed where the Party was arrested. *Dyer* 69. *Moor* 422. See *Cro. Fac.* 345. And upon a *Latitat* awarded against a Defendant, the Sheriff return'd a *Rescous* on such a Day, without mentioning any Place, &c. and adjudged a void Return; because it did not appear that the Arrest or *Rescous* were within his Jurisdiction. But if it had appeared to be done in the County, it shall be intended within his Bailiwick, tho' within a Liberty in the same County; and in such Case the *Rescous* had been unlawful. *Yelv.* 51. An Indictment for a *Rescous* in *B. R.* ought not to be quashed, although it be erroneous, except the Party that is indicted for it do personally appear in Court; for he cannot in such Case appear by Attorney, the Offence being criminal. 21 *Car. B. R.* If the Writ upon which a Defendant is arrested be naught, and *Rescous* is made; there is no Remedy against the Rescuers. 2 *Lill. Abr.* 468. But if it is alledged that the Party was lawfully arrested, it shall be intended by a good Warrant, tho' it be not set forth that he was taken by Virtue of any Warrant. And where the Warrant was set forth in Writing, but it was not said *sub sigillo sigillat'*, it was allowed to be good; but in another Case disallowed, because it is no Warrant if not under the Seal of Office. 2 *Cro.* 472. 3 *Nelf. Abr.* 149. In Case for a *Rescous*, *Holt*, Chief Just. doubted whether an Arrest was lawful, being made by the Bailiff's Servant, and not in his Presence; but said that the Plaintiff must prove his Cause of Action against the Person arrested and rescued: That he must prove the Writ and Warrant, by producing sworn Copies of them; the Manner of the Arrest, that it may appear to the Court to be legal; and in point of Damage, he is to prove the Loss of his Debt, viz. that the Party rescued became insolvent, or could not be re-taken. *Mod. Ca.* 211. Where a Bailiff hath a Warrant to arrest a Man, and is hindered in the Execution of his Office by another; if there is no actual Arrest, it cannot be a *Rescous*, but it is a great Contempt of the Court. *Ibid.* Process of Outlawry lies on the Return of a *Rescous*; and Peers of the Realm, Spiritual or Temporal, are liable to an Attachment for *Rescous*, &c. 2 *Hawk. P. C.* 302, 152. When a *Rescous* is made, it must be return'd upon the Writ, and then it is proper to move the Court for an Attachment against the Rescuers; and not to grant it on Affidavits: So where the *Rescous* is return'd to the Filizer, and Process of Outlawry issues, upon which the Rescuers are brought into Court, they shall not be bailed upon Affidavits; but where an Attachment is granted, and they are examined on Interrogatories, upon answering them the Rescuers shall be discharged: It is the Course upon the Return of a *Rescous*, to set four Nobles Fine upon each Rescuer. 2 *Salk.* 586. Rescuing a Prisoner in or before the Courts of Justice at *Westminster*, is liable to Forfeiture of Lands and Goods, and perpetual Imprisonment. And rescuing a Felon lawfully arrested for Felony, is Felony in the Ref-

Rescuers ; and so of Treason, &c. S. P. C. 31. H. P. C. 131. 3 *Inst.* 141.

Rescussor, The Party that commits such a *Rescous*. 2 Cro 419.

Rescuer, (*Rescure*) Is the Re-taking of Lands into the Hands of the King, where a general Livery or Ouster *le main* was formerly misus'd contrary to the Order of Law. *Staundf. Prerog.* 26.

Reservation, (*Reservatio*) A Keeping aside, or Providing ; as when a Man lets or departs with his Land, but *reserves* or provides for himself a Rent out of it for his own Livelihood ; and sometimes it hath the Force of a Saving or Exception. 1 *Inst.* 143. Exception is always of Part of the Thing granted in general, and of a Thing in Being : And a *Reservation* is of a Thing not in Being, but is newly created out of the Lands or Tenements demised ; tho' Exception and *Reservation* are sometimes used promiscuously. 1 *Inst.* 47. The proper Place for a *Reservation*, is next after the Limitation of the Estate ; and a *Reservation* of Rent may be every two, three or more Years ; as well as Yearly, Half-yearly, Quarterly, &c. 1 *Inst.* 47. 8 *Rep.* 71. It must be out of an House, or Lands ; and be made either by the Words *Yielding and Paying*, &c. or the Word *Covenant*, which is of both Lessor and Lessee, and therefore makes a *Reservation*. 1 *Roll. Rep.* 80. The *Reservation* of Rent is good, although it is not *reserved* by apt and usual Words, if the Words are equivalent. *Plowd.* 120. 3 *Nels. Abr.* 150. But *Reservation* of a Rent *secundum Ratum*, is a void *Reservation*. 2 *Ven.* 272. See *Reddendum*, &c.

Resiant, (*Resiantia*, from the Fr. *Reseant*) Signifies a Man's Abode or Continuance in a Place ; whence also comes the Participle *Resiant*, that is continually dwelling or abiding in any Place : And is all one with *Residence* ; but that Custom ties this only to Persons *Ecclesiastical*. Old Nat. Br. 85. *Kitch.* 33.

Resiant-Rolls, Are Rolls wherein the *Resiants* of a Tithing, &c. are set down. *Comp. Court Keep.*

Residence, (*Residentia*) Is peculiarly used both in the *Canon* and *Common Law*, for the Continuance of a Parson or Vicar upon his Benefice : And personal *Residence* is required of Ecclesiastical Persons on their Cures, upon Pain of forfeiting 10*l.* for every Month. *Stat.* 21. H. 8. cap. 13. One of the great Duties incumbent upon Clergymen, is that they be *Resident* upon their Livings : And on the first erecting Parochial Churches, every Clergyman was obliged to *reside* on his Benefice, for Reading of Prayers, Preaching, &c. by the Laws and Canons of the Church ; and by Statute, the Parson ought to abide upon his Rectory, in the Parsonage House ; for the Statute is intended not only for serving the Cure, and for Hospitality, but to maintain the House in Repair, and prevent Dilapidations : Though lawful Imprisonment, Sicknefs, &c. being Things of Necessity, are good Cause of Excuse for Absence, and excepted out of the Act by Constitution of Law : And it is the same where a Person is employed in some important Business for the Church or King ; or he is entertained in the King's Service. 6 *Rep.* 21. 1 Cro. 590. In an Information on the Statute aforementioned, it was adjudged that the Parson is to live in his Parsonage House, and not in any other, though in the same Parish. But as by *Stat.* 13 *Eliz.* cap. 20. Leases made by Parsons are declared void, where the Parson is absent

for eighty Days, &c. on this Act a Defendant pleaded to an Agreement for Tithes, that the Parson was absent from his Parsonage by the Space of eighty Days in one Year ; and the Jury found that he dwelt in another Town adjoining, and came constantly to his Parish Church four Days in every Week, and there read Divine Service ; and it was held, that this was not such an Absence as is intended by Statute to avoid any Agreement or Lease made by the Parson. 1 *Bulst.* 112. See Cro. 123. Vide *Non Residence*.

Residens, Is a Tenant who is bound *Residere* on his Lord's Land, and not to depart from thence. *Leg. Hen.* 1. cap. 43.

Residuary Legatee, Is he to whom the *Residuum* of the Estate is left by Will. And such Legatee being made Executor with others, shall retain against the rest : If where there are two *Residuary Legatees*, and one die Intestate, his Administrator shall have a Moiety of the Surplus of the Personal Estate of the Testator, contrary to joint Executors, who are not intitled to Moieties ; because by making them *Residuary Legatees*, the Testator intended an equal Share to both : And if a *Residuary Legatee* die before the Will is proved, his Executor shall have Administration, &c. 6 H. 7. 1 *Chanc. Rep.* 238. *Shore* 26. See *Executor*.

Resignation, (*Resignatio*) Is the Yielding up a Benefice into the Hands of the Ordinary, called by the *Canonists* *Renunciation* ; and though it is all one in Nature with the Word *Surrender*, yet it is by Use restrained to the yielding up a Spiritual Living to the Bishop, as *Surrender* is the giving up of Temporal Lands into the Hands of the Lord. And a *Resignation* may now be made into the Hands of the King, as well as the Diocesan, because he has *supremam Autoritatem Ecclesiasticam*, as the Pope had here in ancient Times ; though it has been adjudged, that a *Resignation* ought to be made only to the Bishop of the Diocese, and not to the King ; because the King is not bound to give Notice of the *Resignation* to the Patron, as the Ordinary is ; nor can the King make a Collation himself, without Presenting to the Bishop. *Plow.* 498. *Roll. Abr.* 358. Every Person that *resigns* a Benefice, must make the *Resignation* to his Superior ; as an Incumbent to the Bishop, a Bishop to the Archbishop, and an Archbishop to the King, as supreme Ordinary ; and a Donative is to be *resign'd* to the Patron, and not the Ordinary ; for in that Case the Clerk receiv'd his Living immediately from the Patron. 1 *Rep.* 137. A Common Benefice is to be *resign'd* to the Ordinary, by whose Admission and Institution the Clerk first came into the Church : And the *Resignation* must be made to that Ordinary who hath Power of Institution ; in whose Discretion it is either to accept or refuse the *Resignation* ; as the Law hath declared him the proper Person to whom it ought to be made, it hath likewise empowered him to judge thereof. 2 Cro. 64, 198. The Instrument of *Resignation* is to be directed to the Bishop, and when the Bishop hath accepted of it, the *Resignation* is good, to make void the Church, and not before ; unless it be where there is no Cure, when it is good without the Acceptance of the Bishop. A *Resignation* may be made before a Publick Notary, but without the Bishop's Acceptation it doth not make the Church void : The Notary can only attest the *Resignation*, in order to it's being presented, &c. *Ibid.*

Ibid. Before Acceptance of the *Resignation* by the Bishop, no Presentation can be had to the Church; but as soon as the Acceptance is made, the Patron may present to the Benefice *resigned*. And when the Clerk is instituted, the Church is full against all Men in Case of a common Person; though before Induction, such Incumbent may make the Church void again by *Resignation*. Count. Parl. Compan. 106. A Parsonage is not to be granted over by the Incumbent, but it may be *resigned*; and *Resignations* are to be absolute, and not conditional; for 'tis against the Nature of a *Resignation* to be Conditional, being a judicial Act. 3 *Nelf. Abr.* 157. If any Incumbent shall corruptly *resign* his Benefice, or take any Reward directly or indirectly for *resigning* the same, he shall forfeit double the Value of the Sum, &c. given, and the Party giving it shall be incapable to hold the Living. *Stat. 31. Eliz. cap. 6.* But a Man may bind himself by Bond to *resign*, and it is not unlawful, but may be upon good and valuable Reasons; as where he is obliged to *resign* if he take a second Benefice, or if he be *Non-Resident* by the Space of so many Months, or to *resign* on Request, if the Patron shall present his Son or Kinsman when he should be of Age capable to take the Living, &c. *Cro. Jac.* 249, 274. though Bonds for *Resignation* of Benefices have no Encouragement in *Chancery*; for on such Bonds generally the Incumbent is relieved, and not obliged to *resign*. 1 *Roll. Abr.* 443. The usual Words of a *Resignation* are *Renuncio, Cedo, Dimitto, & Resigno*; and the Word *Resigno* is not a proper Term alone. 2 *Roll.* 350.

Form of a Resignation of a Benefice.

IN Dei Nomine Amen. Ego A. B. Rector & Incumbens Ecclesiæ Parochialis de, &c. in Com. & Diocesi Oxon. Volens & ex certis Causis & Considerationibus, veris iustis & legitimis me in hac parte Specialiter moventibus, ab onere, Cura & Regimine dictæ meæ Rectoriæ, de, &c. & pertinentiis ejusdem penitus exonerari, eandem Rectoriam meam & Ecclesiam Parochialem præd. Una cum suis juribus membris & pertinentiis Universis, in manus Reverendi Patris Johannis permissione Divina Oxonia Episcopi loci ipsius Ordinarii & Diocesan, vel ejusdem Vicarii in Spiritualibus Generali seu alterius cujuscunque hanc meam Resignationem admittend. Potestatem habentis vel habituri, non vel in metu coactus, nec dolo malo ad idem inductus, nec aliqua sinistra machinatione motus, sed ex certa Scientia animo deliberato & Spontanea voluntate meis pure simpliciter & absolute Renuncio & Resigno ac re & verbo vacuam dimitto, jure quoque titulo & Possessione meis in eadem Rectoria sive Parochiali Ecclesia una cum suis juribus Membris & pertinentiis Universis præhabitis & mihi hactenus concessis omnibus & singulis Renuncio eisdemque Cedo & ab iisdem recedo totaliter & expresse in his Scriptis. In cujus Rei Testimonium nomen & sigillum meum his presentibus apposui die & Anno, &c.

Resignation of Offices. If a Man can have no Title to the Profits of an Office, without the Admission or Confirmation of a Superior, there the *Resignation* of that Office must be to him. 3 *Nelf. Abr.* 158.

Resort, (Fr.) Signifies the Authority or Jurisdiction of a Court: *Salvo tamen tam Reforto quam aliis jure nostro, & jure etiam alieno.* Spelm. *Dernier resort*, the last Refuge.

Respectu computi Uiceromitæ habendo, Is a Writ for the Respiting a Sheriff's Account, directed to the Treasurer and Barons of the *Exchequer*. Reg. Orig. 139.

Respite, (Respectus) A Delay, Forbearance, or Continuation of Time. *Glanvil. lib. 12. c. 9.*

Respite of Homage, (Respectus Homagii) Is the Forbearance or Delay of Homage, which ought to be perform'd by Tenants holding by Homage, &c. though it had the most frequent Use for such as held in *Knight's Service* and in *Capite*, who formerly paid into the *Exchequer* every fifth Term some small Sum of Money to be *respited* their Homage: But this Charge being incident to and arising from *Knight's Service*, is taken away by the Stat. 12 *Car. 2.*

Respondens Duffer, To answer over in an Action to the Merits of the Cause, &c. See *Judgment.*

Respondent Superior. If Sheriffs of London are insufficient, the Mayor and Commonalty must answer for them: And *per Insufficiency del Bailiff d'un Liberty*, Respondent Dominus Libertatis. 4 *Inst.* 114. Stat. 44. *Edw. 3. cap. 13.* If a Coroner of a County is insufficient, the County as his Superior shall answer for him. *Wood's Inst.* 83. A Gaoler constitutes another under him, and he permits an Escape, if he be not sufficient, Respondent Superior; and superior Officers must answer for their Deputies in Civil Actions, if they are insufficient to answer Damages. *Dr. & Stud. c. 42.*

Responsalis (Qui Responsum deferit) Is he that appears for another in Court at a Day assign'd. *Glanvil. lib. 12. cap. 1.* And *Fleta* makes a Difference between *Responsalem Attornatum* and *Essoniatorem*; and says that *Responsalis* was for the Tenant, not only to excuse his Absence, but to signify what Trial he meant to undergo, the Combat or the Country. *Flet. lib. 6. cap. 11.* This Word is made use of in the *Canon Law*, & significat procuratorem vel eum qui absentem excusat.

Responsions, (Responsiones) Was applied chiefly by the Knights of St. John of Hierusalem, to certain Accounts made to them by such as held their Lands, &c. 32 *H. 8. cap. 24.*

Responsum, A Word used for Business: Pope Alexander sent two Persons to King *Edw. 1st*, pro Responsis Ecclesiasticis. Blount.

Restare, i. e. To stay or stop; it is mentioned in *Matt. Paris.* 515.

Restitution, (Restitutio) Is a Restoring any Thing unjustly taken from another: It signifies also the setting him in Possession of Lands or Tenements, who had been unlawfully disseised of them. *Crompt. Inst.* 144. And *Restitution* is a Writ which lies where a Judgment is reversed, to restore and make good to the Defendant in the Action what he hath lost. The Court which reverses the Judgment, gives upon the Reversal a Judgment for *Restitution*; whereon a *Scire facias quare Restitutionem habere non debet*, reciting the Reversal of the Judgment, and the Writ of Execution, &c. must issue forth. 2 *Lit. Abr.* 472. But the Law doth oftentimes restore the Possession to one without the Writ of *Restitution*, i. e. by Writ of *Habere facias Possessionem*, &c. in the common Proceedings of Justice upon a Trial at Law. *Ibid.* 473. And there is a *Restitution* of the Possession of Lands in Cases of forcible Entry; a *Restitution* of Lands to an Heir, on his Ancestor's being attainted of *Treason* or *Felony*; and

Resti-

Restitution of stolen Goods, &c. A Writ of *Restitution* is not properly to be granted but where the Party cannot be *restored* by the ordinary Course of Law; and the Nature of it is to *restore* the Party to the Possession of a Freehold, or other Matter of Profit, from which he is illegally removed; and it extends to *Restitution* on *Mandamus* to any Publick Office. *Trin. 23 Car. B. R. 2 Lill. 472, 473.* Where a Judgment for Land is reversed in B. R. by Writ of Error, the Court may grant a Writ of *Restitution* to the Sheriff to put the Party in Possession of the Lands recovered from him by the erroneous Judgment; though there ought to be no *Restitution* granted of the Possession of Lands, where it cannot be grounded on some Matter of Record appearing to the Court. *Hill. 22 Car.* And Persons that are to *restore*, are to be Parties to the Record; or they must be made so by special *Scire Fac.* *Cro. Car. 328. 2 Salk. 587.* If a Lease is taken in Execution upon a *Fieri Fac.* and sold by the Sheriff, and afterwards the Judgment is reversed; the *Restitution* must be of the Money for which it was sold, and not the Term. *Cro. Fac. 246. Moor 788.* But a Sheriff extended Goods and Lands upon an *Elegit*, and return'd that he took a Lease for Years, which he sold and delivered to the Plaintiff as *Bona & Catalla* of the Defendant for the Debt, and afterwards the Judgment was reversed for Error; and it was adjudged that the Party shall be restored to the Lease, because the *Elegit* gave the Sheriff no Authority to sell the Term, and therefore a Writ of *Restitution* was awarded. *Yelv. 179.* And there has been in this Case a Distinction made between compulsory and voluntary Acts done in Execution of Justice, where the Sheriff is commanded by the Writ to sell the Goods, and where he is not, when the Goods are to be *restored*, &c. *8 Rep. 96.* If the Plaintiff hath Execution, and the Money is levied and paid, and afterwards the Judgment is reversed, there the Party shall have *Restitution* without a *Scire Fac.* for it appears on the Record what the Party had lost and paid; but if the Money was only levied, and not paid, then there must be a *Scire Fac.* suggesting the Sum levied, &c. And where the Judgment is set aside after Execution for any Irregularity, there needs no *Scire Fac.* for *Restitution*; but an Attachment of Contempt, if upon the Rule for *Restitution*, the Money is not *restored*. *2 Salk. 588.* In a *Scire Facias quare Restitution*, &c. the Defendant pleaded Payment of the Money mentioned in the *Scire Fac.* and it was held to be no Plea. *Cro. Car. 328.* But now Payment is a good Plea to a *Scire Fac.* by the Stat. 4 & 5 Ann. 2. *Lill. Abr. 479.* Upon a *Vi Laica removendo*, a Parson was put out of Possession; and upon a Suggestion thereof, and Affidavit made, *Restitution* was ordered. *Cro. Eliz. 465.* The Justices of Peace, before whom an Indictment for forcible Entry is found, must give the Party *Restitution* of his Lands, &c. who was put out of Possession by Force. Stat. 8. H. 6. But where one is indicted for a forcible Entry, and the Party indicted traverses the Indictment, there cannot be *Restitution* before Trial and a Verdict, and Judgment given for the Party, though the Indictment be erroneous; it being too late to move to quash the Indictment after the Traverse, which puts the Matter upon Trial. *2 Lill. 473, 474.* A Person being *attainted of Treason*, &c. he or his Heirs may be *restored* to his Lands, &c. by the King's

Charter of Pardon; and the Heir by Petition of Right may be *restored*, if the Ancestor is executed: But *Restitution* of Blood must be by Act of Parliament; and *Restitutions* by Parliament are some of Blood only, some of Blood, Honour, Inheritance, &c. *3 Inst. 240. 1 Inst. 8, 391.* The King may restore the Party or his Heirs to his Lands, and the Blood, as to all Issue begotten after the Attainder. *Ibid.* There shall be a Writ of *Restitution* granted the Owner of *stolen Goods*, by the Court where a Felon is tried on Indictment, after the Attainder of the Felon, as in Case of Appeal of Robbery. *21 H. 8. cap. 11.* And it may be also of Money, when the Felon is convicted of the Felony, by Reason of the Evidence given by the Party robb'd, or by his Procurement, &c. And by this Statute Executors and Administrators shall have *Restitution* of Goods, and 'tis said notwithstanding Sale in Market-overt. *2 Inst. 714. 3 Inst. 242. 5 Rep. 109.* If Goods stolen are not waived by Flight, or seized for the King, the Party robb'd may take his Goods again without prosecuting the Felon; but after seized for the King, they may not be *restored* without Appeal or Indictment. *Kel. 48. 2 Hawk. P. C. 168.*

Re-restitution, Is where there hath been a Writ of *Restitution* before granted: And *Restitution* is generally Matter of Duty; but *Re-restitution* is Matter of Grace. *Raym. 85.* A Writ of *Re-Restitution* may be granted upon a Motion for it, if the Court see Cause to grant it. *2 Lill. Abr. 474.* And on Quashing an Indictment of forcible Entry, the Court of B. R. may grant a Writ of *Re-restitution*, &c.

Restitutio Temporalium, Is a Writ directed to the Sheriff to restore the Temporalities, or the Barony of a Bishoprick to the Bishop elected and confirm'd. *F. N. B. 169. 1 Roll. Abr. 880.*

Resummons, (*Resummonitio*) Signifies a second Summons, or calling a Man to answer an Action, where the first Summons is defeated by any Occasion; and when by the Death, &c. of the Judges, they do not come on the Day to which they were continued, for the Trial of Causes, such Causes may be revived or recontinued by *Resummons*. Vide *Reattachment*.

Resumption, (*Resumptio*) Is used particularly for the taking again into the King's Hands such Lands or Tenements, &c. as before upon false Suggestion he had granted by Letters Patent to any Man. *Broke 298.* And *Resumption of Grants* is mentioned in the Stat. 31 H. 6. cap. 7. and other Statutes.

Retail. To buy by the Great, and sell by Retail or Parcels. *3 & 4. Ed. 6. c. 21.*

Retainer, (from the Lat. *Retineo*) Is a Keeping or Maintaining; as of a Servant, not menial or continually dwelling with the Master, but attending sometimes upon special Occasions, *1 R. 2. cap. 7.* And Counsellors and Attornies are retained to attend the Causes of their Clients, in the several Courts, &c.

Retaining Fee, Is the first Fee given to any Serjeant or Counsellor at Law, whereby to make him sure that he shall not be on the contrary Side.

Retenementum, Is a Word used for Restraint, With-holding, or Keeping back. And *sine ullo retenemento* was a usual Expression in old Deeds and Conveyances of Lands. *Cowel.*

Retinentia, A Retinue, or Persons retain'd to a Prince or Nobleman. *Pat. 14. R. 2.*

Retractus Aquæ, The Ebb or Return of a Tide. *Plac. 30. Edw. 1.*

Retraxit, Is when the Plaintiff cometh in Person in Court where his Action is brought, and saith he will not proceed in it; and this is a Bar to that Action for ever: It is so called, because it is the emphatical Word in the Entry, and is entred thus, *ff. Et prad. Quer. in propria Persona sua venit & dicit quod ipse placitum suum prad. versus prad. Defenden. ulterius Prosequi non vult; sed abinde omnino se Retraxit, &c.* A *Retraxit* must be always in Person; and if it is by Attorney, 'tis Error. 8 Rep. 58. 3 Salk. 245. As to a *Retraxit*, it is a Bar to any Action of equal Nature brought for the same Cause or Duty; but a *Nonfuit* is not. 1 Inst. 208. If the Plaintiff says he will not appear, this is not a *Retraxit*, but *Nonfuit*: But if the Plaintiff says he will not sue, it is a *Retraxit*. 2 Danv. Abr. 471. And *Retraxit* is always on the Part of the Plaintiff or Demandant; and it cannot be before a Declaration, for before the Declaration it is only a *Nonfuit*. 3 Leon 47. 2 Lill. Abr. 476. If the Plaintiff enter a *Retraxit* against one Joint Trespasser, it is a Release to the other. *Cro. Eliz. 762.* But if a *Retraxit* be entred as to one Apellee in Appeal of Murder, the Suit may be continued against the Rest; because the Appellant is to have a several Execution against every one of them. *H. P. C. 190.* In a Prohibition by three, a *Retraxit* of one shall not bar the other two Plaintiffs. *Moor 460. Nelf. Abr. 165.* See *Nolle Prosequi*.

Retropannagium, Is *After-Pannage*, when the best is eaten, and only Haws and such like are left. *Pet. in Parl. temp. Edw. 3.*

Return, (*Returna*, or *Retorna*, from the Fr. *Retour*, i. e. *Reditio, recursus*) Hath divers Applications in our Law, but is most commonly used for the Return of Writs, which is the Certificate of the Sheriff made to the Court of what he hath done touching the Execution of any Writ directed to him; and where a Writ is executed, or the Defendant cannot be found, &c. then this Matter is endorsed on the back of the Writ by the Officer, and delivered into the Court whence the Writ issued at the Day of the Return thereof in order to be filed. *Stat. West. 2. cap. 39. 2 Lill. Abr. 476.* The Name of the Sheriff must always be to the Return of Writs; otherwise it doth not appear how they came into Court: If a Writ be returned by a Person to whom it is not directed, the Return is not good, it being the same as if there were no Return at all upon it. And after a Return is filed, it cannot be amended; but before it may. *Cro. Eliz. 310. 2 Lill. Abr. 477, 478.* If the Sheriff doth not make Return of a Writ, the Court will amerce him; or if he make an insufficient Return; and if he make a false Return, the Party grieved may have his Action against him. *Wood's Inst. 71.* Sheriffs are to accept of Returns of Bailiffs of Liberties, where they are sufficient. 1 Danv. 191. There is a Return of Fines by Sheriffs; and Returns of Commissions, by Commissioners, &c.

Return-Days, Are Days in Term called by that Name; or Days in Bank. See *Term*.

Returnum Habendo, Is a Writ that lies where Cattle are distrained and replevied, and the Person that took the Distress justifies the Taking, and proves it to be lawful, upon which the Cattle are to be return'd to him. This Writ also lieth when the Plaint in Replevin is removed

by *Recordare* into the King's Bench or Common Pleas, and he whose Cattle are distrained makes Default, and doth not prosecute his Suit. *F. N. B. 74.*

Returnum Aberiozum, A judicial Writ, the same with *Retorno Habendo*. *Reg. Judic. 4.*

Returnum irrepletiabile, Is a Writ Judicial directed to the Sheriff for the final Restitution or Return of Cattle to the Owner when unjustly taken or distrained by another, and so found by Verdict; and it is granted after a *Nonfuit* in a second Deliverance. *Reg. Judic. 27.*

Reve, Is the Bailiff of a Franchise or Manor, especially in the West of England. Hence *Shire-reve*, *Church-reve*, &c. *Kitch. 43. Vide Greve.*

Reveland. The Land which in *Domesday* is said to have been *Thaneland*, and after converted into *Reveland*, seems to have been such Lands as being reverted to the King after the Death of his Thane, who had it for Life, was not since granted out to any by the King, but rested in Charge upon the Account of the Reve or Bailiff of the Manor. *Spelm. Feuds. cap. 24.*

Revelles, Signifying with us Sports of Dancing, and Masking, &c. commonly perform'd by Night. See *Master of the Revels*.

Revenue, (Fr.) Is properly the Yearly Rent and Profits that accrue to any Man from his Lands and Possessions; and is generally used for the Revenues or Profits of the Crown.

Reversal, Of a Judgment is the making it void for Error; and when upon the Return of a Writ of Error, it appears that the Judgment is erroneous, then the Court will give Judgment, *Quod judicium revocetur, adnulletur & penitus pro nullo habeatur.* 2 Lill. Abr. 481. The ancientest Judge of the Court, and in his Absence the next in Seniority to him, doth always pronounce the Reversal of an erroneous Judgment openly in Court, upon the Prayer of the Party; and he pronounceth it in French, to this Effect, *Pur les Errors evandit, & auter errors manifest in le Record, soit le Judgment Reverse, &c.* *Trin. 22 Car. B. R.* A Reversal of a Judgment may be pronounced conditionally, i. e. That the Judgment is reversed if the Defendant in the Writ of Error doth not shew good Cause to the contrary at an appointed Time; and this is called a *Revocetur nisi*; and if no Cause be then shewn, it stands reversed without further Motion. 2 Lill. 482. The Stat. 21 Jac. 1. cap. 16. hath provided a new Writ, where Judgment is reversed after a Verdict, or where an Outlawry is reversed, &c. *Lutw. 264. Vide Error.*

Reversion, (*Reversio* from *Revertor*) Signifies a Returning again; and therefore *Reversio terre est tanquam terra revertens in Possessione donatori sive heredibus suis post donum finitum.* 1 Inst. 142. A Reversion hath a double Acceptation in Law; the one is an Estate left, which continues during some particular Estate is in Being; and the other is the Returning of the Land after the particular Estate is ended: It is said to be an Interest in the Land, when the Possession shall fall, and so it is commonly taken; or it is when the Possession and Estate which was parted with for a Time, ceaseth and is determined in the Persons of the Alienees or Grantees, &c. and returns to the Grantor or Donor, or their Heirs from whence derived. *Plowd. 160. 1 Inst. 142.* But the usual Definition of a Reversion is, that it is the Residue of an Estate left in the Grantor after a particular Estate granted away, continuing in him that granted the particular Estate; and where

where the particular Estate is derived out of his Estate: As in a Gift in Tail, the *Reversion* of the Fee-simple is in the Donor; and in a Lease for Life, or Years, the *Reversion* is in the Lessor: Also a *Reversion* takes Place after a Remainder, where a Person makes a Disposition of a less Estate, than that whereof he was seised at the Time of making thereof. 1 *Inst.* 22, 142. *Wood's Inst.* 151. When the particular Estate determines, then the *Reversion* comes into Possession, and before it is separated from it; for he that hath the Possession, cannot have the *Reversion*, because by uniting them, the one is drown'd in the other. 2 *Lill. Abr.* 484. The *Reversion* of Land when it falls, is the Land it self; and the Possession of the Tenant, preserves the *Reversion* of the Lands, with the Rents, &c. in the Donor, or Lessor. 1 *Inst.* 324. A *Reversion* of an Estate of Inheritance, may be granted by Bargain and Sale inrolled, Lease and Release, Fine, &c. And by the Grant of Lands, a *Reversion* will pass; though by the Grant of a *Reversion*, Land in Possession will not pass. *Bridgm. Conveyan.* 237. 6 *Rep.* 36. 5 *Rep.* 124. 10 *Rep.* 107. If one have a *Reversion* in Fee, expectant upon a Lease for Years, he may make a Bargain and Sale of his *Reversion* for one Year, and then make a Release to the Bargainee in Fee; by which the *Reversion* in Fee will pass to the Bargainee. 2 *Lill. Abr.* 483. And a *Reversioner* may covenant to stand seised of a *Reversion* to Uses, &c. 11 *Rep.* 46. Likewise a *Reversion* may be devised by Will; and a Testator being seised in Fee of Lands which he had in Possession, and of other Lands in *Reversion*, devised all his Lands for the Payment of his Debts; adjudged, that by the Words all his Lands, the *Reversion* as well as the Possession passed. 2 *And.* 59. *Cro. Eliz.* 159. A Person devised a Manor to A. B. for six Years, and some other Lands to C. D. and his Heirs; and all the Rest of his Lands to his Brother, and the Heirs Male of his Body; and it was held, that these Words, *the Rest of the Lands*, did not only extend to the Lands which were not devised before, but to the *Reversion* in Fee of the Manor, after the Determination of the Estate for Years. *Allen* 28. And by Devise of all Lands, Tenements and Hereditaments, undispos'd of before in a Will, a *Reversion* in Fee will pass. 2 *Ventr.* 285. 3 *Nelf. Abr.* 166. There was Lessee for Years, Remainder for Life, *Reversion* in Fee; the Tenant for Life died, and the Lessee for Years did not attorn to him in the *Reversion*; yet it was resolv'd, That it passed without Attornment, and that he might bring an Action of Debt, or avow. *Hetl.* 73. *Reversions* expectant upon an Estate-tail, are not Assets, or of any Account in Law, because they may be cut off by Fine and Recovery; but it is otherwise of a *Reversion* on an Estate for Life, or Years. 1 *Inst.* 173. 6 *Rep.* 38. *Wood's Inst.* 151. No Lease, Rent-charge, or Estate, &c. made by Tenant in Tail in Remainder, shall charge the Possession of the *Reversioner*. 2 *Lill.* 448. There were no *Reversions* or Remainders upon Estates in Tail, at Common Law: And by the Common Law, no Grantee of a *Reversion* could take Advantage of any Condition or Covenant broken by the Lessees of the same Land; but by Statute, Grantees of *Reversions* may take Advantage of Conditions and Covenants against Lessees of the same Lands, as fully as the Lessors and their Heirs; and Lessees may have the like Remedies against

the Grantees of *Reversions*, &c. 1 *Inst.* 327. 32 *Hen.* 8. *can.* 34. A *Reversioner* may bring Action of the Case for spoiling of Trees; for any Injury to his *Reversion*, he may have this Action; but he cannot have Trespass, which is founded on the Possession. 3 *Lev.* 209, 233. 3 *Cro.* 55. He in *Reversion* shall have a Writ of Entry *ad Communem Legem*, where Tenant for Life, &c. aliens the Lands: And Writ of Intrusion, after their Deaths, &c. *New Nat. Br.* 461. How to plead a *Reversion* in Fee. 1 *Lutw.* 1174. The Difference between a *Reversion* and a *Remainder*, is that a *Remainder* is general, and may be to any Man, but he that granteth the Land, for Term of Life or otherwise; and a *Reversion* is to himself from whom the Conveyance of the Land proceeded, and is commonly perpetual, &c. See *Remainder. Reversions in Offices*, vide *Office*.

Reuina ter. æ, A Ridge or Furrow of arable Land ploughed in a strait Line. *Mon. Ang. Tom.* 1. pag. 515.

Reuena, (Fr. *Reuene*) A Bill of Review in Chancery, is where the Cause hath been heard, and the Decree therein is signed; but some Error in Law appears in the Body of the Decree, or new Matter is discovered in Time after the Decree made: Which Bill must be exhibited by Leave of the Court, and is usually done on Oath made of the Discovery of new Matter, which could not be had or used at the Time of the Decree passed; and the Sum of 20 *l.* must be deposited in Court on bringing this Bill, as a Security for Costs and Delay, if the Matter be found against the Party, &c. *Ord. in Canc.* 69. *Pract. Soli.* 121, 122. Where a Decree of Chancery is repugnant, or one Part of it contradicts another, &c. it may be reversed by Bill of Review. *Ibid.*

Review of Appeal of Delegates, Is a Commission granted by the King, to certain Commissioners, &c. See *Appeal to Rome*.

Revivor, or *Bill of Revivor*, Is when a Bill hath been exhibited in the Chancery, against one who answers, and before the Cause is heard; or if heard, and the Decree is not inrolled, either Party dies: In this Case, a Bill of *Revivor* must be brought, praying the former Proceedings may stand revived, and be put into the same Condition as at the Time of the Abatement. If a Party dieth, a Female Plaintiff marries, or there have been no Proceedings on a Decree, &c. for a Year past, the Decree and Proceedings must be revived by *Subpoena Sci. fac.* or if the Decree be inrolled, by Bill of *Revivor*: But if the Parties are not Heirs, or Executors, &c. to the Party dead, the Decree or Cause is to be revived by original Bill, and not by *Subpoen. Sci. fac.* or Bill of *Revivor*; and a Bill of *Revivor* lies not upon a Decree of long Standing, but an original Bill is to be preferred. *Practif. Soli.* 122.

Rebiving, Is a Word metaphorically applied to Actions, Rents, &c. and signifies a Renewing them after they were extinguished. *Broke* 223.

Revocation, (*Revocatio*) Is the Calling back of a Thing granted; or a destroying and making void of some Deed, which had Existence until the Act of *Revocation* that made it void. 2 *Lill. Abr.* 485. In voluntary Deeds and Conveyances, there are frequently *Proviso's* containing Power of *Revocation*, which being coupled with an Use, and tending to pass by raising of Uses, according to the Stat. *Hen.* 8. are allowed to be good, and not repugnant; as where one seised of an

to break the Peace, they may as properly be said to be assembled together for that Purpose, from the Time of such Confederacy, as if their first coming together had been upon such a Design. 1 Hawk. P. C. 156. 6 Mod. 43. And it is agreed, That if an Assembly of Persons met together on any lawful Occasion, shall on a sudden Proposal go in a Body to pull down a House, or Inclosure, or to do any Act of Violence to the Disturbance of the publick Peace, and the same be executed accordingly, the Persons concerned cannot but be *Rioters*; their Associating themselves together for such a new Purpose, being no way extenuated by their having met at first upon another: And if any Person seeing others actually engaged in a *Riot*, shall join with them, and assist them therein, he is as much a *Rioter* as if he had at first assembled with them for that Intent; nor shall his pretending that he came innocently into the Company avail him; for it is impossible to discover whether every particular Person engaged in a *Riot* was in Truth one of the first Assembly, or had a previous Knowledge of the Design of the Tumult. 1 Hawk. *Ibid.* On an Indictment for a *Riot*, it hath been adjudged, that where three or more are assembled lawfully, without any ill Intent, and an Affray happens amongst them, none are guilty but those who are actually concern'd in it; but if they were unlawfully assembled, then the Act of one may be imputed to all: That if they are lawfully assembled, and afterwards quarrelling, one of the Company is beaten by the rest, it is no *Riot*; though if they beat a Stranger, in that very Moment the Quarrel began, they are an unlawful Assembly; and if such Stranger is beaten by one of the Company, the Concurrence of the rest is Evidence of their evil Intention, and 'tis a *Riot* in all of them. 2 Salk. 595. Any Person may assemble a Number of Men to defend his House against Injury or Violence; and yet if a Man be threaten'd, that if he come to such a Place, he shall be beaten, and he thereupon assembles a Company to go thither with him, though it be for the Safety of his Person, this may be deem'd a *Riot*, because of the Danger the Government may be in from such Assemblies; and for that the Law gives him another Remedy, *viz.* by demanding Surety for the Peace. *Broke* 1. But every Man in a peaceable Manner, may assemble a Company to do any lawful Thing, or to remove any Nuisance; and may for that Purpose enter another Man's Ground: And where a Man hath erected a Wear over a common River, and several People assembled with Spades, and other Things necessary to remove the said Wear, and made a Trench in his Land that did erect the Wear, to turn the Water so as they might the better take the said Wear, and did remove the same Nuisance; this was held neither any forcible Entry nor *Riot*. *Bro.* 14, 33. Though if in removing such Nuisance, the Persons assembling use any threatening Words, as that they will do it, if they die for it, or the like; or their Behaviour be in apparent Disturbance of the Peace, then it will amount to a *Riot*; for the Manner of doing a lawful Thing may make it unlawful. *Ibid.* If one assembles a proper Company to carry away a Piece of Timber, to which he pretends a Right, if the Number be no more than necessary to carry it away, although another Man may have a better Right to the Timber, and

this is an unlawful Act, it is no *Riot*, except there be a Disturbance of the Peace; so that the Doing of an unlawful Act by an Assembly of People, may be so managed as not to be a *Riot*. 1 Hawk. 157. And Persons assembled together to do a Thing prohibited by Statute, if they peaceably perform the same, cannot be denominated *Rioters*. 6 Mod. 141. An Indictment against A. B. for that he *cum multis aliis* at such a Place, &c. did commit a *Riot*, is good: And several being indicted for a *Riot*, it was moved, that the Prosecutor might name two or three, and try it against them, and that the Rest might enter into a Rule to plead guilty, if they were found guilty; and a Rule was made accordingly, this being to prevent the Charges in putting them all to plead. *Mod. Caf.* 212. 3 Salk. 317. If two only are found guilty on an Indictment for a *Riot*, and the Rest acquitted, all are acquitted; and if a Battery be likewise laid in the Indictment, if it be not laid as a distinct Offence, the Defendants being discharged of the *Riot*, are also discharged of the Battery. 2 Salk. 593. Upon an Information against several Persons for committing a *Riot*, and setting up a Bank, &c. the Jury found the Defendants guilty as to setting up the Bank, but *quoad* the *Riot* not guilty; and it was held, that by this Verdict the Defendants were acquitted of the Charge in the Information, which was a *Riot*; for an Action on the Case would lie for erecting the Bank. 3 Mod. 72. The Defendants being found guilty on Information for a *Riot*, and hindering the Bailiff and Burgesses of a Borough from choosing a Bailiff; Judgment was arrested, because the Information did not set forth that the Defendants were unlawfully assembled, &c. Besides, it did not mention any Right in the Bailiff and Burgesses to meet together to choose a Bailiff, and they might be assembled to do an unlawful Act themselves; and then it is not unlawful in the Defendants to disturb them. 2 Salk. 594. *Dyer* 68. A Mayor and Aldermen of a Town making a *Riot*, are punishable in their natural Capacities; but where they have countenanced dangerous *Riots* within their Precincts, their Liberties have been seized, or the Corporation fined. 3 Cro. 252. *Dalt.* 204, 326. Women may be punished as *Rioters*; but Infants under the Age of fourteen Years, are not punishable. *Dalt.* 325. *Wood's Inst.* 429. By the Common Law, *Riots* are punished by Fine and Imprisonment; and if enormous, by Pillory: And by Statute, Justices of the Peace have Power to restrain *Rioters*, &c. to arrest and imprison them, and cause them to be duly punished. 34 Ed. 3. c. 1. As soon as the Sheriff and other the King's Ministers hear of a *Riot*, or other Assembly against the Peace, they with the Power of the County shall apprehend such Offenders, and put them in Prison until delivered by Law. 27 R. 2. cap. 8. And two or more Justices of the Peace, dwelling near the Place where such Offences shall be committed, together with the Sheriff or Under-Sheriff of the County, shall by the Power of the County, if need be, suppress *Riots*, Routs, &c. arrest the Offenders, and record what shall be done in their Presence; by which Record the Offenders shall stand convicted, as by Stat. 15 R. 2. in case of Forcible Entries; and if the Offenders are departed, the said Justices, &c. shall within a Month after make Enquiry thereof, and hear and determine the same; and if the Truth cannot be found, then

then within a further Month the Justices and Sheriff are to certify to the King and Council, &c. on Default whereof, the Justices, &c. shall forfeit 100*l.* 13 *Hen. 4. cap. 7.* These Statutes are understood of great and notorious Riots: And the Record of the Riot within the View of the Justices, by whom it is recorded, is such a Conviction as cannot be traversed, the Parties being concluded thereby; but they may take Advantage of the Insufficiency of the Record, if the Justices have not pursued the Statute, &c. It is said that the Offenders being convicted upon the Record of their Offence, in the Presence of the Justices, ought to be sent immediately to Gaol, till they pay a Fine assessed by the same Justices; which Fine is to be estreated into the Exchequer; or the Justices may record such Riot, and commit the Offenders, and after certify the Record into B. R. or to the Assises, or Sessions: If the Offenders are gone, then the Justices shall inquire by a Jury; and the Riot being found, they are to make a Record of it, and fine them, or receive their Traverse, to be sent by the Justices to the next Quarter-Sessions, or into the King's Bench, to be tried according to Law. *Dalt. 200, 201, 202.* It hath been adjudged, that where Rioters are convicted upon the View of two Justices, the Sheriff must be a Party to the Inquisition on the Stat. 13 *Hen. 4.* But if they disperse themselves before Conviction, the Sheriff need not be a Party, for in such Case the two Justices may make the Inquisition without him; and this is *pro Domino Rege*: And if the Justices neglect to make an Inquisition within a Month after the Riot, they are liable to the Penalty for not doing it within that Time; but the Lapse of the Month doth not determine their Authority to make an Inquisition afterwards. 2 *Salk. 592.* Rioters convicted on View of two Justices, and of the Sheriff of the County, are to be fined by the two Justices and the Sheriff; and if the Sheriff do not join in setting the Fine, it is Error; for the Statute requires that he should be joined with the Justices in the whole Proceedings. *Raym. 386. 13 Hen. 4. cap. 7.* By the 2 *Hen. 5. cap. 8.* If the Justices make Default in Enquiring of a Riot; at the Instance of the Party grieved, the King's Commission shall be issued to inquire by sufficient and indifferent Men of the County, at the Discretion of the Chancellor; and the Coroners shall make the Panel of Inquest upon the said Commission, which is returnable, into the Chancery, &c. and by this Statute, heinous Rioters are to suffer one Year's Imprisonment. The Lord Chancellor having Knowledge of any Riot, may send the King's Writ to the Justices of Peace, and to the Sheriff of the County, &c. requiring them to put the Statute in Execution; and the Chancellor upon Complaint made, that a dangerous Rioter is fled into Places unknown, and on Suggeſtion under the Seals of two Justices of Peace and the Sheriff, that the common Fame runneth in the County of the Riot, may award a *Capias* against the Party, returnable in Chancery upon a certain Day, and afterwards a Writ of Proclamation returnable in the King's Bench, &c. 2 *H. 5. cap. 9. 8 Hen. 6. cap. 14.* If one Justice of Peace hath Notice of a Riot, he must endeavour to remove it, and may bind the Rioters to the good Behaviour; and if they have no Sureties, or refuse to be bound, he may commit them to Prison. 13 *Hen. 4. Mod. Inst. 368.* Where Riots

are committed, the Sheriff upon a Precept directed to him, shall return twenty-four Persons dwelling within the County to inquire thereof &c. 19 *Hen. 7. cap. 13.* The Stat. 1 *Geo.* enacts, That if any Persons to the Number of Twelve or more, unlawfully and riotously assembled against the Peace, being required by a Justice of Peace, Sheriff, or Under-Sheriff, Mayor, or other head Officer of any Town, &c. by Proclamation in the King's Name, to disperse themselves, shall continue together an Hour afterwards, they shall be guilty of Felony without Benefit of Clergy; and Persons thus assembled and continuing, are to be apprehended and carried before a Justice of Peace, &c. And if in Resistance, the Rioters are killed, the Persons concern'd in it shall be indemnified: Persons by Force hindering the Proclamation, it shall be adjudged Felony; and the Offenders nevertheless guilty, if they do not disperse, &c. Rioters demolishing any Church, Chapel, or Dwelling-house, are guilty of Felony; and Inhabitants of Towns and Hundreds are to yield Damages for Rebuilding or Reparation, to be levied and paid in such Manner as Money recovered against the Hundred, by Persons robbed on the Highway, &c. 1 *Geo. cap. 5.* Prosecutions on this Act are to be commenced within one Year after the Offence: And this is the severest Statute that hath been made against Rioters; but it being wholly in the Affirmative, it doth not take away any Authority in the suppressing a Riot by Common Law, or by other Statutes. *Wood's Inst. 430.* See *Rebellious Assembly.*

A Record of a Riot on View.

Memorand. quod die, &c. Nos A. B. & C. D. Ar. duo Justiciar. Dom. Regis ad pacem in Com. prad. conservand. assign. & E. F. Ar. ad tunc Vicecomes ejusdem Com. ad gravem Querel. & humilem Supplication. L. B. de, &c. in Com. prad. in propriis Personis nostris accessimus ad Domum Mansional. prefat. L. B. in Paroch. de, &c. in Com. prad. & ad tunc & ibidem vidimus G. H. de, &c. prad. & J. K. & L. M. de, &c. in Com. prad. ac alios Malefactores & pacis dist. Dom. Regis. perturbatores nobis ignotos, ad numerum quinque Person. Gladiis Baculis, &c. & falcibus armatos & illicite & riote ad eandem Domum aggregatos multa mala in ipsum L. B. comminantes in Magnam Pacis dist. Dom. Regis perturbation. ac Populi sui terrorem ac contra formam statut. &c. Ac propterea nos prefat. A. B. & C. D. ad tunc & ibid. prad. G. H. J. K. & L. M. arrestari, & proximæ Gaole dist. Dom. Reg. in Com. prad. duci fecimus per visum nostrum & Recordum convictos de illicita congregatione tumultu & Riota prad. ibid. moraturos quousque finem dist. Dom. Reg. proinde fecerint. In cujus rei Testimonium huic presenti Recordo nostro sigilla nostra apposuimus, dat. apud, &c. prad. die, &c. Anno supradict.

Form of an Inquisition of a Riot.

South'ton ff. **I**nquisition pro Domino Rege capt. apud, &c. in Com. prad. die & anno, &c. per Sacramentum A. B. C. D. E. F. G. H. &c. (the Jury) probor. & legal. Hominum de Com. prad. coram T. D. & J. B. Ar. duobus Justic. dist. Dom. Regis ad pacem in Com. prad. conservand. &c. Qui quidem Juratores super Sacrament. suum prad. dicunt quod J. K. de, &c. & L. M. N. O. &c. & alii Malefactores & Pacis Dom. Regis perturbatores juratoribus prad.

pred. ignoti die, &c. ult. elaps. Vi & armis, viz. Baculis Gladiis, &c. & aliis armis invasivis in messuagium T. W. in Paroch. de, &c. pred. inter horas, &c. ejusdem diei illicite & riotose intraver. & ipsum T. W. insult. fecerunt verberaverunt & vulneraverunt in magnam pacis dict. Dom. Reg. perturbationem & populi sui terrorem, ac contra formam Statut. in hujusmodi casu edit' & provis.

An Indictment for a Riot.

JUR. &c. quod J. K. nuper de, &c. in Com. pred. L. M. nuper de, &c. N. O. nuper de, &c. die & anno, &c. Vi & Armis, &c. riotose & illicite seipsos ad perturband. pacem dict. Dom. Reg. nunc apud, &c. pred. in Com. pred. assemblerunt & congregaverunt & sic assemblat. & congregat. existen. adtunc & ibid. in & super quendam L. B. in pace Dei & dict. Dom. Regis adtunc similiter existen. insultum fecer. & ipsum L. B. adtunc & ibidem verberaverunt vulneraverunt & maletraxerunt & alia enormia ei intulerunt ad grave damnum ipsius L. B. ac contra Pacem dict. Dom. Regis coron. & Dignitat. suas necnon contra formam Statuti, &c.

Riparia, (From *Ripa*) A Bank or River; the Water running between the Banks. *Magn. Chart. cap. 5. Westm. 2. c. 47. 2 Inst. 478.*

Ripiers, (*Riparii*, à *Fiscella*, qua in devehendis piscibus utuntur, Anglice a *Rip*) Are those that bring Fish from the Sea-Coast to the inner Parts of the Lands. *Camd. Brit. 234.*

Rippers, Are *Reapers* or Cutters down of Corn; and *Rip-towel* was a Gratuity or Reward given to customary Tenants when they had reaped the Lord's Corn. *Corvel.*

Ribagium, *Rivage*, or *Riverage*; a Duty paid to the King in some Rivers for the Passage of Boats or Vessels.—*Quieti sint ab omni Lastagio, Tallagio, Passagio, Rivagio, &c. Placit. temp. Ed. 1.*

Ribeare, To have the Liberty of a River for fishing or fowling. *Pat. 2 Ed. 1.*

Rivers. By the Statute of *Westm. 2. cap. 47.* The King may grant Commissions to Persons to take Care of Rivers, and the Fishery therein: And the Lord Mayor of London is to have the Conservation in Breaches and Ground overflown as far as the Water ebbs and flows in the River *Thames*. *4 Hen. 7. cap. 15.* Persons annoying the River *Thames*, making Shelves there, casting Dung therein, or taking away Stakes, Boards, Timber-Work, &c. of the Banks, incur a Forfeiture of 5*l.* *Stat. 27 Hen. 8. cap. 18. See Nuisance.*

Rivers made navigable. The River *Wye* is declared a free and common River, for the Carrying of Goods and Passengers, with Power to Trustees to make it navigable, &c. *7 & 8 W. 3. cap. 14.* Duties and Impositions are granted to recover and preserve the Navigation of the River *Dee*, by *11 & 12 W. 3.* And the River *Darwent* is made navigable by *Stat. 1 Ann.* So of many other Rivers.

Roba, A Robe, Coat or Garment; and those who *Robas accipiebant* of another, are accounted of his Family. *Walsingh. 267.*

Robbery, (*Robberia*, or *Robaria*, derived de *la Robe*, i. e. *Vestis*) Is a felonious and violent Assault upon the Person of another, by putting him in Fear, and taking from him his Money or Goods, on the Highway: And it is said to be so called, because a Man was thereby sometimes

bereaved of his Robes or Garments; and for that his Money or other Goods being taken from his Person, viz. from or out of some Part of his Garment or Robe. *3 Inst. 68.* Though Robbery in a large Sense, is any wrongful Taking away of Goods. *2 Inst. 236.* Robbery on the Highway is Felony of Death, though the Sum taken is under Twelve-pence, or be but one Penny; for it may be of any Value; whereas in other Thefts Judgment of Death is only where the Thing stolen is above the Value of 12*d.* *H. P. C. 73, 74.* But there must be something taken; and if any Thing be taken from the Person of another, on the Highway, without putting in Fear, it is not Robbery, but Felony allow'd Clergy; the putting in Fear distinguishing the Robber from other stealing from the Person. *3 Inst. 68. H. P. C. 71. Dalt. 364.* And if there be only an Attempt to rob, without any Taking, it is not Felony, but a Misdemeanor punishable by Fine and Imprisonment, &c. *Wood's Inst. 369.* There is a Taking in Deed, and a Taking in Law, in Robberies; as when a Thief only receives Money or Goods of a Traveller, or if he compels him for Fear of Death to swear that he will fetch him a Sum of Money, and he delivers it; this is a Taking in Law, and adjudged a Robbery. *3 Inst.* The Robber must be in Possession of the Thing stolen: For Example; If the Bag or Purse of a Man be fastened to his Girdle, and the Thief the more easily to take it do cut the Girdle, whereby it falls to the Ground, it is no Taking by reason the Robber never had any Possession thereof: But if the Thief take up the Bag or Purse, and in Striving let it fall, tho' he never take it up again; or if finding little in the Purse, he delivers it with all the Money to the Party again; these are a felonious Taking, because he had it in his Possession; and the Continuance of his Possession is not required by Law. *3 Inst. 69.* And where a Man throws his Purse into a Bush, to conceal it from the Robber, who perceiving it, takes it up, this is deem'd in Law a Taking from the Person; so if a Man had thrown off his Coat, and whilst it lies in his Presence, a Thief assaults him and takes his Coat, it is a Robbery; and if one endeavouring to make his Escape from a Robber, drops his Hat, and the Thief takes it up, it is a Taking from the Person. *Ibid.* The Taking away a Horse which a Man is actually riding, is not only Robbery; but if the Horse is standing by him, and be taken away, it is the same; and a Claim of Property, without Colour for it, will not avail: But if any Man leaves his Horse tied, and steps aside; or if a Carrier follows his Horses at a Distance, and they are taken by a Thief, such Taking is not a Taking from the Person, to make it Robbery. *Dalt. 364. Pult. 128.* If a Person having assaulted me, drives my Cattle in my Presence out of my Pasture; or rob my Servant of my Money before my Face, he may be indicted as having taken such Things from my Person. *S. P. C. 27. Stile 156.* And some have gone so far as to hold, That if a Man meeting another going with his Goods to Market in order to sell them, compel him to sell them against his Will, he is guilty of Robbery. *Crompt. 34. 1 Hawk. P. C. 97.* If a Thief bids the Party deliver his Money, &c. either with or without a Weapon drawn, and he gives it him; or a Person with Sword or Pistol in his Hand, demands my Money, and afterwards prays Alms, and

and I give it accordingly ; it is a *Robbery* : For when ever any Person assaults another with Circumstances of Terror that cause him by Reason thereof to part with his Money, the Taking thereof is adjudged *Robbery* ; whether there were any Weapon drawn or nor, or the Person assaulted delivered his Money upon the other's Command, or after gave it him upon his Ceasing to use Force, and begging Alms, &c. 3 *Inst.* 60. *H. P. C.* 71, 72. 1 *Hawk.* 96. And if I am robbed by several in a Gang, and one of them only takes my Money, in this Case in Judgment of Law, every one of the Company shall be said to take it, in respect of that Encouragement which they give to one another through the Hopes of mutual Assistance ; and though they miss of their first intended Prize, and one of them afterwards rides from the rest, and robs another Person in the same Highway without their Knowledge or Consent, out of their View, and returns to them, all are guilty of *Robbery*, as they came together with an Intent to rob, and to assist one another in so doing. *Cromp.* 34. 1 *And.* 116. *H. P. C.* 72. The Words in an Indictment for a *Robbery*, are, *a Persona A.B. violenter & felonice Cepit & asportavit in magnum Terrorem, &c.* And the *Robbery* must be laid in the Indictment to be done *in Alta via Regia* : If it be alledged to be done *in quadam via Regia pedestri ducent. de London ad Islington, &c.* the Offender will not be ousted of his Clergy, because the Words of the Statute to this Purpose are, in or about or near the Highway. 1 *Hawk.* *P. C.* 97. 2 *Hawk.* 342. *Moor* 5. Streets in Cities are Highways, as to *Robberies*, &c. by a late Statute. 6 *Geo.*

Where *Robberies* are committed on the Highway in the Day-time of any Day, except *Sunday*, the Hundred is chargeable : If the *Robbers* are not taken in 40 Days, &c. the Hundred shall answer it, and *Hue and Cry* is to be made after the *Robbers* ; also if the *Robbers* are taken, and prosecuted by the Party robbed, he shall have *Restitution* of his Goods, &c. *Stat.* 27 *Eliz.* 21 *Hen.* 8. And he who apprehends and prosecutes a *Robber* on the Highway to Conviction, shall receive of the Sheriff of the County, where the *Robbery* was done 40 l. (producing the Certificate of the Judge before whom the Person was convicted) with his Horse, Furniture, Arms, &c. And if any Person out of Prison, having committed any *Robbery*, discovers two or more *Robbers*, so as they are convicted, he shall be intitled to a Pardon. 4 *W. & M.* cap. 8. How to sue the Hundred for Money lost on *Robberies*, see *Hue and Cry* and *Hundred*.

Robbers, (*Robatores*) Are interpreted to be mighty Thieves by *Lambard* in his *Eiren. lib.* 2. cap. 6. — *Latrones validi, qui in Personas hominum inflicientes bona sua diripiunt.* *Spelm.*

Robbersmen or *Robberdsimen*, Were a Sort of great Thieves, mention'd in the Statutes 5 *Ed.* 3. c. 14. and 7 *R.* 2. c. 5. of whom *Sir Edw. Coke* says, That *Robin Hood* lived in the Reign of King *Rich.* 1. on the Borders of *England* and *Scotland* by *Robbery*, Burning of Houses, Rapine and Spoil, &c. and that these *Robberdsimen* took Name from him. 3 *Inst.* 197.

Rochet, Is a Linen Garment worn by Bishops, gathered at the Wrists ; it differs from a *Surplice*, which hath open Sleeves hanging down, but a *Rochet* hath close Sleeves. *Lyndw. lib.* 3.

Rod, (*Roda terre*) Is a Measure of sixteen Foot and a Half long, otherwife called a *Peril*.

Rad-Knights, (From the Sax. *Rad*, i. e. *Equitatio & Cnyt*, *Famulus*, *quasi Ministri Equitantes*) Certain Servitors, who held their Land by serving their Lords on Horseback. *Bract. lib.* 2. cap. 35.

Rogation-Week, (*Dies Rogationum*, *Robigalia*) Is a Time so called, because of special Devotion of Prayer and Fasting then enjoined by the Church, for a Preparative to the joyful Remembrance of *Christ's Ascension*. *Cowel.* — *Robigalia, dies festus septimo Calend. Maias celebrari solitus, &c. ut Robiginem à segetibus averteret : Rogation, or Gang-Week.* *Litt. Dig.*

Rogur, (*Fr.*) Signifies an idle sturdy Beggar ; who by ancient Statutes, for the first Offence was called a *Rogue of the first Degree*, and punished by Whipping, and boring through the Gristle of the right Ear with a hot Iron ; and for the second Offence, he was term'd a *Rogue of the second Degree*, and executed as a Felon, if he were above eighteen Years old. 27 *Hen.* 8. cap. 25. 14 *Eliz.* cap. 5, &c. And by a late Statute, if Justices of Peace in their Sessions adjudge a Person a dangerous and incorrigible *Rogue*, they shall cause him to be whipped three Market-Days successively, and to be kept at hard Labour in the House of Correction, &c. and if he escape from thence, it is Felony. 12 *Ann.* cap. 23. See *Vagrants*.

Rogus, (*Lat.*) A great Fire, wherein dead Bodies were burn'd ; and sometimes it is taken for a Pile of Wood. *Claus.* 5. *Hen.* 3.

Roll, (*Rotulus*) Is a Schedule of Parchment that may be turn'd up with the Hand in the Form of a Pipe. *Stamdf. P. C.* 11. *Rolls* are Parchments on which all the Pleadings, Memorials, and Acts of Courts are entred and filed with the proper Officer ; and then they become Records of the Court. 2 *Lill. Abr.* 491. And by a Rule made by the Court of *King's Bench*, every Attorney is to bring in his *Rolls* into the Office fairly ingrossed in a full Court Hand by the Times thereby limited, viz. The *Rolls of Trinity, Michaelmas, and Hillary Terms*, before the *Effoin-Day* of every subsequent Term ; and the *Rolls of Easter Term* before the first Day of *Trinity Term* ; and no Attorney at large, or any other Person, shall file any *Rolls*, &c. but the Clerks of the chief Clerks of this Court. *Ord. B. R. Mich.* 1705. If *Rolls* are not brought into the Office in Time, it has been ordered that they shall not be received without a particular Rule of Court for that Purpose. *Mich.* 9 *W.* 3. There is an Office called the *Roll's Office* in *Chancery-Lane*, containing all the *Rolls* and Records of the *High Court of Chancery*, &c.

Rolls of the Exchequer, Are of several Kinds ; as the great *Wardrobe Roll*, the *Cofferer's Roll*, the *Subsidy Roll*, &c.

Rolls of Parliament, The manuscript Registers of the Proceedings of our old Parliaments ; and our Statutes being anciently ingross'd in Parchment : In these *Rolls* are likewise a great many Decisions of difficult Points in Law ; which were frequently in former Times referred to the Determination of this supreme Court by the Judges of both Benches, &c. *Nichl. Hist. Libr.* 47.

Rolls of the Temple. In the two *Temples* is a *Roll* called the *Calves-head Roll*, wherein every Bench, Barrister, and Student, is taxed yearly at so much to the Cook and other Officers of the Houses, in Consideration of a Dinner of

Calves-heads provided in *Easter Term*. *Orig. Jurisd.* 199.

Roma-peditæ, Pilgrims that travel to *Rome* on Foot. *Mat. Paris. Anno* 1250.

Romeskot, (*Romefeob* vel *Romefee*, *Romepeny*) Is compounded of *Rome* and *Scot*; as if you would say the *Scot* or *Tribute* due to *Rome*: It was one *Peny* from every Family or Household, paid yearly to *Rome*. And *Mat. Westminster* says it was, *Consuetudo Apostolica, à qua neque Rex, neque Archiepiscopus, vel Episcopus, Abbas vel Prior, aut quilibet in Regno immunis erat.* See *Peter-Pence*.

Rome Church of, its Inroad of Power here, and how suppress'd, &c. vide *Pope*.

Rood, or *Holy-Rood*, Signifies the *Holy Cross*.

Rood of Land, (*Rodata Terra*) Is the fourth Part of an Acre. *Stat. 5 Eliz. c. 5.*

Rog, A Kind of *Rushes*, which some Tenants were obliged, by their Tenures, to furnish their Lords withal. *Brady*.

Rosetum, A low watery Place of *Reeds* and *Rushes*; and hence the Covering of Houses with a Thatch made of *Reeds*, was called *Rosetum*. *Cartular. Glafton. M.S. 107.*

Rolland, Heathy Land, or Ground full of *Ling*; also watery and moorish Land, from the *Br. Rhos.* 1 *Inst.* 5.

Rother-Beasts. Under this Name are comprehended *Oxen*, *Cows*, *Steers*, *Heifers*, and such like horned Beasts. 21 *Jac. c. 18.*

Rotulus Wintoniæ, Was an exact Survey of all *England*, per *Comitatus*, *Centurias*, & *Decurias*, made by King *Alfred*, not unlike that of *Domesday*; and it was so called, for that it was of old kept at *Winchester*, among other Records of the Kingdom; but this Roll Time hath consumed. *Ingulph. Hist.* 516.

Rouble, Coin in *Muscovy* going for ten Shillings Sterling. *Merch. Diff.*

Rout, (*Fr. Route*, i. e. a Company or Number) In a legal Sense signifies an Assembly of Persons, going forcibly to commit an unlawful Act, though they do not do it. *West. Symb. par. 2.* A *Rout* is the same which the *Germans* call *Rot*, meaning a Band or great Company of Men gathered together, and going to execute, or indeed executing any *Riot* or unlawful Act: But the *Stat. 18 Ed. 3. cap. 1.* against *Routs* in *Affray* of the People, and the 2 *R. 2. c. 6.* that speaks of riding in great *Routs*, to make Entry into Lands, &c. do seem to understand it more largely; and make it to be where the Persons unlawfully assembled, have moved forward in order to do the unlawful Act, but part without doing it; for whether they put their Purpose in Execution or no, if they go, ride, or move forward, after their Meeting, it is a *Rout*. *Broke 4, 5. Dalt. 321.* However, two Things are common to *Riots*, *Routs*, and unlawful Assemblies; the one, that three Persons at least be gathered together; the other, that they being together to disturb the Peace, either by Words, Shew of Arms, turbulent Gesture, or actual Violence, &c. *Lamb. Eiren. lib. 2. cap. 5.*

Royal Assent, (*Regius assensus*) Is that Assent or Approbation which the King gives to a Thing done by others; as to a Bill pass'd in both Houses of Parliament, to the Election of a Bishop by Dean and Chapter, &c. *Crompt. Jurisd. S. F. N. B. 170.* See *Le Roy le veut*.

Royalties, (*Regalitates*) The several Sorts of, vide *Prerogative* and *Regalia*.

Rubrics, (*à Rubro colore*, because anciently writ in Red Letters) Are Constitutions of our Church, founded upon the Statutes of Uniformity and Publick Prayer, viz. 5 & 6 *Ed. 6. cap. 1.* 1 *Eliz. cap. 2.* 13 & 14 *Car. 2. c. 2.*

Roodmas-Day, (From the Sax. *Rode*, i. e. *Crux*, and *Mas*-day, i. e. *Feast-day*) The Feast of the *Holy Cross*; and there are two of these Feasts, one on the 3d of May the Invention of the Cross; and the other the 14th of September, called *Holy-Rood Day*, and is the Exaltation of the Cross.

Rules of Court: Attornies are bound to observe the Rules of the Court, to avoid Confusion; also the Plaintiff and Defendant in a Cause are at their Peril to take Notice of the Rules made in Court touching the Cause between them. 2 *Lill. Abr.* 492, 493. The Court will not make a Rule for a Thing which may be done by the ordinary Course; and if the Court be inform'd that they have made such a Rule, they will vacate it. *Mich. 22 Car. B. R.* And if a Rule be made by the Court grounded upon an Affidavit, the other Side may move the Court against this Rule, and is to bring into Court a Copy of the Affidavit and Rule thereupon made, that the Affidavit may be read, to put the Court in Mind for what Reasons they made the Rule, and whether there be stronger Reasons for the Vacating of it, than there were for the Making of it, or not. 2 *Lill.* 494. Where a Rule of Court is made, and it is not drawn up and enter'd before the Continuance Day of the same Term, the Clerk of the Rules will not draw it up afterwards until the Court be moved, and shall again order it to be enter'd. *Pasch. 1656.* For Breach and Contempt of a Rule of Court, an Attachment lies; and if a Rule of Court is made betwixt Parties by their Consent, though the Court would not have made such Rule without their Consent, yet if either Party refuse to obey such a Rule made, the Court will upon Motion grant an Attachment against the Party that disobeys the Rule. *Hill. 1655.* But generally an Attachment is not grantable for Disobedience to any Rule, unless the Party hath been served with it personally; nor for disobeying a Rule at *Nisi prius*, till it is made a Rule of Court; or for Disobedience of a Rule made by a Judge at his Chamber, if it be not enter'd. 1 *Salk.* 71, 83. And a Rule not enter'd is of no Force to ground a Motion upon, &c.

Rule of Court may be granted to any Prisoner in the King's Bench or Fleet Prisons, every Day the Courts sit, to go at large, if such Prisoner hath Business in Law of his own to follow. 2 *Lill. Abr.* 493.

Rumney Marsh. King *Hen. 3.* granted a Charter to *Rumney Marsh*, in the County of *Kent*, empowering Twenty-four Men thereunto chosen to make Distresses equally upon all those which have Lands and Tenements in the said Marsh, to repair the Walls and Water-gates of the same, against the Dangers of the Sea: And there are several Laws and Customs observ'd in the said Marsh, established by Ordinances of Justice thereto appointed, in the 42d Year of King *Hen. 3.* the 16 *Edw. 1.* the 33 *Ed. 3.* &c.

Rumours, Spreading such as are false, is criminal and punishable at Common Law. 1 *Hawk. P. C.* 234.

Runcaris, (From *Runca*) Signifies Land full of Brambles and Briars. 1 *Inst.* 5.

Runcinus,

Runcinus, Runcilus, (Ital. *Runzino*) Is used for a Load-Horse, and sometimes a Cart-Horse, in *Domesday*; which *Chaucer* calls a *Rowney*.

Runlet, Is a Measure of Wine, Oil, &c. containing eighteen Gallons and a Half. 1 R. 3. c. 13. And it is said to be an uncertain Quantity of Liquor, from Three to twenty Gallons. *Merch. Dict.*

Rustarii, Were Robbers, called also *Rutarii*; and *Rutta* was a Company of Robbers: Hence we derive the Word *Rout*, and *Bankrupt*. *Matt. Paris. Anno 1250.*

Ruptura, Arable Land, or Ground broke up, as used in antient *Charters*.

Rural Deans, Were certain Persons having Ecclesiastical Jurisdiction over other Ministers and Parishes near adjoining, assigned by the Bishop and Archdeacon, being placed and displaced by them; such as the Dean of *Croydon*, &c. *Lyndw. cap. 1.* — *Sunt Decani Temporales ad aliquod Ministerium sub Episcopo vel Archiepiscopo exercendum constituti, qui nec habent Institutionem Canonice secundum Doctores. Spelm.* And these Rural Deans were antiently term'd *Archipresbyteri*, and *Decani Christianitatis*. *Kenner's Paroch. Antiq. See Dean.*

Rusca, A Tub or Barrel of Butter, which in *Ireland* is called a *Ruskin*: *Ruska apum* signifies a Hive of Bees. *Mon. Angl. Tom. 2. pag. 986.*

Russici, The Clowns or inferior Country Tenants, who held Cottages and Lands by the Service of Ploughing and other Labours of Agriculture for the Lord; and the Land thus held was distinguished by the Name of *Terra Russicorum*. *Paroch. Antiq. 136.*

Rye, A Corn or Grain, of which Bread is made in some Parts of *England*.

S.

Sabaia, A Sort of poor Small-Beer. *Litt. Diff.*
Sabbatarius, A *Sabbatarian* or Jew; of or belonging to the *Sabbath*.

Sabbatum, The *Sabbath*, or Day of Rest; the seventh Day from the Creation: It is used for Peace, in the Book of *Domesday*.

Sabellinæ pelles, i. e. *Sable Furs*, mentioned in *Hoved. pag. 758.* — *Statutum fuit in Anglorum gente ne quis Escarleto, Sabelino vario, vel griseo uteretur. Brompt. Anno 1188.*

Sabulonarium, A Gravel-Pit, or Money paid for the Liberty to dig Gravel and Sand. *Per. Parl. temp. Ed. 3.*

Sac, (*Saca vel Sacha*) Is an antient Privilege which a Lord of a Manor claims to have in his Court, of holding Plea in Causes of Trespass arising among his Tenants, and of imposing Fines and Amercements touching the same: But by some Writers it is the Amercement and Forfeiture it self. *Rastal.* In the Laws of King *Edw.* set forth by *Lambard*, *Saca* is said to be the Amerciament paid by him, who denies that which is proved against him to be true; or affirms that which is not true. *Lamb. 244.* And according to *Fleta*, *Sac* significat acquietantiam de secta ad Comitatum & Hundredum. *Flet. lib. cap. 47. Præcip. ut A. B. bene & libere habeat Socam & Sacam. Brev. Hen. 2.*

Saca, In the *Saxon* properly signifies as much as *Causa* in *Lat.* whence we in *English* still retain the Expression, For whose *Sake*, i. e. For whose Cause, &c.

Sacaburh, or *Sacabere*, Is he that is robbed, or by Theft deprived of his Money or Goods, and puts in Surety to prosecute the Felon with fresh Suit. *Briton, cap. 15 & 29.* With whom agrees *Bracton, lib. 3. c. 32.* The Scots term it *Sickerborgh*, that is, *certum vel securum Plegium vel Pignus*; for with them *Siker* significeth *securus*, and *Borgh*, *Plegius*.

Saccini, Monks so called, because they wore next their Skins a Garment of Goats-Hair; and *Saccus* is applied to coarse Cloth made of such Hair. *Walsingh.*

Saccis, *Fratres de Saccis*, the *Sack-cloth* Brethren, or the penitential Order. *Placit. 8 Ed. 2.*

Saccus cum brychia, Is a Service or Tenure of Finding a *Sack* and a *Breach* to the King, for the Use of his Army. *Bract. lib. 2. cap. 16.*

Sack of Wool, A Quantity of 26 Stone of Sheep's Wool; and of Cotton-Wool, from One hundred and a Half to Four hundred. *Stat. 14 Ed. 3. c. 2.*

Sacrament, (*Sacramentum*) Is the most solemn Act of Worship amongst us, being instituted by our Saviour himself; and by the *Rubrick* there must be Three at the least to communicate, and a Minister is not without lawful Cause to deny it to any who shall devoutly and humbly desire it: But notorious Sinners are not to be admitted to it 'till they have repented, nor those who maliciously contend until they are reconciled, &c. also the *Sacrament* is not to be administered to such who refuse to be present at the Prayers of the Church, or to Strangers; for a Minister is not obliged to give it to any but to those of his own Parish; and the Partakers of the Holy *Sacrament* ought to signify their Names to the Curate at least a Day before it is administered. *Can. 26. Count. Parf. Compan. 36, 37, 38.* If a Minister refuse to give the *Sacrament* to any one, being required by the Bishop, he is to certify the Cause of such Refusal; and a Parson refusing to administer the *Sacrament* to any, without just Cause, is liable to be sued in Action of the Case; because a Man may have a Temporal Loss by such Refusal. *Right Clergy 489.* By Statute, no Persons shall be chosen into any Office of Magistracy, or Place of Trust, &c. unless they receive the *Sacrament*, according to the Rites of the Church of *England*, and deliver a Certificate thereof to the Court of King's Bench or Quarter-Sessions, under the Hand of the Minister, and prove it by Witnesses. 13, 14 & 25 *Car. 2.* In every Parish-Church, the *Sacrament* is to be administered three Times in the Year, (whereof the Feast of *Easter* to be one) and every Lay-man is bound to receive it thrice every Year, &c. In Colleges and Halls of the *Universities*, the *Sacraments* are to be administered the first or second Sunday of every Month; and in *Cathedral Churches*, upon all principal Feast-Days. *Canon 21, 22, 23.* The Church-wardens as well as the Minister are to take Notice whether the Parishioners come so often to the *Sacrament* as they ought; and on a Church-warden's Presenting a Man for not receiving the *Sacrament*, he may be libelled in the Ecclesiastical Court and excommunicated, &c. Reviling the *Sacrament* of the Lord's Supper is punishable by Fine and Imprisonment. 1 *Eliz. cap. 1.*

Sacramentum, Is used for an Oath: The common Form of all *Inquisitions* made by a Jury runs thus, *Qui dicunt super Sacramentum suum*, &c. whence possibly the proverbial Offering to take

the *Sacrament* of the Truth of a Thing, was first meant of Attesting upon Oath.

Sacramentum altaris, The Sacrifice of the Mass, or what we now call the *Sacrament* of the Lord's Supper; for which Communion in the Times of Popery, the Parish-Priest provided Bread for the People and Wine for himself, out of the Offerings and Oblations. *Paroch. Antiq.* 488.

Sacrileg (*Sacrilegium*) Is Church Robbery, or a Taking of Things out of a Holy Place; as where a Person steals any Vessels, Ornaments, or Goods of the Church: And it is said to be a Robbery of God, at least of what is dedicated to his Service. 3 *Cro.* 153. If any Thing belonging to private Persons, left in a Church be stolen, it is only common Theft, not *Sacrilege*: But the *Canon Law* determines that also to be *Sacrilege*; as likewise the Stealing of a Thing known to be consecrated, in a Place not consecrated. *Treat. Laws* 360. By the *Civil Law*, *Sacrilege* is punish'd with greater Severity than any other Thefts; and the *Common Law* distinguished this Crime from other Robberies, for it denied the Benefit of the Clergy to the Offenders, which it did not do to other Felons: But by *Statute* it is put upon a Footing with other Felonies, by Making it Felony excluded of Clergy, as most other Felonies are. 2 *Inst.* 250. All Persons not in Holy Orders, who shall be indicted, whether in the same County where the Fact was committed, or in a different County, of Robbing any Church, Chapel, or other Holy Place, are excluded from their Clergy, by 23 *H. 8. c. 1.* 25 *H. 8. c. 3.* 5 & 6 *Ed. 6. c. 10.* And all Persons in general are ousted of their Clergy for the felonious Taking of any Goods out of any Parish-Church, or other Church or Chapel, by the 1 *Ed. 6. c. 12.* But the Word *Robbing* being always taken to carry with it some Force, it seems no *Sacrilege* is within these Statutes, which is not accompanied with the actual Breaking of a Church, &c. *Kel.* 58, 69. *Dyer* 224. And the Statute 23 *H. 8.* is the only Statute which extends to Accessaries to these Robberies; except the Offence amount to Burglary, in which Case Accessaries before are ousted of Clergy, by 3 & 4 *W. & M. c. 9.* 2 *Hawk. P. C.* 351.

Sacrilege, Or Alienation to Lay-men and to profane Uses of what was given to Religious Persons and to Pious Uses, was a Guilt which our Fore-fathers were very tender of incurring; and therefore when the Order of the *Knights-Templars* was dissolv'd, their Lands were given to the *Knights Hospitallers of Jerusalem*, for this Reason.

— *Ne in pios usus erogata contra Donatorum voluntatem in alios usus distraberentur.* *Paroch. Antiq.* 390.

Sacrista, (*Lat.*) A Sexton, belonging to a Church, in old Times called *Sagerfon* and *Sagiston*.

Safe-conduct, (*Salvus Conductus*) Is a Security given by the Prince, under the Great Seal, to a Stranger, for his *Safe-coming* into and passing out of the Realm; the Form whereof is in *Reg. Orig.* 25. And touching which there are several Statutes, viz. 9 *H. 3. c. 30.* 15 *H. 6. c. 3.* 28 *H. 8. c. 1.*

Safe-guard, (*Salva Guardia*) A Protection of the King to one who is a Stranger that fears Violence from some of the Subjects, for seeking his Right by Course of Law. *Reg. Orig.* 26.

Safe-pledge, (*Salvus Plegius*) A Surety given for a Man's Appearance at a Day assign'd. *Bract. lib. 4. cap. 2.*

Sagaman, (From the Sax. *Saga*, i. e. *Fabula*) Signifies a Tale-teller, or secret Accuser. *Leg. Hen. 1. cap. 63.*

Sagibaro, alias *Sachbaro*, Is the same we now call *Justiciarius*, a Judge. *Leg. Inc. cap. 6.*

Sagitta Barbata, A bearded Arrow. *Reddendo inde annuatim pro omni servitio sex Sagittas Barbatas ad Festum Sancti Michaelis, &c. Blount.*

Sagittaria, A Sort of small Ships or Vessels, with Oars and Sails. *R. de dicto, anno 1176.*

Saio & Saiones, *Fori vel Magistratus, Minister.* A Tiptaff or Serjeant at Arms; derived from the Sax. *Sagol*, i. e. *Fustis*, because they use to carry a Rod or Staff of Silver.

Salary, (*Salarium*) Is a Recompence or Consideration made to a Person, for his Pains or Industry in another Man's Business: The Word is used in the Statute 23 *Ed. 3. c. 1.* *Salarium* at first signified the Rents or Profits of a *Sala*, Hall or House; (and in *Gascoigne* they now call the Seats of the Gentry *Sala's*, as we do Halls) but afterwards it was taken for any Wages, Stipend, or annual Allowance.

Sale, (*Venditio*) Is the Transferring the Property of Goods from one to another, upon valuable Consideration: And if a Bargain is, that another shall give me 5*l.* for such a Thing, and he give me *Earnest*, which I accept, this is a perfect *Sale*. *Wood's Inst.* 316. On *Sale* of Goods, if *Earnest* be given to the Seller, and Part of them are taken away by the Buyer, he must pay the Residue of the Money upon fetching away the Rest, because no other Time is appointed; and the *Earnest* given binds the Bargain, and gives the Buyer a Right to demand the Goods; but a Demand without paying the Money is void: And it has been held, that after the *Earnest* is taken, the Seller cannot dispose of the Goods to another, unless there is some Default in the Buyer; therefore if he doth not take away the Goods, and pay the Money, the Seller ought to require him so to do, and then if he doth not do it in convenient Time, the Bargain and Sale is dissolved, and the Seller may dispose them to any other Person. 1 *Salk.* 113. A Seller of a Thing is to keep it for a reasonable Time, for Delivery: But where no Time is appointed for Delivery of Things sold, or for Payment of the Money, it is generally implied that the Delivery be made immediately, and Payment on the Delivery. 3 *Salk.* 61. Where one agrees for Wares sold, the Buyer must not carry them away before paid for; except a Day of Payment is allowed him by the Seller. *Noy* 87. And if a Man affirms a Thing sold is of such a Value, when it is not, this is not actionable; but if he actually Warrants it, at the Time of the Sale, and not afterwards, it will bear an Action, being Part of the Contract. 2 *Cro.* 4, 386, 630. 1 *Roll. Abr.* 97. See *Contract*. And *Sales of Goods in Markets*, to be binding, &c. vide *Market*.

Salet, Is a Head-piece, (from the Fr. *Salut*, i. e. *Salus*) A *Salet* or *Scul* of Iron, &c. 20 *R. 2. c. 1.* 4 & 5 *P. & M.*

Salmetum, A Soil where Willows grow, or an Officer Bed. 1 *Inst.* 4.

Salina, Is a Salt-pit, or Place where Salt is made: And *Salina* is sometimes wrote for *Salma*, i. e. a Pound-Weight. *Chart.* 17 *Ed. 2.* and Statute *R. 1.*

Salique Law, (*Lex Salica*) A Law by which Males are only to inherit; it is peculiar to the French,

French, and was made by Pharamond K. of France. — *De Terra Salica nulla portio hereditatis Mulieri veniat, sed ad virilem sexum tota Terra hereditas perveniat, &c.*

Salmon pipe, An Engine to catch Salmon, or such like Fish. 25 H. 8. c. 7.

Saltatorium, Signifies a Deer-Leap: *Quod habeat unum Saltatorium in Parco de B. Pat. 1 Edw. 3.*

Salt, Is to be sold by Weight after the Rate of 56 lb. to the Bushel, under the Penalty of 5l. Stat. 9 & 10 W. 3. And a Duty is imposed on Salt; Pits to be entred, &c. by 1 Ann. c. 21.

Salt-silver, One Penny paid at the Feast of St. Martin, by the Tenants of some Manors, as a Commutation for the Service of Carrying their Lord's Salt from Market to his Larder. *Paroch. Antiq. 496.*

Saltus, A high thick Wood or Forest. See *Boscus*.

Salvage, Is an Allowance made for Saving of Ships or Goods from Danger of Seas, Enemies, &c. *Merch. Diff.* And by Statute, where a Ship shall be in Danger of being stranded or run on shore, Justices of Peace are to command Constables to assemble as many Men as shall be necessary to save the Ship; and being preserved by their Means, the Persons assisting shall within thirty Days after be paid a reasonable Reward for the Salvage by the Master of the Ship or Merchant, in Default whereof the Ship or Goods shall remain in the Custody of the Officers of the Customs as a Security. 12 Ann. c. 18.

Salvagus, Wild, Savage; as *Salvagus Catus*, the wild Cat. *Rot. Cart. 1. Joh.*

Salutæ, (*Salus*) Was a Coin made by K. Hen. 5. after his Conquests in France, whereon the Arms of France and England were stamp'd and quartered, *Stow's Chron. 589.*

Sancta, Are the Reliques of the Saints; and *Furare super Sancta* was to make Oath on those Reliques. *Leg. Canut. c. 57.*

Sanctuary, (*Sanctuarium*) Is a Place privileged for the Safe-guard of Offenders Lives, being founded upon the Law of Mercy, and the great Reverence and Devotion which the Prince bears to the Place whereunto he grants such Privilege. *Sanctuaries* were first granted by K. Lucius to our Churches and their Precincts; and among all other Nations, our ancient Kings of England seem to have attributed most to these *Sanctuaries*, permitting them to shelter such as had committed both Felonies and Treasons; so as within forty Days they acknowledged their Fault, and submitted themselves to Banishment; during which Space, if any Lay-man expell'd them, he was excommunicated; and if a Clerk, he was made irregular. *Mat. Westm. Ann. 187. S. P. C. lib. 2. cap. 38. Fleta, lib. 1. c. 29. St. John's of Beverley in Yorkshire had an eminent Sanctuary belonging to it in the Time of the Saxons: And St. Buriens in Cornwall had the like granted by King Athelstan, Anno 936. so had Westminster granted by King Edward the Confessor; and St. Martins le Grand in London. 21 H. 8. &c.*

Sanctuaries, It has been observ'd, did not gain the Name of such 'till they had the Pope's Bull, though they had the full Privilege of Exemption from Temporal Courts by the King's Grant only: But no Sanctuary granted by general Words, extended to High Treason; though it extended to all Felonies, except Sacrilege, and all inferior Crimes, not committed by a Sanctuary Man; and

it never was a Protection against any Action Civil, any farther than to save the Defendant from Execution of his Body, &c. 2 Hawk. P. C. 335 336. *Sanctuaries* were abolished here by the Statutes 26, 28 & 32 H. 8. and 1 & 2 Ed. 6. And the Plea of Sanctuary with Abjuration is taken away by 21 Jac. 1.

Sandagavel, Is a Payment due to the Lord of the Manor of Rodley in the County of Gloucester, for Liberty granted to the Tenants to dig Sand for their common Use. *Tayl. Hist. Gavellk. 113.*

Sane Memory, i. e. Perfect and sound Mind and Memory, to do any lawful Act, &c. See *Non Sane*.

Sanguinem emere, Was where Villains were bound to buy or redeem their Blood or Tenure and make themselves Freemen. — *Omnes Customarii Tenen. de Manerio de Grendon debent Sanguinem suum emere. Lib. niger Heref.*

Sanguis, Is taken for that Right or Power which the Chief Lord of the Fee had to judge and determine Cases where Blood was shed. *Mon. Angl. Tom. 2. pag. 1021.*

Sarcliu-time, (From the Fr. *Sarcler*, Lat. *Sarclire*) Is the Time or Season when Husbandmen weed their Corn.

Sarculatura, Weeding of Corn: *Una Sarculatura*, the Tenant's Service of one Day's Weeding for the Lord. — *Tenet in Bondagio, & debet unam Sarculaturam, &c. Paroch. Antiq. 405.*

Sarkellus, An unlawful Net or Engine for destroying Fish. *Inquisic. Fuffic. Ann. 1254.*

Sarplar of Wool, (*Sarplera Lana*, otherwise called a Pocket) Is Half a Sack. *Fleta, lib. 2. c. 12.*

Sart, or Assart, A Piece of Wood-Land turn'd into arable. See *Assart*.

Sasse, Is a Kind of Wear with Flood-Gates, most commonly in navigable and cut Rivers, for the Damming or Shutting up and loosing the Stream of Water, as Occasion requires, for the better passing of Boats and Barges: This in the West of England is called a Lock; and in some Places a Sluice. Stat. 16 & 17 Car. 2. c. 12.

Saxsons, The Corruption of Saxons, a Name of Contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welsh.

Satisfaction, Is the Giving of Recompence for an Injury done; or the Payment of Money due on Bond, Judgment, &c. In which last it must be entered on Record. 2 Lill. Abr. 495. *Satisfaction* and Amends may be pleaded for involuntary Trespas, &c. by Stat. 21 Jac. 1. c. 5. Vide *Payment*.

Saturday's Stop, A Space of Time from Even-song on Saturday till Sun-rising on Monday, in which it was not lawful to take Salmon in Scotland, and the Northern Parts of England. *M. S.*

Saver-Default, Is a Law-Term for to excuse, as when a Man having made Default in Appearance in Court, &c. comes afterwards and alleges good Cause for it, viz. Imprisonment at the Time, or the like. *Book Entr.*

Saukefin, (Fr. from *Sang*, i. e. *Sanguis*, & *Fin*, *Finis*) Is the Determination or final End of the lineal Race and Descent of Kindred. *Britton, cap. 119.*

Saxons-lage, (*Saxon-laga*, *Lex Saxonum*) The Law of the West Saxons by which they were governed. See *Merchenlage*.

Scabini, Is a Word used for Wardens at Linne in Norfolk: — *Sciant presentes & futuri quod nos, &c. Custodes sive Scabini & fratres Fraternitatis sive*

five Gilde Mercatorie Sancte Trinitatis Villa Lenne in Com. Norf', &c. Chart. Hen. 8.

Scalam, *Ad Scalam*, The old Way of paying Money into the Exchequer: The Sheriff, &c. is to make Payment *Ad Scalam*, i. e. *Solvere prater quilibet numeratam libram sex denarios. Stat. W. 1.* And at that Time Six-pence super-added to the Pound made up the full Weight, and near the intrinsic Value. This was agreed upon as a *Medium* to be the common Estimate for the defective Weight of Money; thereby to avoid the Trouble of Weighing it when brought to the Exchequer. *Lownd's Ess. on Coin, pag. 4. Hale's Sher. Accounts, pag. 21.*

Scalinga, A Quarry, or Stone-pit; or rather Slates for Covering of Houses: French *Escaleire*, whence *Scaling* of Houses, &c. *Mon. Angl. Tom. 2. pag. 130.*

Scandalum Magnatum, Is the special Name of a Scandal or Wrong done to any high Personage of the Realm: And it is also a Writ granted to recover Damages thereupon. *2 R. 2. c. 5.* None shall report any false or slanderous News or Tales of Great Men, whereby any Discord may arise betwixt, the King and his People, on Pain of Imprisonment until they bring forth the Author. *Stat. Westm. 1. c. 34.* No Person shall devise or tell any false News, or Lies, of any Lord, Prelate, Officer of the Government, Judge, &c. by which any Slander shall happen, or Mischief come to the Kingdom, upon Pain of being imprisoned; and where any One hath told false News or Lies, and cannot produce the Author, he shall suffer Imprisonment, and be punished by the King's Council, &c. *2 R. 2. c. 5. 12 R. 2. c. 11.* If the Slander is published in a Libel, the Party may be indicted, fined and imprison'd: But the Action of *Scandalum Magnatum* is usually brought upon the *2 R. 2. tam pro Domino Rege, quam pro seipso*, in the Name of the King and the Party; the King being concerned in the Credit of Great Men, who act by his Authority; so that the Plaintiff recovers Damages upon this Statute for the Wrong, and the Defendant is imprison'd on the Statute of *Westm.* upon the King's Account. *5 Rep. 125.* The Words in these Cases shall be taken in the worst Sense, to preserve the Honour of great Persons: Yet 'tis said a Defendant may justify in *Scandalum Magnatum*, setting forth the Special Matter. *1 Vent. 60. 1 Lev. 277. 4 Rep. 13, 14.* And the Statutes extend only to extrajudicial Slanders, and so it is at Common Law; for though the Charge be false, which is alleged in a Court of Justice, no Action of *Scandalis Magnat.* lieth. *2 Inst. 228. 1 Roll. Abr. 34. Hob. 35.* For these Words, *I do not know but my Lord of Peterborough sent Gibbs to take my Purse*; they were held actionable, though there was no positive Charge. *1 Vent. 59.* So where a Defendant hearing that his Father's Barns were burnt, said, *I cannot imagine who should do it but my Lord Stourton.* *Moor 142.* A Man said of the Earl of Lincoln, *That he was a base Earl, and a Poultry Lord, and kept none but Rogues and Rascals about him*; although the Words were spoken chiefly concerning his Servants, they were judg'd in Contempt of his Honour and Dignity, and actionable. *2 Cro. 196.* But where the Defendant said, *The Lord Lincoln's Man did, by his Command, take the Goods of a certain Person by a forged Warrant*; after a Verdict for the Plaintiff and great Damages, the Judgment was arrested, because it was not averred that the Earl knew the Warrant to be

forged. *Goldsb. 115.* If one says of a Peer, *He is an unworthy Person, and acts against Law and Reason*; in the Case of the Lord Townsend it was adjudg'd Action of *Scandalum Magnatum* lay, notwithstanding the Words were general, and charged him with nothing certain: Though Justice *Atkins* held an Action, would not lie for these Words, being of a trivial Nature; and the Statute mentions only great Scandals, whereby Discord might arise, &c. *1 Mod. 232. 2 Mod. 150. 1 Danv. Abr. 165.* In this last Case 4000 l. Damages were given; and on a Motion for a new Trial, because of the excessive Damages, it was denied. *1 Nelf. Abr. 130.* The Defendant being a Parson, spoke the following Words in the Pulpit, *The Lord of Leicester is a wicked and cruel Man, and an Enemy to the Reformation*; and in Action of *Scandalum Magnatum* the Plaintiff had 500 l. Damages. *2 Sid. 21, 30.* The Statute of *Scandalum Magnatum* is a general Law, of which the Court is to take Notice. *4 Rep. 12.* And it hath been resolv'd, that if the Plaintiff recites so much of the Statute in his Declaration as will maintain his Action, though he mistakes the Rest, it will not make his Declaration ill: But it being a general Law, it need not be recited. *2 Mod. 98.* An Action brought upon this Statute, and several particular Objections to the Declaration, with the Answers to them, and Judgment for the Plaintiff, see *Cro. Car. 135.*

Form of a Declaration in *Scandalum Magnatum*.

Midd. ff. **P** *Rehonorabilis A. Comes B. un. Procerum & Magnat. hujus Regni Magn. Britan. qui tam pro Domino Rege quam pro seipso seq. Quer. de C. D. in Custod. Marr. Marefc. pro eo videlicet quod cum idem A. Comes B. (tali die & anno) & diu antea & continue postea hucusque fuit Un. Procer. & Magn. hujus Regn. & vocem & locum in Parliament. dicti Dom. Reg. nunc Magn. Britan. ut unum Procerum hujus Regni habuit & adhuc habet pred. tamen C. D. Machinans & Malitiose intendens contra form. Stat. in hujusmodi casu edit. & provis. Magnum Scandalum excitare de pred. Comit. & al. Procer. & Magnat. & al. subdit. dicti Dom. Reg. hujus Regn. Magn. Britan. pred. die & anno supradict. apud, &c. in Com. predict. habens Colloquium cum quodam E. F. de & concernen. predict. Comite hac falsa ficta Scandalosa & opprobriosa Anglicana verba sequen. in presentia & auditu diversor. dicti Dom. Reg. nunc fidel. subditorum adtunc & ibidem falso & malitiose & Scandalose dixit retulit Propalavit & Publicavit, viz. The Earl of B. (pred. Com. innuendo) is a pitiful Man, and no Body will take his Word for any Thing, and Men of Reputation value him (pred. Com. iterum innuendo) no more than I (seipsum C. D. modo Defenden. innuendo) value the Dirt of the Streets, &c. Quorum quidem falsor. fictor. & Scandalosor. Anglicanor. verbor. diccon. propalacon. Publicacon. & Affirmacon. pretextu idem Comes maxim. Honoris & Estimacon. suor. apud Proceres & Magnates pred. & alios dict. Dom. Reg. nunc subditos lason. subiit & passus est ac etiam Displacencia dict. Dom. Reg. erga prefat. Comitem necnon diversa Magna discordia & Scandala infra hoc Reg. Magn. Britan. inter ipsum Com. & diversos alios Procer. & Magn. & alios subdit. dict. Dom. Reg. hujus Regn. oriuntur ac indies magis magisque occasione predicta oriri verisimilia sunt in Magnam. perturbacon. Tranquillitatis hujus Regn. &c. in dict. Dom. Reg. nunc Contempt. & ipsius Comit. Magn. Scandal. & gravamen & contra formam Statut. pred. Ad dampnum ipsius Com. qui tam pro, &c.*

1000 l. *Et inde idem Comes tam pro G. H. quam pro seipso producit sectam, &c.*

Scandalizing the Marriage of King Hen. 8. with Anne Bullen was declared Treason, by Statute 25 Hen. 8.

Scatinia Lex, A Law against Buggery. — Quæ præpostera Veneris usum coarcebat, ita dict. à Scatinio latore.

Scabage, Scavage or Schelmage, (From the Sax. *Sceawian*, i. e. *Ostendere*) A Kind of Toll or Custom, exacted by Mayors, Sheriffs, &c. of Merchant Strangers, for Wares shewed or exposed to Sale within their Liberties; prohibited by the Statute 19 H. 7. c. 7. But the City of London still retains this ancient Custom to a good yearly Profit: And the Lord Chancellor, Treasurer, President of the Council, Privy Seal, Steward, and two Justices of the King's Bench and Common Pleas, are to ascertain these Duties, and order Tables to be made mentioning the Particulars, &c. by 22 H. 8. c. 8.

Scabaldus, The Officer who collected the Scavage Money, which was sometimes done with great Extortion.

Scabengers, (From the Belg. *Schaven*, to scrape or carry away) Are Persons chosen into this Office in London and its Suburbs, who hire Rakers and Carts to cleanse the Streets, and carry the Dirt and Filth thereof away. 14 Car. 2. c. 2. In Easter-Week yearly, two Tradesmen in every Parish within the Weekly Bills of Mortality must be elected *Scavengers*, by the Constables, Church-wardens, and other Inhabitants, who are to take upon them the Office in Seven Days, under the Penalty of 10 l. These *Scavengers* every Day except Sundays or Holidays, are to bring their Carts into the Streets, and give Notice by a Bell, or otherwise, of carrying away Dirt, and to stay a convenient Time, or shall forfeit 40 s. and Justices of Peace in their Petit Sessions may give *Scavengers* Liberty to lodge their Dirt in vacant Places near the Streets, satisfying the Owner for the Damage, &c. All Persons within the Weekly Bills, are to sweep the Streets before their Doors every *Wednesday* and *Saturday*, on Pain of 3 s. 4 d. and Persons laying Dirt or Ashes before their Houses, incur a Forfeiture of 5 s. Inhabitants and Owners of Houses are also to pave the Streets before their own Houses, under the Penalty of 20 s. for every Perch: And Constables, Church-wardens, &c. may make a *Scavenger's* Tax, being allowed by two Justices of Peace, not exceeding 4 d. in the Pound, &c. 2 W. & M. c. 2. By the Stat. 1 Geo. c. 48. Justices of Peace in their Quarter-Sessions may appoint *Scavengers*, and order the Repairing and Cleansing the Streets in any City or Market-Town, and appoint Persons to make Assessments, so as not to exceed 6 d. per Pound per Ann. to defray the Charge of such *Scavengers*, to be collected and levied by Distress; and when new *Scavengers* are chosen, the old Ones must account before two Justices for the Money assess'd and collected, and pay what remains in their Hands to the new *Scavengers*, or be committed to Prison, &c. The Assessments for *Scavengers* of the Parishes of St. Anne Westminster, and St. James's, shall be rated according to the Custom of the City; and ancient Streets in the City are to be maintained according to ancient Usage, &c. The Lord Mayor or any Alderman may present upon View, any Offence within the City, and assess Fines not ex-

ceeding 20 s. to be paid to the Chamberlain for the Use of the City, &c. Stat. Ibid.

Sceat, (Sax.) A small Coin among the Saxons equal to four Farthings.

Sceithman, (Sax.) A Pirate or Thief. LL. Æthelredi, apud Brompton.

Sceppa Salis, An ancient Measure of Salt, the Quantity now not known: And *Sceppa* or *Sceap* was likewise a Measure of Corn, from the Lat. *Schapa*; Baskets, which were formerly the common Standard of Measure, being called *Skip*s or *Skeps* in the South Parts of England; and a Bee-hive is term'd a *Bee Skip*. Mon. Angl. Tom. 2. pag. 284. Paroch. Antiq. 604.

Schaffa, A Sheaf; as *Schaffa Sagittarum*, a Sheaf of Arrows. Skene.

Scharpenny, or **Scharnpenny,** A small Duty or Compensation, i. e. *Dung-penny*; the Saxon *Scearn* signifying Muck or Dung: And some Customary Tenants were obliged to pen up their Cattle at Night in the Yard of their Lord, for the Benefit of their Dung; or if they did not, they paid this Duty. Cartular. S. Edmundi, M.S. In some Places of the North, they still call Cow-Dung, by the Name of *Cow-Skern*.

Schetes, Was formerly a Term for Usury; and the Commons pray'd that Order might be taken against this horrible Vice, practised by the Clergy as well as the Laity. Rot. Parl. 14 R. 2.

Schilla, A little Bell used in Monasteries, mentioned in our Histories. Eadmer. lib. 1. cap. 8.

Schild-penny, *Tributum singulo Scuto impostum.* See *Scutage*.

Schirman, (Sax. *Scirman*) A Sheriff of a County. LL. Ina.

Schirens-geld, Schire-geld, Was a Tax paid to the Sheriffs for keeping the *Shire* or *County-Court*. Cartular. Abbat. St. Edmund. 37.

Schism, (*Schisma*) A Rent or Division in the Church: There was a Statute made to prevent the Growth of *Schism*. Anno 12 Ann.

Schoolmaster. No Person shall keep or maintain a *Schoolmaster*, which does not constantly go to Church, or is not allow'd by the Ordinary; in Pain of 10 l. a Month; and the *Schoolmaster* shall be disabled, and suffer a Year's Imprisonment. Stat. 23 Eliz. c. 1. Recusants are not to be *Schoolmasters* in any publick Grammar-School, nor any other, except the Person be licensed by the Bishop; under the Penalty of forfeiting 40 s. a Day. 1 Jac. 1. c. 4. Every *Schoolmaster* keeping any publick or private *School*, and every Tutor in any private Family, shall subscribe the Declaration, that he will conform to the Liturgy of the Church of England as by Law established, and be licensed by the Ordinary; or he shall for the first Offence suffer three Months Imprisonment, &c. 13 & 14 Car. 2. c. 4. If any Papist shall be convicted of Keeping a *School*, or take upon him the Education of Youth, he shall be adjudged to perpetual Imprisonment. 11 & 12 W. 3. c. 4. Persons keeping *Schools* without a Licence from the Bishop, and receiving the Sacrament of the Church of England, taking the Oaths, &c. (except Tutors in Reading, Writing, and Arithmetick) shall be committed to the common Gaol for three Months, &c. 12 Ann. But this last Statute, as to *Schoolmasters* receiving the Sacrament of the Church is repealed by 5 Geo. c. 3. By our Canons, no Man shall teach in a publick *School*, or private House, but such as is allowed and examined by the Bishop, and of sober Life: And all *Schoolmasters* are to teach the *Catechism* of the

the Church in *English* or *Latin*; and bring their *Scholars* to Church, and afterwards examine them how they have benefited by Sermons, &c. *Can.* 77, 79.

Scilicet, An *Adverb*, signifies, that is to say, to wit; and is often used in Grants and Law-Proceedings. Sir *John Hobart* in his *Exposition* of this Word, says it is not a direct and separate Clause, nor a direct and intire Clause, but *intermedia*; neither is it a substantive Clause of it self, but it is rather to usher in the Sentence of another, and to particularize that which was too general before, or distribute that which was in gross, or to explain what was doubtful and obscure; and it must either increase or diminish, as it gives nothing of it self: Also it will make a Restriction, where the precedent Words are not so very express, but they may be restrained. *Hob.* 168, 174. The Word *Scilicet* in a Declaration, shall not make any Alteration of that which went before. *Poph.* 201, 204. And yet in some Cases, the *Scilicet* which introduces a Subsequent, shall not be rejected. *2 Cro.* 618.

Scire facias, Is a Writ judicial, most commonly to call a Man to shew Cause to the Court whence it issues, why Execution of a Judgment should not go out. *Old Nat. Br.* 151. A *Scire facias* lieth, where Debt and Damages are recovered, and no Execution is sued out within a Year and a Day; then after the Year and Day, the Plaintiff shall have this Writ to summon the Defendant to shew Cause why there should not be Execution sued upon the Judgment against him; and if he can shew no Cause, there is Judgment, *Quod habeat Executionem. Terms de Ley* 537. *2 Lill. Abr.* 497. This Writ was not at the Common Law; but given by the Stat. of *Westm.* 2. cap. 45. in Personal Actions, when Debt or Damages were recovered: And before, if the Plaintiff had not sued out his Execution in a Year and a Day after his Judgment, he had no Remedy but by new Action of Debt upon his Judgment; but now he hath his Liberty to bring either a *Scire facias*, or Action of Debt, as he pleases. *2 Inst.* 469. At Common Law the Writ of *Scire facias* lay only on Judgments in Real Actions; though it has been adjudg'd that it lay also in mix'd Actions. *2 Salk.* 600. If any of the Writs of Execution, whether in Personal or Real Actions, are not executed within the Year and Day after the Judgment, to obtain Execution, there must be a *Scire facias*, to shew Cause why the Execution should not be awarded: But if the Plaintiff sueth out any of them within the Year, he may continue them after the Year 'till he hath Execution, and need not sue out any *Sci. fac.* And a Writ of Error is the Continuance of the Cause, so that no *Scire facias* is required, tho' it depend some Years; and because pending the Writ of Error the Plaintiff cannot sue out Execution of the Judgment, but he may after the Affirmation of it, &c. *Litt.* 505. *1 Inst.* 290. *2 Inst.* 471. *2 Lill.* 500, 504. Where Judgment is had against a Testator, there must issue a *Scire facias* against the Executor, although within the Year, to shew Cause why Execution shall not be had; the like against an Administrator of an Intestate: And so on the Plaintiff's Part, if Heir, Executor, or Administrator; the Person being altered: And if one recovers against a Feme sole, and she is married within the Year and Day, a *Scire facias* is to go against the Husband. *Wood's Inst.* 610. When either Plaintiff or De-

fendant, or one of the Plaintiffs or Defendants dies, Execution may not be sued out upon a Judgment until a *Scire facias* obtained and Judgment thereupon; in these Cases there is to be a new Judgment to warrant Execution. *2 Lill. Abr.* 500. If an Administrator obtains Judgment for a Debt due to the Intestate, by Default or Confession, and the Administrator doth after die Intestate, and Letters of Administration are granted to one *de bonis non*, &c. of him that first died Intestate; this Administrator cannot have a *Scire facias* to revive the Judgment obtained by the first Administrator of the first Intestate, but he must bring a new Action to recover that Debt; for he is no Ways Party or Privy to the first Judgment, but a meer Stranger to it: But if the Recovery were by Verdict, he may now have a *Scire facias* upon it, by *17 Car. 2. c. 8.* *2 Lill.* 505. It hath been used of late to make out a *Fieri facias de bonis Testatoris*, and also a *Scire facias*, and a Writ of Inquiry, all in one Writ, against an Executor or Administrator, for the speedier Obtaining of Execution upon a Judgment; though antiently they were distinct Writs or Processes, and to be severally executed. *Ibid.* 503. One may have a *Scire facias* to revive an old Judgment upon which no Execution hath been executed, without any Motion, if it be but seven Years past since the Judgment was had; and if it be above seven Years, and under ten Years since the Judgment was given, a *Scire facias* may be moved for at the Side-Bar to revive it: But if it be above ten Years, then a *Sci. fac.* cannot be had without moving the Court, and a Rule for it; and the Court doth not use to deny it, if moved for. *Ibid.* 502. *2 Salk.* 598. If a *Scire fac.* be taken out to revive an old Judgment of above ten Years standing, without Motion and Leave of the Court, the *Sci. fac.* is not good, but may be set aside upon a Motion. *Trin.* 23 *Car. B. R.* A *Scire facias* to revive a Judgment, ought not to be granted 'till the Record of the Judgment be in Court where the *Sci. fac.* is moved for. *2 Lill.* 498. In a *Sci. fac.* brought upon a Judgment given in C. B. it is necessary to shew before what Chief Justice by Name the Judgment was had; but it is not necessary to do it in a *Scire facias* upon a Judgment of B. R. And the Reason is, because the Proceedings are in the Common Pleas *coram* the Chief Justice & *sociis suis*; and in the King's Bench they are *coram Domino Rege*. *Ibid.* 499. If a *Scire facias* be sued upon a Judgment in B. R. where the Action is brought by Original; the Plaintiff must alledge a Place where the Court is held, as such a *Sci. fac.* is returnable *Coram nobis ubicunque fuerimus*, &c. 'tis otherwise on a Judgment in C. B. because that Court is by *Magna Charta* confined to a certain Place. *1 Ventr.* 46. *1 Mod.* 19. The Process of *Scire facias* ought to be in the same Court where the Judgment was given; unless it be on a Recognizance on a Statute Merchant or Staple; for in such Case it may be returnable in Chancery, the Recognizance being before that Court, who are Judges of it. *2 Bulst.* 10. After the Removal of a Record by *Certiorari* into a Superior Court, a *Scire facias* shall issue, &c. And if a *Sci. fac.* is brought in B. R. upon a Judgment in an inferior Court, it must appear in the Writ it self, how the Judgment came into B. R. whether by *Certiorari*, or Writ of Error, because the Execution is different; if it came in by *Certiorari*, the *Sci. fac.* is to set forth the same, and the Limits of the inferior Jurisdiction, and pray

pray Execution within those particular Limits; but if it was brought in by Writ of Error, that must be shewn in the *Sci. fac.* it self likewise, and pray Execution generally. 3 *Salk.* 320. A *Scire facias* is in the Nature of an Action, as the Defendant may plead to it: And it ought to be brought in the same County where the original Action was laid; for it must always pursue the first Action. *Finch* 477. *Cro. Jac.* 231. And if one doth not proceed upon a Writ of *Scire facias* within a Year and a Day after it was taken out, he cannot after that Time proceed upon that Writ, which is discontinued; but is to sue out a new *Sci. fac.* 2 *Lill.* 504. *Scire fac.* may be pleaded to, before Judgment given upon it; afterwards it is too late: Though a Writ of Error may be brought to reverse the Judgment on the *Scire facias*, if that be not good on which the Judgment was grounded. *Ibid.* 503. Payment is no Plea at Common Law to a *Sci. fac.* upon a Judgment; because it is a Debt upon Record. 3 *Lev.* 120. But this is altered by the 4 & 5 *Ann.* Whatever is pleadable to the original Action in Abatement, shall not be pleadable to disable the Plaintiff from having Execution on a *Scire facias*; because the Defendant had admitted him able to have Judgment. 1 *Salk.* 2. In *Scire facias* upon a Judgment in Debt, or other Personal Action, the Defendant cannot plead Non-tenure of the Land generally, where it is contrary to the Return of the Sheriff; but he may plead a special Non-tenure: But in a *Sci. fac.* to have Execution in a Real Action, the Defendant may plead Non-tenure generally, because the Freehold is in Question, and that is favoured in Law; and the Ter-tenants may plead there are other Ter-tenants not named, and pray Judgment if they ought to answer *quousq;* the others are summoned, &c. tho' 'twould be otherwise if the *Sci. fac.* had been against particular Tenants by Name. 2 *Salk.* 601. On a *Sci. fac.* to have Execution upon a Judgment in Action of Debt, every Ter-tenant is to be contributory, and therefore one shall not answer, as long as he can show that another is so, and not warned: *Contra* in a *Scire facias* upon a Judgment in a Real Action; for every Tenant is to answer for that which he hath, and one may be contributory, and the other not. 2 *Cro.* 507. 3 *Nels. Abr.* 204. There is to be a *Scire facias* against the Heir and Ter-tenants, to reverse a Common Recovery of Lands; the *Scire facias* is to issue against all the Ter-tenants, for they are to gain or to lose by the Judgment in the Recovery. *Raym.* 16. 3 *Mod.* 274. A *Scire facias* to have Execution of a Fine, shall not be sued against Lessee for Years; but against him who hath the Freehold, who may have some Matter to bar the Execution. *Cro. Eliz.* 471. 2 *Brownl.* 144. In *Ejectment*, it was adjudg'd, that a *Sci. fac.* might be brought by the Lessee though he was but nominal, and that it may be had by the Lessor himself; as either of them may have a Writ of Error on the Judgment: And that it might be brought against those who were Strangers to the Judgment, and against the Executors of the Defendant, &c. 2 *Lutw.* 1267. A Defendant being summoned upon a *Scire fac.* and the Summons return'd, if he doth not appear, but lets Judgment go by Default, he is for ever barred. 1 *Lev.* 41, 42. If the Sheriff hath return'd him warn'd, he shall not have *Audita Querela* on a Release, &c. for the Defendant might have pleaded the same on

the Return of the *Scire facias*; but if the Sheriff return *Nihil*, on which an Execution is awarded, he shall have *Audita Querela*. *New Nat. Br.* 230. Where the Plaintiff in the Judgment releaseth the Defendant of all Judgments and Executions, &c. the Defendant may upon his Release sue out a Writ of *Scire fac.* against the Plaintiff in the Judgment *ad Cognoscendum scriptum suum Relaxationis*; and he needs not to sue out his *Audita Querela*. *Hill.* 5 *W. & M. B. R.* *Sci. fac.* may be sued against a Sheriff, for not bringing the Money into Court levied on a Judgment, to shew Cause why Execution should not be had against him for the Sum, with which he had charged himself by the Return of the Writ of Execution. *Hutt.* 32. If one sues out two Writs of *Scire facias*, one after the other, where it is upon a Judgment by Bill, there ought to be eight Days between the *Teste* and Return of the first *Sci. fac.* and seven Days at least between the *Teste* and Return of the second *Sci. fac.* And the *Teste* of the *Alias Scire facias* is to be the Day of the Return of the First. 3 *Ann. B. R.* 2 *Lill.* 503.

Scire facias against Bail, To an Action, is where a *Capias ad Satisfac.* is sued out and return'd *Non est Inventus* against the Principal, and the Writ filed; after which this Writ is brought to have Execution against the Bail, &c. And if upon the *Sci. fac.* or two *Nichils* return'd, the Bail do not appear, Judgment shall be entered against them. 1 *Inst.* 290. *Lutw.* 1273. In *C. B.* there is but one *Sci. fac.* against the Bail, and upon a *Nihil* return'd, there is Execution; but in *B. R.* there are two *Scire facias*'s and two *Nichils*, and the first is to be duly return'd, before the Second sued out; and there must be fifteen Days inclusive between the *Teste* of the First and the Return of the last. 2 *Salk.* 599. There must be a particular Warrant of Attorney to a *Sci. fac.* against the Bail; for such a Warrant in the principal Action is no Warrant to the *Scire fac.* because these are distinct Actions; and the particular Warrant is to be entered when the Suit commences, which is when the Writ is return'd. 2 *Salk.* 603. When a *Scire facias* is brought against the Bail, it must be *in eâ parte*; and where 'tis brought against the Defendant in the principal Action, it is to be *in hac parte*. 2 *Salk.* 599. If there be no good Judgment against the Principal, Judgment against the Bail by *Sci. fac.* may be reversed, &c. 3 *Nels. Abr.* 190. See *Bail*.

Scire facias ad audiendum Errores, On Writs of Error. There must be fifteen Days between the *Teste* and Return of every *Scire fac. ad audiend. Error.* upon a Writ of Error returnable in *B. R.* And if on the Return of two *Nichils*, &c. the Defendant in Error doth not appear, it is not with him as it is in the Case of a *Sci. fac. quare Execution. non*, &c. but the Cause is to be set down to be heard by the Court, and the Plaintiff in Errors shall be heard thereunto *ex parte*. 2 *Lill. Abr.* 499. If a Writ of Error is brought in *B. R.* and the Record brought in, the Defendant may thereupon sue out a *Scire facias. quare Executionem habere non debet*, and an *Alia Sci. fac.* if there be not a *Scire Feci* return'd on the first Writ; and if the Plaintiff in Error after a *Sci. fac.* or two *Nichils* return'd, doth not before the Rule for Judgment upon the *Scire fac.* is out, appear and assign Errors, or plead to the *Sci. fac.* there will be Judgment against him *Quod habeat Executionem*, &c. But the Writ of Error depend

still until Judgment is affirm'd or reverfed, or the Plaintiff in the Errors is nonsuited. *Ibid.* 502.

Scire facias upon a Recognisance. In Chancery may be sued out to extend Lands, &c. If upon a *Scire facias* on a *Recognisance* in the Chancery, the Record be transmitted into B. R. to try the Issue, and the Plaintiff is nonsuit; he may bring a new *Sci. fac.* in B. R. upon the Record there. 2 *Saund.* 27. Where a Statute is acknowledged, and the Cognisor afterwards confesseth a Judgment, and the Land is extended thereon, in this Case the Cognissee shall have a *Scire facias* to avoid the Extent of the Lands; but if the Judgment be on Goods, it is otherwise. 1 *Brownl.* 37. 3 *Nelf. Abr.* 186. *Scire fac.* lies on *Recognisance* of the Peace, &c. removed into B. R.

Scire facias to repeal Letters Patent and Grants. A *Scire fac.* to repeal a Patent, must be brought where the Record is, which is in Chancery; and there are to be two of these Writs sued out of the Petty-bag Office directed to the Sheriff of *Middlesex*, who by a Letter under the Seal of his Office must send Notice to the Corporation or Person whose Concern the Patent is, that there is a *Scire facias* issued out returnable at such a Time, and remaining with him, for the Revocation of such a Patent, and that if they do not appear thereunto, Judgment will be had against them by Default; and this Letter is to be delivered to the Corporation or Person interested in such Patent, by some Person who can make Oath thereof. *Dalton's Sheriff.* On a *Sci. fac.* out of Chancery returnable in B. R. to repeal Letters Patents, it was held, that if Letters Patent are granted to the Prejudice of any Person, as if a Fair is granted to the Damage of the Fair of another, &c. he may have a *Scire facias* on the Inrollment of such Grant in Chancery; but it may be a Question, whether a *Sci. fac.* upon a Record in Chancery is returnable in B. R. though after it is made returnable into B. R. that Court, and not the Chancery, hath the Jurisdiction of it. *Mod. Caf.* 229. In all Cases at Common Law, where the King's Title accrues by a judicial Record, and he grants his Estate over, the Party grieved could not have a *Scire fac.* against the Patentee, but was forced to his Petition to the King; otherwise it is when his Title is by Conveyance on Record, which is not judicial. 4 *Rep.* 59. The King hath a Right to repeal a Patent by *Scire fac.* where he was deceived in his Grant, or it is to the Injury of the Subject. 3 *Lev.* 220. And where a common Person is put to his Action, there upon an Inquisition found, the King is put to his *Scire facias*, &c. 9 *Rep.* 96.

Scire facias's Have issued to repeal the Grants of Offices, for Conditions broken, Non-attendance, &c. and for Disability, or in Case of Forfeiture, the Offices may be seized without *Sci. fac.* 3 *Nelf. Abr.* 201, 202.

Scire facias in Appeal of Murder, before a Pardon shall be allow'd; vide *Appeal*.

Scite, (*Situs*) Signifies the Setting or Standing of any Place; the Seat or Situation of a Capital Messuage, or the Ground whereon it stood. *Mon. Angl. Tom.* 2. fol. 278. The Word in this Sense is mentioned in the Stat. 32 H. 2. c. 20. and 22 Car. 2. c. 11.

Scolds, Are indictable in the Sheriff's Turn, and punished by the Cucking-stool, &c.

Scot and Lot, (*Sax. Sceat*, pars. & *Llot*, i. e. *Sors*) Signify a customary Contribution laid upon all Subjects, according to their Ability. *Spelm.*

Nor are these old Words grown obsolete, for whoever in like Manner (though not by equal Portions) are assessed to any Contribution, are generally said to pay *Scot* and *Lot*. Stat. 33 H. 8. cap. 9.

Scotal, or **Scotale,** Is where any Officer of a Forest keeps an *Ale-house* within the Forest, by Colour of his Office, causing People to come to his House and there spend their Money for Fear of his Displeasure: It is compounded of *Scot* and *Ale*, which by Transposition of the Words is otherwise called an *Alesbot*. This Word is used in the Charter of the Forest, cap. 8. — *Nullus Forestarius faciat Scotallas, vel Garbas colligat, vel aliquam Collectam faciat*, &c. *Manwood* 216.

Scotare. Those Tenants are said *Scottare*, whose Lands are subject to pay *Scot*. *Mon. Angl. Tom.* 1. pag. 875.

Scotland, Is united to England by 5 Ann. In the Reigns of King James 1. and K. Car. 2. Commissioners were appointed to treat with Commissioners of Scotland, concerning an Union. But the bringing about this Great Work, was reserved for the Reign of Queen Anne. The 1 Ann. c. 14. ordained Articles to be settled by Commissioners for the Union of the two Kingdoms, &c. And by the 5 Ann. c. 8. the Union was effected: The Kingdoms united are to be called *Great Britain*; and the Cross of *St. George* and *St. Andrew* to be conjoined; they are to be represented by one Parliament, and sixteen Peers of Scotland and forty-five Commoners are to be elected for Scotland, and have all the Privileges of Parliament as Peers of England: The Subjects of either Kingdom shall have Freedom of Trade, and be liable to the same Customs, and like Laws for publick Government, &c. Kirk-Government of the Church is confirm'd; and the Courts of Justice are to remain the same as before the Union, but subject to Regulation: When 1,997,763 *l.* shall be raised in England on a Land-Tax, Scotland is to be charged with 48,000 *l.* And Scotland is to have an Equivalent for being charged towards the Payment of the Debts of England, &c. By 6 Ann. c. 14. A Peer committing High Treason, or Felony in Scotland, may be tried by Commission under the Great Seal, constituting Justices to inquire, &c. in Scotland: And the King may grant Commissions of Oyer and Terminer in Scotland, to determine Treasons, &c. by the 7 Ann. c. 21. Persons having Lands in Scotland, guilty of High Treason by Corresponding with, Assisting, or remitting Money, &c. to the Pretender, on Conviction, to be liable to the Pains of Treason; and their Vassals continuing in dutiful Allegiance, shall hold the said Lands of his Majesty in Fee and Heritage for ever, where the Lands were so held of the Crown by the Offender: And Tenants continuing peaceable and occupying Land, are to hold the same two Years Rent-free. 1 Geo. c. 20. An Act for Disarming the High-lands of Scotland, and requiring Bail of Persons for their loyal and peaceable Behaviour, &c. 1 Geo. c. 54.

Scripture. All profane Scoffing of the Holy Scripture, or exposing any Part thereof to contempt and ridicule is punish'd by Fine and Imprisonment. 1 *Hawk. P. C.* 7.

Scribblers, Are mentioned in the Statute against Usury and excessive Interest of Money. 12 Ann. c. 6. If a *Scrivener* is intrusted with a Bond, he may receive the Interest, and if he fails, the Obligee shall bear the Loss; and so it is if he receive the Principal, and deliver up the Bond,

Bond, for being intrusted with the Security it self, it shall be presumed he is trusted with Power to receive the principal and Interest, and the giving up the Bond on Payment of the Money is a Discharge thereof: But if a *Scrivener* be intrusted with a Mortgage-Deed, he hath only Authority to receive the Interest, not the Principal, the giving up the Deed in this Case not being sufficient to restore the Estate, but there must be a Reconveyance, &c. Decreed in *Chancery*. 7 *Ann.* 1 *Salk.* 157.

Scutage (*Scutagium*) Was a Tax on those that held Lands by *Knights-Service*, towards furnishing the King's Army. King *Hen.* 3d. for his Voyage to the Holy Land, had a Tenth granted by the Clergy, and *Scutage*, viz. Three Marks on every *Knight's Fee* by the Laity; and this was levied by King *Hen.* 2d, *Rich.* 1st, and King *John*. See *Escuage*.

Scute, A French Gold Coin of 3 s. 4 d. in the Reign of King *Hen.* 5. And *Catherine* Queen of England had an Assurance made her of sundry Castles, Manors, Lands, &c. valued at the Sum of forty thousand *Scutes*, every two whereof were worth a Noble. *Rot. Parl.* 1 *Hen.* 6.

Scutella, (from *Scutum*, Sax. *Scutel*) A Scuttle, any thing of a flat and broad Shape, like a Shield.

Scutella eleemosynaria, An Alms Basket or Scuttle. *Paroch. Antiq.*

Scutum Armorum, A Shield, or Coat of Arms. — *Noverint Universi per presentes me Johannem K. dedisse, &c. Richardo P. filio Humfridi P. Scutum Armorum meorum: Habend' & tenend' ac portand' & utend' ubicunque voluerit sibi & heredibus suis imperpetuum; ita quod nec Ego nec aliquis alius nomine meo aliquod jus vel clameum seu calumpniam in predicto Scuto habere potuerimus, sed per Presentes sumus exclusi in perpetuum. In cuius Rei Testimonium, &c. Dat. apud Knightley Anno 14. H. 6.*

Scyldwit, (Sax.) Is a Mulct for any Fault; from the Saxon *Scilde*, i. e. *Delictum*, & *Wite*, *pena*. *Leg. Hen.* 1.

Scyza, A Fine impos'd on such as neglected to attend the *Scyregemot* Court, which all Tenants were bound to do. *Mon. Angl. Tom.* 1. pag. 52.

Scyre-gemot, (Sax.) Was a Court held by the Saxons twice every Year by the Bishop of the Diocese, and the *Earldorman*, in *Shires* that had *Earldormen*; and by the Bishop and Sheriff where they were committed to the Sheriffs, &c. wherein both the Ecclesiastical and Temporal Laws were given in Charge to the Country, *Seld. Tit. Hon.* 628. This Court was held three Times in the Year, in the Reign of *K. Canutus the Dane*. — *Et habeatur in Anno ter Bergimotus & Scyremotus. Leg. Canut. cap.* 38. And *Edward the Confessor* appointed it to be held twelve Times in a Year. *Leg. Ed. Conf. cap.* 35.

Sea, (*Mare*) The Main Sea, beneath the Low Water-mark, and round England, is Part of England; for there the *Admiral* hath Jurisdiction. 1 *Inst.* 260. 5 *Rep.* 107. The Seas which environ England are within the Jurisdiction of the King of England, 1 *Roll. Abr.* 528. Sovereignty of the Sea. Vide *Navy*.

Sea-Laws, Are Laws relating to the Sea; as the *Laws of Oleron*, &c.

Seamen, Retained to serve the King, are punishable for departing without Licence. *Stat.* 2. R. 2. And Fighting, Quarrelling, and Di-

turbances of *Seamen* may be punished by the Commissioners of the Navy by Fine and Imprisonment. 19 *Car.* 2. *cap.* 7. Registered Seamen are exempted from serving upon Juries, or in any Parish Office, &c. and shall have 40 s. per Annum Bounty-Money, besides their Pay; and on Disability of Service be admitted into *Greenwich Hospital*. 7 & 8 *W.* 3. *cap.* 21. By this Act, Seamen to the Number of 30,000 were to be registered for the King's Service. See *Navy* and *Mariner*.

Seareebee, In *villis Maritimis est qui Maritimum Domini Jurisdictionem curat, litus lustrat, & ejectum Maris (quod Wreck appellatur) Domino colligit.* *Spelm.*

Seal, (*Sigillum*) Is a little Image graven or molten, or Signet made use of in sealing of Deeds, &c. The first sealed Charter we had in England is said to be that of King *Edward the Confessor*, upon his Foundation of *Westminster Abbey*: But Seals were in use in the Times of the Saxons, according to *Taylor* in his History of *Gavelk.* 73. Before the Conquest, the English did not seal with Wax, but they usually made a Cross of Gold on the Parchment, and sometimes an Impression on a Piece of Lead, which hang'd to the Deed with a string of Silk; and thus it continu'd 'till the Reign of King *Hen.* 2. and then they sealed their Deeds with Wax, the Colour whereof was green with which the King's Grants were sealed, to signify that they were always to be in Vigour; and the Impression on all Seals was a Man on Horse-back, with his Sword in his Hand, 'till about the Year 1218. when they began to engrave Coats of Arms on their Seals, &c. *Ingulph.* 901. 2 *Nelf.* 207. In former Times, the Makers of Deeds subscribed their Names, adding the Sign of the Cross, and in the End setting down a great Number of Witnesses, without using any Kind of Seal; but in the Time of *Will.* 1st, called the Conqueror, the King and the Nobility used Seals of Arms, which was afterwards followed by the Gentry; and in the Reign of King *Edw.* 3d, Seals with Devices became common with all Sorts of Persons. *Terms de Ley.* 331, 332. — *Has Donationes & Ordinationes confirmarunt & Cruce signarunt, Henricus Rex, & Mathildis Regina.* *Mon. Angl. Tom.* 3. pag. 7. Sealing of Writings by biting the Wax, see *Wang*.

Sealing Deeds, Makes Persons Parties to them; and if they are not thus sealed they are void, *Dyer* 13. If a Seal is broken off, it will make the Deed void; and when several are bound in a Bond, the pulling off the Seal of one makes it void as to the others. 2 *Lev.* 220. 3 *Nelf. Abr.* 208.

Dutchy Seal, **Exchequer Seal**, **Great Seal**, **Privy Seal**, Seals of Office of Bishops, &c. Vide the *Heads*.

Sealer (*Sigillator*) Is an Officer of the High Court of Chancery, appointed by the Lord Chancellor to seal the Writs and Instruments there made in his Presence.

Seam, (Sax.) A Measure of Corn. See *Seme*.

Sean Fish, Seems to be that Sort of Fish which is taken with a large and long Net, called a *Sean*. *Stat.* 1. *Jac.* 1. *cap.* 25.

Searcher, An Officer of the Customs, whose Business it is to search and examine Ships outward bound, if they have any prohibited or uncustomed Goods on board, &c. This Officer is

mentioned in the Stat. 12. Car. 2. And there are *Searchers* concern'd in *Alnage Duties*; of *Leather*, and in divers other Cases.

Secondary, (*Secundarius*) Is an Officer who is *Second* or next to the Chief Officer; as the *Secondaries* to the *Prothonotaries* of the Courts of B. R. and C. B. the *Secondary* of the *Remembrancer* in the *Ex chequer*, *Secondary* of the *Compter*, &c. 2 *Lill. Abr.* 506.

Writ of the Office of Privy Seal, Is taken Notice of by 1 *Edw.* 4. cap. 1.

Second Replevin, (*Secunda Deliberatione*) Is a Judicial Writ that lies after a Nonsuit of the Plaintiff in *Replevin*, and a *Returno Habendo* of the Cattle replevin, adjudg'd to him that distrained them; commanding the Sheriff to replevy the same Cattle again, upon Security given by the Plaintiff in the *Replevin* for a Redelivery of them, if the Distress be justified. It is a second Writ of *Replevin*, &c. *F. N. B.* 68.

Second Marriage, (*Secunda Nuptia*) Is when after the Decease of one a Man marries a second Wife, which the Law terms *Bigamus*.

Secretary, (*Secretarius*, & *Secretis*.) A Title given to him that is *ab Epistolis & Scriptis Secretis*; as the two *Secretaries of State*, &c. The *Secretaries of State* have an extraordinary Trust, which renders them very Considerable in the Eyes of the King, and of the Subject also; whose Requests and Petitions are for the most part lodg'd in their Hands, to be represented to his Majesty, and to make Dispatches thereupon, pursuant to his Majesty's Directions: They are Privy Counsellors, and a Council is seldom or never held without the Presence of one of them; they wait by turns, and one of these *Secretaries* always attends the Court, and by the King's Warrant, prepares all Bills or Letters for the King to sign, not being Matter of Law. And depending on them is the Office called the *Paper Office*, which contains all the publick Writings of State, Negotiations, and Dispatches, all Matters of State and Council, &c. and they have the Keeping of the King's Seal, called the *Signet*, because the King's private Letters are signed with it. There was but one *Secretary of State* in this Kingdom till about the End of the Reign of King Hen. 8. but then that great and weighty Office was thought proper to be discharged by two Persons, both of equal Authority, and stiled *Principal Secretaries of State*. The Correspondence with all Parts of *Great Britain* is managed by either of the *Secretaries*, without Distinction; but in respect to foreign Affairs, all Nations which have Intercourse of Business with *Great Britain*, are divided into two Provinces, the *Southern* and the *Northern*; of which the *Southern* is under the *Senior*, and the *Northern* under the *junior Secretary*, &c. Our *Secretaries of State* have Power to commit Persons for Treason, and other Offences against the State, as Conservators of the Peace at Common Law, or as Justices of Peace all over *England*; and it is incident to their Office. 1 *Salk.* 347. *Wood's Inst.* 458.

Secta Curia, Suit and Service done by the Tenants at the Court of their Lord. *Paroch. Antiq.* 320.

Secta ad Curiam, Is a Writ which lieth against him who refuseth to perform his *Suit* to the County-Court, or Court-Baron. *F. N. B.* 158.

Secta facienda per illam quæ habet æniam partem, Is a Writ to compel the Heir that hath

the Elder's Part among Co heirs, to perform Service for all the Coparceners. *Reg. Orig.* 177.

Secta Molendini, A Writ lying where a Man by Usage Time out of Mind, &c. hath grinded his Corn at the Mill of a certain Person, and afterwards goeth to another Mill with his Corn, thereby withdrawing his Suit to the former: And this Writ lies especially for the Lord against his Tenants who hold of him to do Suit at his Mill. *Reg. Orig.* 153. *F. N. B.* 122. The Count in the Writ *Secta Molendini*, may be on the Tenure of the Land; or upon Prescription, viz. That the Tenant, and all those who held those Lands, have used to do their Suit at the Plaintiff's Mill, &c. *New Nat. Br.* 272. *Secta ad Molendinum*, and *Assises of Nuisance* are now much turned into Actions of the Case.

Secta Regalis, A Suit by which all Persons were bound twice in a Year to attend the Sheriff's Tourn; and was called *Regalis*, because the Sheriff's Tourn was the King's Leet, wherein the People were to be obliged by Oath to bear true Allegiance to the King, &c.

Secta unica tantum facienda pro pluribus hæreditatibus, Is a Writ that lies for an Heir who is distrained by the Lord to do more Suits than one, in respect of the Land of divers Heirs descended to him. *Reg. Orig.*

Secta non faciendi, A Writ brought by a Woman, who for her Dower, &c. ought not to perform Suit of Court. *Reg. Orig.* 174.

Secunda Superoneratione Pasturæ, Is a Writ which lieth where Admeasurement of Pasture hath been made, and he that first surcharged the Common doth it a second Time, notwithstanding the Admeasurement. *Old Nat. Br.* 73.

Securitatem inveniendi quod se non dixerat ad Partes externas sine Licentia Regis, An ancient Writ lying for the King against any of his Subjects, to stay them from going out of this Kingdom to foreign Parts; the Ground whereof is, That every Man is bound to serve and defend the Common Wealth, as the King shall think fit. *F. N. B.* 85. See *Ne exeat Regnum*.

Securitate Pæris, Is a Writ that lies for one who is threatened Death or Danger by another, against him which so threatens; and is issued out of the Chancery directed to the Sheriff, &c. *Reg. Orig.* 88.

Se Defendendo, Is a Plea for him that is charged with the Death of another Person, by alledging that he was driven unto what he did in his own Defence; and the other so assaulting him, that if he had not done as he did, he must have been in Danger of his own Life; which Danger ought to be so great, as that it appears to have been otherwise inevitable. *Staundf. P. C. lib.* 1. cap. 7. Any Person in his Defence may kill another for the Safety of his Life; and where a Man is attack'd, a Defence may be made without expecting the first Blow, which may render a Person incapable of making any Defence: But a Defence ought to be always unblameable, not to take Revenge. *Bac. Max.* 25. If a Man attack another Person on a sudden falling out, and before a Mortal Wound is given, the other flies to the Wall, or some other unpassable Place, to save his Life, and being still pursued kills the Person making the Assault; from the unavoidable Necessity of it, this is *Se Defendendo*; and so in the like Cases. *Bract.* 3. *E.* 3. There is no ex-
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press Judgment in *Chance-medley*, or *Se Defendendo*; but the Offender is left to Mainprise to sue out his Pardon; and yet his Goods and Chattels are forfeited; tho' where one kills another in his own Defence, upon the Special Matter found, it is said he may be dismiss'd without any Forfeiture, or Pardon purchased. 2 *Inst.* 148. 3 *Inst.* 220. 1 *Inst.* 391. H. P. C. 138. See the Statute 4 H. 8. cap. 5.

Seditious Conventicles, To the Disturbance of the Peace, &c. See *Conventicles* and *Heresy*.

Seed-cod, (from the Sax. *Seed*, Seed, and *Codd*, a Purse or such like Continent) Is a Basket or other Vessel of Wood carried on one Arm of the Husbandman or Sower of Ground, to bear the Seed or Grain which he sows, and spreads abroad with the other Hand: In *Westmoreland* a Bolster or Pillow is called a *Codd*; and in other Northern Parts a Pin cushion is term'd a *Pin-cod*. —Pro uno *Seed-cod* cmpto 4 d. Paroch. Antiq. 549. Kennet's Glos.

Seeder, A Seedfman, or one who sows the Land. Blount.

Seigneur, (Fr. *Seigneur*, i. e. *Dominus*) Is in general Signification as much as Lord; but particularly used for the Lord of the Fee, or of a Manor, as *Senior* among the *Feudists* is he who grants a Fee or Benefit out of the Land to another; and the Reason is, because having granted away the Use and Profit of the Land, the Property or *Dominium* he still retains in himself. Hotom. F. N. B. 23.

Seignior, (*Dominium*) Signifies a Manor or Lordship, and it often occurs in our old Books. *Kitch.* 80.

Seigniorage, Is a Royalty or Prerogative of the King, whereby he claims an Allowance of Gold and Silver brought in the Mass, to be exchanged for Coin. As *Seigniorage*, out of every Pound-Weight of Gold, the King had for his Coin 5 s. of which he paid to the Master of the Mint for his Work sometimes 1 s. and sometimes 1 s. 6 d. Upon every Pound-Weight of Silver, the *Seigniorage* answer'd to the King in the Time of King *Edw.* 3d, was eighteen Penny-weight, which then amounted to about 1 s. out of which he sometimes paid 8 d. at others 9 d. to the Master: In the Reign of King *Hen.* 5. the King's *Seigniorage* of every Pound of Silver was 15 d. &c. Stat. 9. *Hen.* 5. cap. 1. *Hale's Sher. Acco.* pag. 3.

Seisin, (*Seisina*, Fr. *Seisine*) In the Common Law signifies Possession. To *seise* is to take Possession of a Thing; and *primer Seisin* is the first Possession. Co. Lit. 152. There is a *Seisin* in Deed or in Fact, and a *Seisin* in Law; a *Seisin* in Deed is when an actual Possession is taken; and *Seisin* in Law is where Lands descend, and one hath not actually entred on them, &c. 1 *Inst.* 31. *Seisin* in Law is a Right to Lands and Tenements, though the Owner is by Wrong disseised of them: And he who hath an Hour's actual Possession quietly taken, hath *Seisin de droit & de claime*, whereof no Man may disseise him, but must be driven to his Action. *Perk.* 457, 458. A *Seisin* in Law is sufficient to avow upon; but to the bringing an *Affise* actual *Seisin* is required, &c. 4 *Rep.* 9. *Seisin* of a superior Service, is *Seisin* of all inferior Services which are incident thereto: And *Seisin* of Homage is a *Seisin* of all other Services, because in the doing thereof the Tenant takes upon himself to do all Services. 4 *Rep.* 80. 1 *Danv. Abr.* 647. The *Seisin* of Rent, or other

annual Service, is a sufficient *Seisin* of casual Services. 4 *Rep.* 8. But *Seisin* of one annual Service is not *Seisin* of another annual Service; as if there be Lord and Tenant by Fealty, ten Shillings Rent, and three Days Work in the Year; in this Case *Seisin* of the Rent is no *Seisin* of the Work, nor is *Seisin* of the Rent *Seisin* of the Suit of Court, which is annual. 4 *Rep.* 9. 1 *Danv. Abr.* 647. 2 *L. R.* 507. The *Seisin* of the Father is not sufficient for the Heir; though if a Fine be levied to one for Life, the Remainder to another in Tail, and the Tenant for Life takes *Seisin* of the Services, this will be a good *Seisin* for him in Remainder; and the *Seisin* of a Lessee for Years is sufficient for him in Reversion. 2 *H.* 6, 7. 45 *Ed.* 3, 26. 1 *Danv.* 805, 646. Where a Man is seised of a Reversion, depending upon an Estate for Life, the Pleading of it is that he was seised of it *ut de feodo*, leaving out the Word *Dominico*; but if it be a Reversion in Fee, expectant upon the Determination of a Lease for Years, there he may plead that he was seised of it in *Dominico suo ut de feodo*. *Dyer* 185, 257. *Rep.* 20, 27. 4 *Rep.* 68. *Seisin* is never to be alledg'd, but where it is traversable; and when a Defendant alledged a *Seisin* in Fee in any one under whom he claims, the Plaintiff cannot alledge a *Seisin* in another, without traversing, confessing or avoiding of the *Seisin* alledged by the Defendant. *Cro. Eliz.* 30. 1 *Brownl.* 170. When a *Seisin* in Fee is alledged, it shall be intended a lawful *Seisin* till the contrary appears. 2 *Lutw.* 1337. But the Party is to shew of what Estate he is seised, &c. 3 *Nelf. Abr.* 215. See *Stat.* 32. H. 8. cap. 2.

Seisina habenda, quia Rex habuit Annum, Diem, & hystum, Is a Writ that lies for Delivery of *Seisin* to the Lord of Lands or Tenements, after the King in Right of this Prerogative hath had the Year, Day and Waste, on a Felony committed, &c. *Reg. Orig.* 165.

Sel, Denotes the Bigness of a Thing to which it is added; as *Selwood* is a great Wood.

Selds, (from the Sax. *Selde*, a Seat, or Stool) Is used for a Shop, Shed, or Stall in a Market. *Affis.* 9. R. 1. But Sir *Edw. Coke* takes the Word *Selda* for a Wood of Sallows. Co. Lit. 4.

Sellobane, (Sax. *Self-bana*) Is where a Man murders himself, called *Felo de se*.

Self-Preservation. Every Creature has implanted in it by Nature a strong Desire of *Self-Preservation*; and by our ancient Law, if a Man stole Victuals merely to satisfy his present Hunger, being for the Preservation of Life, it was not Felony, but this Law is become obsolete. *Staund. P. C.* See *se Defendendo*.

Selson of Land, (*Selio Terra*) Is derived from the Fr. *Seillon*, which signifies a Ridge of Land, or Ground arising between two Furrows, and contains no certain Quantity, but sometimes more and sometimes less: Therefore *Crompton* says, That a *Selson of Land* cannot be in Demand, because it is a Thing uncertain. *Crompt. Juris.* 221.

Seme, (Sax. *Seam*, i. e. *Onus*) A Horse Load, or eight Bushels of Corn. Blount. A *Seme* of Glafs is twenty-four Stone, each Stone five Pounds Weight.

Semevole, A Pipe, or Half a Tun of Wine. *Merch. Dist.*

Seminaries, Persons are not to go or be sent to *Popish Seminaries*, to be instructed or educated, under divers Penalties and Disabilities, by *Stat.* 1. *Jac.* 1. cap. 4. And Contributing to the Maintenance

tenance of a Popish Seminary, is made a *Premunire*. Stat. 27. Eliz. cap. 2. See *Papist*.

Seminiverbius, A Preacher, or Sower of Words. *Pet. Bese.*

Senage, (*Senagium*, from *Senatus*, sometimes used for *Synod*) Is Money paid for *Synodals*.

Senatoz, (*Lat.*) As now taken, is a Parliament Man. In the Laws of King *Edw. the Confessor*, we are told that the *Britons* called those *Senators* whom the *Saxons* afterwards term'd *Aldermen*, and *Borough-masters*; tho' not for their Age, but their Wisdom, for some of them were young Men, but very well skill'd in the Laws. *Kenulph*, King of the *Mercians*, granted a Charter which ran thus, *viz. Consilio & consensu Episcoporum & Senatorum gentis sue largitus fuit dicto Monasterio*, &c. *Staundf. P. C. cap. 28.*

Sendal, A Kind of thin fine Silk, mentioned in the Stat. 2. R. 2. cap. 1.

Seneschal, (*Senescallus*, derived from Germ. *Sein* a House or Place, and *Schale*, an Officer) Is a Steward: As the *High Seneschal*, or Steward of England; *Seneschal de le Hotel de Roy*, Steward of the King's Household, *Seneschal* or Steward of Courts, &c. *Co. Lit. 61. Croke's Jurisd. 102. Kitch. 83. See Steward.*

Seneschallo & Marehallo quod non teneant placita de libero tenemento, A Writ directed to the Steward and Marshal of England, inhibiting them to take Cognizance of an Action in their Court that concerns Freehold. *Reg. Orig. 185, 191.*

Seneucia, A Word anciently used for Widowhood. *Plac. Trin. 17. Ed. 3.*

Seney-Days, Are Play-Days, or Times of Pleasure and Diversion — *Dies recreationis vocati Anglice Seney-Days*, &c. *Regist. Eccl. Ebor. Anno 1562.*

Seperia, *Seperaria*, Several, or severed and divided from other Ground. *Paroch. Antiq. 336.*

Separation, (*Separatio*) Is the Living asunder of Man and Wife. See *Divorce*.

Septuagesima, The third Sunday before *Quadragesima* Sunday in *Lent*, and is called *Septuagesima*, because 'tis about the seventieth Day before *Easter*, as *Sexagesima* and *Quinquagesima* are thus denominated from their being, the one sixty, the other fifty Days before the same Feast, which are all of them Days appropriated by the Church to acts of Penance and Mortification, preparatory to the Devotion of *Lent*. From *Septuagesima* Sunday until the *Octaves* after *Easter*, the Solemnizing of Marriage is forbidden by the Canon Law; and the Laws of King *Canutus* ordained a Vacancy from Judicature, from *Septuagesima* to *Quindena Pasche*. See *Stat. Westm. 1. cap. 51.*

Septuagint, The Seventy Interpreters of the Bible; who were in Truth seventy-two, *viz.* Six out of every one of the Twelve Tribes. *Litt. Di&t.*

Septum, An Inclosure, so called by Reason it is encompass'd *cum Sepe & Fossa*, with a Hedge or a Ditch, at least with a Hedge; and it signifies any Place paled in.

Sepulchre, (*Sepulchrum*) Is the Place where any Body lies buried; but a Monument is set up for the Memorial of the Deceas'd, though the Corps lie not there. *Corwel.*

Sepultura, An Offering made to the Priest for the Burial of a dead Body. *Domesd.*

Sequatur sub suo Periculo, Is a Writ that lies where a *Summons ad Warrantizand'* is award-

ed, and the Sheriff returns that the Party hath nothing whereby he may be summon'd; then goes forth an *Alias* and a *Pluries*; and if he come not in on the *Pluries*, this Writ shall issue. *Old Nat. Br. 163.*

Sequela Causæ, The Process and depending Issue of a Cause for Trial.

Sequela Curiz, Is used for Suit of Court. — *Et quod sint liberi a Sequela Curiz. Mon. Angl. Tom. 2. pag. 253.*

Sequela Villanorum, The Retinue and Appurtenances to the Goods and Chattels of Villains, which were at the absolute Disposal of the Lord. In former Times, when any Lord told his Villain, it was said, *Dedi B. Nativum meum cum tota Sequela sua*; which included all the Villain's Offspring. *Paroch. Antiq. 216, 288.*

Sequentia, A Jubilee, or Song of Rejoycing. *Brompton.*

Sequefter (*Sequestrare*) Is a Term used in the Civil Law for Renouncing; as when a Widow comes into Court, and disclaims to have any thing to do, or to intermeddle with her Husband's Estate who is deceas'd. She is said to *sequefter*.

Sequestration, (*Sequestratio*) Signifies the Separation or setting aside of a Thing in Controversy, from the Possession of both the Parties that contend for it; and it is twofold, *Voluntary* and *Necessary*; *Voluntary* is that which is done by the Consent of each Party: *Necessary* is what the Judge of his Authority doth, whether the Parties will or not. *Fortescue, cap. 50. Dyer 232, 256.* And there is a *Sequestration* on a Person's standing out all the Processes of Contempt for Non-appearance in *Chancery* upon a Bill exhibited; so where Obedience is not yielded to a Decree, the Court will grant a *Sequestration* of the Lands of the Party, &c. And a *Sequestration* is also a Kind of Execution for Debt; especially in the Case of a *beneficed Clerk*, of the Profits of the Benefice, to be paid over to him that had the Judgment, 'till the Debt is satisfied. *2 Inst. 472. 2 Roll. Abr. 474.* But the most usual *Sequestration* of a Benefice, is upon a Vacancy, for the gathering up the Fruits of the Benefice to the Use of the next Incumbent; and the Profits of the Church being in Abeyance, are to be received by the Church-wardens by Appointment of the Bishop, to make Provision for the Cure during the Vacancy, &c. *Stat. 28. H. 8. cap. 11.* *Sequestration* is further the Act of the Ordinary, disposing of the Goods of one that is dead, whose Estate no Man will meddle with.

Sequestration in London, Is made upon an Action of Debt; and the Course of proceeding in it is thus: The Action being entred, the Officer goes to the Shop or Warehouse of the Defendant, when there is no Body within, and takes a Padlock and hangs it upon the Door, &c. using these Words, *viz. I do sequester this Warehouse, and the Goods and Merchandises therein of the Defendant in the Action, to the Use of the Plaintiff.* &c. and so puts on his seal, and makes Return thereof at the *Compter*; then four Court-Days being past, the next Court after the Plaintiff may have Judgment to open the Doors of the Shop or Warehouse, and to appraise the Goods therein by a Serjeant, who takes a Bill of Appraisement, having two Freemen to appraise them, for which they are to be sworn at the next Court holden for that *Compter*; and then the Officer puts his Hand to the Bill of Appraisement

ment, and the Court granteth Judgment ; though the Defendant in the Action may put in Bail before Satisfaction, and so dissolve the *Sequestration*; and after Satisfaction, may put in Bail *ad disprobandum debitum*, &c. *Pract. Solic.* 429.

Sequestro habendo, Is a Writ Judicial for the Discharging a *Sequestration* of the Profits of a Church Benefice granted by the Bishop at the King's Commandment, thereby to compel the Parson to appear at the Suit of another ; and the Parson upon his Appearance may have this Writ for the Release of the *Sequestration*. *Reg. Judic.* 36.

Serjeant, (*Serviens*, from the Fr. *Sergeant*) Is a Word diversly used ; as first a *Serjeant at Law*, (*Serviens ad Legem*) otherwise called *Serjeant Counter* or of the *Coif*, is the highest Degree in the *Common Law*, as a *Doctor* is in the *Civil Law*; but according to *Spelman*, a *Doctor of Law* is Superior to a *Serjeant*, for the very Name of a *Doctor* is Magisterial, but that of a *Serjeant* is only Ministerial. To these *Serjeants*, as Men best learned and experienced in the Law and Practice of the Courts, one Court is severd to plead in by themselves, which is that of the *Common Pleas*, where the *Common Law of England* is most strictly observ'd ; yet they are not so limited as to be restrained from Pleading in any other Courts, where the Judges (who cannot be such 'till they have taken the Degree of *Serjeant*) call them *Brothers*, and hear them with great Respect ; and of which one or more are stiled the *King's Serjeants*, being commonly chosen out of the rest in respect of their great Learning, to plead for the King in all his Causes, especially upon Indictments for *Treason*, &c. In other Kingdoms the *King's Serjeant* is called *Advocatus Regius* ; and here in *England*, in the Time of *King Edw. 6th*. *Serjeant Benloe* wrote himself *solus Serviens ad Legem*, there being for some Time none but himself ; and in *Ireland* at this Day there is only a *King's Serjeant* : *Serjeants at Law* are made by the King's Writ or Mandat directed unto such as are called, commanding them to take upon them that Degree by a certain Day ; and with what Solemnity they are created, see *Fortescue*, cap. 50. 3 *Cro.* 1. *Dyer* 72. 2 *Inst.* 213, 214. Their Privilege of being impleaded in *C. B.* &c. vide *Privilege*.

Serjeants at Arms, Their Office is to attend the Person of the King, to arrest Persons of Condition offending, and give Attendance on the Lord High Steward of *England*, sitting in Judgment on any Traitor, &c. There may not be above thirty *Serjeants at Arms* in the Realm, by the Stat. 13. R. 2. cap. 6. And two of them, by the King's Allowance, do attend on the two Houses of Parliament ; the Office of him in the House of Commons is, the Keeping of the Doors, and the Execution of such Commands touching the Apprehension and taking into Custody of any Offender, as that House shall injoin him. Another of them attends on the Lord Chancellor in the Chancery, and one on the Lord Treasurer of *England* : Also one upon the Lord Mayor of *London* on extraordinary Solemnities, &c. They are in the old Books called *Virgatores*, because they carried Silver Rods gilt with Gold, as they now do *Maces*, before the King. Stat. 7. Hen. 7. cap. 3. *Crompt. Fur.* 9. *Fleta. lib.* 2. cap. 38.

Serjeants Of a more inferior Kind are *Serjeants of the Mace*, whereof there is a great Band in the City of *London*, and other Corporate Towns,

that attend the Mayor or other Head Officer, chiefly for Masters of Justice, &c. *Kitch.* 143. Formerly all the *Justices of Eyre* had certain Officers attending them called *Serjeants*, who were in the Nature of *Tipstaves*. *West.* 1. cap. 30. And the Word *Serjeant* is used in *Britton* for an Officer belonging to the County ; which is the same with what *Bracton* calls *Serjeants of the Hundred*, being no more than Bailiff of the Hundred. *Bract. lib.* 5. cap. 4. And we read of *Serjeants of Manors*, of the Peace, &c.

Serjeants of the Household, Are Officers who execute several Functions within the *King's Household*, mentioned in the Stat. 33. H. 8. cap. 12.

Serjeanty, (*Serjantia*) Signifies in Law a Service, that cannot be due from a Tenant to any Lord but to the King only ; and this is either *Grand Serjeanty* or *Petit* ; the first is a Tenure whereby one holds his Lands of the King by such Services as he ought to do in Person to the King at his Coronation ; and may also concern Matters Military, or Services of Honour in Peace, as to be the King's Butler, Carver, &c. *Petit Serjeanty*, is where a Man holds Land of the King, to furnish him Yearly with some small Thing towards his Wars ; and in Effect payable as Rent, though all Tenures are turn'd into *Socage* by the 12 Car. 2. cap. 24. Yet the Honourary Services of *Grand Serjeanty* still remain, being therein excepted. *Lit.* 153, 159. 1 *Inst.* 105, 108. See *Chivalry*.

Sermonium, Was an Interlude or Historical Play acted by the inferior Orders of the Clergy, assisted by Youths and Children in the Body of the Church, suitable to the Solemnity of some High Procession Day ; and before the modern Improvements of the Stage, these ruder Sort of Performances were even a Part of the unreform'd Religion. *Collect. Matt. Hutton, Ex. Reg. Eccl. Lincoln. M.S.*

Serples, A Mantle or upper Coat ; from the Lat. *Superpellicium*. *Blount*.

Servage, Is when Tenants, besides Payment of a certain Rent, find one or more Workmen for their Lord's Service. 1 R. 2. cap. 6. *King John* brought the Crown of *England* in *Servage* to the See of *Rome*. 2 *Inst.* 274.

Servants, Are such as Men of Trades and Professions employ under them, to assist them in their particular Callings ; or such Persons as others retain to perform the Work and Business of their Families, which comprehends both Men and Women : And *Servants* are *Menial*, or not so ; *Menial*, being *Domesticks* living within the Walls of the House. *Wood's Inst.* 51. Every Person under the Age of 30 Years, that has been brought up in Handicraft Trades, and hath not Lands of Inheritance, or for Life, of the yearly Value of 40 s. or is not worth 10 l. in Goods, and so allowed by two Justices of Peace, and not being retained with any Person in Husbandry, or in the said Arts, nor being lawfully hired as a *Servant* with any Nobleman or Gentleman, or having any Farm or other Holding whereupon he may employ his Labour ; shall, upon Request made by any Person using the Mystery wherein such Person hath been exercised, be obliged to serve him as a *Servant* therein, on Pain of Imprisonment : 5 *Eliz.* cap. 4. And by the same Statute, Persons are compellable to serve in Husbandry by the Year, with any Person that keepeth or useth Husbandry, and who will require any

any proper Person to *serve*; and the Justices of Peace have Authority herein, and to assess the Wages of such *Servants* in Husbandry, order Payment, &c. Also two Justices, and Mayors or Head Officers of any City or Town, may appoint any poor Woman of the Age of 12 Years, and under 40. unmarried, to go to *Service* by the Year, &c. for such Wages and in such Manner as they think fit; and if any such Woman shall refuse to go abroad as a *Servant*, then the said Justices, &c. may commit such Woman until she be bound to *serve*. *Stat. Ibid.* If any Master shall give more Wages than assessed by the Justices; or any *Servant* take more, or refusing to *serve* for the Statute Wages, they are punishable; but a Master may reward his *Servant* as he pleases, so as it be not by way of Contract on the Retainer: And if a *Servant* depart before the End of the Term, being hired for a Year, without Cause allowed by a Justice; or after his Term is expired, without giving a Quarter's Warning, two Justices may commit him to Prison till he give Security to *serve* out the Time; or one Justice of Peace may send him to the House of Correction, there to be punished as a disorderly Person. 7 *Fac. 1. cap. 4.* A Master cannot put away a *Servant* before the End of his Term without some reasonable Cause, to be allowed by one Justice; nor after the End of the Term without a Quarter's Warning given before Witnesses; if a Master discharges a *Servant* otherwise, he is liable to a Penalty of 40 s. 5 *Elix.* And where *Servants* quit their Services, *Testimonials* are to be given by Constables and two Householders, &c. declaring their lawful Departure; and a *Servant* not producing such a *Testimonial* to the Constable where he designs to dwell, is to be imprison'd till he gets one, and in Default thereof be whipped as a Vagabond; Masters retaining them without such *Testimonial*, shall forfeit 5 l. But the *Testimonial* concerns only *Servants* in Trades and Husbandry. *Stat. Ibid.* No Person may retain a *Servant* for less than a Year, by the ancient Statutes; if one retains a *Servant* generally, without expressing any Time, the Law construes it for a Year; and where a *Servant* is hired for a Year, according to the Statute, and the Master dieth within that Time, his Executor must pay the Wages. *Dalt. 129. 1 Inst. 42.* If a Woman *Servant* marrieth, she is obliged to *serve* out her Year; but if a single Woman who is with Child procures her self to be retained with a Master, who knows nothing thereof, this is a good Cause to discharge her from her *Service*; and so if she be gotten with Child during her *Service*. *Dalt. 92. Resol. Ann. 1633.* A *Servant* retained for a Year, falling sick, ought not to be discharged therefore, or for any Disability by the Act of God; neither may his Wages be abated for those Causes. *Dalt. 129.* Master and *Servant* may part by Consent, and then the Allowance of the Discharge by a Justice is not necessary. And a Master's detaining Wages, not allowing sufficient Meat, &c. or the Master's Wife beating him, are good Causes for a *Servant's* Departure; but they must be allowed by a Justice. *Dalt.* If a Master puts away his *Servant*, he must pay him his Wages to the Time he *served*; though if the *Servant* go away from his *Service* before the End of the Time agreed, he shall forfeit all his Wages. *Dalt. 129.* A *Servant* is not to depart from his *Service* without good Cause; and if he refuse to do his Bu-

siness, this is a Departure in Law, although he go not away. *Noy's Max. 90.* Enticing away a *Servant*, or retaining and keeping one who departed from his Master without License, knowing him to be a *Servant* to another, the Master may have Action of the Case against the Person doing it. 2 *Lev. 63. Stat. 23. Ed. 3.* But if a Man do retain another's *Servant*, not knowing that he was in the *Service* of the other, he shall not be punished for so doing, if he do not retain him after Notice of his first *Service*: And if a Person do retain one to *serve* him for 40 Days, and another doth afterwards retain him to *serve* for a Year, the first Covenant is avoided, because the Retainer was not according to the Statute. *New Nat. Br. 374, 375.* A Master is answerable for the Actions and Trespases of his *Servant* in many Cases; but not for Trespases of Battery, &c. and in criminal Cases, unless done by his Commandment. *Noy Max. 99.* If a Man has a *Servant* known to be such, and he send him to Fairs and Markets to buy or sell, his Master shall be charged if the Thing come to his Use; tho' if a *Servant* makes a Contract in his Master's Name, the Contract will not be binding, unless it were by the Master's Commandment or Assent; and where a *Servant* borrows Money in his Master's Name, without Order, that does not bind the Master. *Dr. & Stud. Dial. 2. ch. 42.* A *Servant* buys Things in his own Name, the Master shall not be charged, except the Things bought come to his Use, and he have Notice of it. *Kitch. 371.* Where a Master always gives his *Servant* Money, he shall not answer for what the *Servant* buys on Trust; but if he sends sometimes on Trust, he must answer to his usual Tradesmen for what is so taken up upon Trust by him. *Wood's Inst. 56.* A Master used to give his *Servant* Money every Saturday, to defray the Charges of the foregoing Week, and the *Servant* kept the Money; *per Holt Ch. Just.* the Master is chargeable; for the Master at his Peril ought to take Care what *Servant* he employs; and 'tis more reasonable that he should suffer for the Cheats of his *Servants* than Strangers and Tradesmen who do not employ them. 3 *Salk. 234.* It has been adjudg'd, that where a *Servant* usually buys Goods for his Master upon Tick, and takes up Things in his Master's Name, but for his own Use, the Master is liable; but it is not so where the Master usually gives him ready Money: That if the Master gives the *Servant* Money to buy Goods for him, and he converts the Money to his own Use, and buys the Goods upon Tick, yet the Master is answerable, as the Goods come to his Use; otherwise he is not: Also a Note under the Hand of an Apprentice shall bind his Master, where he is allowed to deliver out Notes, tho' the Money is never applied to the Master's Use; but if he is not allowed or accustomed to deliver out Notes, his Note shall not bind the Master, if the Money is not applied to the Use of the Master. 3 *Salk. 234, 235.* The Act of a *Servant* shall not bind the Master, unless he acts by Authority of his Master; and therefore if a Master sends his *Servant* to receive Money, and the *Servant* instead of Money takes a Bill, and the Master as soon as told thereof disagrees, he is not bound by this Payment: But Acquiescence, or any small Matter, will be Proof of his Master's Consent, and that will make the Act of the *Servant* the Act of his Master. *Hill. 2. Ann. B. R. 2 Salk. 442.* For what is within the Compass of a *Servant's* Business, the

the Master shall be generally chargeable, and also have Advantage of the same against others. *Noy's Max.* The Master is liable for the Neglects of his *Servant*, (tho' not the wilful Wrong) where a Carrier's *Servant* loses Things delivered to him, the Master must answer it, and Action lies against him; and if Goods be undertaken to be carried safely for Hire, but by Negligence are spoiled, it has been held, that whoever employs another, is answerable for him, and undertakes for his Care to all that make Use of him. 2 *Salk.* 440. If a Surgeon undertakes the Cure of a Person, and by sending Medicines by his *Servant*, the Wound is hurt and made worse, the Patient shall have Action against the Master, and not against the *Servant*. 18 *Hen.* 8. And where a Smith's *Servant* pricks a Horse whilst he is shoeing him, the Master shall answer the Damages. *Wood's Inst.* 56. A *Servant* casting any Thing into the Highway to the Nuisance of the King's Subjects, the Master shall be charged, &c. *Noy's Max.* 94. A Master may maintain the Cause of his *Servants*, may bring an Action for the Battery of a *Servant*, whereby the Master loses his Service, which is to be alledged: And if a *Servant* is cozened of his Master's Money, the Master may bring Action on the Case against the Person that cozened him. 9 *Rep.* 113. 10 *Rep.* 130. 1 *Roll. Abr.* 98. And in case a *Servant* give away his Master's Goods, the Master may have Action against the Receiver. *Noy's Max.* 94. Where a *Servant* damages Goods of his Master, Action lies against him: And being employed to sell Goods in his Master's Shop, if the *Servant* carries away and converts them to his own Use, Action of Trespass may be brought by the Master against the *Servant*; for the *Servant* cannot meddle with them in any other Manner than to sell them. 5 *Rep.* 14. 1 *Leon.* 88. *Moor* 248. But if a *Servant* be robbed, without his Default, &c. he shall be excused, and allowed it on his Account. 1 *Inst.* 89. *Servants* going or making away with, imbezilling or purloining any of their Master's Goods, to the Value of 40s. are guilty of Felony, by Stat. 21 *Hen.* 8. cap. 7. and 12 *Ann.* c. 7. And assaulting their Masters, they may be bound to the good Behaviour, or be committed to Prison for a Year, &c. 5 *Eliz.*

Servi, Were Bond-men; and *Servi Testamentales*, those which we now call *Covenant Servants*. *Leg. Athelst.* The proper *Servi* were of four Sorts, viz. such as sold themselves for a Livelihood; Debtors that were to be sold for being incapable to pay their Debts; Captives in War, employ'd as perfect Slaves; *Nativi*, such as were born *Servants*, and by such Discent belonged to the sole Property of the Lord: And all these had their Persons, their Children, and Goods, at the Disposal of their Lord, incapable of making any Wills, or giving away any Thing, &c.

Service, (*Servitium*) Is that Duty which the Tenant, by Reason of his Fee or Estate, oweth unto the Lord: The ancient Law-Books make many Divisions of it; as into *Personal*, and *Real*; *Free*, and *Base*; *Continual*, or *Annual*; *Casual*, and *Accidental*; *Intrinsic*, and *Extrinsic*, &c. *Bract. lib.* 2. *Brit. cap.* 66. 4 *Co. Rep.* 9. And where *Services* are intire, and cannot be divided, such as Payment of a Horse, &c. upon the Alienation of Parcel of the Lands by the Tenant, the *Services* shall be multiplied, and every Alience render the whole *Service*; though by the Purchase of Parcel by the Lord, the Whole is extinct, except

in Case of Fealty, and Heriot Custom. 6 *Rep.* 1. *Wood's Inst.* 133.

Service Secular, Signifies worldly Service, contrary to *Spiritual* and Ecclesiastical. *Stat.* 1 *Ed.* 4. c. 1.

Servitium Forinfecum, A Service which did not belong to the chief Lord, but to the King: It was called *Forinfecum* and *Epraneum*, because it was done *Foris*, vel *extra servitium quod fit Domino Capitali*; and we find several Grants of Liberties with the Appurtenances, *Salvo forensi servitio*, &c. in *Mon. Ang. Tom.* 2. pag. 48.

Servitium Intrinfecum, Is that Service which was due to the chief Lord alone from his Tenants within his Manor. *Bract. lib.* 2. *Fleta, lib.* 3.

Servitium Liberum, A Service to be done by feudatory Tenants, who were called *Liberi homines*, and distinguished from *Vassals*; as was their Service; for they were not bound to any of the base Services of ploughing the Lord's Land, &c. but were to find a Man and a Horse, or go with the Lord into the Army, or to attend his Court, &c. and sometimes it was called *Servitium liberum armorum*; as in an old Rental of the Manor of *South-Malling* in *Essex*, mentioned by *Somner* in his Treatise of *Gavelkind*, pag. 56.

Servitium Regale, Royal Service, or the Prerogatives that within a Royal Manor belong'd to the Lord of it; which were generally reckoned to be the following, viz. Power of Judicature in Matters of Property; and of Life and Death in Felonies and Murders; Right to Waifs and Estrays; Minting of Money; Assise of Bread and Beer; and Weights and Measures: All which Privileges 'tis said were annexed to some Manors by Grant from the King. *Paroch. Antiq.* 60. *Blount* says, *Servitium Regale* is the same with *Forinfecum*.

Servitius Acquietandis, Is a Writ Judicial that lies for a Man distrained for Services to one, when he owes and performs them to another, for the Acquittal of such Services. *Reg. Judic.* 27.

Servitor, (*Servulus*) Is a Serving-Man; particularly applied to *Scholars* in the Colleges of the Universities, who are upon the Foundation.

Servitors of Bills, Such *Servants* or Messengers of the *Marshal* of the King's Bench, as were sent abroad with *Bills* or Writs to summon Men to that Court. *Stat.* 2 *H.* 4. c. 23.

Sessur, Seems to signify the Assessing or Rating of Wages. 25 *Ed.* 3. c. 6.

Session, (*Sessio*) Is a Sitting of Justices in Court upon their Commission; as the *Sessions* of *Oyer* and *Terminer*, *Quarter Sessions*, &c.

Sessions of Parliament, (*Sessio Parliamenti*) The Sitting of the *Parliament*; and the *Session* of *Parliament* continues till it be prorogued or dissolved, and breaks not off by Adjournment. 4 *Inst.* 27. See *Parliament*.

Settlements of Poor, In *Parishes*, there are several Statutes relating to, viz. 43 *Eliz.* cap. 2. 3 & 4 *W. & M.* cap. 17. 8 & 9 *W.* 3. c. 30, &c. Vide *Poor*.

Several Action, Is where two or more Persons are severally charged in any Action.

Several Inheritance, An Inheritance conveyed, so as to descend, or come to two Persons severally, by *Moieties*, &c. Vide *Inheritance*.

Several Tail, Is that whereby Land is given and intailed severally to two. *Co. Lit.*

Several Cenuay, (*Tenua separalis*) A Plea or Exception taken to a Writ that is laid against

two Persons as joint Tenants, who are *several*. Bro. 273.

Severance, Is the Singling or *Severing* of two or more join'd in one Writ or Action: There is a *Severance* of the Tenants in an *Affise*, when one or two Disseisees appear upon the Writ, and not the other. *Book Entr.* 81. A *Severance* in Debt, where two Executors are named Plaintiffs, and one refuseth to act or prosecute. *Ibid.* 220. *Severance* in *Quare Impedit*; in *Attaints*, &c. 5 Rep. 97. And it lies in Real, as well as Personal Actions; and on Writs of Error. *F. N. B.* 78. 10 Rep. 135. In Writ of Error, if three Defendants in the Action bring Error, and one releases the Errors, he may be summoned and severed, and then the other two shall proceed to reverse the Judgment. 6 Rep. 26. And if in Error where there are several Plaintiffs, one only appears and assigns Errors; this is not good, without summoning and severing the Rest. *Cro. Eliz.* 892. Summons and *Severance* is usually before Appearance; as Nonsuit is after Appearance. 10 Rep. 134. But according to *Hale*, there are two Sorts of *Severances*, one when a Plaintiff will not appear; and the other when several Plaintiffs appear, but some will not proceed and prosecute. *Hardr.* 317. 3 *Nels. Abr.* 255. If a Plaintiff or Defendant on a Writ of *Summons* and *Severance*, sued out against him by another, doth not come in upon it, Judgment shall be had *ad Prosequendum solum*; and this hath been done in B. R. by giving a Rule to appear and come in. 2 *Lill. Abr.* 539.

Severance of Corn, The Cutting and Carrying it from off the Ground; and sometimes the Setting out the *Tithes* from the Rest of the Corn, is called *Severance*. 2 *Cro.* 325.

Seward, A Saxon Word for he who guards the Sea-Coasts; it signifies *Custos Maris*.

Sewer, (*Severa* & *Sewera*) Is a Fresh-water Trench, or little River, encompass'd with Banks on both Sides, to carry the Water into the Sea, and thereby preserve the Land against Inundations, &c. The Kings of England granted Commissions of *Sewers* long before any Statute was enacted in Parliament for it; and during the Reigns of King *Hen. 6.* Ed. 4. and *H. 7.* several Statutes were made for appointing Commissions of *Sewers* in all Parts of the Realm where needful; some to endure ten Years, some fifteen Years, and others five Years, &c. with certain Powers to the Commissioners; which Commissions, by the 23 *Hen. 8.* are to be settled by the Lord Chancellor, Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellor to be one; and is to continue ten Years, unless repealed by a new Commission: And by this Law, the Commissioners Oath is appointed, they are to be qualified as to Estates, by having Lands, Tenements or Hereditaments, in Fee or for Life, worth forty Marks *per Ann.* besides Reprizes (except they are resident in and free of a Corporation, and having Moveables worth 100*l.*) and if they execute the Commission not being thus qualified, they incur a Forfeiture of 40*l.* Commissioners that may lawfully act, have an Allowance for their Pains of 4*s.* *per Diem*, and their Clerks 2*s.* a Day, out of the Taxes to be laid and levied. 23 *Hen. 8.* cap. 5. The Commissioners of *Sewers* have Power to make and ordain Laws, but not to continue in Force longer than their Commission by this Statute; and may decree Lands to be

sold to levy Charges assessed, upon Nonpayment, &c. *Stat. Ibid.* All Laws, and Ordinances of the Commissioners, are to remain in Force till repealed, notwithstanding the Determination of their Commission; and Clerks of Commissions of *Sewers* are to estreat Fines and Penalties imposed by the Commissioners, yearly into the *Exchequer*, by 13 *Eliz.* cap. 9. The Business of the Commissioners of *Sewers* is to repair Sea-Banks, and Walls, survey Rivers, publick Streams, Ditches, &c. and make Orders for that Purpose: They have Authority grounded on the Statutes, to inquire of all Nuisances, and Offences committed by the Stopping of Rivers, erecting Mills, not repairing of Banks, and Bridges, &c. and to tax and assess all whom it may concern, for the Amending of Defaults, which tend to the Obstruction or Hinderance of the free Passage of the Water, through its ancient Courses: And they may arrest Carts and Horses, and take Trees, paying a reasonable Price for them, for Reparations; appoint Workmen, Bailiffs, Surveyors and other Officers, &c. *Terms de Ley.* 541. 4 *Inst.* 275. *Laws Sew.* 86, 96. They proceed by Jury and View, in their Inquiries into Annoyances and Defects of Repairs; and the Jury may amerce for Neglects: Also the Commissioners may punish by Fine for Contempts, and where Officers are negligent in their Duty; though they may not imprison Persons for Disobedience to their Orders. *Laws Sew.* But they cannot intermeddle where there is not a publick Prejudice; nor can they make a new River: Upon the Statute 23 *Hen. 8.* of *Sewers*, the Commissioners decreed, that a new River should be made out of another large River through the main Land for seven Miles, unto another Part of the old River, and in order to it they laid a Tax of a Sum in gross upon several Towns; adjudged, that the Commissioners have no Power to make a new River, or any new Invention to cast out Water, &c. for such Things are to be done in Parliament: But they may order an old Bank to be new made, or alter a *Sewer* upon any inevitable Necessity; and the Tax of a Sum in gross is not warranted by their Commission, they being to tax every Owner or Possessor of the Lands, according to the Quality of their Lands, Rents, and Number of Acres, and their respective Portions and Profits, whether of Pasture, Fishing, &c. 10 Rep. 141. Commissioners of *Sewers* ought to tax all equally, who are in Danger to receive any Damage by the Waters, and not only those whose Lands are next adjoining; because the Rage of the Waters may be so great, that the Land contiguous may not be of the Value to make the Banks; and therefore the Stat. 6 *H. 6.* cap. 6. will have all that are in Danger to be contributory. 5 Rep. 100. The Commissioners having made a Rate, according to the Quantity and Quality of the Land, &c. may grant Warrants to distrain for it; or the Land may be decreed to be sold to pay the Rate: But the Decrees of Commissioners of *Sewers* are to be certified into the *Chancery*, and have the King's Assent to be binding; and the Commissioners and their Proceedings, are subject to the Jurisdiction of the *King's Bench.* 23 *H. 8.* 1 *Ventr.* 67. There are several Causes and Considerations for which Persons are obliged to repair and maintain *Sewers*; as *Frontagers* were bound to the Repairs of the Walls, and Banks, &c. by Reason of *Frontage*, by 37 *Lib. Assf.* pl. 10. The being
Owner

Owner of a Bank, Wall, or other Defence, is a sufficient Inducement to impose the Charge of the Repairs thereof upon such Owner. 8 *Hen. 7. Prescription* and *Custom* are much of the same Nature, and the Law takes Notice of them in this Case; but *Prescription* doth not bind a Man to the Repairs, except it be *Ratione Terræ*. 21 *Ed. 4.* 38. 19 *Hen. 7.* By *Tenure of Land*, a Person may be bound to repair a Wall, Bank, or Defence mentioned in the Statute of *Sewers*. 12 *H. 4.* A Man may bind himself and his Heirs by *Covenant* expressly to repair a Bank, Wall or *Sewer*, and be good; yet this shall not bind the Heir after his Death, where *Assets* are not left from the Ancestor, which entered into the *Covenant*. *Callis's Read.* The Use of Defences may tie a Man to the Reparation thereof; if one and his Ancestors have had the Use of a River by sailing up and down the same, or have used a Ferry on or over it, &c. *Laws Sew.* 57. If no Persons or Grounds can be known, which ought to make Repairs by *Tenure*, *Prescription*, *Custom*, or otherwise, then the Commissioners are to tax the *Level*. *Ibid.* 67, 68. And by the *Laws and Statutes of Sewers*, all shall be charged, &c. If it is found before Commissioners of *Sewers*, that such a Person ought to repair a Bank; and this is removed into *B. R.* the Court will not quash the *Inquisition*, or grant a new Trial, except he repair it; and if afterwards he is acquitted, he shall be reimbursed. *Sid.* 78. In Cases of *Sewers*, the Court of King's Bench inquires into the Nature of the Fact, before they grant a *Certiorari* to remove Orders; that no Mischief may happen by Inundations in the mean Time, which is a discretionary Execution of their Power. 1 *Salk.* 146. The Court commonly swears Counsel on both Sides, where Orders of Commissioners of *Sewers* are removed by *Certiorari*, before such Orders are filed; for if good, the Court will grant a *Procedendo*, which cannot be done after they are filed: But now they will file them in any Case, where there is no Danger likely to ensue. 1 *Salk.* 145. If Commissioners of *Sewers* proceed after a *Certiorari* delivered out of *B. R.* Attachment will issue against them, and they may be fined. 3 *Nels. Abr.* 218.

The *Sea, Creeks and Bays*, on the Coasts, are all within the Statute of *Sewers*, in Point of Extent; but they and the Shores, and the relinquished Grounds, are out of the Commission of *Sewers*, to be determined thereby: But *Ports and Havens*, as well as the Walls and Banks of Waters, are within the Commission of *Sewers*; and the Shore and Grounds left by the Sea, when they are put in *Gainage* and made profitable, are then within the Power of the Commission of *Sewers*: And though before the Ground left by the Sea, is not as to Defence, within the Commission of *Sewers*; yet a Wall or Bank may be thereon raised, for the Succour of the Country, although not for any private Commodity, the Commission of *Sewers* aiming at the general Good. *Callis's Read. Laws Sew.* 31, 32. The Stat. 3 *Fac.* 1. cap. 14. ordains, That all Ditches, Banks and Bridges, within two Miles of *London*, falling into the *Thames*, shall be subject to the Commission of *Sewers*: And the Lord Mayor, &c. is to appoint Persons who have Power of Commissioners of *Sewers*. 7 *Ann.* cap. 10. Repairs of Sea-Banks in *Norfolk*, by *Judices of Peace* as Highways. See Stat. 2. *Eliz.* c. 24.

Septagesim Sunday, the sixtieth Day before *Easter*. See *Septuagesima*.

Sextary, (Sextarius) An ancient Measure, containing about our Pint and a Half; tho' it hath been used for a much greater Quantity. *Mon. Angl. Tom.* 2, 136.

Sertery-Lands, Are Lands given to a Church, &c. for Maintenance of the *Sexton*. *Baron. Engl.* 324.

Shack, Is a Custom in the County of *Norfolk* to have Common for Hogs, from the End of Harvest till Seed-Time, in all Men's Grounds without Controul: And in that County to go at *Shack*, is as much as to go at large. 7 *Co. Rep.* 5.

Sharping Tonn, A customary Gift of Corn, which at every *Christmas*, the Farmers in some Parts of *England* give to their Smith, for sharpening their Plough-Irons, Harrow-Tines, &c. *Blount*.

Sham, Is a Grove of Trees, or a Wood, mentioned in 1 *Inst.* 4.

Shatwaddes, A Word unknown to *Somner*, who could not tell what it was, unless *Chevaliers*, which may agree with the Signification, but not with the Sound of the Word; for 'tis more like Soldiers than Chevaliers. *Knight Ann.* 1318.

Shedding, Signifies a Riding, Tithing, or Division in the *Isle of Man*, where the whole Island is divided into six *Sheddings*, in each of which there is a *Coroner* or chief *Constable* appointed by Delivery of a Rod at the *Timewald* Court, or Annual Convention. *King's Descrip. Isl. Man.* 17.

Sheep. By an antient Statute, no Person shall keep at one Time above two Thousand Sheep; but Lambs are not to be accounted Sheep till they are a Year old. 25 *Hen. 3.* cap. 13. Persons exporting Sheep, shall forfeit them, and 20 s. for every Sheep, &c. 12 *Car. 2.* cap. 32. And Persons in the Counties of *Kent* and *Suffex*, within ten Miles of the Sea, are to give an Account in Writing after *Sheep-shearing* of the Number of Fleecees, to the next Officer of the Customs, &c. 9 & 10 *W. 3.* c. 40. See *Wool*.

Shearman's Craft, Is a Craft or Occupation used at *Norwich*; the Artificers whereof do shear *Worstedes*, *Fustians*, and all *Woollen Cloth*. *Stat.* 19 *H. 7.* c. 17. and 22 & 23 *Car. 2.*

Sherffce, So the Body of the Lordship of *Cardiff* in *South Wales* is called, excluding the Members of it. *Powel's Hist. Wal.* 123.

Sheriff, Shireff or Shire-reeve, (Vicomites) Sax. *Scire-geveþa*, i. e. *Pagi vel Comitatus Præpositus*, or rather from the Sax. *Scyrian*, to divide; is the chief Officer under the King in every Shire or County, being so called from the first Division of the Kingdom into Counties. *Camd. Brit.* 104. And the Sheriff was anciently chosen in the County-Court by the Suffrages of the People, as Knights of Parliament now are; but by Statute, Sheriffs are to be made by the King, and the Lord Chancellor, Treasurer, and Barons of the Exchequer, &c. nominate three Persons yearly for each County, out of which the King chooses one; and he is created by Letters Patent. *Fortescue*, cap. 24. 9 *Ed. 2.* Sheriffs are appointed for a Year; but they may be constituted *durante beneplacito*, though the King cannot restrain any Part of the Sheriff's Power, as to any Town, &c. (unless he make it a County by it self, and appoint a Sheriff there) nor abridge the

Sheriff in any Thing incident to his Office. 4 Rep. 32. The Lord Mayor and Citizens of London have the Shrievalty of London and Middlesex in Fee, by Charter; and two Sheriffs are annually elected by them, for whom they are to be answerable: If one of these Sheriffs dies, the other cannot act till another is made; and there must be two Sheriffs of London, which is a City and County, though they make but one Sheriff of the County of Middlesex: They are several as to Plaints, in their respective Courts. 3 Rep. 72. Show. Rep. 289. When a Sheriff is chosen, the old Sheriff continues Sheriff of the County till the new one is sworn, which compleats him in his Office. 2 Lill. Abr. 516. The new Sheriff being elected and sworn into his Office, is to deliver a Writ of Discharge to the old Sheriff, who must deliver over all the Prisoners in the Gaol, with all Writs, &c. by Indenture to the new Sheriff; and until that is done, the Prisoners remain in the Custody of the old Sheriff: But the Office of the old Sheriff ceases, and is at an End, when the Writ of Discharge comes to him. Wood's Inst. 70. Poph. 85. A Person in Execution in the Custody of the old Sheriff, not being turned over to the new Sheriff, if he escapes, the old Sheriff, and not the new one, is chargeable: Though where a Sheriff dies in his Office, if any Prisoners escape before another is sworn, this is no Escape against the Sheriff; the Prisoners on the Sheriff's Death are all in Custodia Legis till there is a new Sheriff; and in these Cases when the new Sheriff is sworn into his Office, he must take Notice of all Persons in Execution, &c. as there is none to make a Delivery of them. 3 Rep. 72, 73. A Sheriff out of his Office, may not be fined for any Misdemeanor whilst Sheriff; but the Court may send a Tipstaff for him, or issue forth Process of Distingas nuper vic. to make him appear and answer, &c. 2 Lill. Abr. 510. The Sheriff hath a judicial and ministerial Power: His judicial Authority consists in Hearing, Trying, and Determining Causes in his Tourn and County Court; and in preserving the Peace of the County; for by the Common Law, he is the principal Conservator of the Peace there; and he is to assist the Justices of Peace, and raise the Posse Comitatus to keep the Peace, &c. But this judicial Authority as Conservator of the Peace, is seldom used; being commonly executed by the Justices of Peace. 1 Inst. 174. 2 Inst. 193. The ministerial Power of a Sheriff consisteth in the Execution of Writs and Processes out of the King's Courts; and no Process is to be serv'd but by the Sheriff, wherein he ought not to dispute the Validity of any Writ, but to execute it. 1 Inst. 168. 2 Inst. 452. 5 Rep. 64. He shall not let a Person escape, though taken on an erroneous Process. Cro. Jac. 3. 289. In Cases which concern the King, or where the King is Party, and in criminal Causes, the Sheriff's Officers may break open a Door to execute the Process; (after Demand to open it, signifying the Cause of coming, and Refusal) tho' not in a Civil Cause at the Suit of the Subject; unless when an Execution, &c. is once lawfully begun, as where the Out-doors are open, the Sheriff entering may proceed and break open inner Doors. 5 Rep. 91. Palm. 53. Upon an Arrest, his Officers are to shew at whose Suit it is, and out of what Court the Writ issues, and for what Cause, &c. And if the Sheriff do not make a Return of the Writs, or if he imbezils them, or make a false Return,

the Sheriff may be amerced by the Court, or the Party may bring Action of the Case against the Sheriff; also Attachment may be had against him for undue Practices in Arrests, &c. 5 Rep. 64. 9 Rep. 168. 10 Rep. 70. Cro. Eliz. 75. 2 Hawk. 147. Besides their ministerial Office to execute the Process of the King's Courts, Sheriffs are to return Juries for Trials in civil and criminal Causes; but where there is Cause of Challenge against the Sheriff, the Coroners are to return Juries; though if there be two Sheriffs, and one of them is challenged, the Venire shall go to the other. 23 Hen. 6. Show. 329. They are to proclaim Statutes; and make Returns of Writs for electing Knights of the Shire, &c. and they shall preserve the Rights of the King within their Counties; collect his Rents, seize Profits of Lands forfeited and Goods of Felons, levy the King's Debts, Fines, Amercements, &c. and be accountable to the King for the Issues and Profits of their Counties; for which they are to give up their Accounts in the Exchequer, &c. And they are to see that Criminals be executed, and observe the Order of Law in putting them to Death. 10 Ed. 1. Doct. & Stud. Dial. 2. ch. 41. The Sheriff hath under him an Under-Sheriff, Bailiffs, Gaoler, &c. for he hath the Custody, Rule, and Charge of common Gaols; and for all these he is answerable: But he may execute his Office himself, without an Under-Sheriff, if he pleases. 4 Inst. 114. The Under-Sheriff is to take the Oaths, before he enters on his Office; and then his Power is the same with that of the High Sheriff, he acting in his Stead; though all Returns of Writs by the Under-Sheriff are in the Name of the High Sheriff, and the High Sheriff only is sworn to execute the Office of Sheriff, and therefore he must answer for all. 27 Eliz. cap. 12. Wood's Inst. 73. An Under-Sheriff is removable by the High Sheriff at Pleasure; and is but in the Nature of a general Bailiff-Errant to the Sheriff in the whole County, as other Bailiffs are over particular Districts. 2 Lill. Abr. 511, 512. He ought always to have his Deputy attendant in Courts, to receive and execute their Commands, give Account of Business, &c. and is to file a Warrant of Attorney for his High Sheriff in all the Courts at Westminster, by an Attorney of each Court, or Action will lie upon the Statute Hen. 6. against the High Sheriff. 2 Lill. 511. Sheriffs are not to take any Money or Reward for the Places of Under-Sheriff, Gaoler, Bailiffs, &c. under Penalties. Stat. 5 Ed. 6. cap. 16. 3 Geo. cap. 15. And by Statutes, every Sheriff shall abide in proper Person within his Bailiwick; and a Sheriff shall not let his Bailiwick to farm. 4 Hen. 4. cap. 4. Sheriffs must have sufficient Lands, to answer the King and his People; and shall not continue in their Offices above one Year, on Pain of 200 l. which also extends to Under-Sheriffs; but they may act longer in other Men's Names; and the Under-Sheriffs of London are excepted. 4 Ed. 3. cap. 9. 14 Ed. 3. cap. 7. 23 Hen. 6. cap. 8. No Sheriff is to act as a Justice of Peace, during his Shrievalty: And no Under-Sheriff shall be Attorney in any of the King's Courts, so long as he bears the Office; though such as are Attornies, may practice in the Name of others. 1 M. cap. 28. 1 Hen. 5. cap. 4. They are to let Persons to bail upon reasonable Sureties; and take but 20d. for an Arrest, and the Bailiff 4d. and they shall take no Bond of Persons arrested but for Appearance,

pearance, &c. under the Penalty of 40 l. 23 H. 6. cap. 8. And no Sheriff, Under-Sheriff, &c. shall make out any Warrant before they have in their Custody the Writs upon which such Warrants ought to issue, on the Penalty of 10 l. 6 Geo. c. 21. The Fees of Sheriffs are ascertained, not to be above 1 s. in the Pound, where under 100 l. nor more than 6 d. in the Pound if above, for levying an Extent or Execution: And 1 s. per Pound of the yearly Value of Lands, for executing a Writ of *Habere facias Possessionem*, &c. where the Whole exceeds not 100 l. per Annum, and 6 d. in the Pound where above; in Pain of treble Damages to the Party grieved, and 40 l. taking more. 29 Eliz. cap. 4. 3 Geo. cap. 15. It has been adjudged, that if a Writ is actually out, the Sheriff may make a Warrant before 'tis delivered to him; and it shall be intended to be delivered to him before the Arrest. 2 Lutw. 1283. At Common Law, Sheriffs, &c. were bound to indorse their Names of Office only to Returns; but by Statute they are required to indorse their Names, as well as Name of Office. Moor 578. A Sheriff may take an Appearance Bond, with one or more Sureties, or let the Defendant go without Sureties; for the Bond is only for the Sheriff's Indemnity. Cro. Eliz. 808. And if a Sheriff takes a Bail-Bond of two good Men of visible Estates at the Time of taking it, and they afterwards become insolvent, the Sheriff shall be excused; because he is obliged to let to Bail on good Security; and if the Sheriff refuse to take good Bail, Action lies against him. 2 Lill. Abr. 511. Sid. 22. Cro. Eliz. 76. The Sheriff being obliged to let a Defendant to Bail, and to return a *Capi*, no Action lies against him for not having the Body at the Day; and the Return of *paratum habeo*, &c. is in Effect no more than that he had the Body to bring in when the Court should command him so to do, and he is to be amerced till he doth it. 1 Mod. 239. A Plaintiff may direct the Officer to take a Bond of the Defendant in his the Plaintiff's Name, to give Security for the Payment of the Debt, or render his Body to Prison, &c. but the Sheriff cannot take a Bond in another Man's Name, to elude the Statute. 2 Mod. 304. A Bond with a Condition, that a Man shall continue a true Prisoner, till he is lawfully discharged, is good. 1 Sand. 161. But in Action of Debt on a Sheriff's Bond, condition'd that the Defendant shall be a true Prisoner; the Defendant pleaded that he was in Execution for Debt, and that the Bond was given for *Ease and Favour*, and to obtain his Liberty without satisfying the Plaintiff in that Action; and to this Plea the Sheriff demurred; and it was held, that the Plea was good, without pleading the Statute 23 Hen. 6. because it is a general Law, of which the Court must take Notice; but if it was not, the Bond is void at Common Law. 2 Lev. 103. 3 Nelf. Abr. 224. A Defendant was taken upon an Attachment for a Contempt, and the Sheriff took a Bail-Bond in 40 l. for his Appearance, but he did not appear; whereupon the Sheriff was amerced, and the Prosecutor refused to accept an Assignment of the Bail-Bond; and resolv'd, that he might refuse it, and proceed against the Sheriff; and if the Bond was sufficient, the Sheriff might put it in Suit, and reimburse himself. 2 Salk. 608. Upon a *Fieri facias* the Sheriff took a Bond to pay the Money in Court at the Return of the Writ; and this was adjudged good; for the Statute extends only to such Bonds which

are made when the Defendant is in Custody; and here he was not. 10 Rep. 99. 3 Nelf. 223. Payment to the Sheriff upon a *Fi. fa.* is a good Plea, by reason he hath Authority to levy the Debt: Payment on a *Capias ad satisfac.* is not, because he is only to detain the Body. 2 Lev. 203. If two Writs of Execution are brought to the Sheriff in one and the same Day; on the First whereof no Warrant is made out, but is on the last which is first executed, it shall take Place of the First. 2 Lill. Abr. 516. But according to Salkeld, the Sheriff shall answer it to the Party which brought the first Writ. 1 Salk. 330. Where a *Superfedeas* comes to a Sheriff, before he hath seized Goods in Execution, he shall stop; but after he hath seized, he may go on and sell the Goods. Cro. Eliz. 597. If a Sheriff levies Money on a *Fieri facias*, and dies, Action may be brought against his Executor for the Money; but 'tis otherwise where the Sheriff is chargeable in his Life for a personal Tort; there *Actio moritur cum Persona*. Cro. Car. 539. And the Sheriff seizing Goods in such a Case, is answerable for the Value he hath return'd, and the Defendant is discharged. 3 Ann. R. R. Abr. 236. He may bring Trover or Trespass, &c. for taking his Goods levied in Execution. 1 Lev. 280. An Under-Sheriff procuring Goods taken in Execution to be appraised at an Under-value, and delivering them to the Plaintiff accordingly; for this Oppression, Indictment will lie. Cro. Jac. 426. A Sheriff may have Action of Debt for his Fees, though the Statute doth not give any Remedy, but only saith, that he shall have and receive Twelve-pence per Pound, on Executions, &c. 3 Nelf. Abr. 229. Upon an Extent of a Statute, and before the *Liberate* executed, the Sheriff took a Bond with a Penalty for the Payment of his Fees; and it was held, that he ought not before a compleat Execution, and that the Taking this Bond was Extortion. Winch. 21, 50. And a Sheriff refusing to execute a *Capias ad satisfac.* till he had his Fees: On Motion against him to attend, it was ruled, that the Plaintiff might bring an Action against him for not doing his Duty, or pay him the Fees, and indict him for Extortion. 1 Salk. 330. A Sheriff cannot detain in his own Hands his Fees upon levying of Goods on a *Fi. fac.* but ought to bring his Action for them. 2 Lill. 575. The Sheriff took twenty Shillings for making a Warrant upon a *Capias utlagatum* before Judgment, for which he ought to take no Fee, it being at the Suit of the King, and therefore he was committed; but on such a *Capias* after Judgment, he may take twenty Shillings and Four-pence, which is given by Statute. 2 Brownl. 283. Sheriffs are to have Allowance for executing the King's Writs, levying *Extreas*, Expences at the Assises, and the like; not exceeding a certain Sum, by Stat. 34 H. 8. cap. 16. But this was afterwards repealed; and where Sheriffs have no *Tallies of Reward*, they shall be allowed Expences on Petition. 2 & 3 Ed. 6. c. 4. A *Quietus* shall be a sufficient Discharge for a Sheriff, his Heirs, Executors, &c. 21 Jac. 1. cap. 3. No Sheriff at Assise-Time is to keep a Table for the Entertainment of any but those of his own Retinue, or make any Present to a Judge; or have above forty Servants with Liveries, or under Twenty, attending him at the Assises, &c. so as not to extend to the Sheriffs of London and Middlesex. 13 & 14 Car. 2. cap. 21. and this Act is made perpetual by 1 Jac. 2. cap. 17. Sheriff's Ac-

Accounts are not to be delay'd in the Exchequer, and 4000 l. yearly is to be set apart at the Exchequer, and allowed the *Sheriffs* of the several Counties of *England*, to help to pass their Accounts; also the Fees to be paid by *Sheriffs* on passing their Accounts are appointed, &c. 3 Geo. c. 16. The particular Form of the Oath of *Sheriffs*, is ordain'd by this Statute, and is as follows, viz.

The *Sheriff's* Oath, enjoining his Duty by Statute.

I A. B. do swear, That I will well and truly serve the King's Majesty, in the Office of Sheriff of the County of, &c. and promote his Majesty's Profit in all Things that belong to my Office, as far as I legally can or may; and I will truly preserve the King's Rights, and all that belong to the Crown, and will not assent to decrease, lessen, or conceal the King's Rights, or the Rights of his Franchises; and whensoever I shall have Knowledge that the Rights of the Crown are concealed or withdrawn, be it in Lands, Rents, Franchises, Suits or Services, or in any other Matter or Thing, I will do my utmost to cause them to be restored to the Crown; and if I may not do it myself, I will certify and inform the King thereof, or some of his Judges; I will not respite or delay to levy the King's Debts for any Gift, Promise, Reward, or Favour, where I may raise the same without great Grievance to the Debtors; I will do right, as well to Poor as to Rich, in all Things belonging to my Office; I will do no Wrong to any Man for any Gift, Reward or Promise, nor for Favour or Hatred; I will disturb no Man's Right, and will truly and faithfully acquit at the Exchequer all those of whom I receive any Debts or Duties belonging to the Crown; I will take nothing whereby the King may lose, or whereby his Right may be disturbed, injured, or delayed; I will truly serve and truly return all the King's Writs, according to the best of my Skill and Knowledge; I will take no Bailiffs into my Service, but such as I will answer for, and will cause each of them to take such Oaths as I myself do, in what belongs to their Business and Occupation; I will truly set and return reasonable and due Issues of them that be within my Bailiwick, according to their Estates and Circumstances, and make due Panels on Furies of Persons able and sufficient, and not suspected, or procured, as is appointed by the Statutes of this Realm; I have not sold or let to Farm, nor contracted for, nor have I granted or promised for Reward or Benefit, nor will I sell or let to farm, or contract for, or grant for Reward or Benefit by myself, or any other Person for me, or for my Use, directly or indirectly, my Sheriffwick, or any Bailiwick thereof, or any Office belonging thereunto, or the Profits of the same, to any Person or Persons whatsoever; I will truly and diligently execute the Laws and Statutes of this Realm; and in all Things well and truly behave myself in my Office, for the Honour of the King, and the Good of his Subjects, and discharge the same according to the best of my Skill and Power.

A *Sheriff's* Authority determines by the Death of the King; but in such Case, new Patents are presently issued out by the Successor. 3 Rep. 72. And on the Deaths of *Sheriffs*, their Under-Sheriffs are to act in their Names, &c. till others are appointed, by the Stat. 3 Geo. A Subject cannot be exempted from the Office of *Sheriff*, but by Act of Parliament, or Grant from the King. 3 Salk. 134. See *Escape*, *Fieri facias*, &c.

Sheriffalty, (*Vicecomitatus*) Is the *Sheriffship*, or Time of a Man's being *Sheriff*. 14 Car. 2. cap. 21.

Sheriffwick, The Extent of a *Sheriff's* Authority. 13 Eliz. c. 22.

Sheriff-geld, A Rent formerly paid by the *Sheriff*; and it is pray'd that the *Sheriff* in his Account may be discharg'd thereof. Rot. Parl. 50 Ed. 3.

Sheriff-tooth, Seems to be a Tenure by the Service of providing Entertainment for the *Sheriff* at his County-Courts. Rot. Plac. in Itin. apud Cestr. 14 Hen. 7. In *Derbyshire* the King's Bailiffs anciently took 6d. of every Bovate of Land, in the Name of *Sheriff-Tooth*. Ryl. Plac. Parl. 653. And it is said to be a common Tax levied for the *Sheriff's* Diet.

Shield, (*Scutum*) An Instrument of Defence; from the Sax. *Scyldan*, to cover, or the Greek *σούτον* a Skin, anciently *Shields* being made with Skins.

Shilling, (Sax. *Scilling*, Lat. *Solidus*) Among the English Saxons passed but for 5 d. afterwards it contain'd 16 d. and often 20 d. In the Reign of King Will. 1. called the Conqueror, a *Shilling* was of the same Value as at this Day. Leg. H. 1. Domest.

Shillwite, Est emenda pro Transgressionem facta in Nativam, eam impregnando. Monast. Rading. M.S.

Ship-money, Was an Imposition charged upon the Ports, Towns, Cities, Boroughs, and Counties of this Realm, in the Time of King Char. 1. by Writs commonly called *Ship-writs*, under the Great Seal of *England*, in the Years 1635 and 1636. for the Providing and Furnishing certain Ships for the King's Service, &c. which was declared to be contrary to the Laws and Statutes of this Realm, the *Petition of Right*, and Liberty of the Subject, by Stat. 17 Car. 1. cap. 14.

Shipper, Is a Dutch Word signifying the Master of a Ship, mentioned in the Stat. 1 Jac. 1. cap. 3. We use it for any common Seaman; and commonly say *Skipper*.

Ships and *Shipping*. None of the King's Subjects are to export and import Merchandize in any Ships but *English*, on Pain of Forfeiture. 5 R. 2. c. 3. But Merchants had Power to hire other Ships, by 6 R. 2. cap. 8. and 4 H. 7. c. 10. Goods imported or exported out of or to any Territories belonging to *England* in *Asia*, *Africa* or *America*, shall be in Ships, belonging to the *English*, and the Master and three Fourths of the Mariners to be also *English*, upon Pain, to lose such Goods and the Vessel, &c. 12 Car. 2. c. 18. A Duty of 5 s. per Ton is laid on all foreign-built Ships, one Moiety for the Chest at *Chatham*, and the other for *Greenwich Hospital*, to relieve decay'd Seamen. 1 Jac. 2. cap. 18. During the War with *France*, any Ships might be navigated by Foreign Seamen; and Foreigners serving on Board any *English Ship* for two Years, were to be deem'd natural-born Subjects, &c. 3 & 4 Ann. cap. 13. If any Captain, Master, or Mariner belonging to any Ship, shall wilfully destroy the Ship, or procure the same to be done, they shall suffer as Felons without Benefit of Clergy. 1 Ann. c. 9. 4 Geo. c. 12. *Ships of War*. See *Navy*.

Shire, (*Comitatus*, from the Sax. *Scyre*, to part or divide) Is well known to be a Part or Portion of this Kingdom, called also County: The old Latin Word was *Scyra*; and *Scyre Provincia indicantur*.

bantur. Brompt. 956. King *Alfred* divided this Land into *Shires*, and those again into *Hundreds* and *Tithings*; and this Division made by King *Alfred* was in *Satrapias*, which we now call *Shires*, in *Centurias*, now called *Hundreds*, and *Decenias*, which we call *Tithings*. *Leg. Alfred.*

Shire-Clerk, He that keeps the County-Court; and his Office is so incident to that of the Sheriff, that the King cannot grant it away. 4 Rep.

Shireman, Was anciently the Judge of the Shire, by whom Trials for Land, &c. were determined. *Lamb. peramb. 442.*

Shiremore, An Assembly of the County or Shire at the *Affises*, &c. See *Scyregemot.*

Shoemaker's, Are to make their Shoes of sufficient Leather, or forfeit 3 s. 4 d. 1 Fac. 1. c. 22. And Journeymen *Shoemakers*, imbezilling Leather, shall make Satisfaction for Damage, or be order'd by Justices to be whip'd, &c. 9 Geo. cap. 27. Vide *Leather.*

Shop, (*Shopa*) A Place where any Thing is openly sold. — *Johannem H. dediff. Rogero Smith unam Shopam cum pertin. in, &c. situat. in le Market-place, &c. Dat. 27 Feb. 9. Edw. 4.*

Shoplifters, Are those who steal Goods privately out of *Shops*; which being to the Value of 5 s. though no Person be in the *Shop*, is Felony excluded Clergy, by the 10 & 11 W. 3. cap. 23.

Shorling and morling, Are Words to distinguish *Fells* of Sheep; *Shorling* being the *Fells* after the *Fleeces* are shorn off the Sheep's Back; and *Morling*, the *Fells* flead off after they die or are killed: In some Parts of *England*, they understand by a *Shorling*, a Sheep whose *Fleece* is shorn off; and by a *Morling*, a Sheep that dies. *Stat. 3 Ed. 4. c. 1. See Morling.*

Shortford. The ancient Custom of the City of *Exeter* is, when the Lord of the Fee cannot be answered Rent due to him out of his Tenement, and no Distress can be levied for the same, the Lord is to come to the Tenement, and there take a Stone, or some other dead Thing of the said Tenement, and bring it before the Mayor and Bailiffs, and thus he must do seven Quarter-Days successively; and if on the seventh Quarter-Day, the Lord is not satisfied his Rent and Arrears, then the Tenement shall be adjudged to the Lord to hold the same a Year and a Day; and forthwith Proclamation is to be made in the Court, That if any Man claims any Title to the said Tenement, he must appear within the Year and Day next following, and satisfy the Lord of the said Rent and Arrears: But if no Appearance be made, and the Rent not paid, the Lord comes again to the Court and prays that, according to the Custom, the said Tenement be adjudged to him in his Demesne as of Fee, which is done accordingly; so as the Lord hath from thenceforth the said Tenement with the Appurtenances to him and his Heirs: And this Custom is called *Shortford*; being as much as in *French* to foreclose. *Izack's Antiq. Exet. 48.*

Shrivved or Shrieved, (From Sax. *Scrifan*) A penitent Person confess'd by a Priest. See *Confessor.*

Si Actio, &c. Is the Conclusion of a Plea to the *Action*, when the Defendant demands Judgment if the Plaintiff ought to have his *Action*, &c.

Sib and Soni, (Sax.) i. e. Pax & Concordia. *Spelm.*

Sica, Sicha, A Ditch, from the Sax. *Sic. Lacuna.* *Mon. Ang. Tom. 2. p. 130.*

Sich, (*Sichetum* and *Sikettus*) Is a little Current of Water, which is dry in the Summer; a Water-Furrow or Gutter. *Mon. Ang. Tom. 2. pag. 426.*

Siclus, Was a Sort of Money current among the old *English*, of the Value of 2 d. We read of it in *Egbert*, in *Dialogo de Ecclesiastica institutione*, pag. 98.

Sicut alias, Another Writ like the former: It runs *Præcipimus tibi Sicut alias præcepim', &c.* 4 Co. Rep. 55. See *Alias.*

Sidelings, Are Meers betwixt or on the Sides of Ridges of arable Land. *Mon. Angl. Tom. 2. pag. 275.*

Sidemmen, Rectius Synods-men, is used for those Persons or Officers that are yearly chosen in great Parishes, according to Custom, to assist the Church-wardens in their Presentments of such Offenders and Offences to the Ordinary, as are punishable in the Spiritual Courts: They are also called *Questmen.* Vide *Synodales Testes.*

Sigillum, A Seal for the Sealing of Deeds and Charters, &c. See *Seal.*

Sigla, (From the Sax. *Segel*) A Sail, mentioned in the Laws of King *Etbeldred*, cap. 24.

Sign Manual, Is where any Bill or Writing is signed under the Hand of the King, and usually in Order to the Passing of the King's Grants, &c. through the Offices of the Keepers of the Seals.

Signet, (Fr.) Is one of the King's Seals, used in sealing his private Letters, and all such Grants as pass his Majesty's Hand by Bill signed; which Seal is always in the Custody of the King's Secretaries, and there are four Clerks of the Signet-Office attending them. 2 Inst. 556. The Law takes Notice of the Sign Manual, and Privy Signet; and 'tis said a *Ne Exeat Regno* may be issued by Commandment under the Privy Signet, as well as by the King's Writ under the Great Seal. *Wood's Inst. 457. See Privy Seal.*

Significavit, A Writ issuing out of the Chancery, upon a Certificate given by the Ordinary, on a Man's standing Excommunicate by the Space of forty Days, for the laying him up in Prison till he submit himself to the Authority of the Church: And it is so called, because *Significavit* is an emphatical Word in the Writ. *Reg. Orig.* There is also another Writ of this Name in the Register, directed to the Justices of the Bench, commanding them to stay any Suit depending between such and such Parties, by Reason of an Excommunication alledged against the Plaintiff, &c. *Reg. Orig. 7.* And in *Fitzherbert* we find Writs of *Significavit* in other Cases; as *Significavit pro Corporis Deliberatione*, &c. *F. N. B. 62, 66. Stat. 22 & 23 Car. 2.* The common Writ of *Significavit*, is the same with the Writ *de Excommunicato Capiendo.*

Signing Of Deeds and Wills is necessary to make them binding; the Signing a Will by the Testator is an essential Circumstance, without which 'tis not a Will; for this is expressly requir'd by the Stat. 29 Car. 2. c. 3.

Signum, A Cross prefix'd as a Sign of Assent and Approbation to a Charter or Deed, used by the Saxons. Vide *Seal.*

Silentarius, Signifies one of the Privy Council; and *Silentium* was formerly taken for *Conventus privatus.* *Matt. Paris. Anno 1171.* According to Lit-

Littleton, it is an Usher, who seeth good Rule and Silence kept in Court. *Litt. Dist.*

Silk-throwers, or Thowsters, Is a Trade or Mystery, that winds, twists, and spins or throws Silk, thereby fitting it for Use: They are incorporated by Statute, and Mention is made of *Silk-winders* and *Doublers*, which are Members of the same Trade. 14 Car. 2. c. 15. None shall exercise the *Silk-throwers* Trade, but such as have served seven Years Apprenticeship to it, on Pain of Forfeiting 40 s. a Month. *Stat. Ibid. Silk-winders, &c.* imbezilling or detaining Silk, delivered by *Silk-throwers*, and the Receivers are to be committed to Prison by a Justice of Peace 'till Satisfaction is made the Party injured. 20 Car. 2. c. 6. Fine thrown Silk of the Growth of Italy may be imported. 2 W. & M. c. 9. 1 Ann. c. 27.

Sylva Cædua, Wood under twenty Years Growth, or Coppice Wood. 45 Ed. 3. c. 3.

Simnel, (Siminellus, vel Simnellus) Is mentioned in the *Assise of Bread*, and is still in Use especially in *Lent*: The English *Simnel* is *Panis purior*, or the purest white Bread. *Stat. 51 H. 3.*

Simony, (Simonia) Is a corrupt Contract for a Presentation to any Benefice of the Church, for Money, Gift, or Reward: It is defined to be, *studiosa voluntas emendi vel vendendi aliquid Spirituale aut Spirituali annexum opere subsecuto.*

Also *venditio rei Sacra*; so called from *Simon Magus*. And some Authors mention *Simony per munus triplex*; as *per munus à manu*, i. e. by Bribery; *per munus à lingua*, by Favour and Flattery; *per munus ab obsequio*, i. e. by a sordid Subjection to the Patron. Against the scandalous Corruption of *Simony*, many Church *Canons* have been made; particularly in the Time of King *Hen. 2.* a Provincial *Canon* was made against it by the then *Archbishop of Canterbury*; and among the *Canons of Othobonus*, anno 53 H. 3. there is a severe one on this Head: There are some other general *Canons* of the Church, requiring an Oath to be administered to Clergymen against *Simony*, and whereby *Simony* is punished with *Deprivation*, *Disability*, &c. and it has been held by some of the Fathers to be Heresy, if not the Sin of the Holy Ghost: But neither the Greatness of the Offence, nor the Severity of the *Canons*, (as has been observ'd) were sufficient to restrain this Evil in the Church; till the Parliament took it into their Care, and Anno 31 Eliz. enacted the following Law, viz. That if any Person for any Sum of Money, Reward, Gift, Profit, or Benefit, or by Reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance for any Sum of Money, Reward, Gift, &c. shall present or collate any Person to any Benefice with Cure, Dignity, or Living Ecclesiastical; or give or bestow the same in Respect of any such corrupt Cause, or Consideration, every such Presentation, Collation, Gift, and Bestowing, and every Admission and Induction thereupon, shall be utterly void; and the Crown shall present for that Turn: And the Persons that shall give or take any Sum of Money, or shall take or make any such Promise, &c. shall forfeit and lose double the Value of one Year's Profit of every such Benefice; and the Person so corruptly taking any such Benefice, shall from thenceforth be disabled to have and enjoy the same. *Stat. 31 Eliz. c. 6. 1 Inst. 120.* Generally any Covenant or Agreement, made under any Manner of Consideration whatsoever, to present a Clerk is *simoniacal*: If one promise to a Clerk, that in Consi-

deration he will marry his Daughter, Kinswoman, &c. he will present him to such a Living when void, or the next good Living that shall fall within his Gift, this has been adjudg'd a *simoniacal* Contract: But if a Father, upon the Marriage of his Daughter, covenants to pay a Portion, &c. and there is a distinct Covenant that he will procure the Son-in-Law to be admitted to such a Benefice upon the next Avoidance, it shall not be intended to be *simoniacal*; because the Covenant had no Dependence upon the Marriage, being an intire Covenant by it self, and not made in Consideration of Marriage; for if it had, then it would have been *Simony*; and yet 'tis said it may be made so, by a special Averment, shewing that it was *simoniacal*. *Crc. Car. 425.* A Feme sole was seised of an Advowson, and the Church becoming void, she presented a Parson upon Condition that he would marry her, which he did accordingly; and this was held to be *Simony*, and that it made the Presentation void; for it was for her Benefit, which is the very Word in the Statute: So if a Patron presents one, on Condition that he shall be a Tutor to his Son, though this is not properly a Gift or Reward. *Noy 148.* If a Patron take Bond of his Presentee to pay an yearly Sum to the Wife of the last Incumbent, for the Maintenance of her and her Children; or to pay an yearly Sum to the Son of the last Incumbent, so long as he shall be a Student in the University unpreferred, no *Simony* will be committed; and this is by an equitable Construction of the Statute against *Simony*: But if the Money were to be paid to the Son of the Patron, it would be otherwise. *Pasch. 2 Jac. 1. Noy 142.* A Man may buy the next Turn of a Church, when the Church is full of an Incumbent, who is well in Health, and be no *Simony*: And if a Father doth purchase the next Avoidance of a Church for his Son, when the Incumbent is sick, with an Intent to present him after the Death of the Incumbent, it is not *Simony*; because the Father is obliged by Nature to provide for the Son: And therefore it is, that tho' the Son may not contract for a Benefice, to the Intent that another should present him; yet the Father may contract with an Intention of Presenting his Son. 3 Cro. 685. Contracts may be *simoniacal*, as well before as after the Church is void, in some Cases; for notwithstanding it be lawful for any Person to buy the next Turn of a Church, when it is full generally speaking, such Contracts have been sometimes adjudg'd unlawful: As if a Person seised of an Advowson, grants the next Presentation to another, who enters into Bond to pay him a Sum of Money for it, when the Church shall become void; this is *Simony*: And if a Church being full of an old sickly Incumbent, a Clerk doth contract with the Patron of the Church for a certain Sum of Money, payable when the Church shall be void, to make a Grant of the next Turn to a Friend of his, and the Friend having such Grant doth present the said Clerk to the said Church, it is *Simony*. *Hob. 105.* In a *Quare Impedit* it was held, that the Grant of the next Avoidance for Money, when the Incumbent was very sick in his Bed and near Death, is *Simony*. *Winch. 63.* Where a Man agrees to give a Sum of Money, to procure him to be presented to a Church, this is *Simony*: And if an Incumbent make a *simoniacal* Contract with the Friend, or Wife of the Patron, who knows nothing of it, it will be *Simony*; also if Strangers make

make Agreement by Compact betwixt them, without the Privy of the Incumbent or Patron; as if a Friend of the One, give Money to a Relation of the other to procure him to present such a Clerk, it is *simoniacal*; though this Judgment hath been oppos'd, because thereby the Patron's Right may be defeated by Collusion between Strangers. *Cro. Car.* 330. *Cro. Jac.* 386. *Sid.* 329. And if one that hath no Right to present, shall by Means of a corrupt and *simoniacal* Agreement, present a Clerk, who is by his Presentation admitted, instituted and inducted into a Church; this shall not be such an Act of *Simony* to intitle the King to present: For though the Statute makes all void, an Usurper cannot forfeit the Right of another, in whom there is no Fault. 2 *Brownl.* 7. 3 *Inst.* 153. If any Person receives Reward, &c. for any Presentation to a Benefice, although he who is presented know nothing of the Matter, his Presentation, Institution and Induction are void by the Statute 31 *Elizabeth.* and the King shall present *pro hac Vice*: The Statute intends to inflict a Punishment upon the Patron, by the Loss of the Presentation, because he was the Author of the Corruption; and likewise upon the Incumbent, by the Loss of his Incumbency, because he came in by such a corrupt Patron. 12 *Rep.* 101. And it is the corrupt Agreement, by Colour of which the Clerk is instituted and inducted, which makes the *Simony*; and Notice in this Case is not material, because of the Difficulty of Proving it. 3 *Lev.* 337. *Moor* 914. Though the Forfeiture of double Value of the Church is incurred by the corrupt Contract; the Presentation is not forfeited to the King, unless the Clerk be *de facto* presented or collated upon the same. *Count. Pars. Compan.* 175. The Clerk is disabled to hold the Benefice made void by the *Simony*; and although he be neither Party nor Privy to the *simoniacal* Contract, and obtain a new Presentation from the King, it hath been resolv'd, that he is disabled during Life to hold that Living. *Cro. Jac.* 385. But by my Lord *Coke* it was adjudg'd otherwise, that the Clerk presented, not being privy or consenting to the corrupt Agreement, shall not be a disabled Person; and though he loses his Incumbency upon such a Presentation, he may be presented again to the same Benefice. *Cro. Jac.* 385. 12 *Rep.* 101. 3 *Inst.* 154. According to *Jus. Dodderidge*, a *Simoniacus* is the Person who makes the *simoniacal* Contract, and he is incapable to hold that Benefice to which he was thus promoted, or to have any other; but *simoniace promotus* is where a Friend of the Parson gives Money to the Patron or Ordinary for a Presentation or Institution, and the Parson himself doth not know it, who is incapable to hold that Benefice upon the corrupt Promotion; though he may have any other, or even that very Benefice, if afterwards he come lawfully to it, so as the Right of the Patron be not disturb'd. 2 *Roll. Rep.* 465. It hath been held, that where two Parsons agreed to exchange their Livings, and the one promis'd his Patron, that if he would present the other, with whom he was to exchange his Living, he would make the Patron a Lease of his Tithes at such a Rent; this shall be *Simony*, although the other be not privy to the Contract. *Pars. Counc.* 50. And corrupt Resignations of Livings are within the Statute against *Simony*, as well as Exchanges, &c. A Presentation upon a *simoniacal* Agreement is void to all Manner of Persons who have any In-

terest in the Benefice: 'Tis void as to the Patron, who is to lose his Presentation, for that is vested in the King, and he may present; it is void as to the Ordinary, by Reason he is bound to admit the King's Presentee, and no Layle can incur where the Right of Presentation is in the Crown; 'tis void as to the Clerk, without a declaratory Sentence, though he was not privy to it, and he is disabled, &c. And 'tis void as to the Parishioners; for if he sue them for Tithes, they may plead him no Incumbent, and that he hath no Right to the Profits of the Church; all those being due to the Clerk which the King shall present from the Time of the Avoidance. 1 *Roll. Rep.* 237. And if a Man be presented to a Benefice by *Simony*, a General Pardon afterwards will not enure to the Settling of him in that Benefice, which was never full because of the *Simony*; but it may discharge the Punishment of *Simony*, in Respect of the Forfeiting double Value of the Profits of one Year, &c. *Hob.* 168. 3 *Cro.* 685. By the 1 *W. & M. c.* 16. After the Death of a Person *simoniacally* promoted to any Benefice, the Offence or Contract of *Simony* shall not be alledged to the Prejudice of any other Patron innocent of *Simony*, or of his Clerk; unless the Person *simoniacally* presented, or his Patron were convicted of such Offence in the Life-time of the *simoniack* Person: But if the guilty Patron doth present another Clerk upon the Decease of the former, the *Simony* upon the first Presentation may be alledged both against the guilty Patron, and his second Clerk, though innocent. *Wood's Inst.* 157. If any Person shall for any Reward in his own Name, or the Name of any other Person, take or accept the next Avoidance of, or Presentation to a Benefice with Cure of Souls, and shall be presented thereto, the Presentation shall be void, and such Agreement deemed a *simoniacal* Contract; and the Crown may present for that Time, &c. by 12 *Ann. c.* 12. The Statute against *Simony* may be recited in the Declaration against a *Simonist*; or it may be good without it. 2 *Lutw.* 1090.

Simplex, Signifies simple, or single; as *Carta simplex* is a Deed-Poll or single Deed.

Simplex Beneficium, A minor Dignity in a Cathedral or Collegiate Church, or any other Ecclesiastical Benefice oppos'd to a Cure of Souls; and which therefore is consistent with any parochial Cure, without coming under the Name of Pluralities.

Simplex Justiciarius, This Style was antiently used for any *Puisne* Judge, that was not Chief in any Court: And there is a *Writ* in the *Register* beginning thus ——— I *John Wood*, a *simple Judge* of the Court of Common Pleas, &c.

Simul cum, Are Words used in Indictments, and Declarations of Trespas against several Persons, where some of them are known, and others not known: As the Plaintiff declares against *A. B.* the Defendant *simul cum C. D. E. F. &c.* *A. B.* was indicted, for that he *simul cum C. D. E. F.* and divers others, committed a Riot, and rescued a Prisoner; and it was held that all the Rest were but one, and so void as to the Riot. 2 *Lill. Abr.* 469.

Sine assensu Capitali, A *Writ* that lies where a Bishop, Dean, Prebendary, or Master of an Hospital aliens the Lands holden in Right of his Bishoprick, Deanery, House, &c. without the Assent of the Chapter or Fraternity; in which Case, his Successor shall have this *Writ*. *F. N. B.*

195. And if a Bishop or Prebendary be disseised, and afterwards he releaseth to the Disseisor; this is an Alienation, upon which may be brought a Writ *De fine assensu Capitali*: But the Successor may enter upon the Disseisor, if he doth not die seised, notwithstanding the Release of his Predecessor; for by the Release, no more passeth than he may rightfully release. *New Nat. Br.* 432. A Person may have this Writ of Lands upon Demises of several Predecessors, &c.

Sine-cure, Is where a Rector of a Parish hath a Vicar under him endowed and charged with the Cure; so that the Rector is not obliged either to Duty or Residence. *Deggs's Parf. Counc.* 195. And when a Church is fallen down, and the Parish become destitute of Parishioners, it is said to be a *Sine-Cure*. Wood's *Inst.* 153.

Sine Die, i. e. Without Day: When Judgment is given against the Plaintiff in an Action, he is said to be *in Misericordia pro falso clamore suo*; and for the Defendant, it is said *eat inde sine die*, and the Defendant is discharged, &c. 2 *Lill.* 220.

Si non omnes, Is a Writ of Association, by which if all in Commission cannot meet at the Day assign'd, it is allowed that Two or more of them may finish the Business. *Reg. Orig.* 202. *F. N. B.* 185. After the Writ of Association, it is usual to make out a Writ of *Si non omnes*, directed to the first Justices, and also to those who are so associated to them; which reciting the Purport of the two former Commissions, commands the Justices, that if all of them cannot conveniently be present, such a Number of them may proceed, &c. *F. N. B.* 111.

Sipefforna, Was what we now call a Hundred. *Leg. H. 1. c. 6.*

Si recognoscant, A Writ that, according to the old Books, lies for a Creditor against his Debtor, who before the Sheriff in the County-Court has acknowledged to owe his Creditor such a Sum received of him: The Form of which Writ is this:—*Rex vicecom. S. Salutem Præcip. tibi quod si A. B. recognoscat se debere C. D. Quinq; lib. sine ulteriori dilatione tunc ipsum Distringas ad prædict. debitum eidem C. sine dilatione reddendum, Teste, &c.* Old *Nat. Br.* 68.

Site Of a Messuage or Manor-house, &c. See *Scite*.

Sithcundman, (*Sax.*) Such a Man as had the Office to lead the Men of a Town or Parish. *Leg. Ina*, cap. 56. *Dugdale* says, that in *Warwickshire* the Hundreds were formerly called *Sithesoca*, and that *Sithcundman* and *Sithcundman*, was the chief Officer within such a Division, i. e. The High Constable of the Hundred. *Dugd. Antiq. Warw.*

Sithesoca, A Saxon Word for Franchise or Liberty, a Hundred. *Rot. Parl.* 16 H. 2.

Sixhindi, Were Servants of the same Nature with *Rod-Knights*, viz. Bound to attend their Lord wherever he went; but they were accounted among the English Saxons as Freemen, because they had Lands in Fee, subject only to such Tenure, *Si habeat 5. Hidas est Sexhinde*. *Leg. Ina*, cap. 26. See *Hinden*.

Sizel, Is where Pieces of Money are cut out from the flat Bars of Silver, after drawn through a Mill, into the respective Sizes or Dimensions of the Money to be made; the Residue is called by this Name, and is melted down again. *Lownd's Ess. upon Coin*, pag. 96.

Skarkalla, Seems to be an Engine for Catching of Fish: It was especially given in Charge by the Justices, that all Juries should inquire *de hiis qui piscantur cum Kiddellis & Skarkallis*. 2 *Inst.* 38.

Skerda, A Scar or Wound. — *Si ossa extrahuntur a Capite & Skerda magna levatur, &c.* *Bract. lib.* 3.

Skybmage, Is used for the Precincts of *Calais*. *Stat.* 27 H. 6. c. 2.

Slade, (*Sax. Sled*,) A long narrow Piece or Slip of Ground. *Paroch. Antiq.* 465.

Slander, Is the Defaming of a Man in his Reputation, Profession, or Livelihood; which is actionable, &c. See *Action of the Case for Words*, and *Prohibition*.

Slaves. There are no Slaves in England; one may be a Villain here, but not a Slave. 2 *Salk.* 666.

Slippa, A Stirrup; and there is a Tenure of Land by holding the King's Stirrup, in *Cambridgeshire*. *Carr.* 5 H. 7.

Slough-Silver, A Rent paid to the Cattle of *Wigmore*, in Lieu of certain Days Work in Harvest, heretofore reserved to the Lord from his Tenants. *Pat.* 43 *Eliz.*

Sluice, (*Exclusa*) Is a Frame to keep or let Water out of a Ground.

Slusagium, Or *Sluceage*, see *Exclusagium*.

Smaka, A Smack, or small light Vessel. *Cowel.*

Smalt, (*Ital. Smalto*) Is that of which Painters make their blue Colouring; mentioned in the *Stat.* 21 *Jac.* 1. cap. 3.

Smoke-Silver. Lands were held in some Places by the Payment of the Sum of 6 d. yearly to the Sheriff, called *Smoke-Silver*. *Pat.* 4 *Ed.* 6. *Smoke-Silver* and *Smoke-Peny*, are to be paid to the Ministers of divers Parishes, as a *Modus* in Lieu of Tithe-Wood: And in some Manors, formerly belonging to Religious Houses, there is still paid as appendant to the said Manors, the ancient *Peter-Pence* by the Name of *Smoke-Money*. *Twissd. Hist. Vindicat.* 77. The Bishop of *Lincoln*, Anno 1444, issued out his Commission. — *Ad levandum le Smoke-Farthings, &c.*

Smuglers, Are Persons who conceal prohibited Goods, and that defraud the King of his Customs on the *Sea-Coasts*, by Running of Goods and Merchandize. *Stat.* 8 *Geo.* cap. 18. See *Customs*.

Snottering-Silver. There was a Custom in the Village of *Wylegh*, that all the servile Tenants should pay for their Tenements a small Duty called *Snottering-Silver*, to the Abbot of *Colchester*. *Placit.* 18 *Edw.* 1.

Snuff, or *Snush*, Mixing and colouring it with *Oker*, *Umber*, or *Fustick*, yellow *Ebony*, *Tobacco Dust*, *Sand*, &c. incurs a Penalty of 3 l. for every Pound-weight. *Stat.* 1 *Geo.* c. 46.

Soc, (*Sax.*) Signifies Power, or Liberty to minister Justice and execute Laws; also the Circuit or Territory wherein such Power is exercised: Whence our Law-Latin Word *Soca* is used for a Seigniorship or Lordship, enfranchised by the King, with the Liberty of Holding or Keeping a Court of his *Sockmen*: And this Kind of Liberty continues in divers Parts of *England* to this Day, and is known by the Names of *Soke* and *Soken*. *Bract. lib.* 3. *Lamb.* — *Nullus Socman habet impune peccandi; i. e.* None hath Liberty of Sinning without Punishment. *Leg. Hen.* 1.

Socage, (*Socagium à Soca*, a Plough) A Tenure by which Tenants held their Lands, to plough the

the Land of their Lords with their own Ploughs, and do other inferior Services of Husbandry at their own Charge: Which slavish Tenure was afterwards, by the mutual Agreement of Lord and Tenant, turn'd into the Payment of a Sum of Money yearly, and from thence it was called *Liberum Socagium*; whereas the other was term'd *Villanum Socagium*. *Bract. lib. 2. cap. 35.* It was a Tenure of so large an Extent, that *Littleton* tells us, all the Lands in *England*, which were not held in *Knights Service*, were held in *Socage*: It seems the Land was divided between these two Tenures; and as they were of different Natures, so the Descent of these Lands was in a different Manner; for the Lands held in *Knights Service* descended to the eldest Son; but those held in *Villano Socagio*, equally among all the Sons; and if there was but one Messuage, the eldest Son was to have it, paying the Rest the Value, &c. *Litt. 117.* When the Tenant holdeth of the Lord by certain Service, for all Manner of Services, it is *Socage*; if a Man holds by Fealty only, such Service is Tenure in *Socage*: And Tenure by *Petit Serjeanty*, and in *Burgage*, are but *Socage* Tenures in Effect: But *Grand Serjeanty*, holden of the King, and *Frankalmoign*, which is a Spiritual Service, is not in *Socage*. *Litt. 117, 118, 160. 1 Inst. 86.* Free *Socage* is likewise called *Common Socage*: And all Tenures are adjudged and taken to be for ever turn'd into *Free and Common Socage*. *Stat. 12 Car. 2. c. 24.*

Socagers, Were those Tenants whose Tenure is called *Socage*; otherwise stiled *Sockmen*.

Socmen, Sokemen, (Socmanni) Are such Tenants as hold their Lands and Tenements in *Socage*; but the Tenants in *antient Demesne* seem most properly to be called *Socmans*. *F. N. B. 14. Briton, cap. 66.* After the Conquest, the *Socmanni* or *Sokemanni*, often mentioned in *Domesday*, were Tenants who held by no servile Tenure, but commonly paid their Rent to the Lord as a *Soke* or Sign of Freedom; though they were sometimes obliged to customary Duties for the Service and Honour of their Lord. *Spelm. of Feuds, cap. 7.*

Socna, (Sax. Socne) A Privilege, Liberty, or Franchise. *Chart. Canut. Reg.*

Socome, Signifieth a Custom of grinding Corn at the Lord's Mill; and *Bond Socome* is where the Tenants are bound to it. *Blount.*

Sodomy, The Crime of, and how punished, see *Buggery*.

Soke, Significat *Libertatem Curia Tenentium quam Socam appellamus*. *Fleta, lib. 1. cap. 47. Stat. 32 H. 8. c. 15.*

Soke-reeve, The Lord's Rent-gatherer in the *Soke* or *Soken*. *Fleta.*

Solarium, A Sellar, upper Room, or Garret: *Unum Solarium vocat' a Loft. Chart. Antiq.*

Soldiers, The Military State of *England* includes the *Soldiery* by Land and Sea: And in Time of War, particular Orders are always made for the due Order and Discipline of Officers and *Soldiers*, and Regulation of the Army, which are to be consulted upon all Emergencies; and therefore we are not to expect many standing or perpetual Laws on that Account. *Wood's Inst. 45.* The chief Statutes relating to the Army, and their Contents, are as follow, viz. By 18 H. 6. *Soldiers* retained, departing from their Colours, without Licence, are guilty of Felony. The 7 H. 7. c. 1. and 3 H. 8. c. 5. enact, That if a Captain shall not have the whole Number of

his *Soldiers*, or not pay them their due Wages, within six Days after he hath received it, he shall forfeit all his Goods and Chattels, and suffer Imprisonment. By the 4 & 5 Ph. & M. c. 3. If any Person being commanded to muster, doth absent himself (having no lawful Excuse) he shall suffer ten Days Imprisonment, or pay a Fine of 40 s. And if any one authorized to levy or muster *Soldiers*, shall take any Reward to discharge or spare any from the said Service, he shall forfeit ten Times as much as he shall take, &c. The Stat. 1 Jac. 1. c. 4. ordains, that if any Person going beyond Sea, to serve any foreign Prince, as a *Soldier*, if he do not take the Oath of Allegiance before he goes, it is Felony; and if he is a Gentleman or Officer, that is going to serve a foreign Prince, he is to be bound with two Sureties not to be reconciled to the See of *Rome*, &c. or it will be Felony. By 31 Car. 2. c. 1. no *Soldier* shall be quartered on any Persons without their Consent; and Inhabitants of Places may refuse to quarter any *Soldier*, notwithstanding any Order whatsoever. The 4 & 5 W. & M. &c. was made for punishing Mutiny and Desertion, &c. And by 10 & 11 W. 3. Officers and *Soldiers* may exercise Trades. The 2 & 3 Ann. gave Power to Justices of Peace to send Warrants for apprehending idle Persons, and to deliver them to Officers to recruit the Army; and during the Wars 40 s. and 4 l. Advance-Money was given to *Soldiers* voluntarily lifting. By the 12 Ann. c. 11. Lifting Men, or being enlisted for the Service of any foreign Prince as *Soldiers*, or procuring the same, without the King's Licence, is made High Treason. The 1 Geo. c. 3. enacts, That every *Soldier* who shall cause a Mutiny, Desert, &c. shall be punish'd by a Court Martial; and Persons suspected of Desertion are to be taken up by Constables, for whom a Reward is ordered of 20 s. And concealing Deserters, Buying their Clothes, &c. incurs a Forfeiture of 5 l. Officers making false Certificates to excuse the Absence of *Soldiers* from Musters, shall forfeit 50 l. and making false Musters, be cashiered and forfeit 100 l. Commissaries of the Forces are to give Notice to Mayors to be present at Musters; and the Muster-Rolls shall be sign'd by such Mayors: *Soldiers* falsely mustered shall be deem'd listed *Soldiers*; and Horses lent to the Persons so mustered to be forfeited: If any Pay-master of the Army detains the Pay ordered, for one Month; or any Officer shall refuse to pay his *Soldiers*, they shall be discharged, and be liable to 100 l. Forfeiture: Officers receiving Subsistence-Money, are to give Notice to Inn-keepers, and pay their Accounts; and Accounts shall be made up between the Pay-master General and Colonels of Regiments, &c. Constables shall quarter *Soldiers* in Inns and Ale-houses, and Officers taking Money for excusing Quarterage, shall be cashiered: Justices of Peace are to issue Warrants to Constables to provide Carriages for Baggage, where *Soldiers* are on the March, and Officers shall pay 1 s. per Mile for Waggon, and 9 d. for Carts; and forcing Horses, &c. from the Owners, is liable to a Forfeiture of 5 l. *Soldiers* after three Years Service may demand their Discharges; and his Majesty may establish Articles of War, &c. By 1 Geo. c. 34. No listed *Soldier* is to be allowed to be absent longer than twenty Days in six Months, by any Furlow, except sign'd by the Officer in Chief; and *Soldiers* in *London* shall have no Protection unless they constantly do Duty: Perfwad-

ding and procuring *Soldiers* to desert, incurs a Penalty of 40*l.* and not paying it, the Offenders are to be committed to Gaol for six Months, and be set on the Pillory: Papists being *Soldiers* are to renounce their Religion, or be disabled. The 3 *Geo. c. 2.* and 4 *Geo. c. 4.* ordain, That no *Soldier* shall be taken out of the Service, by any Process, except it be for some criminal Matter, or for a real Debt amounting to 10*l.* of which Affidavit is to be made; and if any *Soldier* be otherwise arrested, a Justice of Peace by Warrant under his Hand may discharge him. By the 5 *Geo. c. 5.* when an Officer or *Soldier* is accus'd of a capital Crime, the commanding Officer, on Application made to him, is to use his utmost Endeavours to deliver over the Criminal to the Civil Magistrate, and he is not to be try'd by a Court Martial in eight Days; within which Time, Application is to be made: But after that the Criminal may be try'd by a Court Martial. Vide *Court Martial.* See *Stat. 4 Geo. c. 3.* as to *Half-pay Officers, &c.*

Solet & Debet, Words inserted in Writs for Recovery of Rights, &c. Vide *Debet.*

Sole Tenant, (*Solus Tenens*) Is he that holds Land by his own Right only, without any other join'd: And if a Man and his Wife hold Land for their Lives, with Remainder to their Son for Life; here the Man dying, the Lord shall not have a Heriot, because he dies not *Sole Tenant.* Kitch. 134.

Solicitor, (*Solicitor*) Signifies a Man employ'd by another to follow and take Care of Suits depending in *Courts of Law* or *Equity*. There is also a *Solicitor General* to the King, who is a great Officer next the *Attorney General.* See *Attorney.*

Solidatum, Used in the *Neuter Gender* is taken for that absolute Right or Property which a Man hath in any Thing. *Malmsb. Lib. 1.*

Solinus terræ, In the County of *Kent* is about One hundred and sixty Acres: *In communi Terra Sancti Martini sunt 400 Acr. & dim. quæ faciunt duos Solinos & dimid.* Domesday.

Soller, Mention'd in *Leases of Houses in London.* Vide *Solarium.*

Solvendo esse, Is a Term of Art, signifying that a Man hath wherewith to pay, or is a Person solvent.

Solvere pœnas, To pay the Penalty; or undergo the Punishment inflicted for Offences. 3 *Salk. 32.*

Soldit ad diem, Is a Plea in Action of Debt on a Bond, Bill, &c. that the Money was paid at the Day limited. *Mod. Ca. 22.* See *Payment.*

Solutione feodi Militis & Burgi. *Parliamenti*, Are Writs whereby Knights of the Shire and Burghesses in Parliament, might recover their antient Allowance or Wages if it were denied. 35 *H. 8. c. 11.*

Son Assault, Is a Justification in an Action of *Assault* and *Battery*; because the Plaintiff made the first *Assault*, and what the Defendant did was in his own Defence. 2 *Lill. Abr. 523.* But *Son Assault* cannot be pleaded by a Defendant for his outrageous *Battery.* *Ibid.*

Sontage, Was a Tax of forty Shillings laid upon every Knight's Fee, according to *Stow*, pag. 284.

Sozcery, (*Sortilegium*) Witchcraft, or Divination by Lots; made Felony by 1 *Fac. 1. c. 12.*

Sozrs. In Sums of Money lent upon *Usury*, the Principal was antiently called *Sors*, to distin-

guish it from the *Interest.* *Pryn's Collect. Tom. 2. pag. 161.*

Sozus Accipiter, Is a *Sor* or *Soar-Hawk*: King *John* granted to *Robert de Hese*, Land in *Berton* of the Honour of *Nottingham*, to be held by the Service of Yielding the King yearly one *Soar-Hawk*, &c. *Cartular. S. Edmund. M.S.*

Sothale, or *Sothail*, Is conceived to be mistaken for *Scotale.* *Braët. lib. 3.*

Sothfaga, (From the Sax. *Sod*, i. e. *verum*, and *Saga*, *Testimonium*) An old Word which signifies History, and all Histories should be true, or true Sayings: From hence we derive *Southsayer.*

Soveraign, Is a Chief, or supream Person, one highest of all; as a King, &c.

Sovereign, A Piece of gold Coin, current at 22*s.* in 1 *H. 8.* when by Indenture of the *Mint*, a Pound-weight of Gold of the old Standard, was to be coined into twenty-four *Sovereigns*. In 34 *H. 8.* *Sovereigns* were coined at 20*s.* a-piece, and Half *Sovereigns* at 10*s.* But *Anno 4 Ed. 6.* the *Sovereign* of Gold pass'd for 24*s.* and in 6 *Ed. 6.* at 30*s.*

Sound, Is a narrow Sea, *Mare Balticum*, the *Sound*; and to *sound* is to make Trial how many Fathom a Sea is deep. *Merch. Diff.*

South-Sea Company, A Company of *Merchants* trading to the *South-Sea.* *Stat. 9 Ann. c. 21. 3 Geo. &c.* See *Merchant.*

Southgrov, Is an old Name of the Month of *February*, so called by the Inhabitants of *South Wales.*

Sowne, From the Fr. *Souvenue*, i. e. remembred; is a Word of Art used in the *Exchequer*, where *Escreats that Sowne not*, are those as the Sheriff cannot levy, viz. Such *Escreats* and Casualties as are not to be remembred, and run not in Demand; and *Escreats that Sowne*, are such as he may gather and are leviable. *Stat. 4 Hen. 5. c. 7. 4 Inst. 107.*

Spadarius, for *Spatharius*, Is a *Sword-bearer.* *Blount.*

Spatæ Placitum, A Court for the speedy Execution of Justice on *Military Delinquents.* *Brad. Append. Hist. Engl. 45.*

Spatularia, Is numbered among the Holy Vestments, &c. in *Mon. Angl. Tom. 3. pag. 331.*

Speaker of the Parliament, The Chief Officer in that High and August Court, who is as it were the common Mouth of the Rest: And as that Honourable Assembly contains two Houses, the *Lords* and *Commons*; so there are two *Speakers*, the one term'd the *Lord Speaker of the House of Peers*, and is most commonly the *Lord Chancellor* or *Lord Keeper of the Great Seal of England*; the other (being a Member of that House) is called *The Speaker of the House of Commons*, both whose Duties consist in managing Debates, putting Questions, and thereby collecting the Sense of the Houses, the passing of Bills, seeing the Orders of each House observ'd, &c. See *Parliament.*

Special Matter in Evidence, Is what is specially alledg'd, and comes not into the *General Issue.*

Specialty, (*Specialitas*) A Bond, Bill, or such like Instrument; a Writing or Deed, under the Hand and Seal of the Parties. *Litt.*

Speleum, The Cell of a Monk, mentioned in *Malmsb. lib. 3.*

Spigurnel, (*Spigurnellus*) Is the Sealer of the King's Writs, from the Sax. *Spurran*, to shut up or

or inclose: But 'tis said, that *Galfridus Spigurnel* being by K. *Hen. 3.* appointed to be Scaler of his Writs, was the first in that Office; and therefore in After-times the Persons that enjoy'd the Office were called *Spigurnels*. *Pat. 11 H. 3. 4 Edw. 1.* This Office was also known by the Name of *Spicurnantia* or *Espicurnantia*; and *Oliver de Standford* held Lands in *Nettlebed* in *Com. Oxon. per Serjeantiam Spicurnantiae in Cancellaria Domini Regis. 27 Ed. 1.*

Spinacium, A Sort of Vessel which we now call a *Pinnace*. *Knight. Ann. 1338.*

Spindulæ, Were those Three golden Pins which were used about the Archiepiscopal Pall; and from thence *Spindulatus* signified to be adorned with the Pall. *Du Cange.*

Spinster, Is an Addition in Law-Proceedings usually given to all unmarried Women; and it is a good Addition for the Estate and Degree of a Woman: Though Sir *Edw. Coke* held, if a Gentlewoman be named *Spinster*, and not *Generosa*, in any original Writ, Appeal, or Indictment, they shall be abated and quashed. *Dyer 46, 88. 2 Inst. 668.*

Spiritual Courts, Have Jurisdiction in Causes matrimonial, and for Probate of Wills for Goods, and granting Administrations; and for Tithes, where there is no *Modus*; in Cases of Defamation, &c. Their Jurisdictions are set forth in the *Stat. Articuli Cleri. 9 E. 2.* And the *Stat. de Circumspecte agatis*; the *23 H. 8. c. 9. &c.* See *Courts Ecclesiastical.*

Spiritualities of a Bishop, Are those Profits which he receives as a *Bishop*, and not as a Baron of Parliament; such as the Duties of his Visitation, Prestation-Money, his Benefit growing from Ordinations and Institutions of Priests, the Income of his Jurisdiction, &c. *Staundf. P. C. 132.* The Archbishop of the Province is *Guardian of the Spiritualities* when a See is vacant, and hath the Jurisdiction of Courts, &c. *Vide Custos Spiritualitatis.*

Spittle-House, Is a Corruption from *Hospital*, and signifies the same Thing; or it may be taken from the Teuton. *Spital*, an Hospital or Almshouse: It is mentioned in the *15 Car. 2. c. 9.*

Spoliation. (*Spoliatio*) A Writ or Suit for the Fruits of a Church, or the Church it self, to be sued in the Spiritual Court, and not in the Temporal, that lies for one Incumbent against another, where they both claim by one Patron, and the Right of Patronage doth not come in Question: As if a Parson be created a Bishop, and hath Dispensation to hold his Benefice, and afterwards the Patron presents another Incumbent, who is instituted and inducted; now the Bishop may have a *Spoliation* in the Spiritual Court against the new Incumbent, because they both claim by one Patron, and the Right of Patronage doth not come in Debate; and for that the other Incumbent came to the Possession of the Benefice, by the Course of the Spiritual Law, viz. by Institution and Induction; for otherwise, if he be not instituted and inducted, a *Spoliation* lies not against him, but Writ of Trespass, or Affise of *Novel Disseisin. F. N. B. 36, 37.* So it is where a Parson that hath a Plurality accepts of another Benefice, by Reason whereof the Patron presents another Clerk, who is instituted and inducted; in this Case one of them may have *Spoliation* against the other, and then shall come in Question, whether he hath a sufficient Plurality,

or not: And it is the same of Deprivation, &c. *Terms de Ley 547.*

Sponte obata, A free Gift and present to the King, antiently so called.

Sportula, Signifies Gifts and Gratuities, forbidden to be received by the Clergy: And St. *Cyprian* calls those Clergymen *Sportulantes Fratres*, who accepted such Gifts for their Maintenance. *St. Cyp. Epist. 70, 71.*

Spouse-breach, Is Adultery, oppos'd to simple Fornication: The Lady *Katherine* was accused to the King of incontinent Living before her Marriage, and of *Spouse-breach* after her Marriage. *Fox Art. Mon. Vol. 2. pag. 540.*

Spur-Royal, (*Spurarium aureum*) An antient gold Coin. — *Pro hac Recognitione dedit Johan. H. unum Spurarium aureum, &c. Paroch. Antiq. 321.*

Spullers of Barn, Are those Persons that Work at the *Spole* or Wheel; Triers of *Yarn* to see that it be well spun, and fit for the Loom. *1 Mar. c. 7.*

Squalley, Is a Note of Faultiness in the Making of Cloth. *43 Eliz. c. 10. See Rewey.*

Squibs, The Making, Selling, or Exposing to Sale of *Squibs*, Serpents, or other Fire-works; or Throwing, Casting, or Firing any *Squibs*, &c. is declared a common Nuisance: And such Persons who make or sell *Squibs*, shall forfeit *5 l.* Also the Persons throwing them, or assisting therein, incur a Forfeiture of *20 s.* leviable by a Justice of Peace's Warrant; and not being paid, the Offender is to be sent to the House of Correction for any Time not exceeding a Month. *Stat. 9 & 10 W. 3. c. 7.* If any Persons shall permit *Squibs* to be cast or thrown from out of their Houses into the Street, they shall forfeit *20 s.* to be levied by Distress and Sale of Goods, &c.

Stabbing Of Persons is made Felony without Benefit of Clergy, and punished as Murder, by *Stat. 1 Jac. 1. c. 8. See Manslaughter.*

Stabilia, A Writ called by that Name, on a Custom in *Normandy*, that where a Man in Power claimed Lands in the Possession of an Inferior, he petitioned the Prince that it might be put into his Hands 'till the Right was decided; whereupon he had this Writ, *Breve de Stabilia*: To this a Charter of King *Hen. 1.* alludes in *Pryn's Lib. Angl. Tom. 1. pag. 1204.*

Stabilitio venationis, The driving Deer to a Stand. *Omnes Burgenses de B. debent invenire unum hominem ter per Annum ad Stabilamentum pro venatione capienda, &c. Lib. niger Heref. And, In Venatione si quis ad Stabilitatem non venit, i. e.* He who doth not come to the Place where he ought to stand. *Leg. H. 1. c. 17.*

Stable-stand, (*Stabilis statio, vel Stans in Stabulo*) Is when a Man is found at his Standing in the Forest, with a Cross or Long-bow bent, ready to shoot at any Deer; or standing close by a Tree, with Greyhounds in a Leash, ready to slip: And it is one of the four Evidences or Presumptions, whereby a Person is convicted of intending to steal the King's Deer in the Forest; the other Three are *Dog-draw*, *Back-bear*, and *Bloody-hand*. *Manwood, par. 2. cap. 18.*

Stack, A Quantity of Wood three Foot long, as many Feet broad, and twelve Foot high. *Merch. Dict.*

Stadium, Is accounted a Furlong of Land; which is the eighth Part of a Mile. *Domesday.*

Staff

Staff-herding, Is a Right to follow Cattle within a Forest: And where Persons claim Common in a Forest, it must be inquired by the Minsters, whether they use *Staff-herding*, for it is not allowable of common Right; because by that means the Deer, which would otherwise come and feed with the Cattle, are frighted away, and the Keeper or Follower will drive the Cattle into the best Grounds, so that the Deer shall only have their Leavings: Therefore if any Man who hath Right of Common, under Colour thereof use *Staff-herding*, it is a Cause of Seizing his Common till he pay a Fine for the Abuse. 1 *Jones Rep.* 282.

Stagatarius, Signifies a Resident; as J. B. *Canonius* & *Stagiarus Sancti Pauli*, is a Canon Residentiary of St. Paul's Church, *Hist. Eccl. S. Paul.* But this Distinction was made between *Residentiarius*, and *Stagiarus*: Every Canon installed to the Privileges and Profits of Residence, was *Residentiarius*; and while he actually kept such stated Residence, he was *Stagiarus*. *Statut. Eccles. Paulin. M.S. 44.* *Stagiaria*, the Residence to which he was obliged: *Stagiari*, to keep Residence. Hence an old *Stager*.

Stagnes, (*Stagna*) Are Pools of standing Water. 5 *Eliz. c. 21.* By the Name of *Stagnum*, the Water and Land shall pass also. 1 *Inst. 5.*

Stal-boat, Is a Kind of Fishing-boat, mentioned in the 27 *Eliz. c. 21.*

Stalking, The going gently Step by Step, to take Game: None shall stalk with Bush or Beast to any Deer, except in his own Forest or Park, under the Penalty of 10*l.* *Stat. 19 H. 7. c. 11.*

Stalkers, Certain Fishing-nets, by the Statute 13 *R. 2. c. 20.*

Stallage, (*Stallagium*, from the Sax. *Stal*, i. e. *Stabulum*, *Statio*) The Liberty or Right of pitching and erecting *Stalls* in Fairs or Markets; or the Money paid for the same. *Kennet's Gloss.*

Stallarius, Is mentioned in our Historians, and signifies *Præfectum Stabuli*; it was the Officer which we now call Master of the Horse: — Eadnothus qui fuit Haroldi Regis Stallarius, &c. *Spelm.* Sometime it hath been used for him who hath a *Stall* in a Market. *Fleta, lib. 4. cap. 28.*

Stamp-Duties. There is a Duty imposed by Parliament on all Vellom, Parchment, and Paper, whereon Deeds, Grants, Commissions, or any Writings, or Process in the Law are ingrossed or written, from 40*s.* down to 6*d.* and 1*d.* *Stat. 5 & 6 W. & M.* And by 9 & 10 *W. 3.* and 12 *Ann.* These Duties are doubled and trebled: The common Stamp is treble Six-penny, &c. Commissioners are appointed by Virtue of these Acts, to provide Stamps or Marks, and inferior Officers for the Stamping of Parchment and Paper, and for Levying and Collecting the Duties: If any Commissioner or Officer, shall fix the Mark or Stamp to Parchment or Paper, before the Duty thereon is paid or secured, he shall forfeit 100*l.* And Persons Ingrossing or Writing upon any Paper, &c. any Thing for which the same is charged with the Duty, before it shall be stamp'd; or Writing upon any Paper or Parchment mark'd or stamp'd, for any lower Duty than what is required; shall incur a Forfeiture of 5*l.* and no Deed or Writing shall be good in Law till the 5*l.* is paid, and the same is stamped. Vide *Printing.*

Stand, Is a Weight from Two hundred and a Half to Three hundred of Pitch. *Merch. Dict.*

Standard, (From the Fr. *Estandart*, i. e. *Signum*, *Vexillum*) In the general Signification, is an

Ensign in War. And it is used for the *Standing Measure* of the King, to the Scantling whereof all the Measures in the Land are or ought to be framed, by the Clerks of Markets, Aulnagers or other Officers, according to *Magna Charta* and divers other Statutes: And it is not without good Reason called a *Standard*, because it standeth constant and immoveable, having all Measures coming towards it for their Conformity; even as Soldiers in the Field have their *Standard* or Colours, for their Direction in their March, &c. to repair to. *Britton, cap. 30.* There is a *Standard of Money*; directing what Quantity of fine Silver and Gold, and how much Allay, are to be contained in Coin of old Sterling, &c. And *Standard of Plate* and silver Manufactures. *Stat. 6 Geo. c. 11.* See *Allay*.

Standardum Londini. *Vobis Mandamus quod Standardum Londini de hujusmodi Mensuris diligenter assisari & probari, ac alias Mensuras per dictum Standardum fieri ad singulos Comitatus Regni, &c.* *Claus. 14 Ed. 2.*

Standardus, True Standard, or legal Weight or Measure. *Cartular. S. Edmund. M.S. 268.*

Standel, A young store Oak-tree, which in Time may make Timber; and Twelve such young Trees are to be left standing in every Acre of Wood, at the Felling thereof. 35 *H. 8. c. 17.* 13 *Eliz. c. 25.*

Stanlaw, A Word antiently used for a Stony Hill. *Domesd.*

Stannaries, (*Stannaria*, from the Lat. *Stannum*, i. e. Tin) Are the Mines and Works where Tin Metal is got and purified; as in *Cornwall* and *Devonshire*, &c. *Camd. Brit. 199.* The Tinnars are called *Stannary-men*; who had great Liberties granted them by King *Edw. 1.* before they were abridg'd by the *Stat. 50 Ed. 3.* by which Statute the Privileges of the Tinnars are limited and expounded; and the Jurisdiction of the *Stannary-Courts* is settled by the 16 & 17 *Car. 1. c. 15.* All Labourers in and about the *Stannaries*, are to have the Privilege of the *Stannary-Court* while they work there; and may not be impleaded in any other Court, for any Cause arising within the *Stannaries*; except for Pleas of Land, Life or Member: The Jurisdiction of this Court is guided by Special Laws and Customs, and by Prescriptions; and no Writ of Error lieth upon a Judgment in the *Stannary-Courts*, but it shall be reversed, where wrong, by Appeal to the Steward of the Court where the Matter lieth; or from the Steward to the Deputy-Warden of the *Stannaries*; from the Under-Warden to the Lord Warden of the *Stannaries*; and from him to the King's Privy Council. 4 *Inst. 230, 232.* *Plowd. 327.* 12 *Rep. 9.* 1 *Roll. Abr. 745.* Transitory Actions between Tinner and Tinner, &c. though not concerning the *Stannaries*, or arising therein, if the Defendant be found within the *Stannaries*, may be brought into those Courts, or at Common Law; but if one Party alone is a Tinner, such transitory Actions which concern not the *Stannaries*, nor arise therein, cannot be brought in the *Stannary-Courts.* 4 *Inst. 231.*

Stannarius, A Pewterer or Dealer in Tin; of or belonging to Tin. *Litt. Dict.*

Staple, (*Stapulum*) Comes from the Fr. *Espace*, i. e. *Forum Vinarium*, a Market or Staple for Wines, which is the principal Commodity of France; or rather from the Germ. *Stapelen*, which signifieth to gather, or heap any Thing together: In an old French Book, it is written à Calais *Espace*

Eftape de la Laine, &c. i. e. The Staple for Wool: And it is with us a *Publick Mart*, appointed by Law to be kept at the following Places, viz. *Westminster, York, Lincoln, New Castle, Norwich, Canterbury, Chichester, Winchester, Exeter, and Bristol, &c.* A *Staple-Court* is held at the *Wool-Staple* in *Westminster*, the Bounds whereof begin at *Temple-Bar* and reach to *Tutbill*; in other Cities and Towns, the Bounds are within the Walls, and where there are no Walls, they extend thro' all the Town: And the Court of the Mayor of the *Staple* is governed by the Law-Merchant in a summary Way, which is the *Law of the Staple*. 4 *Inst.* 237. See *Stat.* 27 *Ed.* 3. The *Staple Goods* of *England* are *Wool, Woolfels, Leather, Lead, Tin, Cloth, Butter, Cheese, &c.* as appears by the *Statute* 14 *R.* 2. c. 1. Though some allow only the five First; and yet of late *Staple Goods* are generally understood to be such as are vendible, and not subject to perish, of any Kind. Vide *Statute Staple*.

Star, (*Starrum*, a Contraction from the Hebr. *Shetar*, a Deed or Contract) All the Deeds, Obligations, &c. of the *Jews* were antiently called *Stars*, and writ for the most Part in *Hebrew* alone, or in *Hebrew* and *Latin*; one of which yet remains in the Treasury of the *Exchequer*, written in *Hebrew*, without Points, the Substance whereof is express'd in *Latin* just under it, like an *English* Condition under a *Latin* Obligation: This bears Date in the Reign of *K. John*; and many *Stars*, as well of Grant and Release, as obligatory, and by Way of Mortgage, are pleaded and recited at large in the *Plea-Rolls*. *Pasch.* 9 *Edw.* 1.

Star-Chamber, (*Camera Stellata, Chambre de Etoile*) Was a Chamber at *Westminster* so called, because at first all the Roof thereof was decked with gilded *Stars*. *Sir Tho. Smith de Rep. Angl. lib.* 2. cap. 2. It is written the *starred Chamber*. *Stat.* 25 *H.* 8. c. 1. There was formerly a high Court called by this Name; long since taken away. 3 *H.* 7. 21 *H.* 8. 17 *Car.* 1. See *Court of Star-Chamber*.

Staticks, (*Statice, Scientia Ponderum*) Knowledge of Weights and Measures; or the Art of Balancing or Weighing in Scales. *Merch. Dist.*

Stationarius, (From *Statio*, Residence) Is the same with *Stagarius*.

Statuarium, A Tomb adorn'd with Statues. — *Ac ejus Sacro Corpore terra illic inter multa alia Romana Statuaria commendato, &c.* *Ingulph.* 853.

Status de Manerio, The State of a Manor: All the Tenants within the Manor, met in the Court of their Lord, to do their customary Suit, and enjoy their Rights and Usages; which was termed *omnis Status de Manerio*. *Paroch. Antiq.* 456.

Statute, (*Statutum*) Has divers Significations: First, It signifies an Act of Parliament made by the King, and the three Estates of the Realm; and Secondly, It is a short Writing called a *Statute-Merchant*, or *Statute-Staple*, which are in the Nature of Bonds, &c. and called *Statutes*, as they are made according to the Form expressly provided in certain *Statutes*. 5 *H.* 4. c. 12. To *Statutes* enacted in Parliament, there must be the Assent of the King, Lords, and Commons, without which there can be no good Act of Parliament; but there are many Acts in Force, though these three Assents are not mentioned therein, as *Dominus Rex statuit in Parlamento*, and *Dominus*

Rex in Parlamento suo Statuta edit, and *de Comuni Concilio Statuit, &c.* *Plowd.* 79. 2 *Bulfr.* 186. And *Sir Edw. Coke* says, that several *Statutes* are penned like Charters in the King's Name only; though they were made by lawful Authority.

4 *Inst.* 25. Before the Invention of Printing, all *Statutes* were proclaimed by the Sheriff in every County, by Virtue of the King's Writ. 2 *Inst.* 526, 644. Some *Statutes* are *General*, and some are *Special*: And they are called *General* from the *Genus*, and *Special* from the *Species*; as for Instance; The whole Body of the *Spirituality* is the *Genus*, but a *Bishop, Dean, and Chapter, &c.* is the *Species*: Therefore *Statutes* which concern all the Clergy, are *General Laws*; but those which concern *Bishops* only are *special*. 4 *Rep.* 76. The *Statute* 21 *H.* 8. c. 13. which makes the Acceptance of a second Living by Clergymen, an Avoidance of the First, is a general Law, because it concerns all *Spiritual Persons*. 5 *Rep.*

All *Statutes* concerning *Mysteries* and *Trades* in general, are general or publick Acts; though an Act which relates to one particular Trade is a private *Statute*. *Dyer* 75. A *Statute* which concerns the King is a *Publick Act*; and yet the *Stat.* 23 *H.* 8. concerning *Sheriffs, &c.* is a *Private Act*. *Plowd.* 38. *Dyer* 119. 'Tis a Rule in Law, that the Courts at *Westminster* ought to take Notice of a *General Statute*, without Pleading it; but they are not bound to take Notice of particular or private *Statutes* unless they are pleaded. 1 *Inst.* 98. *Statutes* against the Power of subsequent Parliaments are not binding; notwithstanding the *Statute* 42 *Ed.* 3. c. 3. declares that any *Statute* made against *Magna Charta* shall be void: And this is evident, seeing many Parts of *Magna Charta* have been repealed and altered by subsequent Acts. *Read. on Statut. Vol.* 4. pag. 340. If a *Statute* is against Reason, or impossible to be perform'd, it is void. 2 *Inst.* 587. Old *Statutes* must give Place to new, where they are contrary; but an affirmative Act does not repeal a precedent affirmative *Statute*: And when there is a seeming Variance between two *Statutes*, and no Clause of *Non obstante* in the latter, such Construction shall be made that both may stand. 11 *Rep.* 56. *Dyer* 347. By Repealing of a Repealing *Statute*, the first *Statute* is revived. 4 *Vol. Read. Stat.* *Statutes* consist of two Parts, the Words, and the Sense; and 'tis the Office of an Expositor, to put such a Sense on the Words of a *Statute*, as is agreeable to Equity and right Reason: Equity must necessarily take Place in the Exposition of *Statutes*; but explanatory Acts are to be construed according to the Words, and not by any Manner of Intendment, for 'tis incongruous for an Explanation to be explained. *Plowd.* 363, 465. *Cro. Car.* 23. The Preamble of a *Statute*, which is the Beginning thereof, going before, is as it were a Key to the Knowledge of it, and to open the Intent of the Makers of the Act; it shall be deem'd true, and therefore good Arguments may be drawn from the same. 1 *Inst.* 11. It is the most natural and genuine Exposition of a *Statute*, to construe one Part by another Part of the same *Statute*, for that best expresses the Meaning of the Makers: The Words of an Act of Parliament are to be taken in a lawful and rightful Sense; and the Construction of *Statutes* in general must be made in Suppression of the Mischief, and for the Advancement of the Remedy intended by the *Statute*; but so that no innocent Person, by a literal Construction shall

receive any Damage. 1 *Inst.* 381, 24. The best way to expound a *Statute*, is to consider what Answer the Law-givers would probably have given to the Question made, if proposed to them. *Plowd.* 465. 3 *Nelf. Abr.* 245. In the usual Exposition of *Statutes*, these Things are to be observed, *viz.* 1. What was the Common Law before the making of the *Statute*? 2. The Mischief and Defect which the Common Law did not provide against. 3. What Remedy the *Statute* hath appointed to cure this Mischief? 4. The true Reason of the Remedy. 3 *Rep.* 7. Where a *Statute* gives a Remedy for any Thing, it shall be presumed there was no Remedy before at Common Law. And the Rules to construe Acts of Parliament, are different from the strict Rules of Common Law; though in the Construction of a *Statute*, the Reason of the Common Law gives great Light. *Raym.* 191, 355. 2 *Inst.* 301. If an Act of Parliament is dubious, long Usage may be good to expound it by; and the Meaning of Things spoken and written, must be as hath been constantly received; but where Usage is against the obvious Meaning of a *Statute*, by the vulgar and common Acceptation of Words, then it is rather an Oppression than an Exposition of the *Statute*. *Vaugh.* 169, 170. A *Statute* which alters the Common Law, shall not be strained beyond the Words, except in Cases of publick Utility, when the End and Design of the Act appears to be larger than the Words themselves. *Ibid.* 179. Relative Words in any *Statute*, may make a Thing pass as well as if particularly express'd. And Cases of the same Nature shall be within the same Remedy. *Raym.* 54. An Act of Parliament in Affirmance of the Common Law, extends to all Times after, though it mentions only to give Remedy for the present; and where a Thing is granted by *Statute*, all necessary Incidents are granted with it. 1 *Inst.* 235. Where-ever a *Statute* gives or provides a Thing, the Common Law supplies all manner of Requisites. *Hardr.* 62. Every *Statute* made against an Injury, gives a Remedy by Action, expressly or implicitly. 2 *Inst.* 55, 74. And Things for Necessity sake, or to prevent Failure of Justice, are excepted out of the *Statutes*. *Ibid.* 118. How *Statutes* are to be recited, and Indictments drawn on them, see *Indictment*.

Statutes of Limitation of Actions, and Feofails, &c. Vide the Heads.

Statutes Merchant, A *Statute Merchant* is a Bond of Record, acknowledg'd before the Clerk of the *Statutes Merchant*, and Lord Mayor of the City of London, or two Merchants assign'd for that Purpose; and before the Mayors of other Cities and Towns, or the Bailiff of any Borough, &c. sealed with the Seal of the Debtor and the King, upon Condition that if the Obligor pays not the Debt at the Day, Execution may be awarded against his Body, Lands, and Goods, and the Obligee shall hold the Lands to him, his Heirs and Assigns, 'till the Debt is levied. *Terms de Ley* 548. *Stat.* 13. *Edw.* 1. The *Statute of Acton Burnel*, 13 *Ed.* 1. Enacts, That the Merchant is to cause his Debtor to come before the Mayor of London, &c. to acknowledge the Debt due, and Day of Payment; and the Recognizance is to be entred in a Roll: Then the Clerk is to make out a Bill Obligatory, whereunto the Seal of the Debtor shall be affix'd, together with the King's Seal, in the Custody of the Mayor, &c. And if the Debtor fail in Payment at the Day,

upon Notice thereof to the Mayor and Clerk, they are to cause his Goods and Chattels to be sold by Appraisment, to satisfy the Creditor what his Debt amounts unto, and the Money without Delay is to be paid to such Creditor; or in Case they cannot sell the Goods, they shall cause so much of the Goods to be delivered to the Creditor as will answer his Debt. If the Debtor have no Goods within the Mayor's Jurisdiction, the Recognizance is to be sent to the Lord Chancellor under the King's Seal, and he shall thereupon direct a Writ to the Sheriff in whose Bailiwick the Goods of the Debtor are, who is to proceed therein as the Mayor might have done if the said Goods had been in his Jurisdiction: And if the Debtor have no Goods whereupon the Debt may be levied, he shall be imprisoned, and there remain until he agree with the Creditor, &c. If the Debtor have Sureties, they shall be proceeded against in like Manner as the Debtor; but so long as the Debt may be levied of the Goods of the Debtor, the Sureties are to be without Damage. Also a Merchant Stranger, to whom a Debt is due by *Statute Merchant*, shall besides the Payment of his Debt be satisfied for his Stay and Detainer from his Business. And by the *Statute de Mercatoribus*, 13 *Edw.* 1. The Merchant shall cause his Debtor to appear before the Mayor of the City of London, or other City or Town, and there acknowledge the Debt, &c. by *Recognizance*, which is to be inrolled, the Roll whereof must be double, one Part to remain with the Mayor, and the other with the Clerk appointed by the King: And then one of the Clerks is to write the Obligation, which shall be sealed with the Debtor's Seal and that of the King, &c. If the Debt be not paid at the Day upon the Merchant's Account, the Mayor is to cause the Debtor to be imprison'd, if to be found, and in Prison to remain until he hath agreed the Debt; and if the Debtor cannot be found, the Mayor shall send the Recognizance into the *Chancery*, from whence a Writ shall issue to the Sheriff of the County where the Debtor is, to arrest his Body, and keep him in Prison till he agree the Debt; and within a Quarter of a Year, his Lands and Goods shall be delivered to him to pay the Debt; but if the Debtor do not satisfy the Debt within that Time, all his Lands and Goods shall be delivered to the Merchant by a reasonable Extent, to hold until the Debt is levied thereby; and in the mean Time he shall remain in Prison; but when the Debt is satisfied, the Body of the Debtor is to be delivered, together with his Lands. If the Sheriff return a *Non est Inventus*, &c. the Merchant may have Writs to all the Sheriffs where he hath any Land; and they shall deliver all the Goods and Lands of the Debtor by Extent, and the Merchant shall be allowed his Damage, and all reasonable Costs, &c. All the Lands in the Hands of the Debtor, at the Time of the Recognizance acknowledged, are chargeable; though after the Debt is paid, they shall return to the Grantees, if granted away, as shall the rest to the Debtor. The Debtor or his Sureties dying, the Merchant shall not take the Body of the Heir, &c. but shall have his Lands until the Debt is levied. In London, out of the Commonalty, two Merchants are to be chosen and sworn by this Statute; and the Seal shall be opened before them, whereof one Piece is to be delivered to the said Merchants,

chants, and the other remain with the Clerk ; and before these Merchants, &c. *Recognizances* may be taken ; a Fee of 1 d. per Pound is allowed to the Clerk for fixing the King's Seal ; and a Seal is to be provided that shall serve for *Fairs*, &c. but the Statute extends not to *Jews*, Stat. Ibid. Cro. Car. 450, 457. *Statutes Merchant* were contrived for the Security of Merchants only ; but at this Day are used by others, and become one of the common Assurances of the Kingdom : The Form of a *Statute Merchant Bond*, according to *Fleta*, is as follows, viz. — *Noverint universi me A. B. de &c. Teneri C. D. in centum libr. solvend' eidem C. D. ad festum, &c. Anno Regni Regis, &c. Et nisi fecero, concedo quod currant super me & heredibus meis districtio & poena provisiva in Statuto Domini Regis edit. apud Westm. Datum London, tali die, &c.*

Statutes Staple, Are concerning Merchants and Merchandizes of the *Staple* ; and are of the same Nature with *Statutes Merchant* : They are for Debt acknowledged before the *Mayor of the Staple*, at our chief Cities, &c. in the Presence of one or more of the *Constables of the Staple*, by Virtue of which the Creditor may forthwith have Execution of the Body, Lands, and Goods of the Debtor, on Nonpayment. 4 *Inst.* 238. The *Mayor of the Staple* may take *Recognizance* of a Debt in Presence of the *Constables of the Staple* ; and there shall be a Seal remaining with the Mayor, &c. with which every Obligation upon such *Recognizance* shall be sealed : And upon such Obligation, after Default of Payment, the Mayor may imprison the Debtor, and attach his Goods, and sell them to satisfy the Creditor ; but if the Debtor be not found within the *Staple*, the Mayor is to certify the Obligation into Chancery, and from thence a Process shall go against the Debtor's Person, his Lands, Goods, and Chattels, as in Case of a *Statute Merchant*. In every *Staple Town* there is to be a Mayor and two *Constables* established to take *Recognizances*, &c. and when they die, or are changed, others shall be chosen in their steads by the Commonalty of Merchants ; though the Mayor is not to hold over a Year, unless he be again chose, &c. 27 *Ed.* 3, cap. 1. Mayors and *Constables of the Staple* are to have Consuance of Debts and Contracts touching Merchandize. Officers of the *Staple* shall be sworn first to the King, and then to the *Staple* ; and the Mayor of the *Staple* taking a *Recognizance* contrary to the Statute, is to forfeit to the King Half the Sum recognized, &c. Persons suing a *Scire facias* in Chancery, to defeat an Execution upon a *Statute Staple*, must find Security both to the King and Recognizee to prosecute, &c. Stat. 36. *Edw.* 3. 14 & 15 R. 2. 11 H. 6. Debt lies as well upon a *Statute Staple*, as upon a Bond : And a Statute acknowledged upon Lands, is a present Duty, and ought to be satisfied before an Obligation ; a Debt due on an Obligation being but a Chose in Action, and recoverable by Law, and not a present Duty by Law, as a Debt upon a Statute Judgment or *Recognizance* is, upon which present Execution is to be taken without further Suit. Cro. *Eliz.* 355, 461, 494. 2 *Litt. Abr.* 536. In Chancery the Proceedings on a *Statute Staple* are in the Petty Bag Office ; and *Statutes Staple* are suable in the King's Bench or Common Pleas, as well as in Chancery. Cro. *Eliz.* 208. On a Statute's being satisfied, it is to be vacated by entering it, &c. *Statutes Staple* and *Statutes Merchant* are to be entred

within six Months, or shall not be good against Purchasers. 27 *Eliz.* cap. 4. See the Stat. 16 & 17 Car. 2. for preventing Delays in extending Statutes. Vide *Recognizance*.

Statute Merchant and Statute Staple, Tenants thereby. He that is in Possession of Lands on a *Statute Merchant* or *Staple*, is called *Tenant by Statute Merchant* and *Statute Staple*, during the Time of his Possession : And Creditors shall have Freehold in the Lands of Debtors, and Recovery by *Novel Disseisin*, if put out ; but if *Tenant by Statute Merchant*, or *Statute Staple*, hold over his Term, he that hath Right may sue out a *Venire facias ad computand'* or enter, as upon an *Elegit.* 27 *Edw.* 3. &c.

Statuto Stapule, Is a Writ that lies to take the Body to Prison, and seise upon the Lands and Goods of one who hath forfeited the Bond called *Statute Staple*. Reg. Orig. 151.

Statuto Mercatorie, A Writ for the Imprisoning him that has forfeited a *Statute Merchant Bond*, until the Debt is satisfied : And of these Writs, there is one against Lay Persons, and another against Persons Ecclesiastical. Reg. Orig. 146, 148.

Statutum de Laborariis, Is an ancient Writ for the apprehending of such *Labourers* as refuse to work according to the Statute. Reg. *Judic.* 27.

Statutum Sessionem, The *Statute Sessions*, A Meeting in every Hundred of *Constables* and *Housholders*, by Custom, for the Ordering of Servants, and the Debating of Differences between the Masters and Servants, rating of Servants Wages, &c. 1 *Eliz.* cap. 4.

Staurum, Any Store, or standing Stock of Cattle, Provision, &c. Matt. *Westm.* Anno 1259.

Stoerelman, The same with *Stirmannus*, or *Sturemannus*.

Sterling, (*Sterlingum*) Was the Epithet for Silver Money current within this Kingdom, and took Name from this ; that there was a pure Coin stamped first in England by the *Easterlings*, or Merchants of East Germany, by the Command of King John ; and *Hoveden* writes it *Esterling*. Instead of the *Pound Sterling*, we now say so many Pounds of lawful English Money ; but the Word is not wholly disused, for tho' we ordinarily say lawful Money of England, yet in the Mint they call it *Sterling Money* ; and when it was found convenient in the Fabrication of Monies, to have a certain Quantity of baser Metal to be mixed with the pure Gold and Silver, the Word *Sterling* was then introduc'd ; and it has ever since been used to denote the certain Proportion or Degree of Fineness, which ought to be retained in the respective Coins. Lownd's *Ess.* on Coins 14.

Steward, (*Senescallus*, compounded of the Sax. *Steda*, i. e. Room, or Stead, and *Weard*, a Ward or Keeper) Is as much as to say a Man appointed in my Place or Stead, and hath many Applications ; but always denotes an Officer of chief Account within his Jurisdiction. The greatest of these Officers is, The Lord High Steward of England, who anciently had the Supervising and Regulating, next under the King, the Administration of Justice, and all other Affairs of the Realm, whether Civil or Military ; and the Office was Hereditary, belonging to the Earls of *Leicester*, 'till forfeited to King Hen. 3. But the Power of this Officer being very great, of late the Office of High Steward of England hath not been granted to any one, only *pro hac vice*, either for the Trial of a Peer of the Realm on an Indi-

ment for a Capital Offence, or for the Determination of the Pretensions of those who claim to hold by Grand Serjeanty, to do certain honourable Services to the King at his Coronation, &c. for both which Purposes he holds a Court, and proceeds according to the Laws and Customs of England; and he to whom this Office is granted must be of Nobility and a Lord of Parliament. 4 *Inst.* 58, 59. *Crompt. Jurif.* 84. 13 H. 8. 11. 2 *Hawk. P. C.* 5. Of the nine great Officers of the Crown, the Lord High Steward is the first; but when the special Business for which he is appointed is once ended, his Commission expires. The first Lord High Steward that was created for the Solemnizing of a Coronation, was Thomas, second Son of Hen. 4th; and the first Lord Steward for the Trial of a Peer, was Edward Earl of Devon, on the Arraignment of John Holderne's Earl of Huntingdon in the same Reign. *Lex Constitution.* 170. There is a Lord Steward of the Household, mention'd *Stat.* 24 H. 8. cap. 13. whose Name was changed to that of Great Master of the Household, Anno 32 H. 8. But this Statute was repeal'd by 1 *Mar.* cap. 4. and the Office of Lord Steward of the Household revived. He is the chief Officer of the King's Court, to whom is committed the Care of the King's House; he has Authority over all Officers and Servants of the Household, except those belonging to the Chapel, Chamber, and Stable; and the Palace Royal is exempted from all Jurisdiction of any Court, but only of the Lord Steward, or in his Absence, of the Treasurer and Comptroller of the Household, with the Steward of the Marshalsea, who by Virtue of their Offices, without any Commission, hear and determine all Treasons, Murders, Felonies, Breaches of the Peace, &c. committed in the King's Palace: Besides the Treasurer and Controller, the Lord Steward hath under him a Cofferer, several Clerks of the Green Cloth, &c. He attends the King's Person at the Beginning of Parliaments, and is a White-Staff-Officer, which he breaks over the Hearse on the Death of the King, and thereby discharges all Officers under him: Of this Officer's ancient Power, read *Fleta, lib.* 2. and *F. N. B.* 241. In the Liberty of Westminster, an Officer is chosen and appointed called High Steward; and there is a Deputy Steward of Westminster; and the Word Steward is of so great Diversity, that in most Corporations, and all Houses of Honour, an Officer is found of this Name and Authority. *Stewards of Manors*, see *Copyhold*.

Stews, (from the Fr. *Estuves*, i. e. *Therma, Balneum*) Are those Places which were permitted in England to Women of profess'd Incontinency, and that for Hire would prostitute their Bodies to all Comers, so called because dissolute Persons are wont to prepare themselves for venereous Acts by Bathing: And Hot Baths were by Homer reckon'd among the effeminate Sort of Pleasures. These *Stews* were suppress'd by King Hen. 8. about the Year 1546.

Stica, A Brass Saxon Coin, of the Value of Half a Farthing, four of them making an *Halfing*.

Sticks of Eels, A Quantity or Measure of twenty-five: A Bind of Eels contains ten Sticks, and each Stick 25 Eels. *Stat. Weights and Measures.*

Stickler, An inferior Officer who cut Wood within the King's Parks of Clarendon. *Rot. Parl.* 1. H. 6.

Stilyard, Steelpard, Otherwise called the *Stylehouse*, in the Parish of *Albhallows* in London, was by Authority of Parliament assign'd to the Merchants of the *Hanse* and *Almaine* to have their Abode in for ever, with other Tenements, rendering to the Mayor of London a certain yearly Rent. *Stat.* 14. *Edw.* 4. In some Records it is called *Guldbalda Teutonicorum*; and it was at first denominated *Stilyard*, of a broad Place or Court where *Steel* was sold, upon which that House was founded. See 19 H. 7. cap. 32. & 22 H. 8. cap. 8. 1 *Ed.* 6. cap. 13.

Stipula, Stubble left standing in the Field, after the Corn is reaped and carried away. — *Dedi unam Caveatam foragii, & duas acras Stipulae, &c.* *Cart.* 2. *Ed.* 2.

Stiremannus, Sturemannus, Sax. Steor-man, A Pilot of a Ship, or *Steers-man*. *Domesd.*

Stoc and Stobel, A Forfeiture where any one is taken carrying *Stipites* and *Pabulum* out of the Woods, for *Stoc* signifies Sticks, and *Stovel* *Pabulum*. *Antiq. Chart.*

Stock or Stoke, Syllables added to the Names of Places, from the Sax. *Stocce*, i. e. *Stipes*, Truncus; as *Woodstock*, *Basingstoke*, &c.

Stockjobbers, All *Stockjobbing* not authorized by Act of Parliament, or by Charter; or used by obsolete Charters, is declared to be void, and the Undertakings, Nuſances, &c. 6 *Geo.* cap. 18. See *Brokers*.

Stocks, (*Cippus*) A Wooden Engine to put the Legs of Offenders in, for the securing of disorderly Persons, and by the Way of Punishment in divers Cases ordained by Statute, &c. And it is said that every Vill within the Precinct of a Town is indictable for not having a Pair of Stocks, and shall forfeit 5 *l.* *Kit. b.* 13.

Stola, Was a Garment formerly worn by Priests, like unto those which we now call Hoods. And sometimes it is taken for the Archiepiscopal Pall. *Eadmer. cap.* 188. Also it was a Vestment which Matrons wore. *Corwel.*

Stone, A Weight of 14 Pounds, used for weighing of Wool, &c. The Stone of Wool ought to weigh 14 Pounds; but in some Places, by Custom, it is less, as 12 Pounds and a Half: A Stone of Wax is 8 Pounds; and in London the Stone of Beef is no more. 11 *Hen.* 7. cap. 4. *Rot. Parl.* 17 *Edw.* 3.

Stores of War, The Laws and Statutes relating to, vide *Naval Stores*.

Stotarius, He who had the Care of the Stud or Breed of young Horses. *Leg. Alfred. cap.* 9.

Stoth, *Nativi de W. solvit quilibet pro filiabus suis Maritandis gerson Domino, & Ourlop pro filiabus corruptis, & Stoth, & alia servitia, &c.* *Petr. Bleff. contin. Hist. Croyl. pag.* 115.

Stolm, (*Sax. i. Locus*) A Place, and is sometimes join'd to other Words, as *Godstow* is a Place dedicated to God.

Stowage, Is the Room where Goods are laid, or it is the Money paid for such Place.

Straits, A narrow Sea between two Lands, or an Arm of the Sea. Also there is a narrow coarse Cloth anciently so called. 18 *Hen.* 6. cap. 16.

Strand, (*Sax.*) Any Shore or Bank of a Sea or great River. Hence the Street in the West Suburbs of London, which lay next the Shore or Bank of the *Thames*, is called the *Strand*. An Immunity from Custom, and all Impositions upon Goods or Vessels, by Land or Water, was usually

usually express'd by *Strand* and *Stream*; as King Hen. 2d, in his Charter to the Town of Rochester.

— *Concedo & Confirmo in perpetuum cum Socne & Soke, & Strand & Stream.* *Mong. Angl. Tom. 3. pag. 4.*

Stranded, (from the Sax. *Strand*) Is when a Ship is by Tempest or ill Steerage run on Ground, and so perishes. 17 Car. 1. cap. 14. Where a Vessel is *stranded*, or run on Shore, Justices of the Peace, &c. shall command Constables near the Sea Coasts to call Assistance for the Preservation of the Ship; and Officers of Men of War are to be aiding and assisting under the Penalty of 100 l. 12 Ann. cap. 18.

Stranger, (derived from the Fr. *Estranger*, aliena) Signifies generally in our Language, a Man born out of the Realm, or unknown. In the Law it hath a special Signification, for him that is not *privy* to an Act: As a *Stranger* to a Judgment is he to whom a Judgment doth not belong; and in this Sense it is directly contrary to *Party* or *Privy*. Old Nat. Br. 128. *Strangers* to Deeds shall not take Advantage of Conditions of Entry, &c. as Parties and Privies may; but they are not obliged to make their Claims on a Fine levied 'till 5 Years; whereas Privies, such as the Heirs of the Party that passed the Fine, are barred presently. 1 Inst. 214. 2 Inst. 516. 3 Rep. 79. *Strangers* have either a present or future Right, or an apparent Possibility of Right, growing afterwards, &c. *Wood's Inst. 245.*

Stray, Or going *astray* of Beasts and Cattle, see *Estray*.

Stream-works, A Kind of Works in the *Stannaries* mentioned in the Stat. 27 H. 8. cap. 23.

Streeman, (Sax.) *Robustus, vel potens vir.* Leland. Vol. 2. pag. 188.

Stretward, Was an Officer of the Streets, like our Surveyor of the Highways, or rather a Scavenger. *Mon. Angl. Tom. 2. pag. 187.*

Strip, (*Strepitus*) Destruction, Mutilation, from the Fr. *Estrapier*: *Strepitum & vastum facere*, i. e. To make *Strip* and *Waste*, or *Strop* and *Waste*. See *Estrapement*.

Strond, An old Saxon Word signifying the same as *Strand*.

Strumpet, (*Meretrix*) A Whore, Harlot, or Courtesan: This Word was heretofore used for an Addition. *Plac. apud Cestr. 6. Hen. 5.*

Strypke, The eighth Part of a Seam, or Quarter of Corn; a *Strike* or Bushel. *Cartular. Rading. M.S. 116.*

Stud Of Mares, is a Company of Mares kept for Breeding of Colts; for the Sax. *Stodmyra*, i. e. *Equa ad fatum*.

Style (*Appello*) Is to call, name, or intitle one; as the *Style* of the King of England is George, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c.

Subarrare. Florence of Worcester tells us, That King Alfred Subarravit & duxit a Noblewoman of Mercia, Anno 868.

Subdeacon, Is an ancient Officer of the Church, made by the Delivery of an empty Platter and Cup by the Bishop, and of a Pitcher, Bason and Towel by the Archdeacon. His Office was to wait on the Deacon with the Linen on which the Body, &c. was consecrated, and to receive and carry away the Plate with the Offerings, the Cup with the Wine and Water in it, &c. He is often mentioned by the Monkish Historians, and particularly in the Apostolical Canons, 42, 43.

Subjects, (*Subditos*) Are the Members of the Common-wealth under the King their Head. *Wood's Inst. 22.*

Subsugalis, Is any Beast carrying the Yoak. *Mat. Paris. 1249.*

Sublegerius, (from the Sax. *Sybleger*, i. e. *Incestus*) One who is guilty of incestuous Whoredom.

Sub-marshal, An Officer in the *Marshallsea*, who is Deputy to the Chief Marshal of the King's House, commonly called the *Knight Marshal*, and hath the Custody of the Prisoners there. He is otherwise term'd *Under-Marshal*. *Crompt. Juris. 104.*

Subnervare, To cut the Sinews of the Legs or Thighs; to *Ham-string*: And it was an old Custom in England, *Meretrices & Impudicas mulieres* Subnervare.

Subornation, (*Subornatio*) A secret under-hand preparing, instructing, or bringing in a false Witness; and from hence *Subornation of Perjury* is the preparing or corrupt alluring to Perjury. *Subornation* of Witnesses we read of in the 32 H. 8. cap. 9. And procuring or *suborning* a Witness to give false Testimony in any Court of Record concerning Lands or Goods, the Offender shall forfeit 40 l. or suffer Imprisonment for Half a Year, stand on the Pillory, &c. by 6 Eliz. cap. 9. 3 Inst. 167. See *Perjury*.

Subpoena, Is a Writ whereby common Persons are called into *Chancery*, in such Cases where the Common Law hath provided no ordinary Remedy; and the Name of it proceeds from Words therein, which Charge the Party called to appear at the Day and Place assign'd, *sub poena Centum librarum*, &c. *West. symb. par. 2. Crompt. Juris. 33.* The *Subpoena* is the leading Process in Courts of Equity; and by Statute, when a Bill is filed against any Person, Process of *Subpoena* shall be taken out to oblige the Defendant to appear and answer the Bill, &c. 4 & 5 Ann. cap. 16. and there are several of these Writs in *Chancery*; as the *Subpoena ad Respondend'* *Subpoena ad Replicand'* & *ad Rejungend'*. The *Subpoena ad Testificand'* & *ad audiend. judicium*, &c. which Writs are to be made out by the proper Clerk of the *Subpoena* Office; and *Subpoena's* to answer must be personally served by being left with the Defendant, or at his House with one of his Family, on Affidavit whereof, if the Defendant do not answer, Attachment shall be had against him, &c. *Pract. Solic. 5, 6.* A *Subpoena ad Testificandum* lies for the calling in of Witnesses to testify in any Cause, not only in *Chancery*, but in all other Courts; and in that Court, and in the *Exchequer*, it is made use of in Law and Equity. The two chief Writs of *Subpoena* are to appear and to testify; and the latter issues out of the Court where the Issue is join'd, upon which the Evidence is to be given. 2 Lill. Abr. 536. In this Writ the 100 l. Penalty is inserted only in *Terrorum*, being never levied; though if a Witness serv'd with a *Subpoena*, refuse to appear, on Tender of his Charges, the Party injured thereby may recover 100 l. Damages, and other Recompence by Action of the Case. 5 Eliz.

Form of a Writ of *Subpoena ad Testificandum*.

GEORGIUS, &c. A. B. C. D. E. F. salutem. Precipimus vobis & cuilibet vestrum firmit' injungen. Quod omnibus aliis pretermisiss & Excusatione quacunque cessan. sitis in propr. Person. vestris

vestris coram Justic. nostris ad Assisas, apud, &c. in Com. S. die, &c. prox. futur. Tenend. ad Testificand. & veritat. dicend. in quadam materia Controversie in Cur. nostra coram Justic. nostris apud Westm. penden. indeterminat. inter T. B. Quer. & R. D. nuper de, &c. in dicto Com. S. Gen. de placito, &c. Et hoc nullatenus omittatis nec aliquis vestrum omittat sub poena cujuslibet vestrum Cent. Librar. Teste, &c.

A Subpœna Ticket for a Witness to appear and testify.

MR. A. B. By Virtue of a Writ of Subpœna to You and others directed, and herewith shewn, You are required personally to be and appear before his Majesty's Justices of Assise on the Day, &c. next, at ten of the Clock in the Forenoon of the same Day, at the Court of Assises then to be holden at, &c. in the County of S. to testify the Truth according to your Knowledge in a certain Cause now depending, and then and there to be tried between T. B. Plaintiff, and R. D. Defendant, in a Plea of Trespass on the Case, &c. on the Part of the Plaintiff; and herein You are not to fail on Pain of 100l. Dated the Day and Year, &c.

In London or Middlesex, it must be personally to be and appear before Sir Robert Raymond, Knt. Lord Chief Justice, or Sir Robert Eyre, on, &c.

Subsidy (*Subsidium*) Signifies an Aid, Tax, or Tribute granted to the King for the urgent Occasions of the Kingdom, to be levied of every Subject of Ability according to the Rate of his Land or Goods; and in some of our Statutes is taken for Custom, which See, *Vide Tax*.

Substitute, (*Substitutus*) One plac'd under another Person to transact some Business, &c. See *Attorney*.

Suburbani, Are Husbandmen, according to the *Monasticon*. Tom. 2. pag. 468.

Successor, (*Lat.*) Is he that followeth, or cometh in another's Place. *Sole Corporations* may take a Fee-simple Estate to them and their Successors; but not without the Word *Successors*: And such a Corporation cannot regularly take in *Succession* Goods and Chattels; and therefore if a Lease for a Hundred Years be made to a Person and his Successors, it hath been adjudged only an Estate for Life. Nor may a *Sole Corporation* bind the Successors. 4 Rep. 65. 1 Inst. 8, 46, 94. 4 Inst. 249. An *Aggregate Corporation* may have a Fee-simple Estate in *Succession*, without the Word *Successors*, and take Goods and Chattels in Action or Possession, and they shall go to the Successors. *Wood's Inst.* 111.

Successiones Arborum, The Cuttings and Croppings of Trees. *Chart.* 2. Hen. 5.

Sufferentia pacis, A Grant or Sufferance of Peace or Truce. — *Pro quadam Sufferentia pacis cum illis habenda, per unum annum duratura.* Claus. 16. Ed. 3.

Suffragan, *Suffraganeus*, *Chorepiscopus*, (*Episcopi vicarius*) Is a *Titular Bishop*, ordained to aid and assist the Bishop of the Diocese in his Spiritual Function; or one who supplieth the Place instead of the Bishop. Some Writers call these *Suffragans* by the Name of *Subsidiary Bishops*, whose Number is limited by the Stat. 26 H. 8. cap. 14. By which Statute it was enacted, That it should be lawful for every Bishop, at his Pleasure, to elect two honest and discreet Spiritual Persons within his Diocese, and to present them

to the King, that he might give to one of them such Title, Stile, and Dignity of such of the Sees in the said Statute mentioned, as he should think fit: And that every such Person should be called *Bishop Suffragan* of the same See, &c. This Act sets forth at large for what Places such *Suffragans* were to be nominated by the King; and if any one exercise the Jurisdiction of a *Suffragan*, without the Appointment of the Bishop of the Diocese, &c. he shall be guilty of a *Præmunire*. Stat. *Ibid.* See *Chorepiscopi*.

Suggestion, (*Suggestio*) Is in Law a Surmise, or Representing of a Thing; and by *Magna Charta* no Person shall be put to his Law on the Suggestion of another, but by lawful Witnesses. 9 H. 3. cap. 28. *Suggestions* are Grounds to move for *Prohibitions* to Suits in the Spiritual Courts, &c. when they meddle with Matters out of their Jurisdictions. 2 Lill. Abr. 536. The Matters of Record ought not to be stay'd upon the bare Suggestion of the Party; there ought to be an Affidavit made of the Matter suggested, to induce the Court to grant a Rule for staying the Proceedings upon the Record. 2 Lill. 537. There are *Suggestions* in *Replevin*, for a *Returno habendo*; which 'tis said are not traversable, as they are for *Prohibitions* to the Spiritual or Admiralty Courts. 1 Plowd. 76. Breaches of Covenants and Deaths of Persons must be suggested upon Record, &c. 8 & 9 W. 3. cap. 10.

Suit, (*Setta*, Fr. *Suite*, i. e. *Consecutio*, *Sequela*) Signifies a Following another; but in divers Senses. The first is a *Suit in Law*, and is divided into *Suit Real* and *Personal*; which is all one with *Action Real* and *Personal*. 2. *Suit of Court*, an Attendance which a Tenant owes to the Court of his Lord. 3. *Suit-Covenant*, when a Man hath covenanted to do *Suit* in the Lord's Court. 4. *Suit-Custom*, where I and my Ancestors owe *Suit* Time out of Mind. 5. *Suit* is the following one in Chase, as *Fresh-suit*. And this Word is used for a *Petition* made to the King, or any great Personage. See *Setta*.

Suits at Law, Are to be prosecuted in certain Times limited by the Statute 21 Jac. 1. cap. 16, &c. Persons desiring to end any *Suits*, for which there is no Remedy but by personal Action or Bill in Equity, may agree that their Submission of the *Suit* to the Award of Arbitrators, shall be made a Rule of Court, &c. 9 & 10 W. 3. cap. 15.

Suit of the King's Peace, Is the Pursuing a Man for Breach of the Peace. 6 R. 2. cap. 1. 5 H. 4. cap. 15.

Suit-Silver, A small Rent or Sum of Money paid in some Manors to excuse the Appearance of Freeholders at the Courts of their Lords.

Sulcus Aquæ, A little Brook or Stream of Water; otherwise called *Sike*, and in *Essex* a *Doke*. *Paroch. Antiq.* 531.

Sultery, (from the Sax. *Sulth*, i. e. *Aratrum*) A Plough-Land. 1 Inst. 5.

Sullinga, *Sullingata Terra*, Is the same with *Savoling*. *Thorn.* pag. 1931.

Sumage, (*Sumagium* & *Summagium*) Toll for Carriage on Horse-back: *Pro uno equo portante Summagium per dimidium Ann. obolum.* *Chart. de Foresta*, c. 14. *Crompt. Juris.* 191.

Summons, Is a Writ Judicial of great Diversity, according to the divers Cases wherein it is used. *Tabl. Reg. Judic.*

Summoners, (*Summonitores*) Are Petty Officers that cite Men to appear in any Court; and these

these ought to be *boni Homines*, &c. *Fleta lib. 4.* The *Summonitores* were properly the *Apparitors*, who warned in Delinquents at a certain Time and Place, to answer any Charge or Complaint exhibited against them: And in Citations from a Superior Court, they were to be Equals of the Party cited; at least the Barons were to be summoned by none under the Degree of Knights. *Paroch. Antiq. 177.*

Summonitores Scarrarii, Officers who assisted in collecting the King's Revenues, by citing the Defaulters therein into the Court of *Exchequer*.

Summons, (*Summonitio*) Is with us as much as *vocatio in jus*, or *Citatio* among the *Civilians*. *Fleta lib. 6. cap. 6.* There is a *Summons* in Writs of *Formedon*, &c. And on every *Summons* upon the Land in a *Real Action*, fourteen Days before the Return, Proclamation is to be made thereof on a *Sunday*, at or near the usual Church Door of the Church or Chapel of the Place where the Land lies, which must be return'd with the Names of the Summoners: And if such Proclamation shall not be had, then no *Grand Cape* shall issue, but an *Alias* and a *Pluries Summons*, until a *Summons* and Proclamation be duly made and return'd. *Cro. Eliz. 42. 2 Lill. Abr. 538.*

Summons & Severance, In Law Proceedings, see *Severance*.

Summons ad Warrantizandum, *Summoneas ad Warrantizand'* The Process whereby the Vouchee in a Common Recovery is called. *Co. Lit. 101.*

Sumptuary Laws, (*Sumptuaria Lex*, from *Sumptuarius*, of or belonging to Expences) Are Laws made to restrain Excess in Apparel, and prohibit costly Clothes, of which heretofore we had many in *England*, but they are all repealed by 1 *Fac. 1. 3 Inst. 199.*

Sunday, (*Dies Dominicus*) Is the Lord's Day set apart for the Service of God: And if any Butchers shall kill or sell Meat on a *Sunday*, they are liable to a Penalty of 6s. 8d. And Carriers, Drovers, &c. travelling on the Lord's Day, incur a Forfeiture of 20s. No Person shall do any worldly Labour on a *Sunday*, (except Works of Necessity and Charity) on Pain of 5s. And crying or exposing to sale any Wares or Goods on a *Sunday*, the Goods to be forfeited to the Poor, &c. on Conviction before a Justice of Peace, who may order the Penalties and Forfeitures to be levied by Distress: But this is not to extend to Dressing Meat in Families, Inns, Cook-Shops, or Victualling Houses; nor to crying of Milk on a *Sunday* in the Morning and Evening. 29 *Car. 2. cap. 7.* Law Processes by this Act are not to be serv'd on a *Sunday*, unless it be in Cases of Treason, or Felony, or on an Escape, by Virtue of 5 *Ann.* *Sunday* is not a Day in Law for Proceedings, Contracts, &c. 2 *Inst. 264.*

Supercargo, A Person employ'd by Merchants to go a Voyage, and oversee their Cargo, and dispose of it to the best Advantage. *Merch. Dict.*

Super-institution, (*Super-institutio*) Is one *Institution* upon another; as where *A. B.* is admitted and *instituted* to a Benefice upon one Title, and *C. D.* is admitted and *instituted* on the Title or Presentment of another. 2 *Cro. 463.* See *Institution*.

Super-jurare, A Term used in our ancient Law, when a Criminal endeavour'd to excuse himself by his own Oath, or the Oath of one or two Witnesses, and the Crime objected against

him was so plain and notorious, that he was convicted by the Oaths of many more Witnesses: This was called *Super-jurare* in *Leg. Hen. 1. cap. 74. Leg. Athelstan. cap. 16.*

Superoneratione Passuræ, Is a Judicial Writ that lies against him who is impleaded in the County Court for the *Surcharging* or Overburthening a *Common* with his Cattle, in a Case where he was formerly impleaded for it in the same Court, and the Cause is remov'd into one of the Courts at *Westminster*. *Reg. Judic.*

Super Prerogativa Regis, A Writ which formerly lay against the King's Widow for Marrying without his License. *F. N. B. 173.*

Superfedeas, Is a Writ that lies in a great many Cases; and signifies in general a Command to stay some ordinary Proceedings at Law, on good Cause shewn, which ought otherwise to proceed. *F. N. B. 236.* A *Superfedeas* is used for the staying of an Execution, after a Writ of Error is allowed, and Bail put in: But no *Superfedeas* can be made out on bringing Writ of Error, 'till Bail is given, where there are Judgments upon Verdict, or by Default in Debt, &c. though in Case and Trespas, where Damages only are recover'd, on the bringing and allowing of the Writ, the Clerk of the Errors will make out a *Superfedeas* without Bail. 2 *Lill. Abr. 543.* A Writ of Error is said to be in Judgment of Law a *Superfedeas*, until the Errors are examined, &c. that is to the Execution, not to Action of Debt, on the Judgment at Law. From the Time of the Allowance, a Writ of Error is a *Superfedeas*; and if the Party had Notice of it before the Allowance, 'tis a *Superfedeas* from the Time of such Notice; but this must be where Execution is not executed, or begun to be executed. *Cro. Fac. 534. Raym. 100. Mod. Ca. 130. 1 Salk. 321.* If before Execution, the Defendant bring a Writ of Error, and the Sheriff will execute a *Fieri fac.* and levy the Money, the Court will award a *Superfedeas, quia erroneice emanavit*, and to have Restitution of the Money. *Stile 414.* After an Execution, there was a *Superfedeas, quia Executio improvide emanavit*, &c. issued; and there being no Clause of Restitution in the *Superfedeas*, it was insisted that the Execution was executed before the *Superfedeas* awarded, and that a faulty *Superfedeas* is no *Superfedeas*; but the Court ordered another *Superfedeas*, with a Clause of Restitution. *Moor 466. 3 Nelf. Abr. 256.* It appearing upon Affidavit, that there were two Writs of Execution executed upon one Judgment: The Party moved for a *Superfedeas*, because there cannot be two such Executions, but where the Plaintiff is hindred either by the Death of the Defendant, or by some Act in Law, that he can have no Benefit of the first; and so it was adjudged. *Stile 255.* Where an Execution was well awarded, but ill served, a *Superfedeas* was denied. *Hetl. 30.* A *Superfedeas* is grantable to a Sheriff to stay the Return of an *Habeas Corpus*; and if he return it afterwards, and the Parties proceed to Trial, 'tis Error; and so are all the Proceedings in an inferior Court, after an *Habeas Corpus* delivered, unless a *Procedendo* is awarded, in which Case a *Superfedeas* is not to be granted. *Cro. Car. 43, 350.* When a *Certiorari* is delivered, [it is a *Superfedeas* to inferior Courts below, and being allowed, all their Proceedings afterwards are erroneous; and they may be punished. The Justices, &c. to whom a *Certiorari* is sent, are to issue a *Superfedeas* to the Sheriff to stop

stop Execution of any Award, &c. 2 Hawk. P. C. 293. If a Sheriff holds Plea of 4 s. Debt in his County-Court, the Defendant may sue forth a *Superfedeas* that he do not proceed, &c. or after Judgment he may have a *Superfedeas* directed to the Sheriff, requiring him not to award Execution upon such Judgment; and upon that an *Alias*, a *Pluries*, and an *Attachment*, &c. New Nat. Br. 552. *Superfedeas* may be granted by the Court, for setting aside an erroneous judicial Process, &c. also a Prisoner may be discharged by *Superfedeas*; as a Person is imprison'd by the King's Writ, so he is to be set at Liberty; and a *Superfedeas* is as good a Cause to discharge a Person, as the first Process is to arrest him. Finch 453. Cro. Jac. 379. If a privileged Person is sued in any Jurisdiction foreign to his Privilege, he may bring his *Superfedeas*. Vaugh. 155. But a Peer being arrested by a Bill of *Middlesex*, was ordered to plead his Privilege; and not allowed a *Superfedeas*. Stile 177. It is false Imprisonment to detain a Man in Custody after a *Superfedeas* delivered; for the *Superfedeas* is to be obey'd; and in such Case 'tis a new Caption without any Cause. 2 Cro. 379. 3 Nelf. 256. There is a *Superfedeas* where an *Audita Querela* is sued; and out of the Chancery, to set a Person at Liberty taken upon an *Exigent*, on giving Security to appear, &c. And in Cases of Surety of the Peace and good Behaviour, where a Person is already bound to the Peace in the Chancery, &c. New Nat. Br. 524, 529, 532.

Super Statuto de Articulis Cleri, Cap. 6. A Writ lying against the Sheriff or other Officer that distrains in the King's Highway, or in the Lands anciently belonging to the Church. F. N. B. 173.

Super Statuto facto pour Seneschal & Marshal de Roy, &c. Is a Writ that lieth against the Steward or Marshal, for holding Plea in his Court of Freehold, or for Trespas or Contracts not made and arising within the King's Household. F. N. B. 241.

Super Statuto versus Servantes & Laboratores, A Writ against him who keeps my Servants, departed out of my Service contrary to Law. F. N. B. 167.

Super Statuto de Bozk, quo nul terra vitellier, Is a Writ lying against a Person that uses Viſtualling, either in Grofs, or by Retail, in a City or Borough Town, during the Time he is Mayor, &c. F. N. B. 172.

Superstitious Uses, Causing Forfeiture of Lands and Goods, to the King, by Stat. 1 Ed. 6. cap. 14. See *Uses*.

Supervisor, (Lat.) A Surveyor or Overseer: And it was formerly and still is a Custom among the better Sort of People, to make a *Supervisor* of a Will, to supervise and oversee the Executors that they punctually perform the Will of the Testator; but this Office is of late very carelessly executed, so as to be to little Purpose or Use. *Supervisor* (now Surveyor) of the Highways, is mentioned in the Stat. 5 Eliz. c. 13.

Supplicavit, Is a Writ issuing out of Chancery, for taking Surety of the Peace, when one is in Danger of being hurt in his Body by another; it is directed to the Justices of Peace and Sheriff of the County, and is grounded upon the Stat. 1 Ed. 3. cap. 16. which ordains, That certain Persons shall be assign'd by the Chancellor to take Care of the Peace, &c. F. N. B. 80, 81. When a Man hath purchased a Writ of *Supplicavit*,

directed to the Justices of the Peace, against any Person, then he against whom the Writ is sued may come into the Chancery, and there find Sureties that he will not do Hurt or Damage unto him that sueth the Writ; and upon that he shall have a Writ of *Superfedeas* directed to the Justices, &c. reciting his having found Sureties in Chancery, according to the Writ of *Supplicavit*; and also reciting that Writ, and the Manner of the Security that he hath found, &c. commanding the Justices, that they cease to arrest him, or to compel him to find Sureties, &c. And if the Party who ought to find Sureties cannot come into the Chancery to find Surety, his Friend may sue a *Superfedeas* in Chancery for him; reciting the Writ of *Supplicavit*, and that such a one and such a one are bound for him in the Chancery in such a Sum, that he shall keep the Peace according to it; and the Writ shall be directed to the Justices, that they take Surety of the Party himself according to the *Supplicavit*, to keep the Peace, &c. and that they do not arrest him; or if they have arrested him for that Cause, that they deliver him. New Nat. Br. 180. Sometimes the Writ *Supplicavit* is made returnable into the Chancery at a certain Day; and if so, and the Justices do not certify the Writ, nor the Recognizance and the Security taken, the Party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security found, &c. *Ibid.* If a Recognizance of the Peace be taken in Pursuance of a Writ of *Supplicavit*, it must be wholly governed by the Directions of such Writ; but if it be taken before a Justice of Peace below, the Recognizance may be at the Discretion of such Justice. Lamb. 100. Dalt. cap. 70. To sue the Writ of *Supplicavit*, the Party that desires it must go before one of the Masters in Chancery, and make Oath that he doth not desire the same through any Malice, but for his own Safety; upon which the Master makes out a Warrant, and the Writ is made by it by one of the Clerks in the Six Clerks Office; and when made, the *Supplicavit* is to be delivered to the Sheriff to have his Warrant thereupon for arresting the Party, &c. and then having sued out a *Certiorari*, it is to be delivered to them that took Bail thereon; and they are required to certify it, &c. Pract. Solic. 130.

Supremacy, Signifies Sovereign, Dominion, Authority and Preheminence, the highest Estate. King Hen. 8. was the first Prince that shook off the Yoke of Rome here in England, and settled the *Supremacy* in himself, after it had been long held by the Pope. Stat. 25 Hen. 8. cap. 12, 20. And by 1 Eliz. cap. 1. all Ecclesiastical Jurisdiction was annexed to the Crown; and it was ordain'd that no Foreign Potentate should exercise any Power or Authority in this Kingdom: Also the Oath of *Supremacy* was appointed, &c. By these Laws, the great Power of Rome was suppress'd; and the Act of 1 Eliz. Sir Edward Coke says, was an Act of Restitution of the ancient Jurisdiction Ecclesiastical, which always belong'd of Right to the Crown of England; and that it was not introductory of a new Law, but declaratory of the old, and that which was of Right ought to be by the fundamental Laws of this Realm, Parcel of the King's Jurisdiction; by which Laws, the King as *Supreme Head*, had full and intire Power in all Causes Ecclesiastical

as well as Temporal ; and the Judges of the Ecclesiastical and Temporal Laws derive their Authority from him alone. 5 Rep. 8, 9. There are several Instances of Ecclesiastical Jurisdiction exercised by the Kings of England in former Ages ; and in this Respect the King is said to be *Persona mixta & unita cum sacerdotibus*. The King is the *supreme* Ordinary, and by the ancient Laws of the Land, might without any Act of Parliament, make Ordinances for the Government of the Clergy ; and if there be a Controversy between spiritual Persons, concerning Jurisdiction, the King is Arbitrator, and 'tis a Right of his Crown to declare their Bounds, &c. *Moor* 755, 1043. *Hob.* 17. See *Appeals to Rome*, *Pope*, and *Præmunire*.

Surcharge, An Over-charge, beyond what is just and right. *Merch. Dict.*

Sur Cui in vita, Is a Writ that lies for the Heir of a Woman, whose Husband hath aliened her Land in Fee, and she neglected to bring the Writ *Cui in vita* for Recovery thereof ; in this Case, her Heir may bring this Writ against the Tenant after her Decease. *F. N. B.* 193.

Surety, (*Vas, Vadis*) A Bail that undertakes for another Man in a criminal Case, or Action of Trespass, &c. and there is a *Surety of the Peace*, so called, because the Party that was in Fear is thereby secured, by Bond or Recognizance of the other, and his Bail bound for him. *Lamb. Eiren. lib. 2.* Vide *Good Behaviour*.

Surgeon, (*Chirurgus*). May be deduc'd from the Fr. *Chirurgion*, signifying him that dealerh in the mechanical Part of Physick, and the outward Cures perform'd with the Hand ; and therefore is compounded of the two Greek Words *Χειρ, manus*, "Epyor, opus ; and for this Cause *Surgeons* are not allowed to administer inward Medicine. By the Stat. 32 Hen. 8. cap. 42. the *Barbers and Surgeons of London* are incorporated and made one Company ; and there shall be chosen yearly four Masters for the said Company, of which two must be expert in *Surgery*, and the other two in *Barbery*, who shall have Power to punish and correct all Defaults ; and the Company and their Successors are to have the Oversight and Correction as well of Freemen as Foreigners, for such Offences as they shall commit against the good Order of *Barbery and Surgery* : They shall be exempted from bearing of Arms, serving on Juries, and all Manner of Parish-Offices, &c. but are to pay Scot and Lot, and other Charges as formerly ; and the said Company shall have free Liberty, to take four Persons condemn'd for Felony, for Anatomies yearly. No Barber in London, or within one Mile thereof, shall practise *Surgery*, letting of Blood, or any other Thing relating thereto, except drawing of Teeth ; nor shall any Person who practises *Surgery* within those Limits, exercise the Craft of a Barber : Though any Man not being a Barber or Surgeon, may retain in his House as a Servant, a Barber or Surgeon, who may exercise his Art in his Master's House, or elsewhere, &c. All Persons practising *Surgery* in London, shall have an open Sign in the Street where they dwell, that People may know where to resort to them when wanted : And every Person offending in any of the Articles contained in this Statute, shall forfeit 5 l. a Month, one Moiety to the King, and the other to him who will sue for the same, &c. See *Physicians*.

Sur sui iur, i. e. Upon his Oath, according to ancient Laws. *Leg. W. 1. cap. 16.*

Surplusage, (Fr. *Surplus*, i. e. *Corollarium*) Is a Superfluity or Addition more than needful, which sometimes is the Cause that a Writ abates ; but in Pleading, many Times it is absolutely void, and the Residue of the Plea shall stand good. *Broke. Plowd.* 63. As on a Writ of Enquiry of Damages in Waste, in which the Sheriff was commanded to go to the Place wasted, and there to inquire of the Waste done and Damages, who returned the Inquisition, without mentioning that he went to the Place wasted ; and this was held to be *Surplusage* that would not hurt, because by the Plea in the Action the Waste was acknowledged, so that he need not go to the Place wasted to view it. *Poph.* 24. A *Disfringas* was returnable *Tres Trin. Nisi prius venerit Matthæus Hale Mil. Capital. Baro*, &c. on such a Day *eiusdem Mensis Junii* ; whereas the Month of June was not mentioned before ; and this was moved in Arrest of Judgment as a Discontinuance ; but adjudged that the Word *eiusdem* shall be rejected as *Surplusage* and void, and then the Word *Junii* shall be intended June next ; as a Covenant to pay Money at *Michaelmas*, shall be intended *Michaelmas* next ensuing. *Hardr.* 330. In a Declaration for Debt, upon Demurrer, it was objected against the Declaration, for that the Plaintiff averred the Defendant had not paid *præd. sexaginta Libras*, &c. when the Word *Sexaginta* was not before mentioned : And it was resolved that it shall be *Surplusage*, when 'tis that the Defendant had not paid *præd. Libras*, which must be the Pounds for which the Plaintiff had declared. 1 *Lutw.* 445. *Cro. Eliz.* 647. 3 *Nelf. Abr.* 262. A Plaintiff being right named through all the Proceedings, but in the last Place, where it was said that a *Capias Utlagatum* was prosecuted against *prædict. Johannem Fowler*, and his true Name was *George* : It was ruled, that the Word *Johannes* shall be *Surplusage* and be rejected ; and then the Plea will be, that a *Capias Utlagatum* was prosecuted against *prædict. Fowler*. 2 *Lutw.* 919. 1 *Lev.* 428. If a Jury find the Substance of the Issue before them to be tried, other superfluous Matter is but *Surplusage*. 6 Rep. 46. And where a Verdict, or Judgment, is compleat ; if there be any other Matter repugnant or uncertain, &c. it shall be rejected as *Surplus*. 3 *Nelf.* 261. 2 *Hawk. P. C.* 441. See *Pleading*.

Surplusage of Accounts, Signifies a greater Disbursement than the Charge of the Accountant amounts unto.

Surrebutter, A second Rebutter ; or more properly it is the Replication or Answer of the Plaintiff to the Defendant's Rebutter. See *Rebutter*.

Surrejoinder, Is a second Defence of the Plaintiff's Declaration in a Cause, and answers the Rejoinder of the Defendant. *West's Symb. par. 2.* As a Rejoinder is the Defendant's Answer to the Replication of the Plaintiff ; so a Surrejoinder is the Plaintiff's Answer to the Defendant's Rejoinder. *Wood's Inst.* 586. After Rejoinder and Surrejoinder, and Rebutter, &c. there may be a Demurrer. *Pract. Attorn. Edit.* 1. pag. 86.

Surrender, (*Sursum Redditio*) Is a Deed or Instrument testifying that the particular Tenant for Life or Years, of Lands and Tenements, doth yield up his Estate to him that hath the immediate Estate in Remainder or Reversion, that he may

may have the present Possession thereof; and where the Estate for Life or Years may merge or drown by the mutual Agreement of the Parties. *Co. Lit.* 337. And of *Surrenders* there are three Kinds; a *Surrender* properly taken at Common Law; a *Surrender* of Copyhold or Customary Estates; and a *Surrender* improperly taken, as of a Deed, a Patent, Rent newly created, &c. The *Surrender* at Common Law, is the usual *Surrender*, and is of two Sorts, *viz.* A *Surrender in Deed*, or by express Words in Writing; where the Words of the Lessee to the Lessor prove a sufficient Assent to give him his Estate back again: And a *Surrender in Law*, being that which is wrought by Operation of Law, and not actual; as if Lessee for Life or Years, take a new Lease of the same Land during their Term; this will be a *Surrender in Law* of the first Lease. *1 Inst.* 338. *5 Rep.* 11. *Perk.* 601. And in some Cases a *Surrender in Law* is of greater Force than a *Surrender in Deed*; for if a Man makes a Lease for Years to begin at a Day to come, this future Interest cannot be *surrendered* by Deed, because there is no Reversion wherein it may drown; but if the Lessee before the Day, take a new Lease of the same Land, it is a good *Surrender in Law* of the former Lease: And this *Surrender in Law*, by taking a new Lease, holds good, tho' the second Lease is for a less Term than the First; and 'tis said, though the second Lease is a voidable Lease, &c. *5 Rep.* 11. *6 Rep.* 69. *10 Rep.* 67. *1 Inst.* 218. *Cro. Eliz.* 873. If Lessee for Life do accept of a Lease for Years, this is a *Surrender in Law* of his Lease for Life; if it should be otherwise, the Lease for Years would be made to no Purpose, and both the Leases cannot stand together in one Person. *2 Lill. Abr.* 544. Lessee for twenty-one Years takes a Lease of the same Lands for forty Years, to commence after the Death of *A. B.* it is not any present *Surrender* of the first Term; but if *A. B.* dies within the Term, it is. *4 Leon.* 83. A Lessee for Years took a second Lease to commence at *Michaelmas* next; adjudg'd this was an immediate *Surrender in Law* of the First, and that the Lessor might enter and take the Profits from the Time of the Acceptance of the second Lease, until *Michaelmas* following. *Cro. Eliz.* 605. If a Woman Lessee for Years marries, and afterwards she takes a new Lease for Life without her Husband, this is a *Surrender* and Extinguishment of the Term; but if the Husband disagree, then 'tis revived: Though if the new Lease had been made to the Husband and Wife, then by the Acceptance thereof, the first Lease had been gone. *Hutt.* 7. A Lessor takes the Lessee to Wife, the Term is not drown'd or *surrendered*; but he is possessed of the Term in her Right, during the Coverture. *Wood's Inst.* 285. A *Surrender* may be of any Thing grantable, either absolute or conditional; and may be made to an Use, being a Conveyance tied and charged with the Limitation of a Use: But it may not be of an Estate in Fee; nor of Rights or Titles only to other Estates for Life or Years; or for Part of such an Estate; nor may one Termor regularly *surrender* to another Termor; or can a Tenant at Will *surrender* any more than he can grant. *Perk.* 615. *Noy's Max.* 73. *Cro. Eliz.* 688. *1 Leon.* 305. Where Things will not pass by *Surrender*, the Deed may enure to other Purposes, and take Effect by way of Grant, having sufficient Words. *Perk.* 624, 588. And a *Surrender* may be made by these Words: *Hath surrendered,*

granted, yielded up and confirmed, &c. To the Making of a good *Surrender in Deed* of Lands, the following Things are requisite; the *Surrenderor* is to be a Person able to grant and make a *Surrender*, and the *Surrenderee* a Person able to receive and take it; the *Surrenderor* must have an Estate in Possession of the Thing *surrendered*, and not a future Right; and the *Surrender* is to be made to him that hath the next Estate in Remainder or Reversion, without any Estate coming between; the *Surrenderee* must have a higher or greater Estate in his own Right, and not in the Right of his Wife, &c. in the Thing *surrendered*, than the *Surrenderor* hath, so that the Estate of the *Surrenderor* may be drown'd therein; (for if Lessee for Life *surrender* to him in Remainder for Years, &c. it is a void *Surrender*) there is to be Privy of Estate between the *Surrenderor* and *Surrenderee*; and the *Surrenderee* must be sole seised of his Estate in Remainder or Reversion, and not in Jointenancy; and the *Surrenderee* agree to the *Surrender*, &c. *1 Inst.* 338. *Perk.* 584, 588. *2 Roll. Abr.* 494. *Noy's Max.* 73. In case of Tenant for Life, Remainder for Life, Reversion in Fee; it was a Question formerly, whether the Remainder-man for Life, by and with the Consent of the Tenant for Life could *surrender* to him in Reversion without Deed, but only by coming on the Land and saying, that he did *surrender* to him in Reversion; the Court were divided, but two Judges held, that if Tenant for Life and he in Remainder for Life, *surrender'd* to the Reversioner, it should pass as several *Surrenders*, *viz.* First of him in Remainder to the Tenant for Life, and then by the Tenant for Life to him in Reversion. *Poph.* 137. By Statute, no Estates of Freehold, or of Terms for Years, shall be granted or *surrendered* but by Deed in Writing, signed by the Parties, or unless by Operation of Law, &c. *29 Car. 2. c. 2. Surrenders of Copyhold Estates, see Copyhold.*

Form of a Surrender of Lands held for Term of Years.

TO all People to whom these Presents shall come, *A. B.* of, &c. sendeth Greeting: Whereas the said *A. B.* is possessed of and interested in one Messuage or Tenement called *D.* and all these Lands containing, &c. situate, lying and being in, &c. for the Remainder of a certain Term of twenty-one Years, the Reversion whereof doth belong to *C. D.* of, &c. Now know ye, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby confess and acknowledge: He the said *A. B.* hath *surrendered* and yielded up, and by these Presents doth *surrender* and yield up unto the said *C. D.* his Heirs and Assigns for ever, All the said Messuage or Tenement, Lands and Premises above-mentioned, and all the Estate, Right, Title, Interest, Term of Years, Claim and Demand whatsoever of him the said *A. B.* of in and to the said Premises, and every Part thereof, with the Appurtenances; so that neither he the said *A. B.* his Executors, Administrators or Assigns, or any of them, shall or may have, claim, challenge or demand the said Premises, or any Part thereof, or any Estate, Right, Title or Interest, of in and to the same, but shall at all Times hereafter, of and from all Right, Title and Interest, of and in the said Premises, and every Part thereof, be barred and for ever excluded by these Presents: And the said *A. B.* for himself, his Executors, Administrators, and Assigns, doth covenant

covenant and grant to and with the said C. D. his Heirs and Assigns, that he the said C. D. his Heirs and Assigns, shall and may at all Times hereafter peaceably and quietly enter into, have, hold, occupy, possess, and enjoy, all and singular the said Messuage or Tenement, Lands and Premises above-mentioned, and every Part thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption or Denial of him the said A. B. his Executors, Administrators or Assigns, or of any other Person or Persons whatsoever, claiming, or to claim, by, from, or under him. In Witness, &c.

Surrender of Letters Patent, and Offices. A Surrender may be made of Letters Patent to the King, to the End he may grant the Estate to whom he pleases, &c. And a second Patent for Years, for the same Thing, is a Surrender in Law of the first Patent. 10 Rep. 66. Letters Patent for Years were delivered into the Chancery to be cancelled, and new Letters Patent made for Years; but the first were not cancelled: It was held that the Second were good, because they were a Surrender in Law of the First, and the not Cancelling was the Fault of the Chancery, which ought to have done it. 10 Rep. 66, 67. 2 Lill. Abr. 545. If an Officer for Life accepts of another Grant of the same Office, it is in Law a Surrender of the first Grant: But if such an Officer takes another Grant of the same Office to himself and another, it may be otherwise. 1 Ventr. 297. 3 Cro. 198.

Surrogate, (Surrogatus) Is one that is substituted or appointed in the Room of another; as the Bishop or Chancellor's Surrogate, &c.

Surmise, (Supersisa) A Word specially used in the Castle of Dover, for Penalties and Forfeitures laid upon those that pay not the Duties or Rent of Castleward, at the Days limited. Stat. 32 Hen. 8. c. 40.

Survey, Is to measure, lay out, or particularly describe a Manor, or Estate in Lands; and to ascertain not only the Bounds thereof, but the Tenure of the respective Tenants, the Rent, and Value of the same, &c. In this last Signification, which is according to our Law, it is also understood to be a Court; for on the Falling of an Estate to a new Lord, consisting of Manors, where there are Tenants by Lease, and Copyholders; a Court of Survey is generally held; and sometimes at other Times, to apprise the Lord of the present Terms and Interests of the Tenants, and as a Direction on making further Grants, as well as in Order to Improvements, &c. See my Comp. Court Keep.

A Survey of the Manor of D. in the County of G. belonging to the Honourable W. B. Esq; Taken this Day of, &c. in the Year, &c.

A. B. of, &c. holds by Lease for his Life, and the Lives of T. B. and C. B. his Sons, one Messuage, and twenty Acres of Land, Meadow and Pasture, situate in, &c. within the said Manor, under the yearly Rent of 20 s. — 20 l. per Ann.

C. D. holds by Copy of Court-Roll for his own Life and the Lives of M. his Wife and C. his Son (all of them living) one Messuage or Tenement with the Appurtenances within the said Manor, called, &c. Quit-Rent 30 s. Heriot 3 l. — 30 l. per Ann.

E. F. holds by Copy for the Lives of K. his Wife, and T. his Son, one Tenement within the said Manor, Rent 10 s. Heriot, &c. — 15 l. per Ann.

G. H. holds for the Term of his own Life, one Cottage with the Appurtenances, Quit-Rent 5 s. — 10 l. per Ann.

J. K. holds for her Widowhood, a Piece of Ground called, &c.

L. M. holds, &c.

Examined by G. F. Gent.

Steward of the said Manor.

Surveyor, (Compounded of two Fr. Words, Sur, i. e. Super, & Voir, Cernere) Signifies one that hath the Overseeing or Care of some great Persons Lands or Works: And there was a Court of Surveyors, erected by 33 Hen. 8. c. 39.

Surveyor of the King's Exchange, An ancient Officer, mentioned in the Statute 9 Hen. 5. cap. 4.

Surveyor General of the King's Manors, We read of in *Crompt. Jurisd.* 106.

Surveyor of the Wards and Liveries, Taken away with the Court of Wards and Liveries. 12 Car. 2. c. 24.

Survivor, (From the Fr. Survivre, Supervivo) Is the longer Liver of two Jointenants, or of any two Persons joined in the Right of a Thing: He that remaineth alive, after others be dead, &c. Broke 33. Where there are Jointenants in any Thing, when one dies, (if but two only) the Whole goes to the Survivor; but if there be more than two, then the Part of him who is dead goes amongst all the Survivors. 2 Lill. Abr. 546. Jointenants take by Survivorship, unless they do any Act whereby the Jointure is severed; for then there can be no Survivorship. Wood's Inst. 147. See Jointenant.

Susana Terra, Said to be Land worn out with Ploughing. *Thorn.*

Susceptor, (Lat.) An Undertaker, or Godfather; also a Receiver of Tribute in the Roman Provinces. *Litt. Dist.*

Suspense, (Suspensio) Is a temporal Stop, or hanging up as it were of a Man's Right, for a Time; and in legal Understanding, is taken to be where a Rent, or other Profit out of Land, by Reason of the Unity of Possession of the Rent, &c. and the Land out of which it issues, is not in esse for a certain Time, *Et tunc dormiunt*, but may be revived or awaked: And it differs from *Extinguishment*, which is when it dies or is gone for ever. *Co. Litt.* 213. A Suspension of Rent is, when either the Rent or Land are so conveyed, not absolutely and finally, but for a Time, after which the Rent will be revived again. *Vaugh.* 109. A Rent may be suspended by Unity for a Time; and if a Lessor doth any Thing which amounts to an Entry on the Land, though he presently depart, yet the Possession is in him sufficient to suspend the Rent, until the Lessee do some Act which amounts to a Re-entry. *Vaugh.* 39. 1 Leon. 110. As Rent is not issuing out of a Common, the Lessor's Inclosing the Common cannot suspend his Rent. *Cro. Jac.* 679. If Part of a Condition is suspended, the whole Condition, as well for Payment of the Rent as doing a collateral Act, is suspended. 4 Rep. 52. And a Thing or Action personal once suspended, is for ever suspended, &c. *Cro. Car.* 373. See *Extinguishment*.

Suspension, A Censure whereby Ecclesiastical Persons are forbidden to exercise their Office, or to take the Profits of their Benefices; or where they are prohibited for a certain Time in both of them, in Whole or in Part: Hence is *suspensio ab Officio*, or *suspensio à Beneficio*, and *ab Officio & Be-*

& Beneficio. Wood's Inst. 510. There is likewise a Suspension which relates to the Laity, i. e. *Suspensio ab Ingressu Ecclesie*, or from the Hearing of Divine Service, &c. In which Case it is used as in the Canon Law, *pro minori Excommunicatione*. Stat. 24 Hen. 8. c. 12.

Suspicion, A Person may be taken up on Suspicion, where a Felony is done, &c. but those who are imprison'd for a light Suspicion of Larceny or Robbery, are bailable by Statute. 2 Hawk. P. C. 101.

Suspiral, (From the Lat. *Suspirare*, i. e. *ducere Suspiria*) Is used for a Spring of Water, passing under Ground towards a Conduit or Cistern. 35 Hen. 8. cap. 10.

Suthdurt, (Sax.) i. e. The South Door of a Church; it was the Place where Canonical Purgation was perform'd, that is, where the Fact charged upon a Person could not be proved by sufficient Evidence, and the Party accused came to the South Door of the Church, and there in the Presence of the People made Oath that he was innocent: And Plaints, &c. were heard and determined at the Suthdurt; for which Reason, large Porches were anciently built at the South Doors of Churches. Gervas Dorob. de Reparation. Ecclesie Cantuar.

Swan, (Cygnus) Is a noble Bird of Game; and a Person may prescribe to have Game of Swans within his Manor, as well as a Warren, or Park. 7 Rep. 17, 18. A Swan is a Bird Royal; and all white Swans not marked, which have gain'd their natural Liberty, and are swimming in an open and common River, may be seized to the Use of the King by his Prerogative: But a Subject may have a Property in white Swans not mark'd; as any Man may have Swans not mark'd in his private Waters, and the Property of them belongs to him, and not the King; and if they escape out of his private Waters, into an open and common River, he may retake them; though it is otherwise if they have gain'd their natural Liberty and swim in open Rivers, without such Pursuit. Game Law, par. 2. pag. 152. Stealing Swans mark'd and pinion'd, or unmark'd, if kept in a Mote, Pond, or private River, and reduc'd to Tameness, is Felony. H. P. C. 68. And he that steals the Eggs of Swans out of their Nests, shall be imprison'd a Year and a Day, and be fined at the King's Pleasure. 11 Hen. 7. cap. 17. No Fowl can be a Stray, but a Swan. 4 Inst. 280.

Swanherd. The King's Swanherd, Magister deductus Cygnorum. Pat. 16 R. 2.

Swanmark, No Person may have a Swanmark, except he have Lands of the yearly Value of five Marks, and unless it be by Grant of the King or his Officers lawfully authorized, or by Prescription. Stat. 22 Ed. 4. c. 6.

Swainmote or Swainmote, (Swainmotus, from the Sax. *Swang*, i. e. a Country *Swain* and *Gemote*, i. *Conventus*) Signifies a Court touching Matters of the Forest, held by a Charter of the Forest thrice in the Year, before the Verderors as Judges. Crompt. Jurisd. 108. 3 Hen. 8. c. 18. The Swainmote is a Court unto which all the Freeholders in the Forest do owe Suit and Service; and all the Officers of the Forest are to appear at every Swainmote, also out of every Town and Village in the Forest four Men and a Reeve; or on Default, shall be amerced and distrained. Game Law, par. 2. 19, 20. A Court of Swainmote is incident to a Forest, as the Court of Pie-

powder to a Fair, &c. Chart. Forest. Hen. 3. See Forest.

Swarff-Money, Is mentioned among Customs and Services: And the Swarf-Money is one Halfpenny, paid before the Rising of the Sun; the Party must go three Times about the Cross, and say the Swarff-Money, and then take Witness and lay it in the Hole; and he is to look well that his Witness do not deceive him, for if it be not so paid, he shall pay a great Forfeiture, viz. xxxs. and a White Bull: This Account was found in an old M.S. containing the Rents due to the Catesby's in Lodbroke, and other Places in Warwickshire. See Warth-Money.

Swath, (Sax. *Swatha*) A Swathe, or as in Kent a Sweath, and in some Parts a Swarth, is a strait Row of cut Grass or Corn, as it lies after the Scythe at the first Mowing of it. Paroch. Antiq. 399.

Swearing, (Imprecatio) Is an Offence against God and Religion, and a Sin of all others the most extravagant and unaccountable, as having no Benefit or Advantage attending it, which most others have: There are several good Laws and Statutes for punishing this Crime; the 21 Jac. 1. cap. 26. enacts, That if any Person shall profanely swear or curse in the Presence of a Justice of Peace, or the same shall be prov'd before a Justice, he shall forfeit 1 s. for every Offence, to the Use of the Poor, to be levied by Distress; and for Want of a Distress, the Offender to be set in the Stocks, &c. This Law is altered by the Stat. 6 & 7 W. 3. c. 11. which confines the Forfeiture of 1 s. to Servants, Labourers, common Soldiers and Seamen; and by this latter Law the Penalty is 1 s. for the first Offence, for the Second double, and for the third Offence treble; and every Person, not being a Servant, Labourer, &c. swearing and cursing, shall forfeit for the first Offence 2 s. for the Second and Third, double and treble, &c. to be levied by Distress and Sale of Goods; and if there be no Distress, the Offender shall be put in the Stocks one Hour, or two Hours if for more Offences than one, provided he be above sixteen Years of Age; for if he is under that Age, he shall be punished with Whipping: The Prosecution is to be in ten Days after the Offence; and Conviction before a Justice by Confession, or Oath of one Witness, &c. The Justice is to register in his Book all Convictions upon this Statute, and certify them to the Quarter-Sessions; and neglecting his Duty in putting the Act in Execution, he shall forfeit 5 l. And Parsons are to read this Act in their Churches the next Sunday after every Quarter-day yearly, immediately after Morning Prayer, under the Penalty of 20 s. Mod. Just. 432.

Swepeage, Or the Swepe, is the Crop of Hay got in from a Meadow. Co. Lit. 4.

Swoling of Land, (Solinga, vel Swolinga Terra, in Sax. *Sulung*, from *Sul*, *aratum*, as to this Day in the West Country a Plow is called a *Sul*) Is as much as one Plough can till in a Year; the same as *Carucata Terra*: A Hide of Land; tho' some Writers say it is an uncertain Quantity.

— *Terram Trium Aratrorum, quam Cantiani Anglice dicunt* Three Swolings. Chart. Eccles. Cantuar.

Su oin Brothers, (Fratres jurati) Persons who by mutual Oath, covenanted to share each other's Fortune: And formerly in any notable Expedition, to invade and conquer an Enemy's Country,

try, it was the Custom for the more eminent Soldiers to ingage themselves by reciprocal Oaths to share the Reward of their Service ; so in the Expedition of *William Duke of Normandy* into *England*, *Robert de Oily*, and *Roger de Ivery* were sworn Brothers and Copartners in the Estate, which the Conqueror allotted them.—*Robertus de Oileio & Rogerus de Iverio Fratres jurati, & per Fidem & Sacramentum Confœderati venerunt ad Conquestum Angliæ. Paroch. Antiq. 57.* This Practice probably gave Occasion to our Proverb of *Sworn Brother*, or *Brethren in Iniquity* ; because of their dividing Plunder and Spoil.

Sylva cædua; Underwood, otherwise called *Sub-bois.* 2 Inst. 642. See *Silva Cedua.*

Symbolum, Is a Symbol or Sign in the Sacrament ; also the Creed of the Apostles, which is often called by this Name in our *Historians.*

Syncope, A Word used in several Ecclesiastical Councils and Synods, signifying to cut short or pronounce Words so as not to be understood. *Synod. Wigorn. cap. 10.*

Syndicus, An Advocate, or Patron ; a Burgess or Recorder of a Town, &c. *Matt. Paris. Anno 1245.*

Syngraph, (*Syngraphus*) A Deed, Bond or Writing, under the Hand and Seal of all the Parties ; and it was the Custom for both the Debtor and Creditor, in Writings obligatory, to write their Names and the Sum borrowed on a Piece of Paper, with the Word *Syngraphus* in large Letters in the Middle ; which being cut through, one Part of the Paper was delivered to each Party, for their better Security, &c. See *Chirograph.*

Synod, (*Synodus*) A Meeting or Assembly of Ecclesiastical Persons for the Cause of Religion ; being the same Thing in *Greek*, as *Convocation* in *Latin* : And of *Synods* there are four Kinds, 1st, A *General* or *Universal Synod* or Council, where Bishops of all Nations meet. 2dly, A *National Synod*, of the Clergy of one Nation only. 3dly, A *Provincial Synod*, where Ecclesiastical Persons of a Province only assemble. 4thly, A *Diocesan Synod*, of those of one Diocese, &c. And our *Saxon Kings* usually called a *Synod* or mix'd Council, consisting of Ecclesiasticks and the Nobility, three Times a Year ; which is said to have been the same with our *Parliament.*

Synodal, (*Synodale*) Is a Tribute or Payment in Money, paid to the Bishop or Archdeacon, by the inferior Clergy, at *Easter Visitation* ; and it is called *Synodale* or *Synodaticum*, *quia in Synodo frequentius dabatur.* *Right Clerg. 59.* They are likewise termed *Synodies*, in the *Stat. 34 Hen. 8. cap. 16.* And sometimes *Synodale* is used for the *Synod* it self ; and *Synodals Provincial*, the Canons or Constitutions of a *Provincial Synod.* 25 *Hen. 8. cap. 19.*

Synodales Testes, Were the urban and rural Deans, whose Office at first was to inform of and attest the Disorders of the Clergy and People in the *Episcopal Synod* ; and for which a solemn Oath was given them to make their Presentments, &c. But when they sunk in their Authority, the *Synodical Witnesses* were a Sort of impanelled Grand Jury, composed of a Priest and two or three Laymen of every Parish, for the Informing of or Presenting Offenders ; and at length two principal Persons for each Diocese were annually chosen, till by Degrees this Office of Inquest and Information was devolved upon the *Churchwardens.* *Paroch. Antiq. 649.*

Synonymous, A Thing of the same Name ; or of the like Signification. *Litt. Dist.*

T.

Tabacum, *Herba ab Insula Tabaco, ubi copiose provenit ; qui primus eam ex India ad nos adduxit, see Tobacco.*

Tabard, **Tabarder**, The Bachelor Scholars on the Foundation of *Queen's College Oxford*, are called *Tabiters* or *Tabarders* ; and these Scholars were named *Tabiters*, from a Gown wore by them, called a *Tabert*, *Tabarr*, or *Tabard* : For *Verstegan* tells us, that *Tabert* anciently signified a short Gown that reached not farther than the Middle of the Leg ; and it remains for the Name of such in *Germany* and other Countries, which with the *Teutonic* and *Saxon Taber*, signify all a Kind of Garment, &c.

Tabardum, A Garment like a Gown ; and used for a Herald's Coat, but generally taken for the Gown of Ecclesiasticks.—*Fratres sacerdotes habent unam Robam integram, Tunicam, supertunicam, Tabardum & capucium nigri Coloris.* *Matt. Paris. 164.*

Tabellion, (*Tabellio*) A Notary Publick or Scrivener, allowed by Authority, to ingross and register Writings, &c. His Office in some Counties did formerly differ from that of *Notary*, but now they are grown or made one. *Matt. Paris. Anno 1236.*

Table-Rents, (*Redditus ad Mensam*) Were Rents paid to Bishops, &c. reserved and appropriated to their Table or House-keeping. See *Bord-land.*

Tabling of Fines, Is the Making a Table for every County, containing the Substance of Fines passed ; as the Name of the County, Town or Place where the Lands or Tenements lie, the Name of the Demandant and Deforçant, and of the particular Lands, &c. mentioned in the Fine : This is properly to be done by the *Chirographer* of Fines of the *Common Pleas*, who every Day of the next Term after the Ingrossing any such Fine, doth fix the said Tables in some open Place of the said Court during its Sitting ; and he also delivers to the Sheriff of each County, his Under-Sheriff or Deputy, fair written in Parchment, a perfect Content of the Table so made for that Shire, in the Term next before the Assises, or between the Term and Assises, to be set up at the Assises in an open Place of that Court, and continue there so long as the Justices shall sit, &c. And if either the Chirographer or Sheriff fail herein, they shall be liable to the Penalty of 5*l.* *Stat. 23 Eliz. c. 3.*

Tac or **Tak**, *Custumarius in Bosbury debet quasdam Consuetudines, viz. Tak & Toll, &c. Blount's Ten. 155.*

Tacfree, Is used in old Charters, as an Exemption from Payments, &c.—*Cum Housbold & Haybold & Tacfree de omnibus propriis Porcis suis infra omnes metas de C.* that is, they paid nothing for their Hogs running within that Limit.

Tactare, For *Confirmare.* *Fleta, lib. 2. c. 61.*

Tail, (*Fr. Taille*, from *Tailler*, to cut or limit, *Lat. Feodum Taliatum*) Is a limited Fee, opposed to Fee-simple : It is that Inheritance whereof a Man is seised to him and the Heirs of his Body, begotten or to be begotten : And he that giveth the Lands in *Tail*, is called the *Donor*, and he to whom the Gift is made, the *Donee.* *Litt. 18.* All

Estates of Inheritance were originally *Fee-simple* by the Common Law; but by the Statute *de Donis Conditionalibus* the Inheritance was divided, and a particular Estate created by the Statute in the Donee, which is what is called an *Estate-tail*, i. e. an Estate cut and divided from the Fee-simple; which Estate is to return to the Donor or his Heirs, after the Determination of the *Tail*. 3 *Nels. Abr.* 266. Before the Statute of *Westm.* 2. 13 *Ed.* 1. If Lands were given to a Man and the Heirs of his Body, it was interpreted to be a Fee-simple presently by the Gift, upon Condition that he had Issue; and if he had Issue, the Condition was supposed to be perform'd for three Purposes, viz. to alien and disinherit the Issue, and by the Alienation to bar the Donor or his Heirs of all Possibility of the Reversion; to forfeit the Estate for Treason or Felony; and to charge it with Rent, &c. But by this Statute, the Will and Intention of the Donor is to be observed; as that the Tenant in *Tail* shall not alien after Issue had or before, or forfeit or charge the Lands longer than for his own Life, &c. and the Estate shall remain to the Issue of the Donee, or to the Donor or his Heirs where there is no Issue; so that whereas the Donee had a Fee-simple before, now he had but an *Estate-tail*, and the Donor a Reversion in Fee expectant upon that *Estate-tail*. *Co. Lit.* 19. In this Manner it continued some Time, though daily Experience shewed that much Mischief had crept into the Law by intail'd Inheritances, as Frauds to Creditors, &c. and Sons became disobedient when they found they could not be disinherited; wherefore the Judges found out a Way to bar an *Estate-tail*, with Remainders over, by a feigned Recovery. *Ann.* 12 *Ed.* 4. And since by a Fine to bar the Issue, by 4 *Hen.* 7. *cap.* 20. and 32 *Hen.* 8. *cap.* 36. And for that Owners of Land held in *Tail* were lets fearful to commit Treason on Account of the easy Forfeiture; therefore the Stat. 26 *Hen.* 8. *cap.* 13. was made; and because Men that had intailed Lands, could not make Improvements, their Estate being only for Life; for this Reason the Stat. 32 *Hen.* 8. *cap.* 18. gave them Power to make Leases for twenty-one Years, or three Lives, &c. And notwithstanding the many Mischiefs and Inconveniencies arising from intailed Estates, and the Statutes before mentioned, and Fines and Recoveries to dock Entails; there are Methods observed in Settlements to limit Estates, that no Law or Statute, can reach or alter them, except a particular Act is made for that Purpose. *Wood's Inst.* 122. The Statute *de donis* creates no Intail, but of such an Estate which was a Fee-simple at the Common Law; and descendible as a Fee-simple. 1 *Inst.* 19. Lands of Inheritance, and all Inheritances favouring of the Realty, may be intailed; so Rents, Profits, Offices, Dignities, &c. which concern Lands, or certain Places: But if the Grant of an Inheritance be merely personal, or exercised with Chattels only; it cannot be intailed. 4 *Inst.* 87. 7 *Rep.* A Grant of an Annuity, to a Man and the Heirs of his Body, is void: And a Lease for Years to a Person and the Heirs of his Body, is also void; though an Assignment may be made of a Lease for Years, in Trust to permit the Issue in *Tail* to receive the Profits; which is in Effect an *Estate-tail*. 10 *Rep.* 87. *Estate-tail* of Lands, are *General*, or *Special*; *General Tail* is where Lands or Tenements are given to a Man and the Heirs of his Body begot-

ten; or to a Woman and the Heirs of her Body begotten: In this Case, it is called a *general Tail*, because whatever Woman the Man taketh to Wife, the Issue may inherit the Lands; and whatsoever Man the Woman takes to Husband, the Issue may inherit; or if she have divers Husbands, and have Issue by every of them, they shall inherit one after another, as Heir of her Body: *Special Tail* is when Lands and Tenements are given to a Man and his Wife, and to the Heirs of their two Bodies begotten; in which Case, no other Persons can inherit but the Issue that are begotten by him on that particular Wife; and it is called *Special Tail*, for that if the Wife die, and the Husband marries a second Wife, by whom he hath Issue, such Issue has no Benefit, as they have by the *general Tail*. *Litt.* 14, 16. *Co. Lit.* 19, 20. If Lands are given to the Husband and Wife, and to the Heirs of their Bodies, both of them have an Estate in *special Tail*; by reason the Word Heirs, or the Inheritance, is not limited to one more than the other: Where Lands and Tenements are given to a Man and his Wife, and to the Heirs of the Body of the Man, the Husband hath an Estate in *general Tail*, and the Wife an Estate for Life; as the Word Heirs relates generally to the Body of the Husband: And if the Estate is made to the Husband and Wife, and to the Heirs of the Body of the Wife by the Husband begotten; there the Wife hath an Estate in *special Tail*, and the Husband for Term of Life only; because the Word Heirs hath Relation to the Body of the Wife, to be begotten by that particular Husband: If an Estate be limited to a Man's Heirs which he shall beget on his Wife, it creates a *special Tail* in the Husband; but the Wife will be intitled to nothing, &c. *Litt.* 26, 28. *Co. Lit.* 22, 26. Lands given to a Man and Woman unmarried, and to the Heirs of their Bodies, will be an Estate in *special Tail*; for they may marry. 1 *Inst.* 25. 10 *Rep.* 50. And though Lands are given to a married Man and another Man's Wife, and the Heirs of their two Bodies, it may be a good *Estate-Tail*; for the Possibility of their Intermarrying. 15 *Hen.* 7. A *general Tail*, and a *special Tail*, may not be created at one and the same Time; if they are, the *General* which is greater, will frustrate the *Special*. 1 *Inst.* 28. There are other *Estates-tail* within the Equity of the Statute; as if Lands are given to a Man and his Heirs Males or Females, of his Body begotten, the Issue Male or Female shall only inherit according to the Limitation: By Virtue of the Statute, here the Daughter may be Heir by Discent, though there be a Son: But in Case of a Purchase, there cannot be an Heir Female, where there is a Son, who is right Heir at Law. 1 *Inst.* 24, 164. It is the Word *Body*, or other Words amounting to it, make the Entail: And a Gift to the Heirs Males, or Heirs Females, without any Thing further, is a Fee-simple Estate; because it is not limited of what Body: And hence a Corporation cannot be seized in *Tail*. 1 *Inst.* 13, 20, 27. In a Devise or last Will, an *Estate-tail* may be created without the Word *Body*; also begotten shall be supply'd and necessarily intended. *Noy's Max.* 101. 1 *Inst.* 26. If one gives Lands to a Man and his Issue, or Children of his Body, without the Words, his Heirs, to convey the Inheritance, he has but an Estate for Life: Though such Words may be good enough to convey the Inheritance in a Will; as

Estates-tail by Devise are always more favour'd in Law, than Estates-tail created by Deeds. 1 *Inst.* 20. The Word Heirs is necessary to create an Estate-tail and Inheritance by Deed; and where an Use was limited to A. B. and to his Heirs Males, lawfully to be begotten; these last Words imply that it must be Heirs Males of his Body, because no other Heir Male can inherit by Virtue of this Grant, but such who are lawfully begotten by the Grantor. 7 *Rep.* 41. If a Man makes a Feoffment to the Use of himself for Life, Remainder to the Heirs Males of his Body, this is an Estate-tail executed in him; and so it is if he covenanted to stand seised in the same Manner. 1 *Mod.* 159. By a Marriage-Settlement and Fine levied, &c. to the Use of Husband and Wife, for their joint Lives, Remainder to the Heirs of the Body of the Wife by the Husband to be begotten, Remainder (the Wife surviving the Husband) to her for Life, Remainder to the right Heirs of the Husband; this was held to be an Estate-tail, executed in the Wife. *Raym.* 127. 3 *Salk.* 338. When a Remainder is limited to two, and the Heirs Male of their Bodies, they have not joint but several Estates-tail: And between Baron and Feme, 'tis said several Moieties may be of an Estate-tail, as well as of a Fee-simple. *Cro. Eliz.* 220. *Moor* 228. 2 *Lill. Abr.* 551. A Feoffment was made to the Use of the Feoffor for Life, Remainder to W. R. his Son and his Heirs; and for Want of Issue of him, Remainder to the right Heirs of the Feoffor; adjudged W. R. hath only an Estate in Tail; for though the first Words of the Sentence, viz. to his Son and his Heirs make a Fee-simple, the subsequent Words in the same Sentence, i. e. and for Want of Issue of him, make an Estate-tail by qualifying and abridging the same. 5 *Mod.* 266. 3 *Salk.* 337. Feoffment to the Use of a Man's Self; and afterwards he made his Will, by which he devised that the Feoffees should make an Estate to all his Sons, except to Henry; and if all his Sons died without Issue, Remainder to a Stranger: It was held, that because Henry was not excepted in this last Clause, he had an Estate-tail. *Heth.* 57. Though an Estate-Tail is created by the Words Dying without Issue, &c. yet where the Limitation is to a Son upon a Dying without Issue, in the Life-time of another, there it will be otherwise. *Dyer* 334. A Father having two Sons, devised his Lands to his youngest Son, and if he died without Heirs, then to his eldest Son and his Heirs; the youngest Son had an Estate-tail, because of the Devise to him; and if he died without Heirs, is the same as if the Testator had devised it in these Words, (viz.) If he die without Heirs of his Body; for otherwise the Remainder limited to the eldest Son had been void, as the Youngest cannot die without Heirs, so long as the Eldest is living. 1 *Roll. Abr.* 836. In Ejectment the Case was, the Father having three Sons, devised his Lands to his second Son, and his Heirs for ever; and for Want of such Heirs, then to the right Heirs of the Father; then the Father died, and his second Son enter'd, and died without Issue, leaving the eldest Son: It was resolv'd, that the second Son had but an Estate-tail, and that the Devise over by these Words, and for Want of such Heirs, is void in Point of Limitation, for the Testator's Intent was that the Lands should descend from himself, and not from his second Son: and the Words, Want of such Heirs, could

import no other than Want of Issue, &c. so that the eldest Son takes by Descent in this Case, and not by the Will. 1 *Salk.* 233. An Estate-tail cannot merge by the Accession of the Fee-simple to it: But it has been adjudg'd, that two Fees immediately expectant upon one another, (as where a Man is Tenant in Tail, and Remainder in Fee to the Tenant in Tail) cannot subsist in the same Person; and the Statute of *Westm.* having made Estates-tail a Kind of particular Estates, they must like all other such Estates be subject to Merger and Extinguishment, when united with the absolute Fee. 8 *Rep.* 74. 1 *Salk.* 338. If there be Tenant in Tail, Remainder in Tail, and Tenant in Tail enfeoffs the Reverfioner in Fee; it is a *Discontinuance*: And Tenants in Tail can make no greater Estate than for their own Lives; unless it be by Lease, &c. according to the Stat. 32 *Hen.* 8. 1 *Rep.* 140. Estates-tail are usually created upon Settlements: Tho' an Agreement to intail, is no Intail; for no Agreement shall bind the Issue in Tail, where there is a first Intail, without a Fine. *Chanc. Rep.* 236. It is incident to an Estate-tail, to be punishable of Waste; that the Wife of the Donee shall be endowed; and the Husband of a Feme Donee, be Tenant by the Curtesy; and that the Tenant in Tail may suffer a common Recovery, &c. and therefore Conditions to restrain any of these, are void. 1 *Inst.* 224. 10 *Rep.* 38. As by Statute it is incident to Estates-tail, to make Leases; so by Custom, it is to grant Lands by Copy of Court-Roll, &c. See *Recovery*.

Tail after Possibility of Issue extinct, Is where Lands and Tenements are given to a Man and his Wife in special Tail, and either of them dies without Issue had between them; the Survivor hath an Estate in Tail after Possibility of Issue, &c. Also if they have Issue, and the Issue dies without Issue, whereby there is none left which may inherit by Force of the Intail, the Survivor of the Donees hath an Estate-tail after Possibility. *Litt.* 32. The Estate of this Tenant must be created by the Act of God, viz. by the Death of either Party without Issue; none can have this Estate but one of the Donees, or a Donee in special Tail; for a Donee in general Tail may by Possibility have Issue. *Litt.* 34. 1 *Inst.* 28. 11 *Rep.* 80. And if one gives Lands to a Man and his Wife, and the Heirs of their two Bodies in special Tail, and they live till each of them are one hundred Years old, and have no Issue; yet doth the Law see no Impossibility of having Children, and they continue Tenant in Tail: But if the Wife die without Issue, there the Law seeth an apparent Impossibility. 1 *Inst.* 28. Tenants in Tail after Possibility of Issue extinct, are not punishable for Waste; as are Tenants for Life. 1 *Inst.* 27. Where Tenants in Tail general or special, &c. die without Issue, the Donor or his Heirs may enter. *Litt.* 18.

Tam't, (Fr. *Teint*, i. e. *Infectus*, *Tinctus*) Is taken for a Person convicted of Treason or Felony. See *Attaint*.

Talent, A Weight of Sixty-two Pounds; also a Sum of Money among the Greeks, of about 100 *l.* Value. *Merch. Dict.*

Tales, (Lat.) Is used in the Law for a Supply of Men, impanelled on a Jury and not appearing, or on their Appearance challenged as not indifferent; when the Judge upon Motion orders a Supply to be made by the Sheriff, &c. of one or more such Persons present in Court, equal in

in Reputation to those that were impanelled, to make up a full Jury; which he could not do by the Common Law; and this is by the Statutes 35 H. 8. c. 6. 2 & 3 Ed. 6. c. 32. 14 Eliz. c. 9. 7 & 8 W. 3. c. 32. &c. *Tales* are of two Sorts, i. e. *Tales de Circumstantibus*, and a *Decem Tales*; a *Tales de Circumstantibus* is where a full Jury do not appear at the *Nisi prius*, or so many are challenged that there is not a full Jury; then on the Prayer of the Plaintiff's Counsel or Attorney, the Judge will grant this *Tales*, which the Sheriff returns immediately in Court: A *Decem Tales* is when a full Jury doth not appear at a *Trial at Bar*, and is a Writ to the Sheriff *apponere Decem Tales*. 10 Rep. 102. *Finch*. 414. 2 *Roll. Abr.* 67. Upon a *Trial at Bar*, if the Jury do not appear full, the Court cannot grant a *Tales de Circumstantibus*, but will grant a *Decem Tales* returnable in some convenient Time the same Term, to try the Cause. 2 *Lill. Abr.* 552. And a *Tales de Circumstantibus* ought not to be in an *Affise*, only a *Nisi prius*; the *Decem Tales* must be awarded in an *Affise*. *Cro. Car.* 341. A Plaintiff or Defendant may have a *Tales de Circumstantibus*; and the Statutes which authorize Justices of *Nisi prius* to award a *Tales de Circumstantibus*, extend as well to capital Cases as to others; but such a *Tales* cannot be prayed for the King upon an Indictment, or criminal Information, without a Warrant from the Attorney General, or an express Assignment from the Court before which the Inquest is taken: Though it may be awarded on an Information *qui tam*, &c. because of the Interest which the Prosecutor hath in such Prosecutions. 2 *Hawk. P. C.* 409. 3 *Salk.* 339. A *Tales* is not to be granted where the whole Jury is challenged, &c. but the whole Panel, if the Challenge be made good, is to be quashed, and a new Jury return'd; for a *Tales* consists but of some Persons to supply the Places of such of the Jurors as were wanting of the Number of Twelve, and is not to make a new Jury. 2 *Lill. Abr.* 552. If but one Juror appears on the Principal Panel, the Court may order a *Tales* by the Statute 35 H. 8. 10 Rep. 102. And if upon a *Habeas Corpora* or a *Distingas Fur.* none of the Jury appear, a *Decem Tales* shall be awarded: But it shall not be had upon a *Venire fac.* *Cro. Eliz.* 502. *Moor* 528. One of the Principal Panel only appears; in such Case there shall be eleven *Talesmen*; or if Eleven of the impanell'd Jurors appear, there shall be one *Talesman* added; and if Two of the Principal Panel appear and are withdrawn, the Trial may be by all *Talesmen*. *Dyer* 245. 2 *Roll. Rep.* 75. At the *Affises*, one of the Principal Panel appear'd, and no more, and a *Tales* was awarded, the Title whereof was *Nomina Decem Talium*, and under it Eleven were return'd; this was notwithstanding held good, for 'tis only a Misprision of the Clerk, and *Decem* was struck out, and then the Title was *Nomina Talium*, &c. And it was adjudg'd, that if after a *Tales* granted, the Principal Panel should be quash'd, the *Tales* should stand good, and more be added, &c. 4 Rep. 103. 2 *Cro.* 316. 3 *Nelf. Abr.* 275. A Day being appointed for a *Trial at Bar*, the Sheriff of the County by Order of the Plaintiff countermanded the Jurymen; but the Defendant did not know it; whereupon he and Three of the Jury appear'd on the Day, and the Defendant pray'd a *Tales* that the Trial might go on; though the Court would not grant it, but offer'd to nonsuit the Plaintiff on Record, and directed that the

Defendant should contribute to satisfy the three Jurors who appear'd, and referred it to the Secondary to tax Costs for the Defendant in Satisfaction of his Trouble and Expences. 2 *Sid.* 77. No Person shall take any Reward or Fee, upon the Account of any *Tales* return'd; on Pain of Forfeiting 10 l. one Moiety to the Informer, and the other to the King. 4 & 5 W. & M. And by this Act, the Qualification of *Talesmen* is to be 5 l. per Annum Freehold Estate, &c.

Tales Is also the Name of a Book in the King's Bench Office, of such Persons as were admitted of the *Tales*. 4 *Inst.* 93.

Tallage, (*Tallagium*, from the Fr. *Taille*) Is metaphorically used for a Part or Share of a Man's Substance, carv'd out of the Whole, paid by Way of Tribute, Toll or Tax. *Stat. de Tallagio non concedendo temp. Edw. 1.* *Stow's Ann.* 445. And according to Sir *Edw. Coke*, *Tallage* is a general Word for all Taxes. 2 *Inst.* 532.

Tallagers, Are Tax or Toll Gatherers, mentioned by *Chaucer*.

Tallagium facere, To give up Accounts in the *Exchequer*, where the Method of Accounting is by *Talleys*. *Mem. in Scacc. Mich.* 6 Ed. 1.

Talley, (*Tallea*, Fr. *Taille*, Ital. *Tagliare*, i. e. *Scindere*) Is a Stick cut in two Parts, on each whereof is mark'd with Notches, or otherwise, what is due between Debtor and Creditor; as now used by Brewers, &c. And this was the ancient Way of Keeping all Accounts, one Part being kept by the Creditor, the other by the Debtor, &c. Hence the *Tallier* of the *Exchequer*, whom we now call the *Teller*. But there are two Kinds of *Tallies* mentioned in our Statutes to have been long used in the *Exchequer*; the one are termed *Tallies of Debt*, which are in the Nature of an Acquittance for Debts paid to the King, on the Payment whereof these *Tallies* are delivered to the Debtors, who carrying them to the Clerk of the Pipe-Office, have there an Acquittance in Parchment for their full Discharge. 1 R. 2. c. 5. The other are *Tallies of Reward* or Allowance, being made to Sheriffs of Counties as a Recompence for such Matters as they have perform'd to their Charge, or such Money as is cast upon them in their Accounts of Course, but not leviable, &c. 27 H. 8. c. 11. 33 & 34 H. 8. 2 & 3 Ed. 6. In the *Exchequer* there is a *Talley-Court*, where attend the two Deputy Chamberlains of the *Exchequer*, and the *Talley-cutter*; and a *Talley* is the King's Acquittance for Money paid or lent, and has written on it Words proper to express on what Occasion the Money is received. *Lex Constitut.* 205. *vid. Tail.*

Tallia, Every Canon and Prebendary in our old Cathedral Churches, had a stated Allowance of Provisions delivered to him *per modum Tallie*; and thence their Commons in Mear and Drink were called *Tallia*. *Stat. St. Paul. Ann.* 1295.

Tally-man, A Person that sells or lets Goods, Clothes, &c. to be paid by so much a Week. *Merch. Dict.*

Talwood, (*Taliatura*) Fire-Wood cleft and cut into Billets of a certain Length; otherwise written *Talghawood*, and *Talshide* in ancient Statutes. 34 & 35 H. 8. c. 3. 7 Ed. 6. c. 7. 43 Eliz. c. 14.

Tam Quam, Is in Nature of a *Qui tam*, being where a Man prosecutes as well for the King as for himself, on an Information for Breach of some Penal Law, whereby any Penalty is given to the Party that sues. *Terms de Ley* 556. In every Case where a Statute prohibits a Thing, and

and doth not annex a Penalty to the Committing thereof, the Party offending may be indicted for a Contempt against the Statute; or Action lies against him for Breach of it, which must be brought *Tam pro Domino Rege, quam pro seipso*, as there is a Fine to be paid to the King. 2 *Inst.* 118. *Cro. Eliz.* 655. *Cro. Jac.* 134. In Action popular, brought *Tam quam*, the King can discharge but his own Part, and not the Informer's; but before Action brought, the King may discharge the Whole. 3 *Inst.* 238. See *Information*.

Tanquer, An antient City of *Barbary*, formerly Part of the Dominion of the Crown of *England*, as *Gibraltar* is at present; mentioned in the Statute 15 *Car.* 2. c. 7.

Tanistry, Seems to be deriv'd from *Thanis*; and is a Law or Custom in some Parts of *Ireland*, of which Sir *John Davis* says thus, — *Quant aucun Person morust seisie des aucuns Castles, Manors, Terres ou Tenements del Tenure de Tanistry; que donques mesme les Castles, &c. dont descender, & de Temps dont Memory ne Court ont use de Descender, Seniori & Dignissimo viro Sanguinis & cognominis, de tiel Person issint morant seisie, & que la file ou les files de tiel Person issint morant seisie de tous temps avant dit, ne fueront inheritables de tiels Terres out Tenements, ou de aucun parte de eux.* *Dav. Rep.* 28. *Antiq. Hibern.* pag. 38.

Tannare, Is a Word used for to drefs or tan Leather. *Plac. Parliam.* 18 *Edw.* 1.

Tare and Tret. The First is an Allowance in Merchandize, made the Buyer for the Weight of the Box, Bag, or Cask, wherein Goods are packed: And the last is a Consideration in the Weight, for Waste in emptying and reselling the Goods, by Dust, Dirt, Breaking, &c. *Book Rates*.

Target, (From the Lat. *Tergus*) A Shield, originally made of Leather, wrought out of the Back of an Ox. *Blount*.

Targia, (*Tarida*) Was a Ship of Burden, since called a *Tartan*, and *Tarrita*. *Knighton*, Anno 1385.

Tarpaulin, or **Tarpawling**, A tarred Canvas to keep the Weather out of Ships; but it is commonly used for a Mariner, or Drudge in a Ship that does the vilest Service. *Merch. Dict.*

Tartaron, A Sort of fine Cloth or Silk. *Stat.* 4 *Hen.* 8. c. 6.

Tassale for *Casula*, A Priest's Garment covering him over.

Tassum, A Mow of Corn or Hay, from the Fr. *Tasser*, to pile up: *Tassare*, to mow or heap up; and *ad Tassum furcare* is to pitch to the Mow. *Rot. Hill.* 25 *Ed.* 3.

Tath. In the Counties of *Norfolk* and *Suffolk*, the Lords of Manors claim'd the Privilege of having their Tenants Flocks of Sheep brought at Night upon their own Demesne Lands, there to be folded for the Improvement of the Ground; which Liberty was called by the Name of *Tath*. *Spelm.*

Tavern, The King may licence any *Tavern* for Selling of Wine. 16 *Car.* 1. c. 21. But Persons who inordinately haunt *Taverns* are indictable by the Common Law; and continuing drinking and tippling, &c. is liable to Penalties, by the Statutes 1 *Jac.* 1. c. 9. 21 *Jac.* 1. c. 7.

Tau, By *Selden* in his Notes upon *Eadmerus*, signifies a Cross. *Mon. Angl. Tom.* 3. pag. 121.

Tauri liberi Libertas, In antient Charters is used for a common Bull; so called, because he is free and common to all the Tenants within such a Manor or Liberty, &c.

Tax, (*Taxa*, from the Gr. *Taxis*, i. e. *Ordo, Tributum*) A Tribute or Imposition laid upon the Subject, which being certainly and orderly rated, was wont to be yearly paid into the King's *Exchequer*: And it differs from what is commonly called a *Subsidy*, in this, That it is always certain as it is set down in the *Exchequer-Book*, and levied in general of every Town, and not particularly of every Man, &c. No History mentions that the *Saxon* Kings had any *Taxes* after the Manner of ours at present; but they had Levies of Money and personal Services towards repairing of Cities, Castles, and Bridges, and for military Expeditions, which they called *Burghbote*, *Brigbote*, and *Heregeld*; and when the *Danes* invaded this Kingdom, great Sums of Money were raised yearly, by a *Tax* on every *Hide* of Land, the Lands of the Church only excepted; and thence it was afterwards called *Hydagium*, which Name remain'd and was used for all *Taxes* and *Subsidies* impos'd on Lands; though sometimes it was laid upon Cattle, and then was termed *Horngeld*: The *Normans* called these sometimes *Taxes*, other times *Tallages*; and made a Law for the particular Manner of their Levying; but many Years after the *Conquest*, they were levied otherwise than now, as every ninth Lamb, every ninth Fleece, and every ninth Sheaf, &c. *Rastal's Abr.* 4 *Inst.* 26, 33. It is said that in antient Times, *Taxes* were imposed by the King at his Pleasure; but *K. Edw.* 1. bound himself and his Successors, in the 25th Year of his Reign, that from that Time forward no *Tax* should be laid upon the Subject, without the Assent of the Lords and Commons in Parliament. *Stat.* 25 *Ed.* 1. c. 5. And the Way of *Taxing* was formerly by *Tenths* and *Fifteenthths*, then by *Subsidies*, afterwards by *Royal Aids*, and at last by a *Pound Rate*; the former were all upon the Person and Personal Estate, and were much the same, but the *Pound-Rate* was on Lands and Rents: Anno 18 *Ed.* 3. a Valuation was made of all the Towns in *England*, and returned into the *Exchequer*, and this became the standing Rule for *Taxing* every Town, (viz.) When a *Tax* was given, the Officers of the *Exchequer* presently knew to how much it amounted for every Town, and the Inhabitants taxed the Landholders, and Occupiers of Lands, and they were charged and paid their Proportion, &c. The first *Subsidy* was granted Anno 32 *H.* 2. and this was a *Tax* upon the Person, both for Lands and Goods, and payable where the Persons lived; and this continued till the 15 *Car.* 1. and about two Years afterwards the first Assessment was made upon Land and Rents, according to a *Pound-Rate*. 2 *Inst.* 76, 77. 3 *Salk.* 340. In the 16 & 17 *Car.* 1. *Taxes* were granted for Relief of, and disbanding the Army, &c. And 13 *Car.* 2. c. 3 & 4. the Sum of 1,260,000 *l.* was granted for eighteen Months at 70,000 *l.* per Month, charged on the several Counties by Lieutenants, for Ammunition for the Militia; and several Aids were granted, one of 2,477,000 *l.* for Fitting out a Navy and Maintenance of Wars, &c. in the Years 16, 17, 18, 19 & 25 *Car.* 2. Also a free and voluntary Present was granted to King *Car.* 2. but it was ordained that the same should not be drawn into Example. King *James* 2. had Aids and *Taxes* granted him by Parliament; and after the *Revolution*, heavy *Taxes* were necessarily laid on Lands and Personal Estate, in the Reigns of *K. Will.* 3. and *Q. Anne*, to defend the Crown and

and Kingdom against the Efforts of the King of France, in Favour of the pretended Prince of Wales, and secure the Protestant Succession in the Line of his present Majesty King George. Since this Necessity, join'd to others, Land-Taxes have been annually granted of 1 s. 2 s. 3 s. and 4 s. in the Pound, as the present Exigencies have required; enacted to be levied by Commissioners on the several Counties, Cities, Towns, &c. And in Respect of this Tax, it is not the Quantity but the yearly Value of Lands that must be observ'd; the Farmers or Occupiers of the Land, are to be charged, and deduct it out of their Rents to the Landlords; and a Man may be rated for Goods, as well as Lands, but not for both; and in Case of a Rate on Goods, the Charge must be on the Person: The Commissioners are to ascertain the several Proportions of the Tax, to be charged upon every Hundred or Division; and appoint fit Persons to be Assessors and Collectors in every Parish to assess and levy the Money, which when received is to be paid to Receivers General, and by them return'd to the Exchequer, &c. If any Persons refuse to pay the Tax, the Collectors may levy it by Distress and Sale of their Goods; but if they are over-rated, they shall be relieved on Appeal to the Commissioners, who have Power to charge the same on others, as they see Cause, and in Case of Deficiency to make a Re-assessment; Assessors neglecting their Duty, are to be fined not exceeding 40 l. And Collectors detaining the Money, shall be imprisoned, and their Estates seized and sold, &c. If a General Receiver neglect to return the Money by him received, he is liable to the Penalty of 500 l. And where there is any Failure in raising and paying the Sums of Money charged on any County, Process may issue against the Commissioners for their Neglect, &c. Papists are double taxed; but the Colleges in the Universities are exempted from paying any Thing to this Tax: There is a Poundage Fee for collecting the Tax, of 3 d. per Pound to the Collectors, 2 d. per Pound to the General Receiver, and 1 d. Half-penny per Pound to the Commissioners Clerks. Stat. 1 Geo.

Taxatio Bladozum, Is an Imposition laid upon Corn. Cowel.

Taxers, Are two Officers yearly chosen in Cambridge, to see the true Gauge of all Weights and Measures; though the Name took rise from Taxing or Rating the Rents of Houses, which was antiently the Duty of their Offices.

Taylor's, Contracts entered into with Journey-men Taylors, for advancing their Wages, are declared void; and Taylors giving greater Wages than allow'd, shall forfeit 5 l. and Journey-men accepting the same, or refusing to work for the settled stated Wages, shall be sent to the House of Correction for two Months, &c. by Stat. 7 Geo. c. 13.

Tea, Is a Kind of potable Liquor of late used in England, and introduced from China and the East-Indies, being made of the Product of a Shrub growing in those Parts: It is mentioned in the Stat. 12 Car. 2. c. 15.

Team and Theme, (From the Sax. *Tyman*, i. e. *propagare*, to Teem or bring forth) Signifies a Royalty or Privilege granted by the King's Charter to the Lord of a Manor, for the having, restraining and judging of Bondmen and Villains, with their Children, Goods and Chattels, &c. Glanvil, lib. 5. c. 2.

Teding-penny, Tething-penny, Tithing-penny, A small Duty or Payment to the Sheriff from each Tithing towards the Charge of keeping Courts, &c. from which some of the Religious were exempted by Charter from the King. Chart. Hen. 1.

Teinland, Tainland, or Thainland, The Land of a Thaine or noble Person. See *Thane-Lands*.

Teirce, (Fr. *Tiers*, i. e. a Third) A Measure of Wine, Oil, &c. containing the Third Part of a Pipe, or forty-two Gallons. Stat. 32 H. 8. c. 14.

Teller, Is a considerable Officer of the Exchequer, of which Officers there are Four; whose Office is to receive all Money due to the King, and to give the Clerk of the Pells a Bill to charge him therewith: They also pay to all Persons any Money payable by the King, by Warrant from the Auditor of the Receipt; and make weekly and yearly Books of their Receipts and Payments, which they deliver to the Lord Treasurer.

Telligraphæ, (From the Sax. *Tellan*, i. e. *dicere*, and the Gr. *ἱστορεω*, *Scribo*, *quasi*, a Telling any Thing by Writing) Are written Evidences of Things past. Blount.

Tellwort, Is that Work or Labour which the Tenant was bound to do for his Lord, for a certain Number of Days; from the Saxon Word *Tællan*, numerare, & *Worc*, opus. Thorn. Ann. 1364.

Temple. Dugdale and Stow both tell us that the Temple in London is a Place of Privilege from Arrests, by the Grant of the King; but this hath been denied by the Court of B. R. Dugd. 317, 320. 3 Salk. Rep. 45. In the Middle Temple the King's Treasure was antiently kept.

Templers, (*Templarii*) Knights of the Temple having their Residence in Part of the Buildings belonging to the Temple of Jerusalem; we read of them in the Reign of Hen. 2. They had in every Kingdom a Governor, whom Bracon calls *Magistrum Militie Templi*; and the Master of the Temple here, was summoned to Parliament 49 H. 3. Bracon. lib. 1. cap. 10. The Chief Minister of the Temple Church is still called Master of the Temple. See *Knights Templers*.

Temporalities of Bishops, Are the Revenues, Lands, Tenements, and Lay-Fees belonging to Bishops, as they are Barons and Lords of Parliament; all Things as a Bishop hath by Livery from the King, as Manors, Lands, Tithes, &c. 1 Roll. Abr. 881. It was a Custom formerly, that when Bishops received from the King their Temporalities, they did by a solemn Form in Writing renounce all Right to the same by Virtue of any Provision from the Pope, and acknowledged the Receipt of them only from the King; which Custom continued from the Reign of Edw. 1. to the Time of the Reformation: And this Practice began by Occasion of a Bull of Pope Gregory 8. wherein he conferred the See of Worcester on a certain Bishop, and committed to him *Administrationem Spiritualium & Temporalium Episcopatus prædicti*. Anno 31 Ed. 1. The Custody of the Temporalities of every Bishop and Archbishop, during the Vacancy of the Sees, belongs to the King; and no Subject can claim them by Grant or Prescription. F. N. B. 32, 34. 2 Inst. 15. And the King may commit the Temporalities during the Vacation of the See; also he may present to a void Advowson, when the Temporalities are in his Hands. 1 Inst. 90, 388. Magn. Chart. c. 5. 14 Ed. 3. c. 4.

Temptatio, or Tentatio, Is used in antient Records for a Trial, or Proof. Chart. 20 Edw. 1.

Tempus Vestonis, Mast-Time in the Forest, which is from about Michaelmas to St. Martin's Day. Novemb. 11.

Tempus pinguedinis, a firmationis; The Season of Killing the Buck and the Doe. M.S. Temp. H. 3.

Tena, Was that which we now call a Coif, worn by Ecclesiasticks: — *Tena coronas abscondunt quasi Coelestes radios repellentes*, &c. Counc. Lambeth, Anno 1281.

Tenancies, Are Houses or Places for Habitation, held of another. 23 Eliz. c. 4.

Tenant, (*Tenens à tenendo*, from holding) Is one that holds or occupies Lands or Tenements, by any Kind of Right, of some Lord or Landlord, by Rent or Fealty, &c. Also the Word *Tenant* is used with divers Additions; as *Tenant* in Fee-simple, Fee-tail, for Life, Years, or at Will, *Tenant* in Dower, by the Curtesy, by Copy of Court-Roll, *Tenant* in Mortgage, by Statute-Merchant, and Statute-Staple, *Elegit*, &c. Co. Litt.

Tenants in Common, Are such as hold Lands for Life or Years, by several Titles, or by one Title and several Rights; and as *Jointenants* have one joint Freehold, so *Tenants in Common* have divers Freeholds. 1 Inst. 188. If a Conveyance is made to two Persons, *Habendum* the one Moiety to one and his Heirs, and the other, *Moiety* to the other, &c. it is a *Tenancy in Common*; and the Heirs and Executors of *Tenants in Common*, shall have their Parts or Shares, and not the Survivors, as in Case of *Jointenants*. 2 Lill. Abr. 559. *Tenants in Common* know not their own Part, but take the Profits in Common: One *Tenant in Common* cannot bring Action of Trespass against another *Tenant in Common*; but one such *Tenant* may bring Waste against his Partner, &c. 3 Leon. 307. 2 Lill. 561. At Common Law *Tenants in Common* were not compellable to make Partition; though they are by the Stat. 31 H. 8. See *Jointenant*.

Tenant to the Praeipe, Is he against whom the Writ of *Praeipe* is to be brought in suing out a Recovery. 3 Rep.

Tend, Seems to signify as much as *Tender*, or Offer; it is mentioned in our old Books, as to *tend* a Traverse, an Averment, &c. Briton, cap. 76. Staundf. Prærog. 16.

Tender, (*Fr. Tendre*) Is the Offering of Money, or any other Thing in Satisfaction, or circumspetly to endeavour the Performance of a Thing; as a *Tender of Rent* is to offer it at the Time and Place when and where it ought to be paid: And it is an Act done to save the Penalty of a Bond, before Action brought, &c. *Terms de Ley* 557. *Tender of Rent* on any Part of the Land, or at any Time of the last Day of Payment, will save the Condition for that Time, though the Landlord refuse it: But when Rent is *tendered*, the Lessor may after bring Debt; though he cannot recover any Damages; the Lessees being ready to pay excuses the Damages, but doth not debar the other of his Rent. 1 Inst. 200. Litt. Rep. 33. 34. 3 Salk. 344. A *Tender of Rent* to save the Forfeiture must be of the whole Rent due, without any Deduction of Taxes or other Payments; unless it be so agreed, &c. Stoppage being no Payment. 1 Inst. 202. *Tender of Money* on a Bond, is to be made to the Person of the Obligee at the Day appointed, to save the Penalty and Forfeiture of the Bond, and it ought to be done

before Witnesses; though if the Obligor be sued afterwards, he must still pay it: But if the Obligor be to do any collateral Thing, or which is not Part of the Obligation, as to deliver a Horse, &c. and the Obligor offers to do his Part, and the Obligee refuseth it, the Condition is perform'd, and the Obligation discharged for ever, 1 Inst. 207, 208. A Sum awarded by an Award, was lost by the *Tender*; it being a collateral Thing. 3 Lev. 277. On Award, that the Defendant should pay Money on such a Day, and at such a Place; the Defendant pleaded, that he *tendered* the Money at the Day and Place, and because he did not set forth that he continued there ready to pay it at the last Instant of the Day 'till after Sun-setting, &c. it was held ill. 2 Cro. 243. Where Time and Place of doing an Act is made certain by Agreement of the Parties, and they both meet accordingly; he who pleads a *Tender*, must also plead a Refusal of the other Party to accept; otherwise such Plea will be ill upon a Demurrer, but not after Verdict; and if the Plaintiff be absent, that is to be set forth, and that he was at the Time and Place, & *obtulit solvere*, &c. 2 Salk. 623. A *Tender* and Refusal being pleaded, 'tis the Refusal which is traversable, and not the *Tender*, for 'tis that makes it a Payment in Law; and wherever the Demand is certain, there a *Tender and Refusal* is a good Plea; and a *Tender* is not well pleaded without a Refusal. 3 Salk. 341. In Action of Debt, *Tender* and Refusal may be pleaded in Bar of the Damages; though not in Bar of the Action, as the Debt still remains: There is a Difference in Pleading a *Tender* in Action of Debt, and in Action on the Case; in Debt, the Damages are but Accessary, so that in Pleading a *Tender* to such Action, the Defendant must pray Judgment *de Damnis*; but in *Assumpsit*, the Damages are Principal, and he is to plead *semper paratus*, with a *Proferat hic in Curia*, and pray Judgment *de ulterioribus Damnis*. 2 Salk. 622. 3 Salk. 344, 345. A Man pleads a *Tender* of a Debt at the Day, he need not plead *Semper paratus*; but *uncore Priſt*, and bring the Money into Court. 2 Lill. Abr. 564. And *Tender* and Refusal, on Covenant to pay Money, where Damages only are to be recovered, is a good Plea without *uncore Priſt*. Show. 129. *Tender* may be of Money in Bags, without shewing or telling it, if it can be proved there was the Sum to be *tendered*; it being the Duty of him that is to receive the Money, to put out and tell it. 5 Rep. 115. Though where a Person held the Money on his Arm in a Bag, at the Time of Offering it; this was adjudged no good *Tender*, for it might be Counters or base Money. Noy 74. 3 Nelf. Abr. 281. If a *Tender* is made of more than is due, it is good; and the Party to whom *tender'd* ought to take out what belongs to him. 5 Rep. 114. *Tender of the Money* is requisite on Contracts for Goods sold, &c. to intitle Action of Trover: And a *Tender of Stock* sold for so much Money, if it be well made, and the Transfer not accepted, will intitle the Party to the Sum agreed to be paid, when he hath done all he could to accomplish the Agreement. 3 Salk. 343. See *Bond*, &c.

Tenement, (*Tenementum*) Signifies properly a House or Home-stall; but more largely it comprehends not only a House, but all Corporeal Inheritances which are holden of another, and all Inheritances issuing out of, or exercisable within

the same. *Co. Lit.* 6, 19, 154. A *Tenement* may be said to be any House, Land, Rent, or other such like Thing, that is any Way held or possessed; but being a Word of a large and ambiguous Meaning, and not so certain as *Messuage*, therefore it is not fit to be used to express any Thing which requires a particular Description. 2 *Litt. Abr.* 566. The Word *Tenement* is join'd with the adjective *Frank*, to denote an Estate in Lands, Offices, &c. for Life or in Fee. *Kitch.* 41.

Tenementary Land, Was the outland of Manors granted out to Tenants by the Saxon Thanes, under arbitrary Rents and Services. *Spelm.*

Tenementis Legatis, An antient Writ lying to the City of London, or any other Corporation, (where the old Custom was, that Men might devise by Will, Lands and Tenements as well as Goods and Chattels) for the Hearing and Determining any Controversy touching the same. *Reg. Orig.* 244.

Tenendum In Deeds, Where the Fee-simple passeth, must be of the Chief Lord of the Fee, by the same Customs and Services as the Feoffor held; and not of the Feoffor and his Heirs, whereby the Lords would lose their Escheats, &c. 1 *Inst.* 6. 2 *Inst.* 66. *Stat.* 18 Ed. 1.

Tenentibus in Affisa non Onerandis, Is a Writ that lies for him to whom a Disseisor hath alienated the Land whereof he disseised another, that he be not molested in *Affise* for the Damages, if the Disseisor have wherewith to satisfy them. *Reg. Orig.* 214.

Tenheved, or **Tienheofed**, A Saxon Word signifying *Decanus*, *Caput* vel *Princeps Decanie* sive *Decurie*. *Leg. Edw. Conf.* cap. 29.

Tenmentale, (Sax. *Tienmantale*, i. e. *decem vivorum numerus*) *Decennaria*, *Tithinga*. *Leg. Edw. Conf.* Also an antient Tax or Tribute paid to the King. *Hoveden* 737.

Tenor, (Lat.) Of Writs, Records, &c. is the Contents or Purport of them; or a Transcript or Copy. *Tenor* of a Libel hath been held to be a Transcript, which it cannot be if it differs from the Libel; and *juxta Tenorem* imports it, but not *ad Effectum*, &c. for that may import an Identity in Sense, but not in Words. 2 *Salk.* 417. In Action of Debt brought upon a Judgment in an inferior Court, if the Defendant pleads *Nul tiel Record*, a *Tenorem Recordi* only shall be certified; and by *Hale Ch. Just.* it may be the same on *Certiorari*s. 3 *Salk.* 296. A Return of the *Tenor* of an Indictment from London, on a *Certiorari* to remove the Indictment, is good by the City Charter; but in other Cases it is usual to certify the Record it self. 2 *Hawk. P. C.* 295.

Tenore Indictamenti mittendo, Is a Writ whereby the Record of an Indictment, and the Process thereupon is called out of another Court into the King's Bench. *Reg. Orig.* 69.

Tenore Præsentium, The *Tenor* of these Presents, is the Matter contain'd therein, or rather the Intent and Meaning thereof; as to do such a Thing according to the *Tenor*, is to do the same according to the true Intent of the Deed or Writing.

Tentates Panis, The Essay or Assay of Bread. *Blount.*

Tenter, A Stretcher, or Trier of Cloth, used by Dyers, &c. mentioned in the Stat. 1 R. 3. c. 8. but prohibited by 39 *Eliz.* c. 20.

Tenth, (*Decima*) Are the Tenth Part of the annual Value of every Spiritual Benefice, being

that yearly Portion or Tribute which all Ecclesiastical Livings pay to the King. They were antiently claimed by the Pope, to be due to him *Jure Divino* as High Priest, by the Example of the High Priest among the Jews, who had *Tenths* from the Levites: But they have been often granted to the King by the Pope upon divers Occasions, sometimes for one Year, and sometimes for more; and were annexed perpetually to the Crown by Stat. 26 H. 8. 1 *Eliz.* c. 4. and at last granted with the *First-Fruits*, towards the Augmentation of the Maintenance of Poor Clergymen. 1 *Ann.* c. 11. Collectors of this Revenue are to be appointed by the King by Letters Patent; and an Office is to be kept for Management of the same, in some Part of London or Westminster, &c. 3 *Geo.* c. 10. *Tenths* signify likewise a Tax on the Temporality; see the Statutes of King Ed. 6. Q. *Eliz.* and K. James.

Tents, Robbing of, in Fairs and Markets, is Felony, and punished as Burglary. 5 & 6 Ed. 6. cap. 9.

Tenure, (*Tenura*, from the Lat. *Tenere*) Is the Manner whereby Lands or Tenements are holden; or the Service that the Tenant owes to his Lord: And there can be no *Tenure* without some Service, because the Service makes the *Tenure*. 1 *Inst.* 1, 93. All Lands in the Hands of a Subject are held of some Lord or Landlord, by *Tenure* or Service: And all the Lands and Tenements in England are said to be holden either mediately or immediately of the King; and therefore he is *Summus Dominus supra omnes*. 2 *Inst.* 531. *Tenure* signifies the Estate in the Land; and *Tenures* and Services were antiently divided into twelve Parts, viz. Homage, Esuage, Knight-Service, Homage Ancestral, Burgage, Villenage, Grand Serjeanty, Petit Serjeanty, Frankalmoign, Fealty, Socage, and Rent; but the common *Tenures* at this Day are Fee-simple and Fee-tail, by the Curtesy, and in Dower, for Life, and Years, and by Copy of Court-Roll. *Vide Stat.* 12 Car. 2. *Fee*, and *Socage*.

Term, (*Terminus*) Signifies commonly the Limitation of Time or Estate; as a Lease for *Term* of Life, or Years, &c. *Bract. lib.* 2.

Termor, (*Tenens ex Termino*) Is he that holds Lands or Tenements for *Term* of Years or Life. *Litt.* 100.

Terms, Are those Spaces of Time, wherein the Courts of Justice are open, for all that complain of Wrongs or Injuries, and seek their Rights by Course of Law or Action, in order to their Redress; and during which, the Courts in Westminster Hall sit and give Judgments, &c. But the High Court of Parliament, the Chancery, and inferior Courts, do not observe the *Terms*; only the Courts of King's Bench, the Common Pleas, and Exchequer, the highest Courts at Common Law. Of these *Terms* there are Four in every Year, viz. *Hilary-Term*, which begins the 23d of January, and Ends the 12th of February; *Easter-Term*, that begins the Wednesday Fortnight after Easter-Day, and ends the Monday next after Ascension-Day; *Trinity-Term*, which begins the Friday after Trinity-Sunday, and ends the Wednesday Fortnight after; and *Michaelmas-Term*, that begins the 23d of October, and ends the 28th of November. Each *Term* has certain Returns; as *Hilary-Term* hath Four, *Easter* hath Five, *Trinity* Four, and *Michaelmas* Six: And by Statute, *Trinity-Term* was abridged four Returns; and *Michaelmas-Term* two Returns; for those *Terms* were formerly longer.

longer than now, 'till contracted by the Statutes 32 H. 8. c. 21. and 16 Car. 1. c. 6. There are four Days in *Term*, called the *Effoin-Day*; the Day of *Exceptions*; the Day of *Returns of Writs*; and Day of *Appearance*, called the *Quarto die post*: The *Term* is said to begin on the *Effoin-Day*, when one Judge sits in each Court of Law at *Westminster*, to take and enter *Effoins*; but the third Day afterwards is the first Day of the *Term*, at which Time the Judges in all the Courts sit to do the Business of the *Term*. 2 *Lill. Abr.* 569. All the *Term* in Construction of Law is accounted but as one Day to many Purposes; for a Plea that is put in the last Day of a *Term* is a Plea of the first Day of the *Term*; and a Judgment on the last Day of *Term* is as effectual as on the first Day. *Trin. 23 Car. B. R.* And for this Reason, the Judges may alter and amend their Judgments in the same *Term*, &c. It has been held, that the Courts sit not but in *Term*, as to giving of Judgments: And the Judges of B. R. and C. B. before *Trinity-Term*, 1651, did not sit longer in Court than 'till one a-Clock upon the last Day of *Term*; because they would not encourage Attornies to neglect their Clients Business to the last Day of *Term*, as too commonly they do, to the Toil of the Court and too much Hurry in Dispatch. *Mich. 22 Car. 2. Lill. 91.* *Terms* have been adjourned, and Returns of Writs and Processes confirmed. 1 *W. & M. Sess. 1. c. 4.* Where there is a *Term* intervening between the *Teste* and Return of a Writ of *Capias*, &c. or when the *Term* to which a Suit is continued is adjourn'd, and the Suit is not adjourn'd, it is a Discontinuance, &c. 2 *Hawk. 298.* The issuable *Terms* are *Hilary* and *Trinity Terms* only; so called, because in them the Issues are joined and Records made up of Causes, to be tried at the *Lent* and Summer *Affises*, which immediately follow. 2 *Lill. Abr.* 568.

The *Terms* in Scotland are *Martinmas*, *Candlemas*, *Whitsonide*, and *Lammas*, at which Times the Court of Exchequer, &c. there is to be kept. *Stat. 6 Ann. c. 6.* And the *Terms* of our Universities for Students are different in Time from the *Terms of the Courts of Law*.

Terms of the Law, Are artificial Words or *Terms of Art*, for Things particularly adapted to the Profession of the Law. 2 *Hawk. P. C.* 239.

Terms for Payment of Rent, Or *Rent-Terms*, the Four quarterly Feasts, upon which Rent is usually paid. *Cartular. St. Edmund.* 238.

Terra, In all the Surveys in *Domesday Register* is taken for arable Land, and always so distinguished from the *Pratum*, &c. *Kenner's Gloss.*

Terra affirmata, Signifies Land let to farm.

Terra Boscalis, Woody Lands, according to an Inquisition. 8 *Car. 1.*

Terra culta, Land that is tilled or manured; as *Terra inculta* is the contrary. *Mon. Angl. Tom. 1.* pag. 500.

Terra debilis, Weak or barren Ground. *Inq. 22 R. 2.*

Terra Circutabilis, Such Land as may be ploughed. *Mon. Angl. Tom. 1.* pag. 426.

Terra frutca, Is fresh Land, or that hath not been lately tilled; likewise written *Terra Frisca*.

Terra Hydota, Was Land subject to the Payment of *Hydage*. *Selden.*

Terra Lucrabilis, Land that may be gained from the Sea, or inclosed out of a Waste to a particular Use. *Mon. Angl. Tom. 1.* pag. 406.

Terra Nova, Is Land newly assarted and converted from Wood-Ground to arable; vel *Terra noviter Concessa*, &c. *Spelm.*

Terra Putura, Land in Forests held by the Tenure of furnishing Man's Meat, Horse-meat, &c. to the Keepers therein. See *Putura*.

Terra Sabulosa, Gravelly or sandy Ground. *Inquis. 10 Ed. 3.*

Terra Vestita, Is used in old Charters for Land sown with Corn.

Terra Usinabilis, Signifies tillable Land. *M.S.*

Terra Wareda, Is fallow Land. See *Warectum*.

Terra Warrenata, Land that hath the Liberty of a free Warren. *Rot. Parl. 21 Ed. 1.*

Terrage, Seems to be an Exemption from Ploughing of Land, Reaping, &c. mentioned in a Charter of K. Ed. 3.

Terrar, or *Terrier*, (*Terrarium*, *catalogus Terrarum*) Is a Land-Roll, or Survey of Lands, either of a single Person, or of a Town; containing the Quantity of Acres, Tenants Names, and such like; and in the *Exchequer*, there is a *Terrar* of all the Glebe Lands in England, made about 11 E. 3. *Stat. 18 Eliz. c. 17.*

Terrarius, A Land-holder or one who possesses many Farms of Land. *Leg. W. 1.*

Terrarius Canobialis, An Officer in Religious Houses, whose Office was to keep a *Terrier* of all their Estates, and to have the Lands belonging to the Houses exactly survey'd and registred; and one Part of his Office was to entertain the better Sort of Convent-Tenants, when they came to pay their Rents, &c. *Hist. Dunelm.*

Terre-tenant, *Tertenant*, (*Terra Tenens*) Is he who hath the actual Possession of the Land: For Example, a Lord of a Manor has a Freeholder, who letteth out his Freehold to another, to be possessed and occupied by him, such other is called the *Tertenant*. *West. Symb. par. 2. Britton, cap. 29.* In the Case of a Recognizance, Statute, or Judgment, the Heir is chargeable as *Tertenant*, and not as Heir; because by the Recognizance or Judgment, the Heir is not bound, but the Ancestor *concedit* that the Money de *Tervis*, &c. *levetur*. 3 *Rep. 12.* Plea of *Tertenancy*, in a *Scire fac.* &c. See *Cro. Eliz. 872. Cro. Jac. 506.*

Terris Bonis & Catallis rehabendis post Purgationem, A Writ for a Clerk to recover his Lands, Goods and Chattels formerly seised, after he had clear'd himself of the Felony of which he was accused, and delivered to his Ordinary to be purged. *Reg. Orig. 68.*

Terris & Catallis tentis ultra debitum levatum, Is a judicial Writ for the Restoring of Lands or Goods to a Debtor, that is distrain'd above the Quantity of the Debt. *Reg. Judic. 38.*

Terris liberandis, A Writ lying for a Man convicted by *Attaint*, to bring the Record and Process before the King, and take a Fine for his Imprisonment, and then to deliver him his Lands and Tenements again, and release him of the *Strip* and *Waste*. *Reg. Orig. 232.* It is also a Writ for the Delivery of Lands to the Heir, after Homage and Relief perform'd; or upon Security taken that he shall perform them. *Ibid. 293, 313.*

Tertian, A Measure of eighty-four Gallons; so called, because it is a third Part of a Tun. 1 *R. 3. c. 13. 2 H. 6. c. 11.*

Test, As to bring one to the *Test*, is to bring him to Trial and Examination, &c. By the Act of King Car. 2. commonly called the *Test-Act*, all Officers Civil and Military are to take the Oaths and *Test*, and if they neglect it, and execute any Office within the Words of that Statute, being legally convicted thereof upon Inform-

mation, Presentment, or Indictment, in any of the Courts at *Westminster*, or at the *Affises*, they shall forfeit 500 l. to be recovered by him who will sue for the same in any Action of Debr, &c. 25 Car. 2. c. 2.

Testament, (*Testamentum*, i. e. *Testatio mentis*) Is a Witness of the Mind: And is thus particularly defined, *Testamentum est ultima voluntatis justa Sententia, eo quod quis post mortem suam fieri vult, &c.* And of Testaments there are two Sorts, viz. a Testament in Writing; and a Testament in Words, which is called a *Nuncupative Testament*. Co. Litt. See *Will*.

Testator, (*Lat.*) He that makes a Testament or Will. *Swinb. of Wills*.

Testatum, Is a Writ in personal Actions, where the Defendant cannot be arrested upon a *Capias* in the County where the Action is laid, but is return'd *Non est Inventus* by the Sheriff; then this Writ shall be sent out into any other County where such Person is thought to be, or to have wherewith to satisfy: And this is term'd a *Testatum*, by Reason the Sheriff hath testified that the Defendant was not to be found in his Bailiwick. *Kitch. Ret. Writs* 287.

Teste, A Word generally used in the last Part of all Writs, wherein the Date is contained; which begins with these Words, *Teste meipso, &c.* if it be an original Writ; or *Teste Roberto Raymond Mil. &c.* if judicial. There is to be at least fifteen Days between the *Teste* and Return of every Process awarded from the King's Bench into any foreign County. Co. Litt. 134. See *Writs*.

Testimonial, Is a Certificate under the Hand of a Justice of Peace, Testifying the Place and Time, when and where a Soldier or Mariner landed, and the Place of his Dwelling and Birth, unto which he is to pass. 39 Eliz. c. 17. And formerly Testimonials were to be given by Mayors and Constables to Servants quitting their Services, &c. 5 Eliz. c. 4.

Testimonials of Clergy, Are necessary to be made by Persons present, that a Clergyman inducted to a Benefice hath perform'd all Things according to the Act of Uniformity; to evidence that the Clerk hath comply'd with what the Law requires on his Institution and Induction, which in some Cases he shall be put to do. *Count. Parf. Compan.* 24, 26.

Teston, or **Tesson**, Commonly called *Tester*, a Sort of Money, which among the French did bear the Value of 18 d. But being made of Brass lightly gilt with Silver, in the Reign of K. Hen. 8. it was reduc'd to 12 d. and afterwards to 6 d. *Lownd's Ess. on Coins*, pag. 22.

Textus, A Text or Subject of a Discourse, and is mentioned by several Authors to signify the *New Testament*; it was written in golden Letters, and carefully preserv'd in the Churches.

Textus magni Altaris, We read of in *Domesday* and *Cartular. S. Edmund*.

Textus Rossensis, An antient Manuscript, containing the Rights, Customs, and Tenures, &c. of the Church of *Rocheſter*, drawn up by the Bishop of that See, Anno 1114.

Thane, (From the Sax. *Thenian*, *ministrare*) Was the Title of those Persons as attended the English Saxon Kings in their Courts, and who held Lands immediately of them; and therefore in *Domesday*, they were promiscuously called *Thaini*, and *Servientes Regis*. This Appellation was in use among us after the Norman Conquest, as appears

by a certain Writ of K. Will. 1. which runs thus: *Willielmus Rex Salutat Hermannum Episcopum, & omnes Thanos, &c.* though not long afterwards the Word was diffus'd, and instead thereof these Men were called *Barones Regis*: And there were also *Thaini Minores*, likewise stiled Barons; they were Lords of Manors, and had a particular Jurisdiction within their Limits, and over their own Tenants in their Courts, which to this Day are called Courts-Baron: But this Word signifies sometimes a Nobleman; sometimes a Freeman; and sometimes a Magistrate; and more properly an Officer of the King. *Skene* saith, that it was a Name of Dignity, equal with the Son of an Earl: And *Thainus Regis* is taken for a Baron, by Sir *Edw. Coke*.

Thane-Lands, Such Lands as were granted by Charter of the Saxon Kings to their *Thanes*; which were held with all Immunities, except the threefold Necessity of Expeditions, Repairs of Castles, and mending of Bridges: *Thanage* signified also Land under the Government of a *Thane*. *Skene*.

Thascia, A certain Sum of Money or Tribute impos'd by the Romans on the Britons and their Lands. *Leg. H. 1. c. 78*.

Theft, (*Furtum*) Is an unlawful felonious Taking away of another Man's moveable and personal Goods, against the Will of the Owner: And this is divided into *Theft* simply so called, and *Petit Theft*; whereof the one is of Goods above the Value of Twelve Pence, and is Felony; and the other under that Value, called *Larceny*. *Theft* is also either open or privy *Theft*; the Civil Law judges open *Theft* to be satisfied in its Punishment by the Recompence of Four-fold; and privy *Theft*, by the Recompence of double: But the Law of England adjudges both these Offences Felony. *West. Symb. par. 2. Vide Larceny*.

Theft-bote, (From the Sax. *Thef*, i. e. *Fur*, & *Bote*, *compensatio*) Is the Receiving of a Man's Goods again from a Thief, after stol'n, or other Amends not to prosecute the Felon, and to the Intent the Thief may escape; which is an Offence punishable with Fine and Imprisonment, &c. *H. P. C. 130. See Misprision of Felony*.

Thelonium, Signifies Toll; to be exempt from which, there is a Writ called *Breve essendi quieti de Thelonio*. *F. N. B.*

Thetonnannus, The Toll-Man, or Officer who received Toll. *Cartular. Abbat. Glaston. M.S. 446*.

Themmagium, A Duty or Acknowledgment paid by inferior Tenants to be free from *Theme* or *Team*. *Ibid.* 88.

Thenicium, *Thenicii agrorum. i. e. Arborum crescentium circa agros pro Clausura eorum*, vulgarly called Hedge rows, or Dike-rows. *Lindwode*.

Thesaurus, Was sometimes taken in old Charters for *Thesaurarium*, the Treasury; and hence the *Domesday* Register preserv'd in the Treasury or Exchequer when kept at *Winchester*, hath been often called *Liber Thesauri*. *Chart. Q. Mand. Wife of Hen. 1.*

Thethinga, A Word signifying Tithing; *Thethingmannus*, a Tithing-man. *Sax.*

Thew, or **Theowe**, (*Sax.*) A Slave or Captive; Bondmen among the Saxons were called *Theowes* and *Efnes*, who were not accounted Members of the Common-wealth, but Parcels of their Master's Goods and Substance. *Spelm. Feuds, cap. 5.*

Thingus, The same with *Thanus*; a Nobleman, Knight, or Freeman. *Crompt. Jurisd.* 197.

Third

Thirdbegow, Is used for a Constable, by *Lambard* in his *Duty of Constables* pag. 6. And in the Stat. 28 H. 8. c. 10.

Thirduings, i. e. The third Part of the Corn growing on the Ground, due to the Lord for a Heriot on the Death of his Tenant, within the Manor of *Turfat*, in Com. *Hereford*. *Blount*. Ten.

Third Night Awn-hinde, (*Trium noctium Hospes*). By the Laws of *St. Edward the Confessor*, if any Man lay a Third Night in an Inn, he was called a Third Night Awn-hinde, for whom his Host was answerable, if he committed any Offence: The first Night, *Forman-night* or *Uncuth*, he was reckon'd a Stranger; the Second Night, *Twa-night*, a Guest; and the Third Night, an *Agen-hine* or *Awn-hinde*, a Domestick. *Bract. lib. 3.*

Third-penny, (*Denarius Tertius*) See *Denarius Tertius Comitatus*.

Thistle-take, In the Manor of *Halton* in the County Palatine of *Chester*, there was a Custom, that if in driving Beasts over the Common the Driver permitted them to graze or take but a Thistle, he should pay a Half-penny a Beast to the Lord of the Fee. *Reg. Priorat. de Thurgarton.*

Thoket, Fish with broken Bellies, forbid by Statute to be mix'd or pack'd with *Tale-fish*. 22 Ed. 4. c. 2.

Thorp, **Trop**, (*Sax. Villa, Vicus*) In the Beginning or End of Names of Places, signifies a Street or Village; as *Adelstrop*, &c.

Thrave of *Cozn*, (*Trava Bladi*, from the Sax. *Threav*. i. e. a Bundle) Is a Quantity of twenty-four Sheaves, or four Shocks; but in some Counties they reckon only twelve Sheaves to the Thrave. 2 Hen. 6. c. 2. King *Athelstan* gave to *St. John* of *Beverley*'s Church, four Thraves of Corn from every Plough-land in the *East-Riding* of *Yorkshire*, by Charter, Anno 923.

Threnqus, A Name antiently applied to certain Vassals, or Tenants. See *Drenches*.

Thrimla, (*Sax. Thrim*, Three) Was an old Piece of Money of three Shillings, according to *Lambard*; or the third Part of a Shilling, being a German Coin passing for 4 d. *Selden's Tit. Hon.* pag. 604.

Thrything, (*Thrythingum*) A Court consisting of Three or Four Hundreds. *Stat. Merton. 2 Inst. 99.*

Thude Weald, (*Sax.*) A Woodward, or Person that looks after the Woods.

Thwertnick, A Saxon Word, which in some old Writers is taken for the Custom of giving Entertainment to the Sheriff, &c. for Three Nights. *Rot. 11 & 12 Ric. 2.*

Tical, A Piece of Money in *China* of two Pounds sixteen Shillings and three Pence Value. *Merch. Dist.*

Tidesmen, Are certain Officers of the Custom-house appointed to watch or attend upon Ships, till the Customs are paid; and they are so called, because they go aboard the Ships at their Arrival in the Mouth of the *Thames*, and come up with the Tide.

Tigh, (*Sax. Teag*.) A Close or Inclosure, mentioned in antient Charters; which Word is still used in *Kent* in the same Sense. *Chart. Eccl. Cant.*

Tihla, (*Sax.*) Signifies an Accusation, in the Laws of *K. Canutus*.

Tiles. The Earth for Tiles is to be digged and cast up before the first of *Novemb.* yearly, and to be stirred and turned before the first of *February* following, and be wrought before the first of *March*: And every common Tile must be in Length ten Inches and a Half, in Breadth six

Inches and a Quarter, and Thickness Half an Inch and Half a Quarter; Roof-Tiles are to be thirteen Inches in Length, and of the same Thickness as the common Tiles, &c. And if any Persons put to Sale any Tiles contrary hereto, they shall forfeit double Value, and be fined. *Stat. 17 Ed. 4. c. 4.*

Tillage. (*Agricultura*) Is of great Account in Law, as being very profitable to the Commonwealth; and therefore arable Land hath the Preference before Meadows, Pastures, and all other Ground whatsoever: And so careful is our Law to preserve it, that a Bond or Condition to restrain Tillage or Sowing of Lands, &c. is void. 11 Rep. 53.

Tilting. Where one kills another in Fighting at Tilting, by the King's Command, the Accident is excusable: But if it be by such Tilting, without the Command of the King; or by Parrying with naked Swords, covered with Buttons at the Points, &c. which cannot be used without manifest Hazard of Life, it will be Felony of Man-slaughter. *H. P. C. 31.*

Timberlode, A Service by which Tenants were to carry Timber felled from the Woods to the Lord's House. *Thorn's Chron.*

Time and Place, Are to be set forth with Certainty in a Declaration; but Time may be only a Circumstance when a Thing was done, and not be made Part of the Issue, &c. 5 Mod. 286. It has been held that an impossible Time is no Time; and where a Day or Time is appointed for the Payment of Money, and there is no such, the Money may be due presently. *Hob. 189. 5 Rep. 22.* If no certain Time is imply'd by Law for the Doing of any Thing, and there is no Time agreed upon by the Parties, then the Law doth allow a convenient Time to the Party for the Doing thereof, i. e. as much as shall be adjudg'd reasonable, without Prejudice to the Doer of it. 2 Lill. Abr. 572. In some Cases, one hath Time during his Life for the Performance of a Thing agreed, if he be not hastened to do it by Request of the Party for whom it is to be done; but if in such Case he be hastened by Request, he is obliged to do it in convenient Time, after such Request made. *Hill. 22 Car. 1. B. R.* See *Bond, Month, &c.*

Time limited, For the Prosecution of Actions. *Void Limitation.*

Tinel le Roy, (*Fr.*) The King's Hall, wherein his Servants used to dine and sup. 13 R. 2. c. 3.

Tinemann, Was a Petty Officer in the Forest, who had the nocturnal Care of Vert and Venison, and other Employments in the Forest. *Leg. Canut. Reg.*

Tinet, (*Tinettum*) Is used for Brushwood and Thorns to make and repair Hedges: In *Herefordshire*, to tine a Gap in a Hedge is to fill it up with Thorns, that Cattle may not pass through it. *Chart. 21 Hen. 6.*

Tinewald, The Parliament or annual Convention of the People of the *Ile of Man*, of which this Account is given: The Governor and Officers of that Island, do usually call the twenty-four Keys, being the chief Commons thereof, especially once every Year, viz. upon *Midsummer-Day* at *St. John's Chapel* to the Court kept there, called the *Tinewald Court*; where, upon a Hill near the said Chapel, all the Inhabitants of the Island stand round about and in the Plain adjoining, and hear the Laws and Ordinances agreed upon in the Chapel of *St. John*, which are published

lished and declared unto them; and at this Solemnity the Lord of the Island sits in a Chair of State with a Royal Canopy over his Head, and a Sword held before him, attended by the several Degrees of the People, who sit on each Side of him, &c. *King's Descript. Isl. Man.*

Tinpeny, A Tribute so called, usually paid for the Liberty of Digging in *Tin-Mines*, from the Sax. *Tinnen*, *Stanneus*, & *Penig*, *Denarius*, according to *Du Fresne*: But some Writers say, it is a customary Payment to the *Tithingman* from the several *Eriburghs*, as *Tedingpeny* signified the Money paid the Sheriff by the several Tithings; for that *Tin* is only a Contraction of *Teon*, and means the number *Ten*. 'Tis mentioned in several Places in the *Monasticon* — *Non Tributa*, *non Tething-peny*, *non Tinpeny*, *exigat*. *Mon. Angl.* Tom. 1. pag. 419.

Tinstaffs, Officers appointed by the *Marshal* of the *King's Bench*, to attend upon the Judges with a Kind of Rod or *Staff* *tips* with Silver, who take into their Custody all Prisoners either committed, or turn'd over by the Judges at their Chambers, &c. See *Baston. Stat.* 1 R. 2.

Tithes, (*Decima*, from the Sax. *Teotba*, i. e. Tenth) Are the Tenth Part of the Increase yearly, arising from the Profits of Lands, and Industry of the Parishioners, payable for the Maintenance of the Parson of the Parish: They are an Ecclesiastical Inheritance, collateral to the State of the Land; and a Spiritual Duty, not released by a Release of all Demands of a Parishioner out of his Lands. 11 Rep. 13. 1 Cro. 293, 814. *Tithes* must be paid of such Things as yield an yearly Increase by the Act of God; but are not due to be paid *Jure Divino*, but *per Legem Terræ*. *Selden.* 2 *Litt. Abr.* 574. No Man had a Property in *Tithes* until the Council of *Lateran*, which was held in the Reign of our K. *John*; for 'till then there were no Parishes distinct from one another, and by Consequence no Parish-Priests who could claim any Right to the *Tithes*: But by a Canon made in the *Lateran* Council, every Person is compellable to pay *Tithes* to the Parson or Vicar of that Parish where they arise; whereas before, the Bishop of every Diocese made a Distribution of *Tithes* to Spiritual Persons for their Subsistence, to charitable Uses, and for Repairs of the Church. *Hob.* 296. Since the Statutes of Dissolution of Abbies, &c. which were made Anno 27 & 31 H. 8. *Tithes* and other Ecclesiastical Revenues have been transferred to Laymen, who are not capable to take them at Common Law; and Spiritual Profits being by those Statutes made Lay-Fees in the Hands of Temporal Men, if those Men were wrongfully kept out of their Possessions, a subsequent Statute, made the 32 H. 8. gave them Remedy to recover in the King's Temporal Courts; though that Act did not take away the Force of the Ecclesiastical Law concerning *Tithes*, but all Spiritual Persons who had any Right to *Tithes* before the Statute, might sue for the same as formerly. 11 Rep. 8, 9, 10. An *Assise* for *Tithes* is given by the Statute 32 H. 8. c. 7. And the Statute of Limitations doth not extend to an Action of Debt or *Tithes*. *Cro. Eliz.* 559. *Cro. Car.* 513. Antiently many Men were so scrupulously Careful in their Payment of *Tithes*, as they at their Deaths bequeathed Legacies, and ordered *Mortuaries* to be given to the Priest, in Lieu and Recompence of any *Tithes* which might be forgotten: But it was observ'd by Sir *Edward Coke*, that in later Times, Laymen

taking Occasion to withdraw their *Tithes*, the Statutes 27 & 32 H. 8. and other Laws were made, to inforce the Payment thereof. 2 *Inst.* 648. By the 27 H. 8. c. 20. On Complaint, by a Judge of the Ecclesiastical Court, to two Justices of the Peace (one of the *Quorum*) of any Contumacy or Misdemeanor committed by a Defendant in any Suit depending for *Tithes*, and other Dues of the Church, the Justices may commit such Defendant to Prison, there to remain without Bail till he find sufficient Surety to give due Obedience to the Process, Decrees and Sentences of the Ecclesiastical Courts. The Stat. 32 H. 8. c. 7. requires, That all Persons do duly set forth, and pay *Tithes*; and if they are not set out and paid, the Party grieved may convene those as detain them before the Ecclesiastical Judge, who has Power to hear and determine, &c. And Persons refusing Payment after Sentence, are to be committed to Prison by two Justices of Peace, on Certificate from the Judge; and if any Persons are disseised of a Parsonage or *Tithes*, made Temporal, they may have like Remedy in the Temporal Courts as for other Lands, &c. By 2 & 3 Ed. 6. c. 13. No Person shall carry away his Corn before he hath justly divided and set forth the Tenth Part, or agreed for the *Tithes* with the Parson or other Proprietor, on Pain of forfeiting treble the Value of the *Tithes* taken away; and the Owner claiming such *Tithes* may depute his Servant to view the said *Tithes*, and see that they are truly set out and severed from the Nine Parts, and the same to take away; and if any Person shall carry his Corn or Hay, before the *Tithe* is set forth, or withdraw his *Tithes*, stop the Owner, &c. from viewing or carrying away the same, upon due Proof before a Spiritual Judge, the Party shall pay double Value of the *Tithes*, besides Cost of Suit: And in Suits for subtracting or withdrawing of *Tithes*, the Ecclesiastical Judge may excommunicate Persons disobeying his Sentence, &c. The treble Damages are recoverable in the Temporal Courts, by Action of Debt, for they are given generally, not limiting where to be recovered; and the Forfeiture is to the Party grieved, though it is not given to any Person in certain by the Statute; but it cannot be demanded of Executors, because the Wrong was personal, and it was a personal Contempt of the Statute: As for the double Value, it may be recover'd in the Ecclesiastical Court; and it is equivalent to the treble Forfeiture to be recovered in the Temporal Courts, because one may sue in the Spiritual Court for the *Tithes* themselves, or a Recompence for them, and have also the double Value. 1 *Inst.* 159. 2 *Inst.* 612, 650. If the *Tithes* are set out and severed from the Nine Parts by the Owner, they are become Lay Chattels; so that if after the Severance they are carried away by a Stranger, the Remedy is in the Temporal Courts for treble the Value: And if the Owner of the Land carries them away after Severance, this is no setting forth. 1 Cro. 607. 2 *Inst.* 613. The Laws of the Church oblige the Owners of the Corn, Hay, &c. to give Notice to the Parson of the Setting forth the *Tithes*; but by the Common Law such Notice is not necessary; and the Statute gives the Parson only a Right of seeing the *Tithes* set out, but doth not oblige to Notice. 2 *Ventr.* 48. 2 *Danv. Abr.* 595. If a Person sows his Land, and before Severance the Parson of the Parish dies, the *Tithes* shall be paid to the Successor; but if the

the Corn is cut down, the Parson's Executors shall have the *Tithes*. 1 *Cro. The Stat. 13 Eliz.* Enacts that Composition for *Tithes* may be made by the concurrent Consent of the Parson, Patron, and Ordinary; and a *Modus Decimandi* may arise by Prescription from a real Composition, beyond the Memory of Man, &c. Where there is a Custom alledg'd for the Payment of *Tithes*, a *Prohibition* shall go to the Ecclesiastical Court, which may not try Customs, but the Temporal Courts; and so it is of a Prescription to pay Money in lieu of *Tithes*; but in a Prescription, except it concerns a Layman, or a Prescription merely Spiritual, &c. it is otherwise. 2 *Lev. 103.* By the 7 & 8 *W. 3. cap. 6.* small *Tithes* of or under the Value of 40 s. may be recovered before two Justices of the Peace not interested in *Tithes*, within twenty Days after Demand, and two Years after due; and the said Justices are impowered to administer an Oath to Witnesses to summon the Party, and after Appearance, or in Default thereof, to determine the Case in Writing, with Costs not exceeding 10 s. but with Liberty of Appeal to the Quarter-Sessions, whose Judgment shall be final, unless the Title of such *Tithes* come in Question: The Justices may levy the Money adjudg'd by Distress, upon Refusal ten Days after Notice, &c. And this Judgment being inrolled by the Complainant, shall not be removed by *Certiorari*; though if the Defendant insists on a *Modus*, and gives Security to pay Costs and Damages in the Courts above, which shall be given against him upon a Trial at Law, the Justices shall not proceed; but the Complainant is put to his Remedy by suing for his *Tithes* in the Courts at *Westminster*. This Statute doth not extend to the City of London, or any other Corporation, where the *Tithes* are particularly settled by Act of Parliament. The 7 & 8 *W. 3. cap. 34.* ordains, That if any Quaker refuse to pay or compound for great or small *Tithes*, &c. the two next Justices of Peace may, upon Complaint, convene him before them, and examine upon Oath the Matter of Complaint, and thereupon determine what is due to the Person complaining; and by Order under their Hands and Seals, direct the Payment in all Cases of or under 10 l. And if after the Order such Quaker shall refuse to comply, one of the Justices may by Warrant order the same to be levied by Distress, &c. subject to appeal to the Quarter-Sessions, in which Case no Warrant for Distress may be granted till the Appeal is determined. By 1 *Geo. cap. 6.* the Act of 7 & 8 *W. 3. cap. 34.* is made perpetual, and that Statute is extended to the Recovery of any *Tithes* or Right belonging to the Church, with 10 s. Costs, &c. But notwithstanding all these Statutes, *Tithes*, if of any considerable Value, are commonly sued for in the *Exchequer* by *English Bill*; except it be upon the Statute of 2 & 3 *Edw. 6.* for treble or double Value, &c. And the Manner of Payment of *Tithes* is for the most part govern'd by Custom; it is the Customs of Parishes which generally determine what are the Dues of the Parson, especially of small *Tithes*. 11 *Rep. 16.* An ancient Statute obliged the *Citizens of London* to pay yearly to their Parsons, for every 20 s. Rent of all Houses, Shops, or Warehouses, 2 s. 9 d. and so in Proportion for greater and lesser Rents: But by an Act of *Cha. 2d.* after the Fire of London, the whole *Tithes* of the Parishes in London were reduced to a Certainty,

from 200 l. *per Annum*, the greatest Incomes of Rectors, to 100 l. *per Ann.* the lowest, over and above Perquisites, Gifts, &c. to be levied by Rate and Assessment on the Inhabitants, made by the several Aldermen of Wards, Common Council-Men and Churchwardens, and in Default of Payment by Distress and Sale of Goods, by Virtue of the Lord Mayor's Warrant, and to be paid Quarterly, &c. The Sums assessed are appointed in lieu of *Tithes*, for the Maintenance of the respective Parsons, Vicars, &c. of the Parishes in the Act mentioned; and in Parishes where there are Improvements, the Improvements shall pay and allow what they formerly used and ought to pay to the several Incumbents, as Part of the Maintenance of the Parsons; and no Court or Judge Ecclesiastical or Temporal, shall have Cognisance of or determine any Controversy relating to the Sums ordained for these *Tithes*, but the Persons mentioned in the Statute 22 & 23 *Car. 2. cap. 15.*

Tithes are due of common Right to the Parson or Rector of the Parish; and are of three Kinds, *viz. Predial, Personal, and Mixt*: *Predial*, such as immediately arise from the Land, either by Manurance, or of its own Nature, as *Corn, Grain, Hay, Wood, Fruit and Herbs*; and these are due, without deducting the Costs. *Personal Tithes* are those as arise from the Labour and Industry of Man only, being the tenth Part of his clear Gains in Trade, &c. after Charges deducted; which are paid when due by Custom, tho' but seldom in England, and payable where the Party dwells, and hears Divine Service, &c. But see the Statute 2 & 3 *Ed. 6. Mix'd*, such as arise not immediately from the Ground, but proceed from Cattle and other Things that receive their Nourishment from, and are maintained out of the Land; as *Colts, Calves, Pigs, Wool, Lambs, Milk, Cheese, &c.* and are paid where they arise. 2 *Inst. 490, 649, 656.* And *Tithes* as to their Value are likewise divided into *Great* and *Small*: *Great Tithes* are *Corn, Hay, and Wood*; *small Tithes* comprehend all other *Predial Tithes* besides *Corn and Hay, &c.* as also those *Tithes* which are *Personal* and *Mix'd*: Some Things may be great or small *Tithes*, in regard of the Place; as *Hops* in Gardens are small *Tithes*, and in Fields may be great *Tithes*; and 'tis said the Quantity will turn a small *Tithe* into a great one, if the Parish is generally sown with it. 1 *Roll. Abr. 643.* 1 *Cro. 578. Wood's Inst. 162.* According to the Opinion of *Holt, Ch. Just.* where *Flax* or *Hemp* grow in Gardens, they shall be accounted small *Tithes*; but when sowed in large Quantities in Fields, that alters the Nature of those Things, and then they become great *Tithes*: But the other Judges held, that the Quantity did not alter the Nature of the *Flax*, for let that be as much or as little as it will, it is still small *Tithes*. 3 *Lev. 365. 4 Mod. 183. 3 Nels. Abr. 313.* *Great Tithes* generally belong to the Rector, and small *Tithes* to the Vicar. *Cro. Car. 20.* The particular Things for which *Tithes* are paid, and for which not, according to our Law, are the following, *viz. Acorns*, as they yearly increase, are liable to the Payment of *Tithes*; but this is where they are gathered and sold, and reduc'd to a certain Profit; not when they drop, and the Hogs eat them. 2 *Inst. 643. Heil. 27. After-math*, or *After-pasture* pays no *Tithes*, except by Custom; being the Remains of what was before tithed. 2 *Inst. 652. 2 Danv. Abr. 589. Tit. Dismes. Agistment* of

of Cattle upon Pasture Land, which hath paid no other *Tithes* that Year, pays *Tithe* for the Cattle; and if a Man breeds or buys barren unprofitable Cattle, and sells them, he shall pay for the *Agistment*; but if he depastures his Land with his own Saddle Horses, he shall pay no *Tithes*. If Ground is eat up with unprofitable Cattle of a Man's own, or others, a tenth Part of the yearly Value of the Rent of the Land, i. e. the Sum of 2 s. per Pound, is payable by the Owner of the Land, or his Tenant; though the twentieth Part is usually accepted. 1 *Roll. Abr.* 646. *Hardr.* 184. Alder Trees pay *Tithes*, notwithstanding they are above 20 Years Growth, not being Timber. *Asp* is Timber, and therefore if these Trees are above 20 Years Growth, they are *Tithe* free. *Asp* Trees are exempted, if beyond that Growth, in Places where they are used for Timber. 2 *Cro.* 199. 2 *Inst.* 643. Bark of Trees is not *Titheable*, if the Trees whereon produc'd were Timber. 11 *Rep.* 49. Barren Land, which is so of its own Nature, pays no *Tithe*; where Land is barren, and not manurable without some extraordinary Charge, in respect of such Charge, and for the Advancement of Husbandry, such Land being converted to Tillage, shall for the first seven Years after the Improvement, be discharged from *Tithes* by the Act 2 & 2 *Ed. 6. cap.* 13. But the barren Land, during the seven Years of Improvement, shall pay such small *Tithes* as have been accustomed to be paid before; and afterwards is to pay the full *Tithe* according to the Improvement: And if Land is over-run with Bushes, or become unprofitable by bad Husbandry, it cannot properly be called barren Land; for if it be grubbed, or plough'd and sow'd, it immediately pays *Tithes*. 2 *Inst.* 656. *Cro. Eliz.* 475. Beech Trees, where Timber is scarce, and these Trees are used for Building, if above 20 Years Growth to be Timber, are privileged from *Tithes*, by the Stat. 45 *Ed. 3. cap.* 3. though this Tree is not naturally Timber, for 'tis Necessity makes it so. 2 *Danv. Abr.* 589. Bees are *Titheable* for their Honey and Wax, by the tenth Measure and tenth Pound: It hath been a Question whether the tenth Swarm can be demanded for *Tithes* of Bees, because Bees are *Fera Nature*; but when the Bees are gathered into Hives, they are then under Custody, and may pay *Tithe* by the Hive or Swarm; but the *Tithe* is generally paid in the tenth part of the Honey or Wax. 1 *Roll. Abr.* 651. 3 *Cro.* 404, 559. Birch Wood is *Titheable*, though of above 20 Years Growth. 2 *Inst.* 643. Bricks pay not *Tithes*, for they are made of Parcel of the Freehold, and are of the Substance of the Earth, not an annual Increase. 1 *Cro.* 1. Broom shall pay *Tithe*; but it may be discharged by Custom, or if burnt in the Owner's House, kept for Husbandry. 2 *Danv. Abr.* 597. Calves are *Titheable*, and the tenth Calf is due to the Parson when weaned, and he is not obliged to take it before; but if in one Year a Person hath not the Number of ten Calves, the Parson is not intitled to *Tithes* in Kind for that Year, without a special Custom for it, though he may take it the next Year, throwing both Years together; and it is a good Custom to pay one Calf in seven, where there hath been no more in one Year; and where a Man sells a Calf to pay the Tenth of the Value, &c. 1 *Roll. Abr.* 648. *Raym.* 277. Cattle sold pay *Tithe*; but not Cattle kept for the Plough or Pail, which pay no *Tithe* for their Pasture, by

Reason the Parson hath the Benefit of the Labour of Plough Cattle in tilling the Ground, by the *Tithe* of Corn, and *Tithe* Milk for those kept for the Pail; yet if such Cattle bought are sold before used, or if being past their Labour, the Cows are barren, and afterwards fatted in order to sell, *Tithes* shall be paid for them; tho' if the Owner kill and spend the Cattle in his own House, no *Tithe* is due for them, being for his Provision to support him in his Labour about other Affairs, for which the Parson hath *Tithes*. Cattle feeding on large Commons, where the Bounds of the Parish are not certainly known, shall pay *Tithes* to the Parson of the Parish where the Owner lives; and if fed in several Parishes, and they continue above a Month in each Parish, *Tithes* shall be paid the two Parsons proportionably. 1 *Roll. Abr.* 646, 647, 635. *Hardr.* 35. Chalk and Chalk-pits are not *Titheable*; nor is Clay or Coal, as they are Part of the Freehold, and not Annual to pay *Tithes*. 2 *Inst.* 651. Cheese pays *Tithe* by Custom, where *Tithe* is not paid for the Milk; but if the Milk pays a *Tithe*, the Cheese pays none: And it may be a good Custom to pay the tenth Cheese made in such a Month, for all *Tithe* Milk in that Year. 1 *Roll. Abr.* 651. Chicken are not *Titheable*, because *Tithe* is paid for the Eggs. 1 *Roll. Abr.* 642. Colts pay *Tithes* in the same Manner as Calves. *Ibid.* *Conies* are *Titheable* only by Custom, for those that are sold; not for such as are spent in the House. 2 *Danv. Abr.* 583. Corn pays a *Predial Tithe*; it is *tithed* by the tenth Cock, Heap, or Sheaf, which if the Owner do not set out, he may be sued in an Action upon the Statute 2 & 3 *Edw. 6.* And if the Parishioner will not sow his Land usually sown, the Parson may bring his Action against him. 1 *Roll. Abr.* 644. 1 *Sid.* 283. 2 *Vent.* 48. Deer are not *Titheable*, for they are *Fera Nature*; though in Parks, &c. they may pay *Tithes* by Custom. 2 *Inst.* 651. Doves kept in a Dove-House if they are not spent in the Owner's House, are *Titheable*. 1 *Vent.* 5. Eggs pay *Tithe* when *Tithes* are not paid for the Young. 1 *Roll. Abr.* 642. Elm Trees being Timber, are discharged from the Payment of *Tithes*, but not if under 20 Years Growth. 2 *Inst.* 643. Fallow Ground is not *Titheable* for the Pasture in that Year in which it lies fallow, unless it remain beyond the Course of Husbandry; because it improves and renders the Land more fertile by lying fresh. 1 *Roll. Abr.* 642. Fenns being drain'd, and made manurable, or converted into Pasture, are subject to the Payment of *Tithes*. 1 *Roll. Rep.* 354. Fish taken in the Sea or common Rivers, are *Titheable* only by Custom, and the *Tithe* is to be paid in Money, and not the tenth Fish; but Fish in Ponds and Rivers inclos'd, ought to be set forth as a *Tithe* in Kind. 2 *Danv. Abr.* 583, 584. Flax pays *Tithe*; every Acre of Flax or Hemp sown shall pay yearly 5 s. for *Tithe*, and no more. 11 & 12 *W. 3. cap.* 16. Forest Lands shall pay no *Tithes* while in the Hands of the King, though such Lands in the Hands of a Subject shall pay *Tithes*; and if a Forest be disforested, and within a Parish, it shall pay *Tithes*. 1 *Roll. Abr.* 655. 3 *Cro.* 94. Fowls, as Hens, Geese, Ducks, are to pay *Tithes*, either in Eggs or the Young, according to Custom, but not in both. Turkeys are said to be exempt from *Tithes*. 2 *Danv. Abr.* 583. Fruit, Apples, Pears, Plumbs, Cherries, &c. pay *Tithes* in Kind when gathered; and ought to be set out according to the Statute.

tute. 2 *Inst.* 621. *Fruit-Trees* cut down and sold, are not *Titheable*, if they have paid *Tithe* Fruit that Year before cut. *Ibid.* 652. *Furzes*, if sold, pay *Tithe*, not if used for Fuel in the House, or to make Pens for Sheep, &c. *Wood's Inst.* 166. *Gardens* are *Titheable* as Lands, and therefore *Tithes* in Kind are due for all Herbs, Plants, and Seeds sowed in them; but Money is generally paid by Custom or Agreement. *Ibid.* *Grass* mowed is *Titheable* by Payment of the tenth Cock, or according to Custom; but for *Grass* cut in *Swarths* for Sustainance of Plough Cattle only, not made into Hay, no *Tithe* is to be paid. *Grass* or Corn, &c. when sold standing, the Buyer shall pay the *Tithe*; and if sold after cut and severed, the Seller must pay it. 1 *Roll. Abr.* 644, 645. *Wood's Inst.* 166. *Hazle, Holly, and Maple Trees, &c.* are regularly *Titheable*, although of 20 Years Growth. 2 *Danv. Abr.* 589. *Hay* pays a *Predial Tithe*; the tenth Cock is to be set out and paid, after made into Hay, by the Custom of most Places, and the Parishioners shall make the *Grass* Cocks into Hay for the Parson's *Tithe*; but if they are not obliged to make the *Tithe* into Hay, they may leave it in Cocks, and the Parson must take it, for which Purpose he may come on the Ground, &c. A Prescription to measure out and pay the tenth Acre, or Part of *Grass* standing, in lieu of all *Tithe* Hay, may be good: And if Meadow Ground is so rich that there are two Crops of Hay in one Year, the Parson by special Custom may have *Tithe* of both. 1 *Roll. Abr.* 643, 647, 950. *Headlands* are not *Titheable*, if only large enough for turning the Plough; but if larger, *Tithe* may be payable. 2 *Inst.* 652. *Herbage* of Ground is *Titheable* for barren Cattle kept for Sale, which yield no Profit to the Parson. *Wood's Inst.* 167. *Honey* pays a *Tithe*, as under Bees. *Hops* are *Titheable*, and the tenth Part may be set out after they are picked: There are several Ways of *tithing Hops*, viz. by the Hills, Pole, or Pound; in some Places they set forth the tenth Pole for *Tithes*, but my Lord Chief Just. Roll tells us, they ought not to be *tithed* before dried. 1 *Roll. Abr.* 644. *Horses* kept to sell, and afterwards sold, *Tithes* shall be paid for their Pasture; though not where Horses are kept for Work and Labour. *Hutt.* 77. *Houses* for Dwelling are not properly *Titheable*. A *Modus* may be paid for Houses in lieu of *Tithes* of the Land upon which they are built, and a great many Cities and Boroughs have a Custom to pay a *Modus* for their Houses; as it may be reasonably suppos'd that it was usual to pay so much for the Land before the Houses were erected on it. 11 *Rep.* 16. 2 *Inst.* 659. *Kids* pay a *Tithe* as Calves, the tenth is due to the Parson. *Wood* 167. *Lambs* are *Titheable* in like manner as Calves; but if they are yeaned in one Parish, and do not tarry there thirty Days, no *Tithe* is due to the Parson of that Place: If there be a Custom that the Parishioner having six Lambs or under, shall pay so much for every Lamb, and if he have above that Number, then to pay the Seventh, it is good. 3 *Cro.* 403. *Lead* may pay *Tithe* by Custom, as it does in some Counties; but it doth not without it. 2 *Inst.* 651. By Custom only *Lime* and *Lime-Kilns* are *Titheable*. 1 *Roll. Abr.* 642. *Mast* of Oak and Beech pays *Tithe*, as under *Acorns*. *Milk* is *Titheable* when no *Tithes* are paid for Cheese all the Year round, except Custom over-rules; and it is payable by every tenth Meal, not tenth Quart or Part of

every Meal; and is to be brought to the House of the Parson, &c. by Custom, in which Particular this *Tithe* differs from all others, which must be fetched by the Receiver. In some Places they pay *Tithe* Cheese for Milk, and in others some small Rate according to Custom. *Cro. Eliz.* 609. 2 *Danv. Abr.* 596. *Mills*, as there are several Sorts of them, the *Tithes* are different; the *Tithes* of Corn-Mills driven by Wind or Water, are paid in Kind every tenth Toll-Dish of Corn to the Parson of the Parish wherein the Mills are standing: But ancient Corn-Mills are *Tithe-free*, being suggested that they are very ancient, and never paid *Tithes*, &c. And it is question'd whether *Tithe* is due for any Corn-Mills, unless by Custom, because the Corn hath before paid *Tithe*; and it seems rather a *Personal Tithe* where due: The *Tithes* of Fulling-Mills, Paper-Mills, Powder-Mills, &c. are *Personal*, charged in respect to the Labour of Men, by Custom only, and are regarded more as Engines of several Trades than as Mills. 1 *Roll. Abr.* 656. 2 *Inst.* 621. *Mines* pay no *Tithes* but by Custom, being of the Substance of the Earth, and not annually increasing. 2 *Inst.* 651. *Nurseries of Trees* shall pay *Tithes*, if the Owner digs them up and makes Profit of them by selling. 2 *Danv. Abr.* 585. *Oak Trees* are privileged as Timber from the Payment of *Tithes* by the Statute of *Sylva Cadua* 45 Ed. 13. if of or above 20 Years Growth; and if Oaks are under that Age, it is the same when they are apt for Timber. *Moor* 541. *Offerings, &c.* are in the Nature of *Personal Tithes*. 2 *Inst.* 659, 661. *Orchards* pay *Tithes* both for the Fruit they produce, and the *Grass* or Grain, if any be sown or cut therein. 2 *Inst.* 652. *Parks* are *Titheable* by Custom for the Deer and the Herbage; and when dispart'd and converted into Tillage, they shall pay *Tithes* in Kind. 1 *Roll. Rep.* 176. *Partridges and Pheasants, &c.* as they are *Fera Natura*, yield no *Tithes* of Eggs or Young. 1 *Roll. Abr.* 636. *Pease*, if gathered for Sale, or to feed Hogs, pay *Tithes*; but not Green Pease spent in the House. 1 *Roll. Abr.* 647. *Pigeons* ought to pay *Tithes* when sold; and this holds good if they lodge in Holes about an House, as well as in a Dove-house; and by Custom if spent in the House, they may be *Titheable*, though not of common Right. 2 *Danv. Abr.* 583, 597. *Pigs* are *Titheable*, as Calves, *Ibid.* *Pollard-Trees*, such as are usually lopp'd, and distinguished from Timber-Trees, pay *Tithes*. *Plowd.* 470. *Quarries of Stone, &c.* are not subject to pay *Tithes*, because they are Part of the Inheritance, and *Tithes* ought to be collateral to the Land, and distinct from it. 1 *Roll.* 644. *Rakings* of Corn are not *Titheable*, for they are left for the Poor; and are properly the Scattering of the Corn whereof the *Tithes* have been paid, left after the Cocks set out are taken away. *Cro. Eliz.* 660. *Saffron* pays a *Predial* and small *Tithe*. 1 *Cro.* 467. *Salt* is not *Titheable*, but by Custom only. 2 *Danv. Abr.* *Sheep*, a *Tithe* is paid for of Lambs and Wool, and therefore they pay no *Tithe* for their Feeding. If Sheep are in the Parish all the Year, they are to pay *Tithe* Wool to the Parson; but if remov'd from one Parish to another, the Parsons of each Parish are to have *Tithe pro Rata*, where they remain 30 Days in a Parish; and if they are fed in one Parish, and brought into another to be shorn, the same *Tithing* is to be observ'd. 1 *Roll. Abr.* 642, 647. 3 *Cro.* 237. *Stubble* pays no *Tithe*, under After-

math. 2 *Inst.* 652. *Tares, Vetches, &c.* are *Titheable*; but if they are cut down green, and given to the Cattle of the Plough, where there is not sufficient Pasture in the Parish, no *Tithe* shall be paid for them. 1 *Cro.* 139. *Tiles* are no yearly Increase, and not *Titheable*. 2 *Inst.* 651. *Timber-Trees*, such as Oaks, Ashes, and Elms, and in some Places Beech, &c. above the Age of 20 Years, were discharged of *Tithes* by the Common Law, before the Statute 45 *Edw.* 3. and the Reason of it is, because such Trees are employ'd to build Houses, and Houses when built are not only fixt to, but part of the Freehold; and if these Trees stand so long 'till they become rotten and fit for Firing only, no *Tithe* is due for them, because they were once privileged; and Loppings of *Timber-Trees*, above 20 Years Growth, pay no *Tithes*, for the Branch is privileged as well as the Body of the Tree; and the Roots of such Trees are exempted as Parcel of the Inheritance. Trees cut for Ploughboor, Cart-boor, &c. shall not pay *Tithes*, although they are no Timber; but all Trees not fit for Timber, and not put to those Uses, pay *Tithes*. 1 *Roll. Abr.* 650. *Cro. Eliz.* 477, 499. *Turfs* used for Fuel are Part of the Soil, and *Tithe-free*. 2 *Inst.* 651. *Underwood* is *Titheable*, though the *Tithe* is not of annual Payment; and is set out while standing, by the tenth Acre, Pole, or Perch, or when cut down by the tenth Faggot or Billet, as Custom directs; and if he that sells the Wood doth not set out the *Tithe*, he is liable to the treble Damages by 2 *Edw.* 6. cap. 13. But if the Underwood is used for Firing in a House of Husbandry, or to burn Brick to repair the House, or for Hedging and Fencing the Lands in the same Parish, it may be discharged from *Tithe*. 2 *Inst.* 642, 643, 652. *Iob.* 250. 2 *Danv. Abr.* 597. *Warrants* where *Titheable*, see *Conies*. *Waste Ground*, where Cattle feed, is liable to the Payment of *Tithes*. 2 *Danv. Abr.* *Wood* growing in Nature of an Herb, is a *Predial* and small *Tithe*. 2 *Danv.* 594. *Wood* is generally esteem'd to be a great *Tithe*; and if *Wood-Grounds* have likewise *Timber-Trees* growing on them, and consist for the most part of such Trees, the Trees shall privilege the other Wood; but if the Wood is the greatest Part, then it must pay *Tithes* for the whole. 13 *Rep.* 13. *Wool* is a mix'd small *Tithe*, paid when clip'd; one Fleece in ten, or in some Places one in seven is given to the Parson. If there is under ten Pounds of Wool at the Shearing, a reasonable Consideration shall be paid, because the *Tithes* are due of common Right; and if less than ten Fleeces, they shall be divided into ten Parts, or an Allowance be otherwise made. All Sheep kill'd, and Sheep which die, pay *Tithe* Wool; and Neck-wool cut off for the Benefit of the Wool, but not if it is to preserve the Sheep from Vermin, &c. Also the Wool of Lambs shorn at *Midsummer*, though *Tithe* was paid for the Lambs at Mark-tide, is *Titheable*. 1 *Roll. Abr.* 646, 647. 2 *Inst.* 652. *Vide* *Tithe of Sheep*. When any thing is *Titheable* only by Custom, it may be exempted from *Tithe* by Custom, but Custom to exempt Corn, &c. from *Tithe*, will not be allowed, because for that *Tithes* are due *de jure*. *Count. Parf. Compan.* 155. See *Modus* and *Prescription*.

Tithes Extraparochial, which do not lie in any Parish, belong to the King. 2 *Rep.* 2, 44.

Tithing, (*Tithingum*, from the Sax. *Teothunge*, i. e. *Decuriam*) Is in its first Appointment the

Number or Company of ten Men with their Families, held together in a Society, all being bound for the peaceable Behaviour of each other: And of these Companies there was one chief Person who was called *Teothung-man*, at this Day *Tithing-man*; but the old Discipline of *Tithings* is long since left off. In the Saxon Times, for the better Conservation of the Peace, and more easy Administration of Justice, every Hundred was divided into ten Districts or *Tithings*; and within every *Tithing* the *Tithing-men* were to examine and determine all lesser Causes between Villages and Neighbours; but to refer greater Matters to the then Superior Courts, which had a Jurisdiction over the whole Hundred. *Paroch. Antiq.* 633.

Tithing-men Are now a Kind of petty Constables, elected by Parishes, and sworn in their Offices in the Court-Leet, and sometimes by Justices of Peace, &c. There is frequently a *Tithing-man* in the same Town with a Constable, who is as it were a Deputy to execute the Office in the Constable's Absence; but there are some Things which a Constable has Power to do that *Tithing-men* and Headboroughs cannot intermeddle with. *Dalt.* 3. When there is no Constable of a Parish, the Office and Authority of a *Tithing-man* seems to be all one under another Name. *Stat.* 13 & 14 *Car.* 2. cap. 12. See *Constable*.

Title, (*Titulus*) Is when a Man hath lawful Cause of Entry into Lands whereof another is seized, for which he cannot have his Action; and it signifies also the Means whereby a Man comes to Lands or Tenements, as by Feoffment, Fine, Last Will and Testament, &c. The Word *Title* includeth a *Right*, but is the more general Word: Every *Right* is a *Title*, tho' every *Right* is not such a *Title* for which an Action lies; so that *Titulus est justa Causa possidendi quod nostrum est*, and is the Means of holding the Lands. *Co. Lit.* 345. A Man may plead in Trespass, &c. without particularly setting forth his *Title*, where his Justification is collateral to the *Title* of the Land; so if Damages are to be recovered, and the *Title* of the Land is not in Question; and in Actions on real Contracts, where the Plaintiff shews enough to intitle him to the Action, &c. 2 *Mod.* 70. 1 *Roll. Rep.* 13. *Cro. Car.* 571. 3 *Nelf. Abr.* 325. But in Trespass for cutting Corn on Lands, the Party must set forth the *Title* which he hath to the Corn, or on Demurrer it will be judg'd ill; for the shewing that he is possessed thereof, is not sufficient without a *Title*, because the Property shall be intended to be in the Owner of the Soil. 2 *Sand.* 401. 3 *Salk.* 361. When a Person will recover any Thing from another, he must make out and prove a better *Title* than the other hath; or it will not be enough to destroy his *Title*, &c. *Hob.* 103. It is not allow'd for the Party to forsake his own *Title*, and fly upon the other's; for he must recover by his own Strength, not the other's Weakness. *Ibid.* 104. If by the Record it appears that the Plaintiff in the Cause hath no *Title*, he shall not have Judgment. *Lutw.* 1631. The Law will not permit *Titles* and Things in Entry, &c. to be granted over; and the Buying or Selling any pretended Rights or *Titles* to Lands, is prohibited by Statute as *Maintenance*. 32 H. 8. cap. 9.

Titles of Clergymen, Signify some certain Place where they may exercise their Functions. A *Title* in this Sense is the Church to which a Priest

Priest was ordained and constantly to reside: And there are many Reasons why a Church is called *Titulus*; one is because in former Days the Name of the Saint to whom the Church was dedicated was engraved on the Porch, as a Sign that the Saint had a *Title* to that Church; from whence the Church it self was afterwards denominated *Titulus*. *Concil. London. Ann. 1125.* No Persons shall be ordained without a *Title*; and this is required to keep out those from the Ministry who might otherwise for want of Maintenance, bring Disgrace upon the Church. And if a Bishop shall admit any Person into the Ministry without any *Title*, he shall maintain him 'till he prefers him to some Ecclesiastical Living; or if he refuses so to do, he shall be suspended from giving Orders for one Year. *Can. 31.* Anciently a *Title* of Clergy was no more than entering their Names in the Bishop's Roll, and then they had not only Authority to assist in the Ministerial Functions, but had a Right to a Share of the common Stock or Treasury of the Church; but since a *Title* is an Assurance of being preferred to some Ecclesiastical Benefice, a Certificate that the Clerk is provided of some Church, or Place, &c. or where the Bishop who ordains him, intends shortly afterwards to admit him to a Benefice or Curacy then void. *Count. Parf. Compan. 2, 3.*

Titinylls, An old Word for Tale-bearers. — In all Realms the *Popish* Practice hath had such Confederacy of false, forsworn, factious, and traitorous *Titinylls*, untrue to their Sovereign, &c. Letter Secr. State. 28 H. 8. to James 5. King of Scotland.

Toalia, A Towel; and there is a Tenure of Lands by the Service of Waiting with a Towel at the King's Coronation; — *Petrus Picote tenet unum Mesuag. &c. per Serjeantiam serviendi cum una Toalia ad Coronationem Regis. Inq. Ann. 12, 13. K. John.*

Tobacco, Is not to be planted in England on Pain of forfeiting 40 s. for every Rod of Ground thus planted; but this shall not extend to hinder the Planting of Tobacco in Physick Gardens. 12 Car. 2. cap. 34. And Justices of Peace have Power to issue Warrants to Constables, to search after and examine whether any Tobacco be sown or planted, and to destroy the same; which they are to do under Penalties, &c. 22 & 23 Car. 2. cap. 26. The 4 & 5 W. & M. continues the Stat. 22 & 23 Car. 2. And by a late Act, if any Person shall cut Walnut Tree Leaves, or other Leaves, (not being Tobacco Leaves) or colour them so as to resemble Tobacco; or shall sell the same mixed with Tobacco, they shall forfeit 5 s. per Pound: And the like Penalty is inflicted for exporting such Leaves, or Engines for cutting, which may be seized by the Officers of the Customs, &c. Also Servants employed therein may be committed to Gaol, or the House of Correction, for any Time not exceeding six Months, &c. 1 Geo. cap. 46.

Tod of Wool, contains twenty-eight Pounds, or two Stone; mentioned in the Stat. 12 Car. 2. cap. 32.

Toft, (*Toftum*) A Messuage, or rather a Place or Piece of Ground where an House formerly stood, but is decay'd, or casually burnt and not re-edify'd; it is a Word much used in Fines, wherein we often read *Toftum* and *Croftum*, &c. *West Symb. par. 2. Stat. 22 & 23. Car. 2.*

Toftman (*Toftmannus*) The Owner or Possessor of a *Toft*. Reg. Priorat. Lew. pag. 18.

Toile, (*Fr. i. e. Tela*) A Net to compass or take Deer, which is forbid to be used unlawfully in Parks, on Pain of 20 l. for every Deer taken therewith. 3 & 4 W. & M. cap. 10.

Tokens False, to get Money or Goods by from others, &c. See *false Tokens*.

Tol, (*Tollere*) Signifies to defeat or take away; as to *Tol an Entry* is to take away the Right of Entry. 8 Hen. 6.

Toll, (*Tolnetum, vel Theolonium*) Is a Saxon Word, and properly a Payment in Towns, Markets and Fairs, for Goods and Cattle bought and sold. It is a reasonable Sum of Money due to the Owner of the Fair or Market, upon Sale of Things *tolable* within the same. 2 Inst. 220. and it is used for a Liberty as well to take as to be free from *Toll*; of which Freedom from *Toll* the City of *Coventry* boasts an ancient Charter granted by *Leofrick* Earl of the *Mercians*, in the Time of King *Edw. the Confessor*, who at the Importunity of *Godeva*, his virtuous Lady, granted this Freedom to that City. By the ancient Law of this Land, the Buyers of Corn or Cattle in Fairs or Markets ought to pay *Toll* to the Lord of the Market, in Testimony of the Contract there lawfully made; for *Toll* was first invented that Contracts in Markets should be openly made before Witnesses; and privy Contracts were held unlawful. But the King shall pay no *Toll* for any of his Goods; and a Man may be discharged from the Payment of *Toll*, by the King's Grant. Also Tenants in ancient *Demefne* are discharged of *Toll* throughout the Kingdom, for Things which arise out of their Lands, or bought for Manurance thereof, &c. not for Merchandizes. *Horn's Mir. lib. 1. 2 Inst. 221. 2 Roll. Abr. 198.* *Toll* doth not of common Right belong to a Fair, though it hath been held, that some *Toll* is due of common Right, as appears from the Immunities of several Persons not to pay *Toll*, which proves that if it was not for those Privileges, they ought to pay *Toll* of common Right; therefore where the King grants a Market, *Toll* is due, although it is not expressed in the Grant what *Toll* is to be paid; and this from the Necessity of it, because the Property of Things sold in a Market is not alter'd without paying *Toll*. *Palm. 76. 2 Lutw. 1377. 3 Nelf. Abr. 326.* But it is said, if the King grants to a Man a Fair or Market, and grant no *Toll*, the Patentee shall have no *Toll*; for *Toll* being a Matter of private Right for the Benefit of the Lord, is not incident to a Fair or Market, as a Court of Piepowders is, which is for the Benefit of the Publick and Advancement of Justice, &c. such a Fair or Market is free from *Toll*; and after the Grant made the King cannot grant a *Toll* to such free Fair or Market, without some proportionable Benefit to the Subject: And if the *Toll* granted with the Fair or Market be outrageous, the Grant of the *Toll* is void, and the same is a free Market, &c. 2 Inst. 220. *Cro. Eliz. 559.* When the King grants a Fair, he may likewise grant that *Toll* shall be paid, though it be a Charge upon the Subjects; but then it must be of a very small Sum. *Toll* is to be reasonable, for the King cannot grant a burthensome *Toll*; and one may have *Toll* by Prescription for some reasonable Cause, but such a Prescription to charge the

Subject with a Duty of *Toll*, must import a Benefit or Recompence for it, or some Reason must be shewn why it is claimed. *Cro. Eliz.* 559. 3 *Lev.* 424. 2 *Mod.* 143. 4 *Mod.* 323. The *Toll* in Fairs is generally taken upon the Sale of Cattle, as Horses, &c. but in Markets for Grain only; and the Lord may seize until Satisfaction is made him: It is always to be paid by the Buyer, unless there be a Custom to the contrary; and nothing is *tollable* before the Sale, except it be by Custom Time out of Mind; which Custom none can challenge that claim the Fair or Market by Grant since the Reign of King *Richard* 2d; so that it is better to have a Market or Fair by Prescription than Grant. 2 *Inst.* 220, 221. At this Day, there is not any one certain *Toll* to be taken in Markets; but if that which is taken be unreasonable, it is punishable by the Stat. 3 *Ed.* 1. cap. 31. And what shall be deem'd reasonable is to be determin'd by the Judges of the Law, when it comes judicially before them. *Toll* may be said to be outrageous, where a reasonable *Toll* is due, and excessive *Toll* is taken; or when no *Toll* is due, and *Toll* is unjustly usurp'd, &c. 2 *Inst.* 222. If excessive *Toll* be taken in a Market-Town, by the Lord's Consent, the Franchise shall be seized; and if by other Officers, they shall pay double Damages, and suffer Imprisonment, &c. *Stat. Westm.* 1. 3 *Edw.* 1. Owners of Markets and Fairs are to appoint *Toll-takers* where *Toll* is to be taken, under Penalties, by the 2 & 3 *Ph. & M.* cap. 7. And he that hath the *Toll*, or Profit of the Market where no *Toll* is, ought to provide a lawful Measure of Brass, and chain it in the publick Market-place, or shall forfeit 5*l.* 22 *Car.* 2. cap. 8. See *Market*.

Port-Toll. A Prescription to have *Port-Toll* for all Goods coming into a Man's Port may be good; and this 'tis said without any Consideration. 2 *Lev.* 96. 2 *Lutw.* 1519. And it hath been adjudged, that the Liberty of bringing Goods into a Port for Safety, implies a Consideration in it self. 3 *Lev.* 37. Prescription of *Toll* for Goods landed in a Manor, or to have *Port-Toll* for all Goods coming into Port, is a good Prescription; but not to have *Toll* of Goods brought into a River, &c. 2 *Lev.* 96, 97. *Toll* may be Appurtenant to a Manor. 2 *Mod.* 144.

Toll-Travers, Is where one claimeth to have *Toll* for every Beast driven over his Ground; for which a Man may prescribe, and distrain for it in *via Regia*. *Cro. Eliz.* 710. They who claim these *Tolls* by Grant, ought to aver the Certainty of the Sum mentioned in the Grant, &c. *Palm.* 76. *Toll-Travers* being to pass a nearer Way, he that hath it is to repair the Way, because he receives Money for it. 2 *Lill. Abr.* 585.

Thorough-Toll, Is when a Town prescribes to have *Toll* for such a Number of Beasts, or for every Beast that goeth *through* their Town; or over a Bridge or Ferry, maintained at their Cost, which is reasonable, though it be for passing *through* the King's Highway, where every Man may lawfully go, as it is for the Ease of Travellers that go that Way. *Terms de Ley.* 561, 562. Persons may have this *Toll* by Prescription or Grant; but it must be for some reasonable Cause, which must be shewn, *viz.* that they are to repair and maintain a Causeway, or a Bridge, or such like. *Cro. Eliz.* 711.

Turn-Toll, A *Toll* paid for Beasts that are driven to Market to be sold, and do *return* un-

sold. 8 *Rep.* 46. There is also *In-toll* and *Out-toll* mentioned in *ancient Charters*: But if any one take *Toll* where he ought not, the Party grieved shall have an Action on the Case, or Action of Trespass, &c. 3 *Nels. Abr.* 325, 326. Of *Toll*, and Grants, Customs and Prescriptions for *Tolls*, good, and not so, see 4 *Mod.* 319. 5 *Mod.* 361. *Lutw.* 1380, 1518.

Tollage, Is the same with *Tallage*. This Word occurs in the Statute 17 *Car.* 1. cap. 15.

Toll-Booth, The Place where Goods are weighed, &c.

Toll-rozn, Is *Corn* taken for *Toll* ground at a *Mill*: And an Indictment lies against a Miller for taking too great *Toll*. 5 *Mod.* 13.

Tollhop, A small Dish or Measure by which *Toll* is taken in a Market, &c.

Tollfeffer, (*Tolcestrum*) An old Excise, or Duty paid by the Tenants of some Manors to the Lord, for Liberty to brew and sell Ale. *Cartular. Rading.* 221. *Chart.* 51 *Hen.* 3.

Tollsey, (from the Sax. *Tol*, i. e. *Tributum*, & See, *Sedes*,) Is the Place where Merchants meet, in a City or Town of Trade.

Tolt, A Writ whereby a Cause depending in a Court-Baron is removed into the County Court. *Old Nat. Br.* 4. And as this Writ removes the Cause to the County Court; so the Writ *Pone* removeth a Cause from thence into the Court of *Common Pleas*, &c.

Tolta, Signifies Extortion, any Thing exacted or impos'd contrary to Right and Justice. *Brad. Hist. Engl. Append.* pag. 235.

Tombs, Defacing of in Churches. See *Monument*.

Tomin, A Weight of 12 Grains used by Goldsmiths and Jewellers.

Tonnage, (*Tonnagium*) Is a Custom paid to the King. Vide *Tunnage*.

Torra, (Sax. *Tor*) A Mount or Hill; as *Glastenbury Torre*. *Chart. Abbat. Glaston M.S.* pag. 114.

Tort, (from the Lat. *Tortus*) Is a French Word for Injury or Wrong; and Wrong is properly called *Tort*, because it is wrested or crooked. *Co. Lit.* 158. See *De son tort*, &c.

Tortfeasor, (Fr. *Tortfaisieur*) A Wrong-doer, or Trespasser. 2 *Coke's Rep.* 383.

Toties quoties, As often as a Thing shall happen, &c. used in Deeds and Conveyances. 19 *Car.* 2. cap. 4.

Totted, A good Debt to the King, is by the foreign *Apposer* or other Officer in the *Exchequer* noted for such by writing the Word *Tot* to it: Also that which is paid shall be *totted*. — *Tort pecunia Regi debetur.* Stat. 42. Ed. 3. cap. 9. 1 Ed. 6. cap. 15.

Tourn, The Sheriff's Court so called. See *Turn*.

Tournaments, Martial Exercises frequent in former Ages, wherein the Combatants fought with blunt Weapons, and in great Companies; the Intent of them was to enure Men to the Wars. Vide *Fusts*.

Tout temps prêt & uncore est, i. e. Always was, and is at present ready; and is a Kind of Plea by Way of Excuse for him that is sued for any Debt or Duty. *Broke* 258.

Towage, (*Towagium*, Fr. *Touage*) Is the Rowing or Drawing a Ship or Barge along the Water by another Ship or Boat fastened to her; or by Men or Beasts on Land: It is also Money which is given by Bargemen to the Owner of Ground

next

next a River where they *tow* a Barge or other Vessel. *Plac. Parl.* 18. *Ed.* 1.

Town, (*Oppidum*, *Villa*) A wall'd Place or Borough: The old Boroughs were first of all *Towns*; and upland *Towns*, which are not ruled and govern'd as Boroughs, are still *Towns*, tho' inclos'd with Walls. *Finch* 80. There ought to be in every *Town* a Constable, or Tithingman; and it cannot be a *Town* unless it hath or had a Church, with Celebration of Sacraments and Burials, &c. But if a *Town* is decay'd so that it hath no Houses left, yet it is a *Town* in Law. 1 *Inst.* 115. Under the Name of a *Town*, or Village, Boroughs, and 'tis said Cities are contained, for every Borough or City is a *Town*. Where a Murderer escapes untaken in a *Town*, in the Day Time, the *Town* shall be amerced. 3 *Hen.* 7. *cap.* 1. And a *Township* is answerable for Felons Goods to the King, which may be seized by them. 1 *R.* 3. *cap.* 3. But see 31 *Ed.* 3. *cap.* 3. A Custom may be alledged in a *Town*, &c.

Trabariæ, Were little Boats, so called from their being made out of single Beams, or Pieces of Timber cut hollow. *Elorence of Worcester*, pag. 618.

Trabes In Churches, was that we now call *Branches*, made usually with Brals, but formerly with Iron. *Cowel*.

Tractus, A *Trace* by which Horses in their Gears draw a Cart, Plough, or Waggon. *Paroch. Antiq.* 549.

Trade, In general Signification is Traffick or Merchandize: Also a private Art and Way of Living. All the King's Subjects were to have a free *Trade* with *France*, *Spain*, &c. *Stat.* 3 *Fac.* 1. *cap.* 6. But by 1 *W. & M.* *cap.* 34. all *Trade* with *France*, during the *War*, and importing Goods was declared a common Nuisance, and the Commodities were to be seized and burnt; the Vessels with their Furniture, &c. to be forfeited; and landing Goods, or assisting therein, incurr'd a Penalty of 500*l.* though the Prohibition of *Trade* to *France* was taken off and repealed by 9 *Ann.* *cap.* 8. The King was enabled to prohibit all *Trade* with *Sweden*, on the intended Invasion of this Kingdom, by the late King of *Sweden*. 3 *Geo.* *cap.* 1. None of the King's Subjects may *trade* to and with a Nation of *Infidels* without the King's Leave, because of the Danger of relinquishing Christianity; and Sir *Edw. Coke* said, That he had seen a License from one of our Kings, reciting, That he having a special Trust and Confidence that such a one, his Subject, would not decline his Faith and Religion, licensed him to *trade* with *Infidels*, &c. 3 *Nels. Abr.* 331. As to private *Trades* at Common Law, none was prohibited to exercise any particular *Trade*, wherein he had any Skill or Knowledge; and if he used it unskilfully, the Party grieved might have his Remedy against him by Action on the Case, &c. By the 5 *Eliz.* a Man must serve 7 Years Apprenticeship, before he can set up any *Trade*; though it hath been resolv'd that the Statute doth not prohibit the Use of a *Trade* for a Family, but the publick Use of it in general. 11 *Rep.* 53. If a Bond or Promise restrains the Exercise of a *Trade*, though it be to a particular Place only, if there was no Consideration for it, it is void; if there be a Consideration, in such Case, it may be good: But if the Restraint be general throughout *England*, although there be a Consideration, it will be void. 2 *Lill.*

Abr. 179. Hence we see how the Law favours *Trade*, &c.

Trade, *Companies* of, and their Privileges and Advantages, see *Merchant*.

Trait, Bread of *Trait* was formerly what we now call White-bread.

Transcript, Is the Copy of any Original Writing, or Deed, &c. where it is written over again, or exemplified. *Stat.* 34 & 35 *Hen.* 8. *cap.* 14.

Transcripto pedes finis levati mittendo in Cancellariam, A Writ for certifying the Foot of a *Fine* levied before Justices in Eyre, &c. into the Chancery. *Reg. Orig.* 669.

Transcripto Recognitionis factæ coram Justiciariis itinerantibus, &c. Is a Writ to certify a Recognisance taken by Justices in Eyre. *Reg. Orig.* 152.

Transgressione, A Writ or Action of *Trespass*, according to *Fitzherbert*.

Transire, (from *Transire*) Is used for a Warrant from the Custom House, to let pass. 14 *Car.* 2. *cap.* 11.

Transitory, Is the Opposite to *Local*: *Transitory* Actions are those as may be laid in any County, or Place; such as Personal Action of *Trespass*, &c. See *Local*.

Translation, (*Translatio*) In a common Sense of the Word signifies a Version out of one Language into another; but in a more confined Acceptation, it denotes the Setting from one Place to another, and the Removal of a Bishop to another Diocese, &c. which is called *Translating*: And such a Bishop writes not *Anno Consecrationis*, but *Anno Translationis nostræ*, &c. A Bishop *translated* is not consecrated *de novo*; for a Consecration is like an *Ordination*, 'tis an indelible Character, and holds good for ever. 3 *Salk.* 72. But the Bishop is to be a new elected, &c. 1 *Salk.* 137. See *Postulation*.

Transportation, Is the Banishing or Sending away a Criminal into another Country. And by Statute, if any one convicted of Felony, shall in open Court pray to be *transported*, it may be done if the Court thinks fit. 31 *Car.* 2. *cap.* 2. The 4 *Geo.* *cap.* 11. was made for the more effectual *Transportation* of Offenders convicted of Felony, or Larceny, within the Benefit of Clergy, &c. By 5 *Geo.* *cap.* 28. Deer-Stealers may be *transported* to the Plantations, &c.

Transubstantiation, (*Transubstantiatio*) Is a Converting into another Substance: To *transubstantiate*, i. e. *Quidnam in aliam Substantiam convertito*. *Litt. Dict.* A Declaration against the Doctrine of *Transubstantiation* used in the Church of *Rome*, is required by the *Stat.* 30 *Car.* 2. *cap.* 1.

Travellers. Inn-keepers are to receive *Travellers*, and find them Lodging, Viſuals, &c. on Refusal, a reasonable Price being rendered, they may be indicted and fined; or Action of the Case lies against them. 2 *Hawk.* 225.

Traverse, (from the Fr. *Traverser*) Is the Affirming of one Thing, and the Denial of another, and is used in Law for the denying of some Matter of Fact, alledged to be done in a Declaration or Pleadings; upon which the other Side comes and says that it was done, and this makes a single and good Issue for the Cause to proceed to Trial. And the formal Words of a *Traverse* are in our French *Sans ceo*, in Latin *Abſque hoc*, and in English *without that*, &c. *Kit.b.* 227. *West Symb.* part 2. A Plea will be ill, which neither *traverseth* nor confesseth the Plain-

Plaintiff's Title, &c. And every Matter in Fact, alledged by the Plaintiff, may be *traversed* by the Defendant; but not Matter of Law, or where it is Part Matter of Law and Part Matter of Fact; nor may a Record be *traversed* which is not to be tried by a Jury. And if a Matter be expressly pleaded in the *Affirmative*, which is expressly answered in the *Negative*, no *Traverse* is necessary, there being a sufficient Issue join'd; also where the Defendant hath given a particular Answer in his Plea, to all the material Matters contained in the Declaration, he need not take a *Traverse*; for when the Thing is answered there needs no further Denial. *Cro. Eliz.* 755. *Yelv.* 173, 193, 195. 2 *Mod.* 54. If a *Traverse* contain no more than the Party hath pleaded before, it will not be good. No *Traverse* ought to be taken but where the Thing *traversed* is *Issuable*: And where one will make a *Traverse* to a Declaration, he ought to *traverse* that Part of it, the doing whereof will make an End of the Matter, when the Point is determined by the Jury. 2 *Roll. Rep.* 37. 2 *Lill. Abr.* 587. 3 *Nelf. Abr.* 355. As one *Traverse* is enough to make a perfect Issue, a *Traverse* cannot regularly be taken upon a *Traverse*, if 'tis well taken to the material Point, and goes to the Substance of the Action; but where the first *Traverse* is not well taken, nor pertinent to the Matter, there to that which was sufficiently confessed and avoided before, the other Party may well take a *Traverse* after such immaterial *Traverse* taken before: And if special Matter alledged in a foreign County in the Defendant's Plea be false, the Plaintiff may maintain his Action, and *traverse* that special Matter; and in such Case a *Traverse* on a *Traverse* hath been adjudged good. 1 *Saund.* 32. *Poph.* 101. These Rules are to be observed in *Traverses*: 1. The *Traverse* of a Thing immediately alledged, vitiates a good Bar. 2. Nothing must be *traversed* but what is expressly alledged. 3. Surplusage in a Plea doth not inforce a *Traverse*. 4. It must be always made to the substantial Part of the Title. 5. Where an Act may indifferently be intended to be at one Day or another, there the Day is not *traversable*. In Action of Trespass generally the Day is not material; though if a Matter be to be done upon a particular Day, there it is material and *traversable*. 2 *Roll. Rep.* 37. 1 *Roll. Rep.* 235. *Yelv.* 122. 2 *Lill. Abr.* 313. If the Parties are agreed one the Day for a Thing to be done, the *Traverse* of the Day is material; but where they are not agreed on the Day, it is otherwise; and though 'tis proved to be done on another Day, 'tis sufficient. *Palm.* 280. Per *Holt Ch. Just.* Where a *Traverse* goes to the Matter of a Plea, &c. all that went before is waved by the *Traverse*; and if the *Traverse* goes to the Time only, it is not waved. 2 *Salk.* 642. In Action of Trespass, a particular Place, and Time, were laid in the Declaration, and in the Plea there was a *Traverse* as to the Place, but not as to the Time: On Averment that it was *eadem Transgressio*, the Plea was held good. 3 *Lev.* 227. 2 *Lutw.* 1452. Where a Plea in Justification of a Thing is not local, a *Traverse* of the Place is wrong. 2 *Mod.* 270. The Substance and Body of a Plea must be *traversed*. *Hob.* 232. But a *Traverse* that a Person died seised of Land in Fee modo & forma as the Defendant had declared, was adjudged good. *Hutt.* 125. A Lord and Tenant differ in the Services, there the Tenure

and not the Seisin shall be *traversed*; but if they agreed in the Services, the Seisin and not the Tenure is *traversable*; and it is a general Rule, that the Tenant shall never *traverse* the Seisin of the Services without admitting the Tenure. *March.* 116. 3 *Nelf. Abr.* 361. That which is not material nor *traversable*, is not admitted when it is alledged, and not *traversed*. 2 *Salk.* 561. But the Omitting a *Traverse* where it is necessary, is Matter of Substance. 2 *Mod.* 60. And a *Traverse* of a Debt is ill when a Promise is the Ground of the Action; which ought to be *traversed*, and not the Debt. *Leon.* 252. A *Traverse* should have an *Inducement* to make it relate to the foregoing Matter. And 'tis no good Plea for the Plaintiff to reply that a Man is alive who is alledged to be dead, without *traversing* that he is not dead 2 *Lill.* 3 *Salk.* 357. It is said that where a *Traverse absque hoc* comprizes the whole Matter generally, it may conclude & de hoc pon. se super Patriam; but when it *traverses* a particular Matter, the Conclusion ought to be with an Averment, &c. 1 *Salk.* 4.

Traverse of an Indictment or Presentment, Is to take Issue upon, and contradict or deny some chief Point of it: As in a *Presentment* against a Person for a Highway overflow'd with Water, for Default of scouring a Ditch, &c. he may *traverse* the Matter, that there is no Highway, or that the Ditch is sufficiently scoured; or otherwise *traverse* the Cause, viz. That he hath not the Land, or he and they whose Estate, &c. have not used to scour the Ditch. *Lamb. Eiren.* 521. *Book Entr.*

Traverse of an Office, Is to prove that an Inquisition made of Lands or Goods is defective and untruly made. No Person shall *traverse* an Office, unless he can make to himself a good Right and Title: And if one be admitted to *traverse* an Office, this Admission of the Party to the *Traverse*, doth suppose the Title to be in him, or else he had no Cause of *Traverse*. *Vaugh.* 64. 2 *Lill. Abr.* 590, 591.

Traversum, Signifies a Ferry: It is mentioned in the *Monasticon*. Tom. 2. pag. 1002.

Trawlermen, A Kind of Fishermen on the River Thames, who used unlawful Arts and Engines to destroy Fish, of which some were term'd *Tinkermen*, others *Hebbermen*, and *Trawlermen*, &c. And hence comes to *trawl* or *trawl* for Pikes. *Stow's Surv. Lond.* pag. 19.

Traylbaston, Commissions in the Reign of King Edw. 1. See *Justices of Traylbaston*.

Traytor, (*Traditor, Proditor*) A State-Offender, Betrayor, &c.

Trayterous Position, Of taking Arms by the King's Authority against his Person, and those that are commissioned by him, is condemned by the Statute 14 Car. 2. cap. 3.

Treason, (from the Fr. *Trahir*, to betray; and *Trabison* the Betraying, contracted into *Treason*) the Latin Word for which used in Law is *Proditio*, is divided into High *Treason*, *Alta Proditio*, and Petit *Treason*, *Proditio parva*: And there is Mention of *Accumulative* and *Constructive* *Treason* in some of our Statutes. *High* *Treason* is defined to be an Offence committed against the Security of the King or Kingdom; and as all *Treasons* are Felony, therefore the Word *Proditorie* must be used in the Indictment for *Treason*, to distinguish it. 3 *Inst.* 4, 15. At Common Law there were different Opinions concerning *High* *Treason*, and before the Statute 25 Edw. 3. *Treason* was a very

very uncertain Crime; for the Killing of the King's Brother, or even of his Messenger, was taken to be included in it; so when Acts tended to diminish the Dignity of the Crown, and where a Man grew popular, this was construed to be incroaching Royal Power, and held to be *Treason*; so that by the Excess of the Times, any Crime by aggravating the Circumstances of it, was heightened into *Treason*: Wherefore this Statute was made to determine what should be *Treason*; and since the Making thereof, there can be no constructive *Treason*, i. e. Nothing can be construed to be *Treason*, which is not literally specified in that Act; nor may this Statute be construed by Equity, because it is a declarative Law, and one Declaration ought not to be a Declaration of another; besides it was made to secure the Subject in his Life, Liberty and Estate, which by admitting Constructions to be made of it, might destroy all. 1 *Hawk. P. C.* 34. 3 *Salk.* 358. The Statute 25 *Ed. 3. c. 2.* (reciting that divers Opinions having been, what Cases should amount to High *Treason*) enacts and declares, That if a Person doth compass or imagine the Death of the King, Queen, or their eldest Son and Heir; or if he do violate and deflower the King's Wife, or his eldest Daughter unmarried, or the Wife of the King's eldest Son; or if he levy War against the King in his Realm, or adhere to his Enemies, give them Aid and Comfort in the Realm, or elsewhere, and thereof be provably attainted of open Deed; and if a Man counterfeit the King's Great or Privy Seal, or his Money, or bring false Money into the Kingdom, like to the Money of England, to make Payment therewith in Deceit of the King and his People; or if he kill the Chancellor, Treasurer, or any of the King's Justices of either Bench, Justices of Assize, &c. being in their Places doing their Offices; these Cases are to be adjudged *Treason*: And if any other Case happen before the Justices, supposed to be *Treason*, they shall not proceed to Judgment 'till it be declared by the King and Parliament whether it ought to be judged *Treason*, or not. 25 *Ed. 3.* It was made High *Treason* to wish or desire, by Words or Writing, or to imagine the Death of the King, Queen, or their Heir apparent; or to publish, that the King was an Heretick, Schismatick, Infidel, &c. by 26 *H. 8. c. 13.* And to endeavour to depose the King, or affirm by Writing that he is an Usurper, Tyrant, &c. was declared *Treason* by the 1 *Ed. 6. c. 12.* But these are repealed by 1 *Mar.* which enacts, That no Act, Deed or Offence, shall be deemed or adjudged *Treason*, but such as are declared and expressed to be so by the 25 *Ed. 3.* concerning *Treasons*. 1 *Mar. Sess. 1. c. 1.* All *Treasons* were settled by the Stat. 25 *Ed. 3. c. 2.* And by 1 *Mar. c. 1.* that Act was re-inforced and confirmed, and made the only Standard of *Treason*; the 1 *Mar.* takes away the Power of the King and Parliament to adjudge any Thing else to be *Treason*, than what is declared to be such therein: So as no Crime is at this Day High *Treason*, Petit *Treason*, or Misprision of *Treason*, unless it be declared by 25 *Ed. 3.* or by some Statute since the 1 *Mar. c. 1.* All other Statutes made between those two Acts concerning High *Treason* are abrogated; but since 1 *Mar.* many Offences are made High *Treason* by Statute, which were not so before; as relating to the Pope, Popish Priests and Papists, the Protestant Succession, &c. And to say

that the King is a Papist, or that he intends to introduce Popery, intending Death or bodily Harm, or a Restraint of the King's Person; or to incite an Invasion, &c. and such Intentions declared by Printing, Writing or Speaking, the Offenders shall be adjudged Traitors. 13 *Car. 2. c. 1.* Persons sending any Arms, Powder, Masts, Cordage, &c. to France, during the late War, were declared Traitors, by 3 & 4 *W. & M. c. 13.* Corresponding with the pretended Prince of Wales, or remitting him Money, is made High *Treason*. 13 *W. 3. c. 3.* And if any one shall maliciously by Writing or Printing, declare that the King is not lawful King, or that the Pretender hath any Title to the Crown, he shall be guilty of *Treason*. 4 & 5 *Ann. c. 3.* Officers or Soldiers of this Realm, holding Correspondence with any Rebel, or Enemy to the King, or giving any Advice, Information by Letter, Message, &c. is declared *Treason* by the 2 & 3 *Ann.* And if a Subject of Great Britain or Ireland shall enlist himself a Soldier, with Intent to go beyond Sea, to serve any foreign Prince or State, he shall suffer and forfeit as in *Treason*. 12 *Ann. &c.* These are the chief of our Statutes antient and modern, declaring what Offences shall be *Treason*; and *Treasons* committed out of the Realm may be tried in B. R. as if the Offence had been done in the County of Middlesex; also they may be inquired of and tried in such County as the King thinks fit, &c. A Party within one Year after Outlawry for *Treason*, may surrender himself to the Chief Justice of England, and traverse the Indictment; and none shall be attainted of *Treason* but by the Testimony of Two Witnesses, &c. by Stat. 35 *H. 8. c. 2.* 5 & 6 *Ed. 6. c. 11.* All Trials for High *Treason* shall be according to the Course of the Common Law, and not otherwise. 1 & 2 *Ph. & Mar. c. 10.* And Persons indicted for *Treason* are to have a Copy of the Indictment five Days before Trial, to advise with Counsel; and shall be admitted to make a full Defence by Counsel learned in the Law, and by lawful Witnesses, &c. and there must be Two Witnesses to the same Overt-Act, or two Acts of the same *Treason*, produc'd Face to Face, to make out the *Treason* against them. 7 *W. 3. c. 3.* Offenders guilty of High *Treason* by being concern'd in the Rebellion in the first Year of K. Geo. 1. were to be tried before such Commissioners of Oyer and Terminer and Gaol-Delivery, and in such County as his Majesty by any Commission under the Great Seal should appoint, by lawful Men of the same County, as if the Fact had been there committed: This extended only to Persons actually in Arms. 1 *Geo. 1. c. 33.* All are Principals in High *Treason*; and on Attainder of *Treason*, the Blood of the Criminal is corrupted; he shall be drawn, hang'd and quartered; and forfeit his Lands and Goods to the King, &c.

Treason by the Stat. 25 *Ed. 3.* in compassing and imagining the Death of the King, must be manifested by some Overt-Act, as by providing Arms to do it, consulting to levy War against him, writing Letters to excite others to join in it, assembling Persons in order to imprison or depose the King, or to get him into their Power, &c. these Acts are sufficient to prove that one compassed or imagined the Death of the King, and to make a Man guilty of High *Treason*. 3 *Inst. 6. 12.* It has been a very great Question whether Words spoken can amount to High *Treason*: But it was resolv'd in the Trial of the Regicides, that though

though a Man cannot be indicted of High *Treason* for Words only; yet if he be indicted for compassing the King's Death, these Words may be laid as an Overt-Act, to prove that he compassed the Death of the King; and to support this Opinion, the Case of a Person was cited who was indicted of *Treason Anno 9. Car. 1.* for that he being the King's Subject at *Lisbon* used these Words; *I will kill the King, (innuendo King Charles) if I may come to him;* and afterwards he came into *England* for that Purpose; and two Merchants proving that he spoke the Words, for that his traitorous Intent and the wicked Imagination of his Heart was declared by these Words, it was held to be High *Treason* by the Common Law, and within the Statute of the 25 *Ed. 3. cap. 2. Cro. Car. 242. 1 Leo. 57.* Deliberate Words, which shew a direct Purpose against the King's Life, will amount to an Overt-Act of compassing or imagining the King's Death; as the Compassing or Imagining the Death of the King is the *Treason*, Words are the most natural Way of expressing the Imagination of the Heart, and may be good Evidence of it: And any external Act which may be a Manifestation of such Imagination, is an Overt-Act; but although Words may be an Overt-Act of *Treason*, they must be so certain and positive as plainly to denote the Intention of the Speaker, and be laid with an Averment that they were spoken *de Rege, &c. 1 Hawk. P. C. 40. 2 Salk. 631. 3 Mod. 52.* The Maxim, That no Words can amount to *Treason*, at this Day, is not generally true; and notwithstanding the Objection made against Words being high *Treason*, from the Stat. 1 *M. cap. 1.* wherein it is said, that many honourable Persons and others of good Reputation, had then of late for Words only suffered shameful Death, that the Severity of such like dangerous and painful Laws should be abolished: It was enacted; That no Offence made *Treason* by Words, Writing, Cyphering, &c. should be adjudged *Treason*: It appears from the next Part of the Preamble of the said Statute, that it is applicable only to the Statutes in the Time of King *Hen. 8.* which made bare Words High *Treason*. And in the first Edition of *Hale's Pleas of the Crown* it is twice said, that it hath been adjudged that Words are an Overt-Act; though in the latter Edition it is said, that Compassing by bare Words is not an Overt-Act, &c. 1 *Hawk. 41.* Ever since the Revolution, it has been the constant Practice, where a Person by *treasonable* Discourses, has manifested a Design to murder or depose the King, to convict him upon such Evidence: And Chief Justice *Holt* was of Opinion, That express Words were not necessary to convict a Man of High *Treason*; but if from the Tenor of his Discourse, the Jury were satisfied he was engaged in a Design against the King's Life; this was sufficient to convict the Prisoner. *State Trials, Vol. 4. pag. 172.* Words of Persuasion to kill the King, are Overt-Acts of compassing his Death; and it hath been adjudged, that he who intendeth by Force to prescribe Laws to the King, and to restrain him of his Power, doth intend to deprive him of his Crown and Life; that if a Man be ignorant of the Intention of those who take up Arms against the King, if he join in any Action with them, he is guilty of *Treason*; and that the Law construesth every Rebellion to be a Plot against the King's Life, and a Deposing him, because a Rebel would not suffer that King to reign and live,

who will punish him for Rebellion. *Moor 620. 2 Salk. 63. 3 Nelf. Abr. 365.* If Words are set down in Writing, and kept privately in one's Closet, they are not an Overt-Act of *Treason*, except the Words are published. *Kel. 20.* But it has been held, that *treasonable* Matter put in Writing, *Scribere est agere*; and though it was not published but sent in a Box to the King, it shewed the Intent of the Party to be High *Treason. 2 Roll. Rep. 88.* Under the Head of compassing and imagining the King's Death, Intention of *Treason* proved by Circumstances, is High *Treason*: The Law takes Notice of Intentions to commit *Treason*, and Men's Actions are govern'd by their Intentions, &c. 1 *Inst. 140. 5 Mod. 206.* For a Man to say, That he will be King after the King's Death, hath been adjudged *Treason*: And so to prophesy when the King shall die; for this may imply Knowledge of a Conspiracy. *Roll. Rep. 88.* There must be a Compassing, Intent or Imagination to kill the King, to make the Offence *Treason*; the Killing him *per nfortunium*, as Sir *Wa. Tyrrel* killed King *Will. 2.* by the Glance of an Arrow in *New Forest*, is not *Treason*: And though by the antient Law, if a Madman killed or offered to kill the King, it was held to be *Treason*; by the Stat. 25 *Ed. 3.* by Force of the Words *Compass or Imagine*, he that is *Non Compos Mentis*, and totally deprived of all Compassings and Imaginations, cannot commit High *Treason*; but it must be an absolute Madnefs, and total Deprivation of Memory. 3 *Inst. 6.* If the Husband of a Queen regent conspire her Death; or a Queen Consort shall conspire the King's Death, either of these Acts are *Treason*: And although the Compassing the Death of the Queen Consort be *Treason*, by the 25 *Ed. 3.* this must be intended during the Marriage; and it doth not extend to a Queen Dowager. 3 *Inst. 8.* And the eldest Son and Heir of the King, that is living, is intended by the said Act, though he was not the first Son; but if the Heir apparent to the Crown be a collateral Heir, he is not within the Statute; nor is a Conspiracy against such collateral Heir, *Treason* by this Act. *Ibid.* Also Violating the Queen Consort is High *Treason*, and her yielding and consenting to it is *Treason*; but this doth not affect a Dowager Queen: So likewise Violating the Wife of the Prince is *Treason* only during the Coverture. 3 *Inst. 9.* And the eldest Daughter of the King is such a Daughter as is eldest not married, at the Time of the Violation, which will be *Treason*, although there was an elder Daughter than her, who died without Issue; for now the Elder alive has a Right to the Inheritance of the Crown, upon Failure of Issue Male: And violating the Queen's Person, &c. was High *Treason* at Common Law, by Reason it destroyed the Certainty of the King's Issue, and consequently rais'd Contention about the Succession. *H. P. C. 16.* By the Common Law, *Levying War against the King* was *Treason*: But, as in Cases of High *Treason*, there must be an Overt-Act; a Conspiracy or Compassing to levy War is no Overt-Act, unless a War is actually levied; though if a War is actually levied, then the Conspirators are all Traitors, although they are not in Arms: And a Conspiracy to levy War will be Evidence of an Overt-Act to maintain an Indictment for Compassing the King's Death; but if the Indictment be for levying War only, Proof must be made that a War was levied, to bring the Offender under this Clause of the Statute

25 Ed. 3. 3 Inst. 8, 9. H. P. C. 14. If Two or more conspire to levy War, and one of them alone raises Forces; this shall be adjudged *Treason* in all. Dyer 98. And Persons raising Forces for any publick End or Purpose, and putting themselves in a Posture of War, by chusing Leaders, and opposing Constables or Guards, &c. is High *Treason*: Some Time ago there was a great Riot in London by the Apprentices there, some whereof being imprisoned, the Rest conspired to kill the Lord Mayor, and release their Comrades; and in order to it, to provide themselves with Armour, by Breaking open two Houses near the Tower; they marched with a Cloke on a Pole instead of an Ensign, towards the Lord Mayor's House, and in the Way meeting with Opposition from the Sheriffs, resisted them, this was held Levying of War and *Treason*. Trin. 37 Eliz. Sid. 358. Those who make an Insurrection in order to redress a publick Grievance, whether it be a real or pretended One, are said to levy War against the King, although they have no direct Design against his Person; as they are for doing that by private Authority, which he by publick Justice ought to do, which manifestly tends to a Rebellion: For example; Where great Numbers by Force endeavour to remove certain Persons from the King, or to lay violent Hands on a Privy Councillor, or revenge themselves against a Magistrate for executing his Office, or to deliver Men out of Prison, expel Foreigners, or to reform the Law or Religion, to pull down all Bawdy-houses, or throw down all Inclosure in general, &c. But where a Number of Men rise to remove a Grievance to their private Interest, as to pull down a particular Inclosure, they are only Rioters; for there is a Difference between a Pretence that is publick and general, and one that is private or particular. 3 Inst. 9. H. P. C. 14. Kel. 75. 1 Hawk. P. C. 37. It was resolved by all the Judges of England in the Reign of King Hen. 8. That an Insurrection against the Statute of Labourers, for raising their Wages, was a Levying of War against the King; because it was generally against the King's Law, and the Offenders took upon them the Reformation thereof. Read. Statutes. Vol. 5. pag. 150. Not only such as directly rebel and take up Arms against the King, but also those who in a violent Manner withstand his lawful Authority, or attempt to reform his Government, do levy War against him; and therefore to hold a Fort or Castle against the King's Forces, or keep together armed Men in great Numbers against the King's express Command, have been adjudg'd a levying War and *Treason*: But those who join themselves to Rebels, &c. for fear of Death, and return the first Opportunity, are not guilty of this Offence. 3 Inst. 10. Kel. 76. To succour or adhere to the King's Enemies, give them Comfort or Relief, or for any Persons to be in Counsel with others to levy any seditious Wars, are High *Treason*: And the Delivery or Surrender of the King's Castles or Forts, by the Captains thereof, to the King's Enemy, within the Realm or without, for Reward, &c. is an Adhering to the King's Enemies, and *Treason* by the 25 Ed. 3. A Lieutenant of Ireland let several Rebels out of Dublin-Castle, and discharged some Irish Hostages which had been given for Securing the Peace; and for this he was attainted of High *Treason* in adhering to the King's Enemies. 33 H. 8. 1 Leon. Adhering

to the King's Enemies out of the Realm is *Treason*; and one who was beyond Sea having solicited a foreign Prince to invade the Kingdom, was adjudged guilty of High *Treason*, and triable by the Statute 35 H. 8. But Adherence out of the Realm must be alledged in some Place in England. 3 Inst. 10. H. P. C. 14. Dyer 298, 310. It has been adjudg'd, that Adhering to the King's Enemies is an Adhering against him; and that English Subjects joining with Rebel Subjects of the King's Allies, and fighting with them under the Command of an Alien Enemy Prince, is *Treason* in Adhering to the King's Enemies; and Cruising in a Ship with Intent to destroy the King's Ships, without doing any Act of Hostility, is an Overt-Act of Adhering, Comforting and Aiding; for where an Englishman lifts himself and marches, this is *Treason* without coming to Battle, or actual Fighting. 2 Salk. 634. An Indictment for Levying of War, or Adhering to the King's Enemies generally, without shewing some particular Instances, is not good; because of these Words, viz. *And thereof shall be proveably attainted by Overt-Deed*, which follow and are connected to the *Treasons* of Compassing the King's Death, Levying War, and Adhering to the King's Enemies; and as these *Treasons* are several and distinct *Treasons*, one of them cannot be made an Overt-Act of another. *Ibid.* There is no Necessity expressly to alledge that Adherence was against the King; but the Special Manner of Adherence must be set forth: And it is said, that the Succouring a Rebel, fled into another Realm, is not within the Statute; for a Rebel is not properly an Enemy, and the Statute is taken strictly. 1 Hawk. 38. Subjects of the King, in open War or Rebellion, are not the King's Enemies, but Traitors; and if a Subject join with a foreign Enemy, and come into England with him, if he be taken Prisoner, he shall not be ransomed or proceeded against as an Enemy, but as a Traitor to the King: On the other Hand, an Enemy coming in open Hostility into England, and taken, shall be either executed by Martial Law, or ransomed; for he cannot be indicted of *Treason*, because he never was within the Ligeance of the King. 3 Inst. 11. By the Word *Proveably*, a Person ought to be convicted of the *Treason* on direct and manifest Proofs, and not upon Presumptions or Inferences; and the Word *Attainted* necessarily implies, That the Prisoner be proceeded against and attainted according to due Course of Law; wherefore if a Man be killed in open War against the King, or be put to Death arbitrarily, or by Martial Law, and be not attainted of *Treason* according to the Common Law, he forfeits nothing, for which Cause some Persons killed in open Rebellion against the King, have been attainted by Act of Parliament, *Ibid.* 12. On a Judgment for High *Treason*, Error was brought, for that the Indictment did not conclude *contra Ligeantiam*, &c. Now though all the particular Facts of the *Treason* were fully expressed, so that it appeared that it must be *contra Ligeantiam sue debitum*, yet the Judgment was reversed. 3 Lev. 396. Upon a Writ of Error to reverse an Attainder in *Treason*, because the Party convicted was not asked what he had to say why Judgment should not be given against him, the Attainder was reversed; for he might have a Pardon, or some Matter to move in Arrest of Judgment. 2 Salk. 630. 3 Mod. 265. And the Omission of any necessary Part of the Judgment

ment for *Treason*, is Error sufficient to reverse an Attainder; as it is more severe and formidable in *Treason*, than for any other Crime. 2 *Salk.* 632. As to the *Counterfeiting the King's Seal*, this was *Treason* by Common Law; and the Statute 25 *Ed.* 3. mentions only the Great Seal and Privy Seal; for the Counterfeiting of the Sign Manual or Privy Signet, is not *Treason* within that Act, but by 1 & 2 *P. & M.* c. 6. Those who aid and consent to the Counterfeiting of the King's Seal are equally guilty with the Actors: But an Intent or Compassing to counterfeit the Great Seal, if it be not actually done, is not *Treason*; there must be an actual Counterfeiting, and it is to be like the King's Great Seal. 3 *Inst.* 15. *S. P. C.* 3. *H. P. C.* 18. And this Branch of the Statute does not extend to the Affixing the Great Seal to a Patent, without a Warrant for so doing; nor to the Rasing any Thing out of a Patent, and adding new Matter therein; or to the Taking off the Wax impressed by the Great Seal from one Patent, and fixing it to another; yet this, though it be not a Counterfeiting, has been adjudg'd a Mispri-son of the highest Degree: And a Person guilty of an Act of this Nature, with Relation to a Commission for levying Money, &c. had Judgment to be drawn and hanged. 2 *H.* 4. 3 *Inst.* 16. *Kel.* 80. At Common Law, *Forging of the King's Money* was *Treason*, as *Counterfeiting* it is by the Stat. 25 *Ed.* 3. Forging or Counterfeiting foreign Money made current here by Proclamation, is likewise High *Treason* by 1 *Mar.* c. 6. And if not current here, it is Mispri-son of *Treason*. Counterfeiting the King's Coin, or impairing or lightening it by Clipping, &c. is *Treason*; but it shall work no Corruption of Blood. 18 *Eliz.* c. 1. And as those who coin Money without the King's Authority are guilty of *Treason*; so are those that have Authority to do it, if they make it of greater Alloy, or less Weight than they ought. 3 *Inst.* 17. 2 *Inst.* 577. *H. P. C.* 20. *Treason* in making Stamps, Dyes, &c. for coining and colouring Metal, &c. See 8 & 9 *W.* 3. and *Coin.* Bringing False Money into this Kingdom, counterfeited like the Money of England, knowing it to be false, is *Treason* by the 25 *Ed.* 3. In this Case it must be counterfeited, according to the Likeness of English Money, and is to be knowingly brought over from some foreign Nation, not from any Place subject to the Crown of England; and must be uttered in Payment. 3 *Inst.* 18. The Killing of the King's Chancellor, Treasurer, Justices of either Bench, &c. declared to be *Treason*, relates to no other Officers of State besides those expressly named; and to them only when they are in actual Execution of their Offices, representing the Person of the King; and it doth not extend to any Attempt to kill, or Wounding them, &c. 3 *Inst.* 18, 38. *H. P. C.* 17. See *Mispri-son*.

Petit Treason; Is where one, out of Malice, takes away the Life of a Subject to whom he owes special Obedience: And is called *Petit Treason*, in respect to *High Treason*, which is against the King. 3 *Inst.* 20. It may be committed where a Servant kills his Master, a Wife her Husband, or a Secular or Religious Person killeth his Prelate or Superior. 25 *Ed.* 3. c. 2. And Aiders, Abettors, and Procurers, are within the Act; but if the Killing is upon a sudden falling out, or *Se Defendendo*, &c. it is not *Petit Treason*; for Persons accused of *Petit Treason* shall be adjudg'd Not guilty, or Principal and Accessary, according to the Rules of

Law in other Cases. *H. P. C.* 24. *Petit Treason* is committed against the Head, though not against the supream Head; and if a Servant kills his Mistress, or the Wife of his Master, she is Master within the Letter of the Statute, and it is *Petit Treason*: But this Statute is so strictly construed, that no Case which cannot be brought within the Meaning of the Words of it, shall be punished by it; and therefore if a Son kill his Father, he shall not be tried for *Petit Treason*, except he served his Father for Wages, &c. in which Case he shall be indicted by the Name of a Servant; and yet the Offence is more heinous by far in a Child than a Servant. 3 *Inst.* 20. *H. P. C.* 23. 11 *Rep.* 34. A Servant procured another to kill his Master, who killed him in the Servant's Presence; this was *Petit Treason* in the Servant, and Murder in the other; if the Servant had been absent, the Crime would not have been *Petit Treason*, but Murder, to which he would have been accessary. 3 *Inst.* 20. *Mocr.* 91. Where a Servant intended to kill his Master, and laid in Wait for that Purpose while he was his Servant, but did not do it 'till he had been a Year out of his Service; it was adjudged *Petit Treason*. *H. P. C.* 23. A Maid-Servant and a Stranger conspired to rob the Mistress, and in the Night the Servant opened the Door and let in the Stranger into the House, who killed her Mistress, she lighting him to her Bed, but neither saying nor doing any Thing, only holding the Candle; and this was held Murder in the Stranger, and *Petit Treason* in the Servant. *Dyer.* 128. If a Wife and a Stranger kill the Husband, it is *Petit Treason* in the Wife, and Murder in the Stranger: And so it is of an Ecclesiastick Person; if he kills his Prelate, or Superior. *Dalt.* 337. If a Wife and her Servant conspire to kill the Husband, and appoint Time and Place for it, but the Servant alone in the Absence of the Wife killeth him; it shall be *Petit Treason* in both: And if the Wife procure a Servant to kill the Husband, both are guilty of *Petit Treason*; also if a Stranger procures a Wife or Servant to kill the Husband or Master, he may be indicted as accessary to *Petit Treason*. *Dyer.* 128, 332. *Crompt.* 41. Where the Wife and another who was not her Servant, conspired the Death of the Husband, the Indictment was that the Wife *Pro-ditorie*, and the other Person *Felonice* gave him Poison, &c. whereof he died: And the Wife being acquitted on the Indictment, she brought an Action against her Son-in-Law for a malicious Prosecution, and recovered Damages; but afterwards he brought an Appeal of Murder against her, upon which she was convicted in *B. R.* and carried down into the County where the Fact was done, and there executed. *Cro. Car.* 331, 382. *Mod. Ca.* 217. 3 *Nelf. Abr.* 372. In *Petit Treason*, it is said that two Witnesses are required to the Indictment; and not to the Trial of it, for it is not within the Stat. 7 *W.* 3. 2 *Hawk.* *P. C.* 258. *Petit Treason* implies Murder, and is the highest Degree thereof: And an Attempt by a Wife to kill her Husband; Piracy by a Subject, &c. were *Petit Treason* by the Common Law. 1 *Hawk.* 87, 88. This Kind of *Treason* gives Forfeiture of Lands by Escheat to the Lord of the Fee, &c. and a Man is drawn and hanged for it; and a Woman burn'd. 1 *Inst.* 37.

Treasure, (*Thesaurus*) Signifies Riches and Wealth; and as the King's *Treasure* is the Honour and

and Safety of the King, for this Reason Mines of Gold and Silver belong to the King.

Treasurer, (*Thesaurarius*) Is an Officer to whom the *Treasure* of another is committed to be kept, and truly disposed of: The Chief of these with us is the *Lord Treasurer of England*, who is a Lord by his Office, and one of the greatest Men of the Kingdom. This great Officer holds his Place *Durante beneplacito*, and is instituted by the Delivery of a White Staff to him by the King; and in former Times he received his Office by Delivery of the Golden Keys of the *Treasury*: He is also *Treasurer of the Exchequer*, by Letters Patent; and by 31 Ed. 3. in Writs of Error the Lord Chancellor and Lord *Treasurer* shall cause the Record and Process of the Exchequer to be brought before them, who are Judges; but the Writ is to be directed to the *Treasurer* and Barons, who have the Keeping of the Records. Under the Charge and Government of the Lord *Treasurer*, is all the King's Wealth contained in the Exchequer; he has the Check of all the Officers employ'd in Collecting the Customs and Royal Revenues; all the Offices of the Customs in all the Ports of *England* are in his Gift and Disposition; *Eccheators* in every County are nominated by him; and he makes Leases of all the Lands belonging to the Crown, &c. But the high and important Post of Lord *Treasurer* has of late Years, like some other great Offices, been esteem'd too great a Task for one Person, and been generally executed by Commissioners. And see more belonging to this Office. *Stat.* 20 Ed. 3. c. 6. 31 H. 6. c. 5. 4 Ed. 4. c. 1. 17 Ed. 4. c. 5. 21 H. 8. c. 20. and 1 Ed. 6. c. 13. 4 Inst. 104. Besides the Lord *Treasurer*, there is a *Treasurer of the King's Household*, who is of the Privy Council, and with the Controller, &c. has great Power. *Stat. Westm.* 2. c. 1. A *Treasurer of the Navy* or *War*. 35 Eliz. c. 4. *Treasurer of the King's Chamber*. 33 H. 8. c. 39. A *Treasurer of the Wardrobe*. 25 Ed. 3. c. 21. And there are *Treasurers of Corporations*, &c.

Treasurer in Cathedral Churches, An Officer whose Charge was to take Care of the Vestments, Plate, Jewels, Relicks, and other *Treasure* belonging to the said Churches; and at the Time of the Reformation, the Office was extinguished as needless in most *Cathedral Churches*, but it is still remaining in those of *Salisbury*, *London*, &c.

Treasurer of the County, Is he that keeps the *County Stock*: There are Two of them in each County, chosen by the major Part of the Justices of the Peace, &c. at *Easter-Sessions*; they must have 10 l. a Year in Land, or 150 l. in Personal Estate, and shall not continue in their Office above a Year; and they are to account yearly at *Easter-Sessions*, or within ten Days after to their Successors, under Penalties: The *County Stock*, of which this Officer hath the Keeping, is raised by Rating every Parish yearly; and is disposed of to Charitable Uses, for the Relief of maimed Soldiers and Mariners, Prisoners in the County Gaols, paying the Salaries of Governors of Houses of Correction, and Relieving poor Alms-houses, &c. And the Duty of these *Treasurers*, with the Manner of raising the Stock, and how it shall be disposed of, is set forth particularly in the Statutes of 43 Eliz. c. 2. 7 Jac. 1. c. 4. 11 & 12 W. 3. c. 18. 5 Ann. c. 32. 6 Geo. cap. 23.

Treasure-trove, (*Thesaurus inventus*) Is where any Money is found hid in the Earth, but not

lying upon the Ground, and no Man knows to whom it belongs; then the Property thereof belongs to the King, or the Lord of the Manor by special Grant or Prescription: But if the Owner may any Ways be known, it doth not belong to the King or Lord of the Liberty, but such Owner: By the *Civil Law*, *Treasure-trove* is given to the Finder, according to the Law of Nature; but the Law of *England* gives it to the King by his Prerogative, or some other claiming under him, &c. *Bract. lib.* 3. 3 Inst. 132. *Kitch.* 80. Nothing is said to be *Treasure-trove*, but Gold and Silver; and it is every Subject's Part as soon as he has found any *Treasure* in the Earth, to make it known to the Coroners of the County, &c. and Concealing *Treasure* found is punished by Fine and Imprisonment. *Briton*, c. 17. S. P. C. 25. Coroners ought to inquire of *Treasure-trove*, being certified thereof by the King's Bailiffs or others, and of who were the Finders, &c. 4 Ed. 1. And Seizures of *Treasure-trove*, 'tis said, may be inquired of in the Sheriff's Turn. 2 Hawk. P. C. 67.

Trebuchet, *Tribuch*, A Tumbrel or Cuckingstool; also a great Engine to cast Stones to batter Walls. 3 Inst. 319.

Treet, (*Triticum*) Fine Wheat, mentioned in the Statute 51 H. 3.

Tremagium, *Tremesium*, *Tremisium*, The Season or Time for sowing Summer-Corn, being about *March*, the third Month, to which the Word may allude; and Corn sowed in *March* is by the French called *Tremes* and *Tremois*: *Tremesium* was the Season for Summer-Corn, Barley, Oats, Beans, &c. oppos'd to the Season for Winter-Corn, Wheat and Rye, called *Hibernagium*, and is thus distinguished in old Charters. *Cartular. Glasfou. M.S.* 91.

Trenellum, A Word used for Granary, in *Mon. Angl. Tom.* 1. pag. 470.

Trencheator, (From the Fr. *Trancher*, to cut) A Carver of Meat at a Table; as in the Patent Rolls Mention is made of a Pension granted by the King to A. B. *uni Trencheatorum nostrorum*, &c.

Trenchia, A Trench, or Dike newly cut. *Peramb.* 33 H. 3.

Trental, (Fr. *Trentale*) An Office for the Dead, that continued thirty Days, or consisting of thirty Masses; from the Ital. *Trenta*, i. e. *Triginta*. *Stat.* 1 Ed. 6. c. 14.

Trespas, (*Transgressio*) Is any Transgression of the Law under Treason, Felony, or Misdemeanor of either: But it is most commonly used for that Wrong or Damage, which is done by one private Man to another; or to the King in his Forest, &c. In which Signification it is of two Sorts; *Trespas general*, otherwise term'd *Trespas Vi & Armis*, and *Trespas special*, or upon the Case; and there is also *Trespas local* and *transitory*, in the former whereof the Place is material, but not in the latter; and Actions of *Trespas Quare clausum fregit* ought to be local. *Broke Trespas. Bract. lib.* 4. *Trespas* supposes a Wrong to be done with Force; and *Trespas* against the Person of a Man are of several Kinds, viz. By Menacing or Threatning to hurt him; assaulting or setting upon one to beat him; Battery being the actual Beating of another; maiming of a Person so that he loses the Use of his Limbs; by Imprisonment, or restraining him of his lawful Liberty, &c. *Trespas* against a Man's Property may be committed in divers Cases; as against his Wife, Children, or Servants, or his House and

Goods, &c. and against his Land, by carrying away Deeds and Evidences concerning it, Cutting the Trees, or spoiling the Grass therein, &c. *E. N. B.* 86, 87. *Finch.* 198, 201. 2 *Roll. Abr.* 545. Action of *Trespass* lies where a Man makes an Entry on the Lands of another, and does Damage: And *Trespass Vi & Armis* may be brought by him that hath the Possession of Goods, or of a House, or Lands, if he be disturb'd in his Possession; for the Disturbance, besides the private Damage, is also a Breach of the Publick Peace. 1 *Inst.* 57. 2 *Roll. Abr.* 572. 2 *Lill. Abr.* 596. Entry into a House against a Man's Will is *Trespass*; but a Man may lawfully come into the House of another Person, to demand or pay Money, and if *Trespass* be brought he may plead it specially. 2 *Lill. Abr.* *Trespass* lies generally for Breaking a Man's Close, for chasing Cattle, whereby they die or are injured, Taking away Pales, and Breaking of Fences, or of Doors or Windows of a House, for Driving a Cart and Horses over the Ground of another where there is no Way for it, Fishing in another Person's Pond, and for Breaking the Pond, for Earing the Corn of another with Cattle, and Digging in any Man's Coal-Mines, and carrying away Coals; for Taking away so much of the Plaintiff's Money, Tearing a Bond, &c. 1 *Bro.* 338. 1 *Saund.* 220. 2 *Cro.* 463. *Latch.* 144. Upon a Recovery of Lands in Action of *Trespass* and Ejectment, the Plaintiff may afterwards bring an Action of *Trespass* against the Defendant for the mean Profits of the Land. 2 *Lill. Abr.* 596. And where a Person has only the Crop and Vesture, or Pasture of the Land, he may maintain *Trespass*. *Moor* 456. 2 *Lutw.* In *Trespass* for taking Goods, the Plaintiff must alledge a Property in himself; because in such Case there may be two Intendments, one that they were the Defendant's own Goods, and then the Taking is lawful; and the other that they were the Goods of the Plaintiff, when the Taking will be wrongful; but where-ever the Construction is indifferent, it shall always be most strong against the Plaintiff. 2 *Lev.* 20. *Yelv.* 36. If the Defendant makes the Place where the *Trespass* was done material by his Plea, he must shew it with great Certainty; but if it be a *Trespass Quare clausum fregit*, in B. and the Defendant pleads that the Place where is his Freehold, if Issue be taken thereon, the Defendant may give in Evidence any Close in which he hath a Freehold; though if the Plaintiff had replied and given the Close a Name, the Defendant must have a Freehold in that very Close. 2 *Salk.* 453. A Plaintiff may make a *New Assignment* of the Place where, &c. and then the Defendant may vary from his first Justification; as for Instance; In Action of *Trespass* assign'd to be done generally in D. the Defendant justified the Taking Damage-feasant; and the Plaintiff in his Replication made a new Assignment, upon which the Defendant justified for a Heriot, and it was adjudg'd good. *Moor* 540. 3 *Nelf. Abr.* 381. The Defendant in his Plea may put the Plaintiff to the new Assignment; and every new Assignment is a new Declaration, to which the Defendant is to give a new Answer, and he may not traverse it, but must either plead or demur; yet where *Trespases* are alledged to be done in several Places, and the Defendant pleads to some, and agrees to the Places wherein the Plaintiff alledged the *Trespases* to be done, there the Plaintiff may answer that Part of the Plea by a Traverse,

and shew a new Assignment as to the Rest. *Cro. Eliz.* 492, 812. One Action of *Trespass* may be brought for a *Trespass* committed in Lands which lie in several Towns or Villages, if they are in one and the same County; for else they cannot receive one Trial, as they are local Causes of Action triable in the County where done. 2 *Lill. Abr.* 595. A Man may have one Action of *Trespass* for several *Trespases*: And if divers Actions of *Trespass* are brought for one and the same Cause, the Defendant may get them joined into one, if brought to vex him; but the *Trespases* must not be of several Natures, which may not be tried in one Action. *M. b.* 24 *Car. B. R.* All Persons accessory to *Trespases* may be charged as Principals; as where one commands, persuades, or procures another to commit a *Trespass*, &c. and *Trespases* continued may be laid with a *Continuando diversis diebus & vicibus*; but Things must lie in Continuance, and not terminate in themselves, or it will not be good: And where a *Trespass* is alledg'd with a Continuance, that cannot be continued, the Evidence ought only to be to the first Act. 2 *Salk.* 638, 369. The best Way to declare for such *Trespases* which lie in Continuance, is for the Plaintiff to set forth in his Declaration, that the Defendant, between such a Day and such a Day, cut several Trees, &c. and not to lay a *Continuando Transgressionem* from such a Day to such a Day; and upon such Declaration, the Plaintiff may give in Evidence a Cutting on any Day within those Days. 3 *Salk.* 360. When a *Trespass* is done before the Day mentioned in the Declaration, it is good enough; because being once a *Trespass*, it is always a *Trespass*. *Cro. Eliz.* 32. In all *Trespases* there ought to be a voluntary Act, and also a Damage; and though in Detinue and Trover, where the Thing it self is in Demand, it ought to be particularly named, 'tis not so in *Trespass* where Damages only are to be recovered: But if *Trespass* be laid in a Declaration for Taking of Goods, without expressing the Quantity and Quality of them, or the Value, &c. it is bad upon a general Demurrer; though as to the Omission of the Value, it hath been held to be good after Verdict. *Latch.* 13. *Style* 170. 2 *Lev.* 230. *Lutw.* 1384. *Sid.* 39. If the Defendant in *Trespass Quare clausum fregit*, disclaim any Title to the Land, and the *Trespass* is involuntary or by Negligence, he may be admitted to plead a Disclaimer and Tender of Amends before the Action brought, &c. And if it be found for the Defendant, the Plaintiff shall be barred. 21 *Fac.* c. 16. Where a Defendant justifies for a *Trespass*, he must confess it, or it will be ill: And a Defendant shall never be excused in *Trespass*, unless upon an inevitable Necessity. 3 *Nelf. Abr.* 379. In a *Trespass Quare clausum fregit*, where there is only a Force in Law, the Party must be required to go out before Hands may be laid on him; for every Imposition of Hands is an Assault which cannot be justified upon the Account of a Force or Breaking a Close in Law, without Request to be gone; but 'tis otherwise where there is an actual Force. 2 *Salk.* 644. *Trespass* for Breaking the Plaintiff's Close, and Beating his Servant; the Plaintiff had a Verdict, but could never get Judgment, because he did not declare *per quod Servitium amisit*: The Servant himself may have an Action of *Trespass* for the Beating, though his Master cannot, unless it be so great that he loses his Service, without which it is no Damage to the

the Master. 5 Rep. 10. 9 Rep. 111. Action of *Trespass* may be brought for Taking away a Man's Servant; but not for the Taking away of a Man generally. 5 Mod. 191. *Trespass quod cepit & abduxit* lies not for the Father for Taking and Carrying away any of his Children, except for Taking of a Son or Daughter who is Heir. Cro. Eliz. 769. A Man committed Adultery with a Woman in *Southwark*, where they both dwelt, and the Woman went to *Ratcliff* in *Middlesex*, from whence the Man brought her to *Richmond* in *Surrey*; the Husband brought an Action of *Trespass de Uxore Rapta & abducta cum bonis Viri*; and it was a Doubt, whether upon this Matter given in Evidence, the Defendant could be found guilty in *London*, but the Jury found him guilty generally, and gave the Plaintiff 300 l. Damages. Dyer 256. Executors may bring *Trespass* for Goods taken out of their Possession, or for Goods and Chattels taken in the Life of the Testator; also Administrators shall have it for Goods of Intestates; and an Ordinary may bring Action of *Trespass* for Goods in his own Possession to administer as Ordinary, &c. If any Person shall maliciously maim, wound, or hurt any Cattle, or destroy any Plantation of Trees, or throw down Inclosures, he shall forfeit treble Damages in Action of *Trespass*. 22 & 23 Car. 2. c. 7. But in Action of *Trespass*, if the Jury give not 40 s. Damages, the Plaintiff shall have no more Costs than Damages, except the Title come in Question, or something of the Plaintiff's be carried away, &c. Stat. 23 Car. 2. c. 9. The Plaintiff where the *Trespass* is wilful and malicious, shall recover Damages and full Costs, by 8 & 9 W. 3. c. 11. A Court, which is not a Court of Record, cannot hold Plea of *Trespass Vi & Armis*. F. N. B. 85. Writs of *Trespass* lie either to the Sheriff to determine the Matter in the County-Court, or returnable in B. R. or C. B. And the Words *Vi & Armis* shall be in the returnable Writs, but not in the others: Though in Writs of *Trespass* upon the Case, those Words must not be inserted, if returnable in B. R. &c. F. N. B. 86, 190. *Trespass quare Vi & Armis clausum fregit* was brought, wherein the Plaintiff laid Damage to the Value of 20 s. and the Defendant demurred for that Cause, alledging that B. R. could have no Cognizance at Common Law, or by the Statute of *Gloucester*, to hold Plea in an Action where the Damages are under 40 s. But it was adjudg'd, that *Trespass Quare Vi & Armis* will lie in this Court, be the Damages what they will. 3 Mod. 275. The Process in Writ of *Trespass* is an Attachment and *Distingas*, and upon a Return of a *Nihil* by the Sheriff, a *Capias*, *Alias*, and *Pluries* shall issue; and then Exigent and Process of Outlawry, &c. New Nat. Br. 193, 203. See Action on the Case, and Traverse.

Form of a common Writ of *Trespass*.

REX, &c. Si A. B. fecerit, &c. tunc pone per Vad. & Salvos pleg. C. D. quod sit coram, &c. apud Westm. in octab. Sancti Mich. ostens. quare Vi & Armis in ipsum A. apud, &c. insult fecit & ipsum verberavit, vulneravit, & maletraxavit, & alia enormia ei intulit, ad grave dampnum ipsius A. & contra Pacem, &c. — Or, *Quare Vi & Armis clausum ipsius A. apud, &c. fregit, & in eo, &c. quatuor Boves cepit & asportavit, &c.* — Or, *Quare Herbam ipsius A. apud, &c. nuper crescentem ad valenc. &c.*

cum quibusdam Averiis depastus fuit, conculcavit & consumpsit, & alia, &c.

Trespasser, Is one who commits a *Trespass*; and the Law allows a Man Power to enter a Tavern, a Landlord to distrain on Land, &c. yet if he doth abuse it by Committing a *Trespass*, the Law will adjudge him a *Trespasser ab initio*. 8 Rep. 146.

Trespasants, (Fr.) Is used for Passengers, by Britton, cap. 29.

Tressore, To turn or divert another Way; as to turn a Road, &c. Chart. K. John.

Trial, (*Triatio*) Is the Examination of a Cause, Civil or Criminal, before a Judge who has Jurisdiction of it, according to the Laws of the Land: It is the Trial and Examination of the Point in Issue, and of the Question between the Parties, whereupon Judgment may be given. 1 Inst. 124. Finch 36. And there are many Manners or Kinds of Trials; as of Matters of Fact, which shall be tried by a Jury; Matters of Law, that are triable by the Court; and Matters of Record tried by the Records themselves; also some Things shall be tried by the Bishop's Certificate; and some by Inspection, &c. 2 Litt. Abr. 602. In criminal Cases, it is usual to ask the Criminal how he will be tried; which was formerly a very significant Question, though it is not so now, because antiently there were Trials by *Battel*, by *Ordeals*, and by *Fury*; and when the Offender answered the Question, *By God and his Country*, it shewed that he made choice to be tried by a *Fury*: But now there is no other Way of Trial of Criminals. Blount's Dict. It is ordained by *Magna Charta*, that no Person shall be condemn'd on any Accusation without Trial by lawful Judgment of his Peers, or by the Law. 9 Hen. 3. cap. 29. And the most general Rule has been, that every Trial shall be out of that Town, Precinct, &c. within which the Matter of Fact triable is alledged, or the nearest thereunto, for the better Cognizance of the Fact committed; and not to have Things tried in Foreign Counties, where the Jury are Strangers to the Parties, to the Witnesses, and the Point in Issue. 1 Inst. 125. But when an Indictment is found against a Person in the proper County, it may be heard and determined in another County by special Commission, &c. 3 Inst. 27. If a Subject of England be killed in a Foreign Kingdom, by an Englishman, he may be tried by the Constable and Marshal; or by Commissioners in any County. 3 Inst. 48. An Issue being joined in B. R. of a Matter triable in Ireland; this shall be sent into Ireland to be tried, and after Trial be remanded. 1 Danv. Abr. 248. Though if an Issue be thus joined of a Thing in Wales, the Record shall not be sent there to be tried; but it shall be tried in the next County of England adjoining thereto. Ibid. If a foreign Issue which is local should happen, it may be tried where the Action is laid; and for that Purpose the Plaintiff may enter a Suggestion on the Roll, that such a Place in such a County is next adjacent; and it may be tried in B. R. by a Jury from that Place, according to the Laws of that Country, which may be given in Evidence: Adjudged in Action of Debt for Rent, upon a Lease made in London of Lands in *Jamaica*; and it was held, that where the Lessor declares upon the Privy of Estate, the Action must be brought where the Lands are; but 'tis otherwise when the Action is founded on the

the Privy of Contract, the one being local and the other transitory, as in this Case. 2 Salk. 651. In Covenant, the Action was laid in London, and Issue joined upon a Feoffment in Oxfordshire, of Lands in that County, and the Cause was tried in London; after Verdict, it was objected that the Trial ought to have been in Oxfordshire, but resolved that by the Stat. 17 Car. 2. it was well tried in the County where the Action was brought: But though the Words of that Statute are, that it shall be good, if tried by the County where the Action is laid, it hath been adjudged, that must be understood of a Trial by the County where the Matter in Issue doth arise; for otherwise it would destroy the whole Law concerning Trials by Juries. 3 Salk. 364. And by a late Statute, the Venire for the Trial of any Issue in a civil Cause, shall be awarded of the Body of the County where the Issue is. 4 & 5 Ann. On civil Causes grown to Issue, if they are to be tried in London or Middlesex, and the Defendant live not forty Miles from London, eight Days Notice of Trial is to be given; and if the Defendant lives that Distance or further, he must have fourteen Days Notice from the Plaintiff, before he tries his Cause; but eight Days Notice of Trial is good at the Assises, let the Defendant live where he will, except on an old Issue; as where a Cause hath remained four Terms without Prosecution, in which Case a Term's Notice is to be given: Upon due Notice of Trial, the Defendant must generally go to Trial, or Judgment will pass against him by Default; and where the Plaintiff proceeds not to Trial after Notice, and there is no Countermand, the Defendant shall have Costs for Attendance, &c. or the Defendant may give a Rule to try the Cause by Proviso; and on Notice given the Plaintiff bring it to Trial, that he may discharge himself of the Action, and herein he may recover Costs. 2 Lill. Abr. 609, 613. 23 Hen. 8. cap. 15. If a Cause to be tried, be not enter'd in the Judge's Book, two Days before the Time of Trial, a Ne Recipiat may be enter'd, that it be not set down to be tried that Time; but this will not be admitted in Sittings after the Term. Hill. 22 Car. B. R. To proceed to Trial, in the Courts at Westminster, when the Declaration is drawn, and the Appearance of the Defendant made, it must be delivered with an Imparance to the Defendant's Attorney; then it is to be enter'd upon the Prothonotaries Roll and docketted that Term, and the Term following Rule must be given with the Secondary for the Defendant to plead by such a Day, or the Plaintiff to have Judgment: The Defendant having pleaded, a Copy of the Issue is to be made out and delivered the Defendant's Attorney, giving him Notice of Trial; in Order to which, the Venire facias must be had and return'd by the Sheriff, and then is sued out the Habeas Corpora, the Record is made up, and the Parties go to Trial: But if the Defendant neglects to plead, and lets it go by Default, on entering Judgment, a Writ of Enquiry of Damages is to be awarded, returnable the next Term, of the Execution whereof the Defendant's Attorney shall have Notice; which being executed, and the Damages inserted in a Schedule annexed to the Writ return'd by the Sheriff, a Rule is to be given upon it, and Costs are taxed by the Prothonotary; and lastly, it is carried to the Clerk of the Judgments, who on giving him the Number-Roll and Term, when the Judgment

was enter'd, he will make out a Writ of Execution, either a Capias ad satisfaciend. or Fieri facias, for the Damages and Costs, &c. Practif. Attorn. Edit. 1. pag. 99. At the Assises, when a Cause comes on to Trial, first a Distringas of the Jury is to be return'd by the Sheriff, and then the Record must be delivered to the Judge's Marshal; and the Record being put into the Hands of the Marshal, Briefs prepared by the Counsel, and all Parties ready, the Marshal delivers the Record to the Judge, and the Crier calls over the Jury: The Jury are sworn, and bid to stand together and hear their Charge; after which, the Counsel on both Sides open the Case, first of the Plaintiff, the Proof lying on his Side, and looking over their Breviates argue the Matter in Contest according to Law, producing Witnesses to prove the Facts alledged; and when the Counsel have done, the Judge sums up the Evidence, and the Clerk of Assise, or his Associate, delivers a Copy of the Jury's Names, and the Issue they are to try, to the Jury; and a Bailiff being sworn to keep them without Meat, Drink, &c. till they are agreed, they depart from the Bar; and when they are all agreed, they return to give in their Verdict: Then the Plaintiff is called, and if he do not appear, a Nonfuit shall be recorded; but if he appears, the Clerk asks the Jury who they find for, and what Costs and Damages, and so enters it on the Back of the Panel, and repeats it to the Jury, which finishes the Trial: And after the Trial is over, the Associate delivers to the Party recovering the Record with the Distringas, and the Names of the Jury annexed, on the Back of which he indorses the Substance of the Verdict, and the Costs given by the Jury; and then upon the Back of the Record is ingrossed the Possea, which is delivered to the Clerk of the Rules, and he makes out a Four-Days Rule for Judgment; and when the Rule is out, if Judgment be not arrested, further Costs are taxed, and the Judgment is fit to be entered: But in Trials at the Assises, the Record and Distringas are usually kept by the Associate till the next Term, when he is to be called upon for the Possea, and you proceed to have it marked, make out a Rule, and sign Judgment; and Judgment being entered, Execution is thereupon awarded, and Writs of Ca. sa. Fieri fac. Elegit, &c. lb. 100, 101. If a Trial be had the last Day of Term, or at the Sittings after the Term, or the Assises, Judgment cannot be given thereon, till the first Day of the next Term. 2 Lill. 610, 616. When a Defendant is not prepared to try his Cause, upon Petition and Affidavit of the Reasons, the Judge will order the Cause to be stay'd till another Day the same Assises; or in London till the next Term, on Payment of Costs: And in Case at a Trial, the Court sees that one of the Parties is surpris'd, through some Casualty, and not by any Fault of his own, they may in their Discretion put off the Trial to another Time, until such Party is better prepared. Ibid. 609. If the Matters contested are of great Value, or the Title in Question is difficult or intricate, on Motion the Judges will order a Trial at Bar, for the better Satisfaction of the Parties; though it is not usual to grant Trials at Bar the same Term moved for, but the next Term after, except special Reasons be given for it: And these Trials are appointed by the Stat. Westm. 2. where the Cause requires Magnam Examinationem; also Officers of the Court, and Barristers at Law, may insist upon

upon a *Trial* at Bar ; after which, a new *Trial* is not to be granted. 2 *Salk.* 648, 651, 653. New *Trials* may be granted in several Cases, viz. where the Defendant had not sufficient Notice given him of the former *Trial* ; if excessive Damages are given, a Verdict is against Evidence ; there was any Fraud, &c. But a new *Trial* ought not to be granted for want of Evidence at the former *Trial*, which the Party might then have produced : And it has been denied, where the Defendant forgot to bring a Settlement at the *Trial* ; so likewise where very large Damages were given, on the Report and Opinion of the Judge who *tried* the Cause, that he believed the Jury gave a Verdict according to their Consciences ; and it is a Rule that no new *Trial* shall be granted for too small Damages ; unless where Action of Covenant is brought for a Sum certain, and the Jury give Damages under the same, &c. The Reason of granting new *Trials* upon Verdicts against Evidence at the Assises is, because the *Trials* are subordinate to the Courts ; and 'tis plain that such new *Trials* have been anciently granted, as 'tis a good Challenge to a Jurymen to say that he hath been a Juror before in the same Cause : Adjudged that a new *Trial* cannot be granted in an inferior Court. 2 *Salk.* 647, 648, 649, 650. 3 *Nelf. Abr.* 414, 417. After a Motion in Arrest of Judgment, the Party shall not move for a new *Trial* ; but after Motion for a new *Trial*, he may move in Arrest of Judgment. 2 *Salk.* 647. A new *Trial* is never granted in Criminal Cases, where the Defendant is acquitted, if some Fraud or Trick be not proved in the Case. *Ibid.* But on Conviction, a new *Trial* may be granted upon Cause ; so if a *Trial* on Indictment be by a wrong *Venue* ; and in Cases where Appeal may be brought. 2 *Lill.* 606, 613. If the Issue *tried* in any Cause is not joined, it is not a good *Trial* ; except it be an Issue in *Chancery* in the Petty Bag Side, which is to be sent from thence to be *tried* in B. R. *Hill.* 22 *Car.* It is a *Mis-trial* for a Thing to be *tried* before a Judge, who hath Interest in the Thing in Question ; and if a Cause is *tried* by a Jury out of a wrong County, or there be any Error in the Process against the Jurors, or it is directed to a wrong Officer, &c. it is a *Mis-trial* ; likewise where Matter of Record is *tried* by a Jury, it will be a *Mis-trial* ; but if the Matter of Record be mix'd with Matter of Fact, *Trial* by Jury is good. *Hob.* 124. On a *Mis-trial*, Judgment may not be given ; but shall be arrested, &c. But a *Mis-trial* is help'd by the Statute of *Jeofails*. See *Issue, Nisi prius*, &c.

Trials in Criminal Cases, the particular Form and Manner of, Vide my *Mod. Just. Edit.* 3. pag. 402, 403.

Tricennale, Is the same with *Trental*. 1 *Ed.* 6.

Tricefima, An ancient Custom in a Borough in the County of Hereford, so called, because Thirty Burgesses paid 1 *d.* Rent for their Houses to the Bishop, who is Lord of the Manor. *Lib. niger Heref.*

Tridingmote, The Court held for a *Triding* or *Trithing*. *Chart. King Hen.* 1.

Trithing or *Trithing*, (Sax. *Trithinga*) Contains the third Part of a County, or three or four Hundreds : Also it was a Court held within that Circuit, of the Nature of the Court-Leet, but inferior to the County-Court. *Camd.* 102. *Magn. Chart. cap.* 36. The *Ridings* in Yorkshire are corruptly called by that Name, from *Tridings* or

Trithings : And those who anciently govern'd those *Trithings*, were term'd *Trithing-Reeves*, before whom were brought all Causes which could not be decided in the Hundreds ; for from the Hundred Court Suits might be removed to the *Trithing*, and thence to the County-Court. *Spelm.* See *Lath-reve*.

Trillion, A Word used by Merchants in Accounts, to shew that the Word Million is thrice mentioned. *Merch. Dict.*

Trimilchi. The English Saxons denominat'd the Month of May *Trimilchi* ; because they milk'd their Cattle three Times every Day in that Month. *Beda.*

Trinity, (*Trinitas*) The Number of three Persons in the Godhead or Deity ; and denying any one of the Persons in the *Trinity* to be God, is subject to divers Penalties, and Incapacities, by the Stat. 9 & 10 *W.* 3. See *Religion*.

Trinity-House, Is a Kind of College at Deptford, belonging to a Company or Corporation of Seamen, who have Authority by the King's Charter to take Knowledge of those that depart by Sea-marks ; also to redress the Faults of Sailors, and divers other Things belonging to Navigation. 8 *Eliz. cap.* 13. By a late Statute, Pilots of Ships coming up the *Thames*, are to be examined and approved by the Masters and Wardens of *Trinity-House*, &c. 3 *Geo. c.* 13.

Trink, A Fishing Net, or Engine to catch Fish. 2 *Hen.* 6. c. 15.

Trinoda Necessitas, Signified a *Threesfold necessary Tax*, to which all Lands were liable in the Saxon Times, i. e. for repairing of Bridges ; the maintaining of Castles or Garrisons ; and for Expeditions to repel Invasions : And in the King's Grants, and Conveyances of Lands, these three Things were excepted in the Immunities from other Services, &c. — *Ex eptis his tribus, Expeditione, Pontis & Arcis constructione.* *Paroch. Antiq.* 46.

Triours or *Triers*, Are such as are chosen by the Court to examine whether a Challenge made to the Panel of *Jurors*, or any of them, be just or not. *Broke* 122.

Triroda terræ, A Quantity of Land, containing three Rods or Perches. *M.S. Eliam Ashmole Ar.*

Trissa, A Post or Station in Hunting. *Cowel.*

Tristis, (From *Trist*, i. e. *Trust*) Is an Immunity, whereby a Man is freed from Attendance on the Lord of a Forest when he is disposed to chase within the Forest ; and by this Privilege, he shall not be compelled to hold a Dog, to follow the Chase, or stand at any Place appointed, which otherwise he is obliged to, on Pain of Amerciament. *Manwood, par.* 1. pag. 86.

Trithing and *Trithing-Reve*. See *Trithing*.

Triumbir, A *Trithing-Man*, or Constable of three Hundreds. *Histor. Eliens.*

Tronage, (*Tronagium*) Is a customary Duty or Toll for weighing of Wool : According to *Fleta*, *Trona* is a Beam to weigh with, mentioned in the Stat. *West.* 2. cap. 25. And that *Tronage* was used for the weighing Wool in a Staple or Publick Mart, by a common *Trona* or Beam ; which for the *Tronage* of Wool in London, was fixed at *Leaden-Hall*. *Fleta, lib.* 2. c. 12.

Tronator, (From *Trona*, i. e. *Statere*) An Officer in the City of London, who weighs the Wool brought thither.

Trope, (*Tropus*) A Rhetorical Way of Speech. *Litt. Dict.*

Troper,

Troper, (*Troperium*) Is a Book of alternate Turns or Responses in singing Mass; called *Liber sequentiarum*, by *Lindewode*. Hoved. Hist. p. 283.

Trophy Money, Signifies Money yearly raised and collected in the several Counties of *England*, towards providing Harnes and Maintenance for the *Militia*, &c. Stat. 15 Car. 2. 1 Geo. See *Militia*.

Trover, (From the Fr. *Trouver*, i. e. *invenire*) Is an Action which a Man hath against one, that having found any of his Goods, refuseth to deliver them upon Demand: Or if another hath in his Possession my Goods, by Delivery to him, or otherwise, and he sells or makes Use of them without my Consent, this is a *Conversion* for which *Trover* lies; so if he doth not actually convert them, but doth not deliver them to me on Demand. 2 *Lill. Abr.* 618. It is called *Trover* and *Conversion*, and is a special Action of the Case, brought to recover Damages to the Value of the Goods, &c. In this Action, the Plaintiff surmisseth that he lost such and such Goods, and that the Defendant hath found them, and converted them to his own Use at such a Place; but the Losing is but a mere Suggestion, and not material: For if the Plaintiff delivered the Goods to the Defendant; or if the Defendant take the Goods in his Presence, &c. this Action lies against him, if there be a Conversion; which is the Point of the Action, and therefore must be particularly alledged: If a Man finds Goods, he may take Possession of them, and no Action lies; but he ought not to abuse or use them, for therein lies the Offence: And where a Man finds my Goods, and refuseth to deliver them upon Demand, it is a Conversion in Law; but if he answers that he knows not whether I am the true Owner or not, and therefore denies to deliver them; this is no Conversion if he keeps them for me. 1 *Danv. Abr.* 21, 22, 23. If in *Trover*, an actual Conversion cannot be proved, then Proof is to be had of a Demand made, before the Action brought, of the Thing for which the Action is commenced, and that the Thing demanded was not delivered; and in this Case, though an actual Conversion may not be prov'd, a Demand, and Refusing to deliver the Things demanded, is a sufficient Evidence to the Jury that he converted the same, till it appears to the contrary. 10 *Rep.* 56, 491. 2 *Lill.* 619. Where a Defendant comes to the Possession by finding, Denial is a Conversion; but if he had the Goods, &c. by Delivery, there Denial is no Conversion, but Evidence of a Conversion: And in both Cases, the Defendant hath a lawful Possession, either by Finding or by Delivery; and where the Possession is lawful, the Plaintiff must shew a Demand and a Refusal, to make a Conversion: Though if the Possession was tortious, as if the Defendant takes away the Plaintiff's Hat, the very Taking is a sufficient Proof of the Conversion, without proving a Demand and Refusal. *Sid.* 264. 3 *Salk.* 365. By *Holt Chief Justice*, the Denial of Goods to him, who hath a Right to demand them, is a Conversion; and after a Demand and Refusal, if the Defendant tender the Goods, and the Plaintiff refuse to receive them, that will go only in Mitigation of Damages; not to the Right of the Action of *Trover*, for the Plaintiff may have that still. *Mod. Caf.* 212. 3 *Nels. Abr.* 424, 425. An Action of *Trover* and *Conversion* may be brought for Goods, al-

though the Goods come into the Possession of the Plaintiff before the Action brought; which doth not purge the Wrong, or make Satisfaction for that which was done to the Plaintiff by detaining the Goods: If a Man takes my Horse and rides him, and afterwards delivers him to me, *Trover* lies against him; for this is a Conversion, and the Redelivery is no Bar to the Action. 1 *Danv. Abr.* 21. 2 *Lill.* 618. If Goods are delivered to one, to deliver over to another, and he to whom they were first delivered do afterwards refuse to deliver them over, and converts them to his own Use; he is liable to Action of *Trover*, not only by him who first delivered them, but also by him to whom they were to be delivered: And a Plaintiff may chuse to have his Action of *Trover* against the first Finder of Goods; or any other who gets them afterwards by Sale, &c. 1 *Bulstr.* 68. 1 *Leon.* 183. If a common Carrier has Goods deliver'd to him to carry to a certain Place, and a Stranger takes them out of his Possession, and converts the Goods to his own Use; Action of *Trover* and *Conversion* lies for the Carrier against him. 1 *Mod.* 31. *Trover* doth not lie against a common Carrier for Negligence in losing Goods; though it doth for an actual Wrong, if he take the Goods out of a Box, to sell them. 2 *Salk.* 655. And if Goods are stolen from a Carrier, he may not be charged in *Trover* and *Conversion*; but Action upon the Case on the Custom of the Realm, &c. If upon a *Fieri facias* the Sheriff takes Goods in Execution, and before the Sale of them, a Stranger takes them away out of his Possession, and converts them to his own Use; the Sheriff may have an Action of *Trover* and *Conversion*, as he had a lawful Possession, and is answerable for them. 2 *Sand.* 47. And an Executor may have *Trover* for the Goods of the Testator; the Law gives him a Property, which draweth the Possession to it, though there be not an actual Possession. *Latch.* 214. There must be a Right or Property in the Goods, or a lawful Possession, &c. which is to be proved by the Plaintiff in *Trover*, before the Goods came to the Defendant's Hands: And if a Man finds his Goods lost in the Hands of another, if he bought them in open Fair or Market; this alters the Property, and he cannot recover them. 1 *Inst.* 498. 1 *Danv.* 23. The Plaintiff declared on a Conversion of his own Goods; the Defendant justified, for that the Property of the Goods was in *A. B.* who sold them to him; adjudged this was no good Title to justify the Conversion without a Traverse, unless the Goods had been sold in a Market. 1 *Leon.* 221. In *Trover*, the Plaintiff may declare upon a *devenerunt ad manus* generally; or specially *per Inventionem devenerunt*: And the Plea on the Defendant's Part is commonly Not guilty, on which the special Matter may be given in Evidence, to prove the Plaintiff hath no Cause of Action; or to intitle the Defendant to the Thing in Controversy: If the Defendant pleads a special Plea, he must confess and avoid, or traverse the Title of the Plaintiff. 2 *Bulstr.* 313. *Wood's Inst.* 540. The Defendant in *Trover* may plead Not guilty, and give in Evidence, that he distrained the Goods, and detained them till he was paid; but he cannot plead specially that he took the Goods by Distress, or that he detained them as a Host till paid for Horses standing, &c. for the Conversion being lawful, none is confess'd; though if he pleads a Matter which confesses a Conversion, and avoids it,

it, 'tis good. *Yelv.* 198. 2 *Salk.* 654. A Man puts out Cattle to pasture at so much *per Week*, and then sells them to the Plaintiff, who demands the Cattle, but the Defendant refuses to let them go till paid for; *Trover* well lies, and the Defendant's Remedy must be by Action for the Money due to him for depasturing the Cows; and he may not detain them for the Money, as in Case of an Innkeeper, or a Taylor, of Things in their Custody. *Cro. Car.* 27. 2 *Lill.* 622. In *Trover* for a Bond, the Plaintiff need not shew the Date; for the Bond being lost or converted, he may not know the Date; and if he should set out the Date, and mistake it, he would fail in his Action. *Cro. Car.* 262. If the Defendant find the Bond, and receive the Money, Action of Account lieth against the Receiver, and not *Trover*. *Cro. Eliz.* 723. The Plaintiff in Action of *Trover* alledged, that such a Day and Year, he required the Defendant to deliver the Goods, but he refused and converted them to his own Use; though he shewed no Day or Place of the Conversion, as the Day and Place were alledged of the Request and Refusal, it was held sufficient. *Cro. Car.* 262. But the Place of Conversion must be generally mentioned in *Trover*, or it will be naught. *Cro. Eliz.* 78, 97. And yet where the *Trover* of Goods is in one County, and the Conversion in another County, the Action brought for these Goods may be laid in the County where the Conversion was, or in any other County, as it is only a transitory Action; and neither the Place of *Trover*, nor Conversion, are traversable. *Pasch.* 23 *Car. B. R.* If there be *Trover* before the Marriage of the Plaintiff, and a Conversion afterwards; the Husband and Wife may join, and it will be good. 2 *Lev.* 107. *Trover* lies against Baron and Feme, setting forth that they converted the Goods to the Use of the Husband; for the Feme may be a Trespasser, and convert them to the Husband's Use, or the Use of a Stranger, but not to her own Use; and if the Conversion be laid *ad usum* of her self and Husband, or *ad usum proprium*, &c. it will not be good. *Cro. Car.* 494. Action of *Trover*, or of *Detinue*, at the Plaintiff's Election, may be brought for Goods detained; for it is but Justice that the Party should have his Goods detained if they may be had, or else Damages to the Value for the Detaining and Conversion of them. 2 *Lill. Abr.* 619. And *Trespass*, or *Trover*, lies for the same Thing; tho' they cannot be brought in one Declaration: And the Allegation of the Conversion of the Goods in *Trespass*, is for Aggravation of the Damages, &c. *Cro. Jac.* 50. *Lutw.* 1526. *Trover* lieth not for any Part of a Freehold; but if Doors fix'd are removed and converted, it will lie. *Wood's Inst.* 540. In *Trover*, the Defendant may not wage his Law, as he may in *Detinue*; wherefore it often takes Place of that Action. See *Detinue*.

Troy-Weight, (*Pondus Trojae*) A Weight of twelve Ounces to the Pound, having its Name from *Troyes*, a City in *Champaign*, whence it first came to be used here.

Truce, (*Treuga*) A League, or Cessation of Arms; and anciently there were Keepers of *Truces* appointed, as King *Edw.* 3. constituted by Commission two Keepers of the *Truce* between him and the King of *Scots*, with this Clause, *Nos volentes Treugam predictam quantum ad nos pertinet observari*, &c. *Rot. Scot.* 10. Ed. 3. Vide *Conservators of the Truce*.

Trug-Corn, (*Truga frumenti*) Is a Measure of Corn; and at *Leominster*, at this Day the Vicar hath *Trug-Corn* allowed him for officiating at some Chapels of Ease within that Parish. *Liber Niger Heref.*

Truncus, A Trunk set in Churches, to receive the Oblations of pious People; of which, in the Times of *Popery*, there were many at several Altars and Images, like the Boxes which since the Reformation, have been placed near the Doors of Churches for receiving all voluntary Contributions for the Poor: And the customary Free-will Offerings that were drop'd into these Trunks, made up a good Part of the Endowment of Vicars, and thereby oftentimes render'd their Condition better than in later Times. — *Vicarius habebit Oblationes quasunque ad Truncos tam in dicta Ecclesia, &c. quam alibi infra Parochiam ipsius Ecclesie factas.* *Ordin. Vic. Lancast.* Anno 1438.

Trussa, A Truss or Bundle of Corn, mentioned among the customary Services done by Tenants. *Cartular. S. Edmund. M.S.*

Trust, (*Ejducia, Confidentia*) Is a Confidence which one Man repofes in another; and if a Person in whom a Trust is repofed, breaks or doth not perform the same, the Remedy is by Bill in *Chancery*, the Common Law generally taking no Notice of Trusts. 2 *Lill. Abr.* 624. A Trust and a Use were all one at Common Law, till the Stat. 27 *H. 8.* which distinguished them: The Method of making Conveyances by Way of Trust, was invented to evade the Statute of Uses; and these Conveyances are not so much favoured in Law, as plain and direct Conveyances of Estates. *Pasch.* 23 *Car. B. R.* Declarations and Creations of Trusts, of Lands, Tenements or Hereditaments, are to be in Writing, sign'd by the Party empower'd to declare such Trust, &c. 29 *Car. 2.* In the Explanation of this Statute, it is provided, That this shall not extend to *resulting Trusts*, or Trusts arising by Implication or Construction of Law; which shall be of like Force as before that Act. 4 & 5 *Ann.* And there is a Statute by which Infants seised or possessed of Estates in Fee in Trust, may make Conveyances of such Estates, by Order of *Chancery*. 7 *Ann.* A Fine and Recovery of *Cestuy que Trust* shall bar and transfer a Trust, as it should an Estate at Law, if it were upon a Consideration. *Chanc. Rep.* 49. A Termor grants his Lands in Trust for himself for Life, and to his Wife for Life, and after to his Children for their Lives, and then to A. B. This Trust to A. B. is good; though if it had been to the Heirs of their Bodies, it would be otherwise: And a remote Trust of a Term, which tends to a Perpetuity, has been decreed a void Limitation. *Chanc. Rep.* 230, 239. If a Husband makes a Lease for Years, in Trust for his Wife, he may sell it, and it will bind her: But when a Trust is created for a Wife *bona fide*, he cannot sell it, unless she join in a Fine. *Ibid.* 307, 308. It hath been adjudged, where a Term is settled in Trust for a Jointure on a Wife, or in Pursuance of Marriage-Articles, or if the Term of the Wife be assigned by her before Marriage; the Husband can neither charge or sell it, &c. though if the Assignment is made after Marriage in Trust for the Wife, 'tis then voluntary and fraudulent. *Ibid.* 225. A Trust to pay Portions, Legacies, &c. out of the Rents and Profits of the Lands, at a Day prefix'd, gives the Trustees Power to sell; if the annual Profits will not do it within that Time,

then they may sell, being within the Intention of the *Trust*; and they cannot sell to raise the Money, except it be to be paid at a certain Time. *Ibid.* 176. A Trustee for Sale of Lands for Payment of Debts, paying Debts to the Value of the Land, thereby becomes a Purchaser himself. *Ibid.* 199. *Trust* of a Fee-simple Estate, or Fee-tail, is forfeited by Treason, but not by Felony; for such Forfeiture is by way of Escheat, and an Escheat cannot be but where there is a Defect of a Tenant; and here is a Tenant. *Hard.* 495. A *Trust* for a Term is forfeited to the King in case of Treason, or Felony; and the Trustees in Equity shall be compelled to assign to the King. *Cro. Jac.* 513. If a Bond be taken in another's Name, or a Lease made to another in *Trust* for a Person, who is afterwards convicted of Treason or Felony, they are as much liable to be forfeited as a Bond or Lease made to him in his own Name or in Possession. 2 *Hawk.* 450. Execution may be sued, and Lands held in *Trust* delivered, where any Person is seised or possessed in *Trust* for another; by the Stat. of Frauds. 29 *Car.* 2. *cap.* 3. there is a Breach of *Trust* in Servants, going away with their Masters Goods delivered them, &c.

Trustees of Papists, Are disabled to make Presentations to Churches. *Stat.* 12 *Ann.*

Tub, A Measure, containing sixty Pounds Weight of Tea; and from Fifty-six to Eighty-six Pounds of Camphire, &c. *Merch. Dict.*

Tumbrell, (*Tumbrellum*) An Engine for Punishment and Correction of Scolds. *Kitch.* 13. See *Cuckingsfoot*.

Tun, (*Sax.*) In the End of Words signifies a Town, or Dwelling Place.

Tun, (*Tunellum*) A Vessel of Wine and Oil, being four Hogsheads: A *Tun* of Timber is a Measure of forty solid Feet, cut to a Square. 1 *R.* 3. *c.* 12. 12 *Car.* 2. *c.* 14.

Tunnage, (*Tunnagium*) Is a Custom or Impost granted the Crown for Merchandise imported or exported, payable after a certain Rate for every *Tun* thereof. *Stat.* 12 *Hen.* 4. *c.* 3. 6 *Hen.* 8. *cap.* 14. 1 *Ed.* 6. *c.* 13. 12 *Car.* 2. *cap.* 4. See *Customs*.

Turbagium, The Liberty of digging Turfs. *Mon. Angl. Tom.* 1. p. 632.

Turbary, (*Turbaria*, from *Turba*, an obsolete Latin Word for Turf) Is a Right to dig Turfs on another Man's Ground. *Kitch.* 94. Also it is taken for the Ground where Turfs are digged: And *Turbus* hath been used for the Turfs; and *Turbarius* for the Turfary.

Turking, A Kind of Sky-colour'd Cloth, mentioned in the Stat. 1 *R.* 2. *c.* 8.

Turn, Is the King's Leet through all the County; of which the Sheriff is Judge, and this Court is incident to his Office; wherefore it is called the *Sheriff's Turn*: And it had its Name originally from the Sheriff's taking a *Turn* or Circuit about his Shire, and holding this Court in several Places; for the Word *Turn* properly taken, doth not signify the Court of the Sheriff, but his Perambulation. *Crompt. Jurisd.* 230. 4 *Inst.* 260. 2 *Hawk. P. C.* 55. The *Turn* is a Court of Record; and by the Common Law, every Sheriff ought to make his *Turn* or Circuit throughout all the Hundreds in his County, in order to hold a Court in every Hundred for the Redressing of common Grievances, and Preservation of the Peace; and this Court might be holden at any Place within the Hundred, and as often as

the Sheriff thought fit: But this having been found to give the Sheriff too great Power of oppressing the People, by holding his Court at such Times and Places, at which they could not conveniently attend, and thereby increase the Number of his Amercements; by the Stat. of *Magna Charta*, *c.* 35. it was enacted, That no Sheriff shall make his *Turn* through a Hundred but twice in a Year, *viz.* once after *Easter*, and once after the Feast of St. Michael; and at the Place accustomed: Also a subsequent Statute ordain'd, That every Sheriff shall make his *Turn* yearly, one Time within the Month after *Easter*, and another Time within the Month after *Michaelmas*; and if they hold them in any other Manner, they shall lose their *Turn* for that Time. 37 *Ed.* 3. *cap.* 15. Since these Statutes, the Sheriff is indictable for holding this Court at another Time, than what is therein limited, or at an unusual Place: And it hath been held, That an Indictment found at a Sheriff's *Turn*, appearing to have been holden at another Time, is void. *Dalt. Sher.* 390, 391. *Dyer* 151. 38 *Hen.* 6. At Common Law, the Sheriff might proceed to hear and determine any Offence within his Jurisdiction, being indicted before him, and requiring a Trial, till Sheriffs were restrained from holding Pleas of the Crown, by *Magna Charta*, *c.* 17. But that Statute doth not restrain the Sheriff's *Turn*, from taking Indictments or Presentments, or awarding Process thereon; though the Power of awarding such Process being abused, was taken from all the Sheriffs, (except those of London) by the 1 *Ed.* 4. *cap.* 2. and lodg'd in the Justices of Peace at their Sessions, who are to award Process on such Indictments delivered to them by the Sheriffs, as if they had been taken before themselves, &c. 2 *Hawk.* 57, 70, 71. The Sheriff's Power in this Court is still the same as anciently it was, in all Cases not within the Statutes above-mentioned; he continues a Judge of Record, and may inquire in his *Turn* of Treasons and Felonies, by the Common Law; as well as the lowest Offences against the King, such as Purprestures, Seisures of Treasure-Trove, of Waifs, Estrays, Goods wreck'd, &c. All common Nuisances, and Annoyances, and other such like Offences; as selling corrupt Victuals, breaking the Assise of Beer and Ale, or keeping false Weights or Measures, are here indictable; also all common Disturbers of the Peace, Barrenors, and common Oppressors; and all dangerous and suspicious Persons, &c. And the Sheriff in his *Turn* may impose a Fine on all such as are guilty of Contempts in the Face of the Court; and upon a Suitor to the Court making Default, or refusing to be sworn on the Jury; or on a Bailiff not making a Panel; on a Tithing-man neglecting to make his Presentment; or a Person whose Constable refusing to be sworn, &c. and he may amerce for Offences; which Fines and Amercements are leviable and recoverable by Distress, &c. *Ibid.* 58, 60, 67. But notwithstanding this, it has been observ'd that great Part of the Business of the *Turn* and Leet, hath for several Years past, through the Negligence of Sheriffs and Stewards, devolv'd on the *Quarter-Sessions*. Wood's *Inst.* See *County Court* and *Court-Leet*.

Turno Miercomitum, Is a Writ that lieth for those that are called to the *Sheriff's Turn* out of their own Hundred. *Reg. Orig.* 173.

Turny, (Fr. *Turney*) Mentioned in the Stat. 24 H. 8. c. 13. See *Tournament*.

Tutors, The Statute relating to, 13 & 14 Car. 2. cap. 4.

Waste, Signifies a Wood grubbed up, and converted to arable Land. Co. Lit. 4.

Three Night Cell, (*Hospes duarum Noctium*) Was a Guest at an Inn a *second Night*; and if he did any Injury to any Person, he was to answer for it himself; and not his Host, as in case of a *Third Night's Awne-binde*. Sax. Leg.

Twelve Men, (*Duodecim homines legales*) Is a Number of *twelve* Persons or upwards, by whom and whose Oath as to Matter of Fact all Trials pass, both in Civil and Criminal Causes, thro' all Courts of the Common Law in this Realm: They are otherwise called the *Fury* or *Inquest*. See *Fury*.

Twylfthi, (Sax.) Were Men valued at 200 s. according to which a pecuniary Mulct was inflicted on them for Crimes, &c. Leg. Alfred. cap. 12.

Tyrtan, An Accusation, Impeachment, or Charge of any Trespas or Offence. Leg. Ethelred. cap. 2.

Tylwith, (Brit. derived from *Tyle*, i. e. *locus ubi stetit Domus vel locus edificandæ Domui aptus*, or from *Tylth*, *Trabs*, *tignus*) Signifies a Place whereon to build a House, or a Beam in the Building: And it is applied to *Familia*, a Tribe or Family branching forth of another, which in the old English *Heraldry* is called *Second* or *Third Houses*; so that in case the great paternal Stock brancheth it self into several *Tylwiths* or Houses, they carry no younger House farther; and the Use of these *Tylwiths* was to shew not only the Originals of Families as to Pedigree, but the several Distinctions and Distances of Birth, that in case any Line should make a Failure, the next in Degree may claim their Interest according to the Rules of Descent, &c.

Type, (*Typus*) A Figure, Example, or Likeness of a Thing. Litt. Dist.

Typographia, The Trade of Printing. Ibid.

Tythes, (*Decima*). See *Tithes*.

V.

Vacant, Vacant, Free, that is, at leisure; also void. Litt.

Vacaria, A void Place, or waste Ground: — *Dedimus omnia Dominica nostra Vacariis*, & *Forestis*, &c. Mem. in Scacc. Mich. 9. Edw. 1.

Vacation (*Vacatio*) Is all the Time betwixt the End of one Term and the Beginning of another; and it begins the last Day of every Term as soon as the Court rises. The Time from the Death of a Bishop, or other Spiritual Person, till the Bishoprick or Dignity is supplied with another, is also called *Vacation*. Stat. Westm. 1. cap. 21. 14 Edw. 3. cap. 4.

Vacatura, An Avoidance of an Ecclesiastical Benefice; as *prima Vacatura*, the first Voidance, &c.

Vaccary, (*Vaccaria*) Is a House or Place to keep Cows in; a Dairy-House, or Cow-Pasture. Fleta. lib. 2.

Vaccarius, The Cow-herd, who looks after the common Herd of Cows.

Vadium, Is to take Security, Bail, or Pledges for the Appearance of a Defendant in a

Court of Justice. — *Præcipimus tibi quod ponas Vadium & salvos Plegios Johannem de B. &c.* Reg. Orig.

Vadium Mortuum, A Mortgage or Pawn of Lands so engaged to the Creditor, that he hath a Right to the mean Profits for the Use of his Debt. Glanvil. lib. 10. cap. 8.

Vagabond, (*Vagabundus*) One that wanders about, and has no certain Dwelling; an idle Fellow: And Rogues, *Vagabonds*, and sturdy Beggars, are mentioned in divers Statutes. See *Vagrant*.

Vagrants, (*Vagantes*) Are described by Statute to be such as pretend to be Patent-gatherers, or Collectors for Prisons, and wander abroad for that Purpose; all Fencers, Bear-wards, common Players of Interludes, Minstrels, Juglers; Persons pretending to be Gypsies, or wandering in the Habit or Form of counterfeit *Egyptians*, or that pretend Skill in Physiognomy, Palmestry, or like crafty Science, or to tell Fortunes; such Persons as use any subtil Craft, unlawful Games or Plays; or being able in Body, that run away and leave their Wives or Children to the Parish; those who not having wherewith otherwise to maintain themselves, use Loitering, and refuse to work for the usual Wages; and all other idle Persons wandering abroad, and begging, &c. Stat. 12 Ann. cap. 23. And if any such *Vagrants* shall be found in any Parish (for whom Searches are to be made) the Constable, &c. is to apprehend them, and carry them before a Justice of Peace, who shall examine them on Oath as to their Condition, Place of Abode, &c. and send them by *Pass*, directed to the Constable, to their last legal Settlement; or if that cannot be found, to the Place of Birth; and in Case that may not be known, to the Parish where last found Begging, &c. and passed unapprehended: And *Vagrants* refusing to be examined, shall be deemed incorrigible Rogues, and be punished accordingly. The Justice is to give the Constable a Certificate, ascertaining how the *Vagrants* shall be conveyed, and in what Time, and what Allowance he shall have; and if the Place whither the *Vagrants* are sent be out of the County, then the Constable is to deliver them with the *Pass* to the Constable of the first Town of the County named in the *Pass*, taking his Receipt for such Delivery; and the next Constable is to cause the *Vagrants* to be whipp'd, and convey them forward by a new Order and Certificate from a Justice of the proper County; and so from one County to another, until brought to the Place whither ordered to be sent: And the Parish to which conveyed, shall employ them in Work, till they betake themselves to Service, &c. Justices at their Quarter-Sessions are to appoint Rates for passing of *Vagrants* at so much a Mile; and cause such Sums of Money to be rais'd for that Purpose as shall be necessary, to be quarterly paid to the chief Constables, who are to pay the petty Constables what shall be allowed on the Justice's Certificate for passing of *Vagrants*, &c. Those *Vagrants* as have begg'd for two Years, may be transported to the Plantations for seven Years: And *Vagrants* brought from *Ireland*, or the Plantations, are to be apprehended by Constables where found wandering and begging, and be whipp'd, and reconvey'd, &c. at so much *per Head* as the Justices in Sessions shall appoint; and Masters of Ships importing such *Vagrants*, or refusing to transport them

them on a Justice's Warrant, or Order, shall forfeit 5*l.* Constables failing of their Duty in apprehending *Vagrants*, or any Persons hindering the Execution of this Act, incur a Forfeiture of 20*s.* to be levied by Distress, &c. This Statute reduces all the Laws relating to *Vagrants*, *Vagabonds*, &c. into one Act of Parliament.

Valer, *Malet*, or *Maletet*, (*Valetus vel Valecta*) Was anciently a Name specially denoting young Gentlemen, though of great Discent or Quality, but afterwards attributed to those of lower Rank, and now a Servitor, or Gentleman of the Chamber. *Cambd. Selden's Tit. Hon. Eraft. lib. 3.* In the Accounts of the *Inner-Temple*, it is used for a Benchers Clerk, or Servant; and the Butlers of the House corruptly call them *Varlets*.

Valentia, The Value or Price of any Thing. See *Value*.

Vallethria, Signifies the Kindred of the Slain, one on the Father's side, and another on the side of the Mother, to prove that a Man was a *Welshman*: It is mentioned in Stat. *Wallie* 12 Ed. 1. cap. 4.

Value, (*Valentia*, *Valor*) Is a known Word; and the *Value* of those Things wherein Offences are committed, is usually comprised in Indictments, which seems necessary in *Theft* to make a Difference from *Petit Larceny*, and in *Trespass* to aggravate the Fault, &c. But in other Cases a Distinction has been made between *Value* and *Price*. If a Plaintiff Declares in an Action of *Trespass* for the Taking away of live Cattle, or one particular Thing, he ought to say that the Defendant took them away *Pretii* so much; if the Declaration be for taking of Things without Life, it must be alledg'd *ad valentiam*, &c. so that live Cattle are to be prized at such a Price, as the Owner of them did esteem them to be worth; and dead Things to be reckon'd at the *Value* of the Market. Of Coin not current it shall be *Pretii*; but of Coin current it shall be neither said *Pretii* nor *ad valentiam*, for the *Value* and Price thereof is certain; tho' the Difference between *Pretii* and *ad valentiam* may proceed from the Rule in the *Register of Writs*, which shews it to be according to the ancient Forms used in the Law. *West. Symb. part 2. 2 Lill. Abr. 629.* A Jewel 'tis said is not *valuable* in Law, but only according to the *Valuation* of the Owner of it, and is very uncertain: But there seems to be a certain *Value* for Diamonds among the Merchant Jewelers, according to their Weight and Lustre, &c. *Hill. 21 Car. B. R. 2 Lill. Abr. 628.* A Man cannot say that another owes him so much, when the *Value* of the Thing owing is uncertain; for which Reason Actions in these Cases are always brought in the *Detinet*, and the Declaration *ad valentiam*, &c. 1 *Lutw. 484.*

Value of Land, May be intended such as it was anciently, and not adjudg'd according to its improv'd *Value*. 2 *Leon* 117. *Lutw. 1304.* See *Purchase*.

Value of Marriage, (*Valore Maritagii*) Was a Writ that lay for the Lord, having proffered *Marriage* to an Infant without Disparagement, if the Man refus'd to take the Lord's Offer, to recover the *Value* of the Marriage. *Reg. Orig. 164.* See the Statute 12 *Car. 3. cap. 24.*

Vang, (*Sax.*) He *vanged* for me at the *Vant*, i. e. stood for me at the Font. *Blount.*

Vannus, A Vane, *Venti Index*; and *Vannus* a Fan to winnow Corn with. *Lit. Dist.*

Vantarius, (*Præcursor*) As *Vantarius Regis*, the King's Fore-footman. — *Richardus R. Miles Ten. Terras per Serjeantiam esse Vantarium Regis, &c. Rot. de finibus. Term. Mich. 2 Edw. 2.*

Variance, (*Variantia*, from the Fr. *Varier*, i. e. *Alterare*) Signifies any Alteration of a Thing formerly laid in a Plea, or where the Declaration in a Cause differs from the Writ, or from the Deed upon which it is grounded, &c. 2 *Lill. Abr. 629.* If there is a *Variane* between the Declaration and the Writ, it is Error; and the Writ shall abate. And if there appear to be a material *Variance* between the Matter pleaded and the Manner of the Pleading it, this is not a good Plea; for the Manner and Matter of Pleading ought to agree in Substance; or there will be no Certainty in it. *Cro. Jac. 479. 2 Lill. 629.* But when the Pleading is good in Substance, a small *Variance* shall not hurt. 3 *Mod. 227.* Where the Original Writ *varies* from the Declaration, 'tis not remedied by any Statute of *Feoffails. 5 Rep. 37.* There was a *Variance* between the Writ and Declaration, in Action of the Case, the one being for more than the other, and tho' the Plaintiff had a Verdict, he could not get Judgment: It was held, that it was not help'd by the Stat. 18 *Eliz.* for that Statute helps when there is no Writ, not where there is one that *varies* in Substance from the Declaration. 2 *Cro. 829.* In Ejectment, the Original was *Teste 24 Jan.* And the Ejectment suppos'd to be 31 *Jan.* in the same Year; the Plaintiff had a Verdict, and this was assign'd for Error, viz. That the Original was taken out before there was any Cause of Action, and being certified to be between the same Parties, and of the same Land, in the same Term, it was adjudg'd ill, and not to warrant the Declaration; and thereupon the Judgment was reversed. *Cro. Car. 98, 205.* Tho' a Verdict in Ejectment was for a Messuage next the Messuage of A. B. and the Judgment for a Messuage next another Messuage in the Occupation of A. B. This is no material *Variance*, but is amendable by the Statute 16 & 17 *Car. 2. cap. 8.* Which Enacts, That all Omissions, *Variances*, &c. not being against the Right of the Matter of the Suit, shall be amended. *Raym. 398. 3 Salk. 368.* The Original Writ in C. B. concluded *ad dampnum 40*l.** and the Declaration was *ad dampnum 100*l.** The Jury gave 12*l.* Damages; and on a Writ of Error brought this *Variance* was assign'd; it was held that this had been a good Objection in the Original Action on a Demurrer to the Declaration; but it is not so after Verdict, not being Matter in Point of Judgment, especially as the Jury found only 12*l.* Damages; but if the Verdict had found more Damages than what was mentioned in the Writ, tho' less than what was set forth in the Declaration, it had been ill, because there was no Writ to warrant such Damages. 2 *Cro. 629. 1 Bulst. 49.* If a Defendant pleads a *Variane* between the Writ and Declaration, he is to crave Oyer of the Writ before he shall have any Advantage of the *Variance*, because the Writ and Declaration are not upon the same Roll; and therefore if the Defendant plead to it without demanding Oyer, on Demurrer Judgment may be for him to answer over, &c. 2 *Salk. 658.* If in the Imparlance Roll the Declaration is in Debt, and in the Plea Roll 'tis in *Trespass*; this is such a *Variane* that if the Plaintiff hath Judgment it shall be reversed. 3 *Bulst. 229.* When a Contract is intire,

intire, an Action of Debt cannot be brought for Part of the Money, without shewing how the other is satisfied; if it be, this *Variance* from the true Debt will make it ill. 3 *Nelf. Abr.* 440. In Writ of Error in the Exchequer Chamber to remove a Record out of B. R. of a certain Trespass the Husband and Wife had done, the Record certified was of a Trespass done by the Woman alone, and for this *Variance* the Writ was abated, and the Record not removed. *Sid.* 269. 3 *Salk.* 369. *Variance* in the Number of Acres or Persons, between a Fine and an Indenture to lead the Uses; if the Party avers, there was not any other Consideration, or new Agreement, but that the Fine was levied according to the Uses and Intents mentioned in the Indenture, it is good. 5 *Rep.* 25. *Variance* in Names, &c. how supplied by Averment, that a Man is the same Person, and Inquest of Office, &c. see *Averment* and *Pardon*. Vide *Amendment*.

Vassal, (*Vassallus*) A Tenant or Feudatary; also a Slave or Servant: *Vassallus* is quasi *Bassallus*, i. e. *inferior* *Servus*, as the *Vassal* is inferior to his Master, and must serve him; and yet he is in a Manner his Companion, because each of them is obliged to the other. *Skene*.

Vassalage, *Vassalage*, or the Tenure of Vassals. *Corvel*.

Waste, Is a Writ that lies against Tenants for Term of Life or Years, committing *Waste*. *F. N. B.* 55. *Reg. Orig.* 72. See *Waste*.

Vavasor, Is one who was in Dignity next a Baron. *Camd. Brit.* 109. — *Sunt & alii Potentes Regni, qui dicuntur Barones, hoc est, Robur Belli: Et alii sunt qui dicuntur Vavasores, Viri Magnae Dignitatis, &c.* *Bract. lib.* 1. cap. 8. *Spelm. Gloss.*

Vavasory, (*Vavasoria*) The Lands that a Vavasor held. *Bract. lib.* 2.

Veal-money, The Tenants within the Manor of Bradford in the County of Wilts, pay a yearly Rent by this Name to their Lord in lieu of Veal paid formerly in Kind. *Blount's Ten.*

Vestigal Judiciarum, Is applied to Money or Fines paid to the King, to defray the Charge he is at in maintaining the Courts of Justice, and Protection of the People. 3 *Salk.* 35.

Vesours, (*Vesores*, from the Fr. *Veoir*, i. e. *Cernere*) Are such Persons as are sent by the Court to take a View of any Place in Question, for the better Decision of the Right thereto: And it is used for those that are appointed to view an Offence; as a Man murdered, a Woman ravished, &c. *Old. Nat. Br.* 112. *Bract. lib.* 5.

Velum quadragesimale, A Veil or Piece of Hangings, drawn before the Altar in Lent, as a Token of Mourning and Sorrow. — *Item ad quodlibet Altare, &c. Velum quadragesimale, Velum Nuptiale, Palla Mortuorum, &c.* *Synod. Exon.* Anno 1217.

Venaria, Are those Beasts which are caught in the Woods by hunting. *Leg. Canut. c.* 108.

Venatio, In the Statute of *Charta de Foresta* signifies *Venison*, in Fr. *Venaison*: It is called *Venaison*, of the Means whereby the Beasts are taken, quoniam ex Venatione capiuntur, and being hunted are most wholesome: And they are termed Beasts of *Venery*, (not *Venery*) because they are gotten in Hunting. 4 *Inst.* 316.

Venditioni exponas, Is a judicial Writ, directed to the Sheriff, commanding him to sell Goods which he hath formerly taken into his Hands, for the Satisfying a Judgment given in

the King's Court. *Reg. Judic.* 33. *Stat.* 14 *Car.* 2. cap. 21. If a *Superfedeas* be not delivered to the Sheriff till he hath in part executed a Writ of Execution, he may afterwards be authorized to go through with it by a *Venditioni exponas*; as he may also in the like Case after a Writ of Error. *Dyer* 98. *Cro. Eliz.* 397. 1 *Roll. Abr.* 864.

Venditor Begis, The King's Salesman; being the Person who exposed to Sale Goods and Chattels seized or distrained to answer any Debt due to the King: This Office was granted by King Ed. 1. to Philip de Lardimer, in the County of York, *Ita quod ipse vel certus suus Attornatus ibit ad Mandatum Vicecomitis de loco in locum infra Com. pred. sumptibus suis ad Venditiones faciendas, & capiat de unaquaque Venditione pro Feodo suo xxxii. den.* But the Office was seized into the King's Hands for the Abuse thereof. Anno 2 Ed. 2.

Venia, Is used for a Kneeling or low Prostration on the Ground, by Penitents. *Walsingh.* 196.

Venire facias, A Writ judicial awarded to the Sheriff to cause a Jury of the Neighbourhood to appear, when a Cause is brought to Issue, to try the same; and if the Jury come not at the Day of this Writ, then there shall go a *Habeas Corpora*, and after a *Distress* until they appear. *Old Nat. Br.* 157. But where a *Venire* omits Part of the Issue to be tried, or any of the Parties; if a Juror is named in the *Habeas Corpora*, by a Name different from that in the *Venire*; or a Juror return'd on such a Panel is omitted in the *Habeas Corpora*; or a *Venire* or *Distringas* are issued without any Award on the Roll to warrant them; it will be ill, and is said to be a Discontinuance. 2 *Hawk. P. C.* 298, 299. A *Venire facias* ought to be *de aliquo Vicineto*; and a *Venire de Vicineto Civitatis*, is good without naming of the Parish within the City out of which the Jurors are summoned. 2 *Lill.* 633, 636. Though it hath been held, that the *Venire facias* may be of a Town, Parish, Manor, or any Place known, called a *Lieu Conus*; but not of a City, or County. *Cro. Eliz.* 260. And yet where a *Venue* cannot come from a Vill, Hamlet, &c. there it might be *de Corpore Comitatus*, to prevent Failure of Justice, before the Statute 4 & 5 Ann. By which Act, a *Venire facias* may be from the Body of the County, &c. In an Information against a County for not repairing a Bridge, it was held, that the Attorney General might take a *Venire* to any adjacent County; and that it might be *Corpore of the Whole*, or *de Vicineto* of some particular Place therein next adjoining. *Trin.* 3 Ann. 3 *Salk.* 381. The Plaintiff in *Assumpsit* declared upon a Promise made at Maidstone in Kent; and upon *Non Assumpsit* pleaded, the *Venire facias* was *de Vicineto Villa & Parochiae de Maidstone*, and a Trial was had: But it was resolv'd to be an insufficient Trial, because the *Venire* ought not to be of a larger Precinct, than the Plaintiff himself had alledged in his Declaration. *Tetu.* 104. And it will be Error if the *Venire* be short; as a Defendant in Trespass prescribed for a Footway leading from Hinton so far as the Footway of Horn-Castle, &c. Issue was taken upon this Prescription, and the *Venire facias* awarded *de Vicineto de Hinton* only, when it should have been of Hinton and Horn Castle; and the Judgment was reversed. *Moor* 257, 412. So if in Ejectment Lands are laid in A. B. and C. and try'd for the Plaintiff by a *Visse* out of A. only; this is insufficient. 5 *Rep.* 36. Tho' in Action of Trespass, &c. for rescuing a Distress for Rent, setting

ting forth that the Plaintiff made a Lease of Lands to the Defendant lying in three several Places; the Plaintiff having a Verdict, it was moved in Arrest of Judgment that the Trial was insufficient, because the *Venire* was from one Place, when it ought to be from all three Places where the Lands lie; but adjudged, that this Action being brought against a wrong Doer, and not upon the Lease it self, the *Venue* may be laid in that very Place where the Wrong was done. *Lutw.* 213. One *Venire facias* is sufficient to try several Issues, between the same Parties, and in the same County. *2 Cro.* 550. And where an Action was brought against two, they both joined Issue, and one died; and after the *Venire facias* was awarded to try the Issue between both, which was done; and held to be no Error, though it issued against a dead Person, because one of the Defendants was living. *Cro. Car.* 308. *3 Nels. Abr.* 444. If a *Venire facias* is return'd by the Coroner, on Objection to the Sheriff, &c. when it ought to be return'd by the Sheriff, the Trial is wrong, and not remedied by any Statute of Jeofails. *5 Rep.* 36. In all Cases, where there is to be a special Jury, the *Venire* must be special: If the Matter to be tried be within divers Places, in one and the same County, the *Venire facias* shall be general; and if in several Counties, it shall be special. *2 Lill. Abr.* 635. If a Matter of Law be depending undetermined, and an Issue also joined in the Cause, there is to be a special *Venire* awarded, *tam ad Triandum Exitum, quam ad Inquirendum de Dampnis*, &c. as well to try the Issue, as to find the Damages both upon the Issue and the Matter put in Judgment of the Court. *Ibid.* 636. The Plaintiff's Attorney ought to give a Copy of the Jury return'd upon a *Venire facias* to the Defendant's Attorney, before the Trial; and it is to be filed. *Paf. b.* 24 *Car. B. R.* At a Trial at *Nisi prius*, the Plaintiff changed the *Venire facias*, and Panels, and had a Jury the Defendant knew not of; and ruled, that the Defendant cannot be aided, if the first *Venue* was not filed: And a Difference was taken when the first *Venire* was not filed, that he cannot be aided, because he may resort to the Sheriff, and have a View of the Panel, to be prepared for his Challenges; but if the first *Venire* was filed, then the Defendant shall have a new Trial. *Raym.* 79. A *Venire facias* after filed, cannot be altered, without Consent of Parties: Tho' where a Verdict is imperfect, so that Judgment cannot be given upon it, there shall be a new *Venire facias* to try the Cause, and find a new Verdict. *2 Lill.* 634, 635. And if a Plaintiff be nonsuit on a Mistake in the *Nisi prius*, and the Paper-Book and Roll are right, the Nonsuit may be set aside, and a *Venire facias de novo* awarded, and the Issue tried, &c. *Cro. Jac.* 669. A *Venire facias* may be amended by the Issue Roll, when that is right, in some Cases. *3 Nels.* 446.

Venire facias, Is also the common Process upon any *Presentment*, being in Nature of a Summons for the Party to appear; and is a proper Process to be first awarded on an Indictment for any Crime, under the Degree of Treason, Felony, or Maim, except in such Cases wherein other Process is directed by Statute: And if it appear by the Return to such *Venire*, that the Party has Lands in the County whereby he may be distrained, the Distress infinite shall be awarded till he do appear; and he shall forfeit on every Default, so much as the Sheriff returns upon him

in Issues: But if a *Nihil* be return'd, a *Capias*, *Alias*, and *Pluries*, shall issue, &c. *2 Hawk.* 283. The *Venire facias ad Respondendum* may be without a Day certain, because by an Appearance the Fault in this Process is cured; but a *Venire facias ad triand. exitum* must be returnable on a Day certain, &c. *3 Salk.* 371.

Venire facias tot Patronat. Is mentioned in *Lambard's Eiren. lib. 4.* See *Ventre inspiciendo*.

Venitane, Is the Book of *Ecclesiasticus*, so called, because of the *Venite Exultemus Domino, Jubilate Deo*, &c. It often occurs in the History of our English Synods; and is called *Venitarium*. *Mon. Angl. Tom. 3. p. 332.*

Venter, Signifies the Belly, or the Child that a Woman goes with; and in Law there is a *first* and *second Venter*, &c. of Children by several Wives; and how they shall take in Descents of Lands, vide *Fee-simple*.

Ventre inspiciendo, Is a Writ to search a Woman that saith she is with Child, and thereby withholdeth Lands from the next Heir: The Trial whereof is by a *Jury of Women*. *Reg. Orig.* 227. The Law hath provided this Writ for the Benefit of right Heirs, *contra Partus suppositiofas*; and it is sued out of Chancery, and returnable in the Common Pleas, &c. And if a Man having Lands in Fee-simple, or Fee-tail, dieth, and his Wife soon after marries again, and feigns her self with Child by her former Husband; in this Case, tho' she be married, the Writ de *Ventre inspiciendo* doth lie for the Heir against her. *2 Lill. Abr.* 631. *Thomas de Aldham* of *Surry*, Brother of *Adam de Aldham*, Anno 4 *Hen. 3.* claimed his Brother's Estate; but *Joan* Widow of the said *Adam* pleaded she was with Child, whereupon the said *Thomas* obtained the Writ *Ventre inspiciendo* directed to the Sheriff. — *Quod assumptis te um discretis & legalibus militibus & discretis & legalibus mulieribus de Comitatu tuo in propria Persona accetas ad ipsam Joannam, & ipsam a predictis mulieribus coram prefatis militibus videri facias, & diligenter tractari per ubera & per Ventrem, & Inquisitionem factam Certificari facias sub sigillo tuo & sigillo duorum militum Justiciarius nostris apud Westm.* &c. And in *Easter Term 29 Eliz.* this Writ was sued out of the Chancery into C. B. at the Prosecution of *Perival Willoughby*, who had married the Eldest of the five Daughters of *Sir Francis Willoughby*, who died without any Son, but left a Wife named *Dorothy*, that at the Time of his Death pretended her self to be with Child by *Sir Francis*, which if it were a Son, all the five Sisters would thereby lose the Inheritance descended unto them; which Writ was directed to the Sheriffs of *London*, and they were commanded to cause the said *Dorothy* to be viewed by 12 Knights, and searched by 12 Women, in the Presence of the 12 Knights, *Et ad tractandum per ubera & ad ventrem inspiciendum*, whether she were with Child, and to certify the same to the Court of Common Pleas; and if she were with Child, to certify for how long, in their Judgments, *Et quando sit paritura*; upon which the Sheriffs accordingly caused her to be searched, and returned that she was twenty Weeks gone with Child, and that within twenty Weeks more, *suit paritura*: Thereupon another Writ issued out of C. B. requiring the Sheriffs safely to keep her in such a House, and that the Doors should be well guarded; and that every Day they should cause her to be viewed by some of the Women named in the Writ, and when she should be delivered, that some of them

them should be with her to view her Birth, whether it be Male or Female, to the Intent that there should be no Falſity: And upon this Writ the Sheriffs return'd, That they had cauſed her accordingly to be kept and view'd, and that ſuch a Day ſhe was delivered of a Daughter. *Cro. Eliz.* 566. In the 22d Year of K. James 1. the Widow of one *Duncomb* married within a Week after the Death of her firſt Husband, and his Couſin and Heir brought the Writ *Ventre Inſpiciendo* directed to the Sheriff of L. who return'd that he had cauſed her to be ſearched by ſuch Matrons who found her with Child, *Et quod paritura ſuit* within ſuch a Time; and thereon it was pray'd that the Sheriff might take her into his Cuſtody, and keep her till ſhe was delivered, but becauſe ſhe ought to live with her Husband, they would not take her from him; but he was ordered to enter into a Recognizance not to remove her from his Dwelling-houſe, and a Writ was awarded to the Sheriff to cauſe her to be inſpected every Day, by Two of the Women which he had return'd had ſearched her, and that Three of them ſhould be preſent at her Delivery, &c. *Cro. Jac.* 685. Theſe two Caſes are notable Precedents of the Form of Proſecuting theſe Writs: And where Women condemn'd for Crimes, who plead their Bellies, pretending to be with Child, are to be viewed and try'd by a Jury of Matrons, ſee *Reprivee*.

Venue, (*Vicinetum*, or *Viſnetum*) Is taken for a neighbouring Place, *Locus quem Vicini habitant*: It is the Place from whence a Jury are to come for Trial of Cauſes. *F. N. B.* 115. In Actions of Treſpaſs and Ejeſtment, the *Venue* is to be from the Vill or Hamlet, where the Lands in Queſtion do lie: And in all Real Actions, the *Venue* muſt be laid in that County where the Thing is for which the Action is brought. *2 Lill. Abr.* 634, 635. But the Judges may, in all tranſitory Actions, alter the *Venue* from the Place where by the Law it otherwiſe ſhould be, if they believe through any juſt Cauſe there cannot be an indifferent Trial in the County the *Venue* was firſt laid in; though if a Defendant will move to change the *Venue*, he muſt make *Affidavit* that the Cauſe of Action (if any be) did ariſe in the County where he would have the *Venue* to be, or elſewhere, and not in the County where the Plaintiff hath laid his Action. And if upon a Motion the Court orders the *Venue* to be altered, the Plaintiff is to alter his Declaration, and lay his Action in the other County, &c. *Mich.* 22 Car. B. R. Motion to change a *Venue* muſt be within eight Days after the Declaration delivered; but this Rule is not ſtrictly obſerv'd: It is never granted after the Rules for Pleading are out; and 'tis a Rule not to change a *Venue*, where neceſſary Evidence ariſes in two Counties to ſupport the Action, if the Plaintiff will be bound to give ſome material Evidence in the County where he laid his Action. *2 Salk.* 668, 669. If the Defendant is a Barrifter or Attorney, on Motion the *Venue* ſhall be changed into *Middleſex*; and where an Attorney is Plaintiff, and lays his Action in *Middleſex*, there the *Venue* ſhall continue. *Ibid.* The Want of a *Venue* is only curable by ſuch a Plea which admits the Faſt, for the Trial whereof it was required to lay a *Venue*. *3 Salk.* 381. Vide *Venire facias*.

Verderer, (*Viridarius*, from the Fr. *Verdeur*, i. e. *Cuſtos Nemoris*) Is an Officer of the King's Foreſt, whoſe Office is properly to look to the Vert,

and ſee it well maintained; and he is ſworn to keep the Affiſes of the Foreſt, and view, receive, and inrol the Attachments and Preſentments of Treſpaſſes of Vert and Veniſon, &c. *Manwood*, par. 1. pag. 332.

Verdict, (*Verdictum*, *quasi dictum Veritatis*) Is the Answer of a Jury given to the Court, concerning the Matter of Faſt in any Cauſe committed to their Trial; wherein every one of the Twelve Jurors muſt agree, or it cannot be a *Verdict*: And the Jurors are to try the Faſt, and the Judges to adjuſt according to the Law that ariſeth upon it. *1 Inſt.* 226. *Verdicts* are either *General*, or *Special*: A *General Verdict* is that which is brought into the Court in like general Terms to the General Iſſue; as if a Defendant pleads Not guilty, or no Wrong, then the Iſſue is general, whether he be guilty, or the Faſt be a Wrong, or not; which being committed to the Jury, they, upon Conſideration of the Evidence, ſay for the Plaintiff, that the Defendant is guilty of a Wrong, or for the Defendant, that it is no Wrong, &c. A *Special Verdict* is where they find the Matter at large, according to the Evidence given, that ſuch a Thing is done by the Defendant; and declaring the Courſe of the Faſt, as in their Opinions it is proved, pray the Judgment of the Court as to what the Law is in ſuch a Caſe. *S. P. C.* *1 Inſt.* 227. And a *Faſt* may be found *ſpecially*, viz. Where a Perſon is indiſted of Murder; the Jury may bring him in guilty of Manſlaughter, &c. or they may leave the Matter to the Judges, in which Caſes ſometimes it is reſerr'd to the Lord Chief Juſtice of B. R. and all the Judges to determine it; wherein 'tis ſaid a Recorder of London who tried a Priſoner hath given his Opinion, and the King himſelf, to whom the Matter was reported. *3 Lev.* 255. *2 Nelf. Abr.* 97. There are likewiſe *Publick* and *Privy Verdicts*: *Publick*, when given in open Court; and *Privy*, which is given out of the Court, before any of the Judges thereof, and is called *Privy*, being to be kept ſecret from the Parties till affirm'd in Court. *1 Inſt.* 227. But a *Privy Verdict* is in Strictneſs no *Verdict*; for it is only a Favour which is allowed by the Court to the Jury for their Eaſe: The Jury may vary from it, and when come into Court give a contrary *Verdict*; but this muſt be before the *Privy Verdict* is recorded. *5 Mod.* 351. *1 Inſt.* No *Privy Verdict* can be given in criminal Matters, which concern Life, as Felony, &c. but it muſt be openly in Court; becauſe the Jury are commanded to look upon the Priſoner, when they give their *Verdict*, and ſo the Priſoner is to be there preſent: But in criminal Cauſes, where the Defendant is not to be perſonally preſent at the Time of the *Verdict*, and in Informations, a *Privy Verdict* may be given. *Raym.* 193. *1 Vent.* 97. A *Special Verdict* may be given in criminal, or civil Caſes; and where the Court directs the Jury to find a *Special Verdict* in a civil Cauſe, one of the Counſel on each Side agree upon Notes for it, and draw them up and ſet their Hands to them; and then they are to be delivered to the Jury in convenient Time, or the Court will take a *General Verdict*: If at the Prayer of the Plaintiff or Defendant, a *Special Verdict* is ordered to be found, the Party praying it is to proſecute the *Special Verdict*, that the Matter in Law may be determined; and if either Party delay to join in drawing it up, and pay his Part of the Charges, or if the Counſel for the Defendant reſuſes to ſubſcribe:

subscribe the Special *Verdict*, the Party desiring it shall draw it up and enter it *Ex parte*. 2 *Lill. Abr.* 645, 653. Where the Parties disagree, or the Special *Verdict* is drawn contrary to the Notes agreed upon, the Court on Motion will rectify it; and the Court may amend a Special *Verdict*, to bring the Special Matter in Question: Though if a Matter of Fact be left out in the Notes of the Special *Verdict* drawn by Counsel, this cannot be amended afterwards. *Ibid.* 646. The Plaintiff and Defendant are both of them to appear in Court to hear a Special *Verdict*, and the Jury is to be called and to have the Special *Verdict* read unto them by the Secondary; and upon the Reading of it, if there be any Mistake in the Drawing it up, the Counsel on either Side may except against it; and when the Counsel is agreed, then the Secondary demands of the Jury, whether they agree to find it so; and if they answer they do, the *Verdict* is found: And it is to be afterwards entered, &c. *Pasch.* 23 *Car. B. R.* 2 *Lill.* 646. A Special *Verdict*, though agreed to by the Counsel, &c. is not a Special *Verdict* 'till allow'd by the Court. *Ibid.* In all Cases and all Actions, the Jury may give a General or Special *Verdict*; and the Court is bound to receive it, if pertinent to the Point in Issue, and if the Jury doubt they may refer themselves to the Court, but are not bound so to do. 3 *Salk.* 373. Though the Plaintiff and Defendant in a Cause consent to have the Jury find a Special *Verdict*, yet they may find a General *Verdict*; but this is not usual: And if the Jury will take upon them to find, against the Directions of the Court, any Thing in Matter of Law, the Court will receive the *Verdict*; but if they give a false *Verdict*, they are liable to Attaint. *Pasch.* 23 *Car.* The ancient Course of laying a Fine on Jurors, barely for giving a *Verdict* contrary to the Directions of the Court, is condemn'd as illegal and disus'd: And it is the same if the *Verdict* be given against Evidence; for the Jury may give it against Evidence, if they know the Fact themselves. *Kel.* 50, 58. If Jurors eat or drink any Thing at the Charge of him for whom they give their *Verdict*, before they are agreed; or if by Casting of Lots, they find for the Plaintiff or Defendant; if any Writing, Letter, &c. be delivered by the Plaintiff, or any in his Behalf to the Jury, concerning the Matter in Issue, after the Jury are gone from the Bar, and the *Verdict* is found for the Plaintiff; or if either of the Parties, their Attornies or Solicitors, speak any Thing to the Jury before agreed on their *Verdict*, which relates to the Cause; as that 'tis a clear Cause, or I hope you will find for such a Person; or if any Witness be sent for by the Jury, after gone from the Bar, and he repeats his Evidence again, &c. In these Cases the *Verdict* shall be void and set aside: But tho' where the Jury eat and drink at the Charge of the Plaintiff, and the *Verdict* being found for him, it is void; it is not so if given for the Defendant: And if the Plaintiff, after the Jury are gone from the Bar, deliver any Writing to any of the Jurors, although the *Verdict* shall be void if given for the Plaintiff; it is otherwise if given for the Defendant, and *sic e converso*, &c. Also if the Jury have eat or drank after they went from the Bar, and before they gave their *Verdict*, this ought to be shewed before the *Verdict* is given. 1 *Inst.* 227. 1 *Ventr.* 125. 2 *Lev.* 140. *Moor.* 17. 3 *Nell.* *Abr.* 454. A Jury-man withdrawing from his Fellows, or keeping them from giving their

Verdict, without giving good Reason for it, shall be fined; but if he differ from them in Judgment, he shall not: And although Jury-men are punishable for Misdemeanors, every Misdemeanor of the Jury before they give their *Verdict*, is not a sufficient Cause to make void the *Verdict*. *Dyer* 53. 2 *Lill. Abr.* 647. If one of a Jury that found a *Verdict*, were outlawed at the Time of the *Verdict*, it is not good: And where a *Verdict* is given by thirteen Jurors, it is said to be a void *Verdict*; because no Attaint will lie. 2 *Lill.* 644, 650. In capital Cases, a *Verdict* must be actually given; and if the Jury don't all agree upon it, they may be carried in Carts after the Judges, round the Circuit 'till they agree; and in such Case they may give their *Verdict* in another County. 1 *Inst.* 227, 281. 1 *Ventr.* 97. The Court may set aside a *Verdict* that convicts a Man contrary to Evidence in a criminal Cause; but they cannot set aside a *Verdict* which acquits him. *Wood's Inst.* 648. If the Jury acquit a Person of an Indictment of Felony against Evidence, the Court, before the *Verdict* is recorded, may order them to go out again and re-consider the Matter; but this hath been thought hard, and of late Years is not so frequently practis'd as formerly: There are Instances where Defendants acquitted of Crimes contrary to Evidence, have been bound to the Good Behaviour. 2 *Hawk. P. C.* 442. When a *Verdict* in a Civil Action is given against Evidence, it shall be set aside, and a new Trial had, &c. If the Fact upon which the Court was to judge, be not found by the *Verdict*, a new *Venire facias* shall be granted. 1 *Roll. Abr.* 693. A *Verdict* being given where no Issue is joined, there can be no Judgment upon it; but a *Repleader* is to be had. *Mod. Ca.* 4. And if a *Verdict* be ambiguous, insufficient, repugnant, imperfect, or uncertain, Judgment shall not pass upon it. 1 *Saund.* 154, 155. *Verdicts* must in all Things directly answer the Issue, or they will not be good; and if a *Verdict* finds only Part of the Issue, it may be ill for the Whole. 3 *Salk.* 374. But there is a Difference between Actions founded on a Wrong, and on a Contract; for where 'tis founded on a Wrong, as on a Trespass, or Escape, &c. 'tis maintainable if any Part of it is found: So in Debt for Rent, a less Sum than demanded may be found by the *Verdict*, because it may be apportioned; but where an Action is founded on a Contract, there 'tis intire, and otherwise. 2 *Cro.* 380. If several Persons are indicted, or jointly charged in an Information, a *Verdict* may find some of the Defendants guilty, and not others: And if the Substance of an Issue be found, or so much as will serve the Plaintiff's Turn, although not directly according to the Issue, the *Verdict* is good. 1 *Lev.* 142. *Hob.* 73. 1 *Mod.* 4. According to *Glyn Ch. Just.* if an Action be brought for 500*l.* the Jury may find Part paid against the Plaintiff, and Part unpaid against the Defendant, and so divide the *Verdict*. *Trin.* 1658. 2 *Lill. Abr.* 649. If the Jury find the Issue and more, it is good for the Issue, and void for the Residue: And where a Jury find a Point in Issue, and a superfluous Matter over and above, that shall not vitiate the *Verdict*. 2 *Lev.* 253. Yet if a Man brings an Action of Debt, and declares for 20*l.* and the Jury, upon *Nil debet* pleaded, find that the Defendant owed 40*l.* this *Verdict* is ill; for the Plaintiff cannot recover more than he demands; and in this Case he may not recover what he demands, because the Court cannot

cannot sever their Judgment from the *Verdict*. 3 Salk. 376. A Plaintiff failing to prove his Issue, the *Verdict* ought to be found for the Defendant; and the Court will give Judgment for the Defendant, where it appears that the Plaintiff hath recovered by *Verdict* without Cause of Action. 2 Lill. 644, 651. A *Verdict* found against a Record, which is of a higher Nature than any *Verdict*, is not good: But where a *Verdict* may be any Ways construed to make it good, it shall be so taken, and not to make it void. *Ibid.* No *Verdict* will make that good, which is not so by Law, of which the Court is to judge; Judgment is to be given on *Verdicts*, that stand with Law; and what both Parties have agreed in the Pleading, must be admitted so to be, though the Jury find otherwise, it being a Rule in Law. *Hob.* 112. 2 Cro. 678. 2 Mod. 4. The Statute of Jeofails helps after *Verdict*; as it supposes the Matter left out was given in Evidence, and that the Judge directed accordingly. 1 Mod. 292. If there be no original Writ, it is held by a *Verdict* by the Statute of Jeofails; but not if there be a bad Writ: A Declaration that is not good, is in many Cases help'd after *Verdict*; but not where the Declaration doth not make it appear that the Plaintiff had some Cause of Action, to warrant his Declaration, &c. A *Verdict* may make an ill Plea good, by Intendment, &c. But a *Verdict* will not help, where there is no Issue: And what is good after *Verdict*, would be ill on Demurrer; also in criminal Cases, Real Actions, or Actions *Quintum*, if there be any Errors in the Proceedings, they are not help'd after *Verdict*, by the Stat. of Jeofails. 2 Lill. Abr. 644, 647. 2 Bulst. 41. 2 Salk. 644. 3 Mod. 161. Where a *Verdict* is found for the Plaintiff, and he will not enter it, the Defendant may compel him to do it, on Motion; or the Defendant may enter it himself. 2 Lill. After a *Verdict* is return'd in Court, it cannot be amended; but if there be any Misprision, it is to be suggested before: And a Mistake of the Clerk of the Assises appearing to the Court, was ordered to be amended. *Cro. Eliz.* 112, 150. On Return of *Verdicts*, in Civil Causes, given at the Assises, to the Courts at *Westminster*, Judgment is had thereon; and generally if the Judgment differ from the *Verdict*, it may be reversed, &c. See *Issue*, and *Judgment*.

A Charge by *Verdict* of Felony, found against a Person, in Action of Trespas for taking Goods, is equivalent to an Indictment, to put the Defendant to answer, &c. But it is said no *Verdict* ought to be taken in the Trespas, 'till the Party is tried for the Felony. 2 Hawk. 211, 440.

Verecundium, Is specially used for Injury done to any one. *Somner of Gavelkind*, pag. 174.

Verge, (*Virgata*) The Compass of the King's Court, which bounds the Jurisdiction of the Lord Steward of the Household; and that seems to have been twelve Miles in Compass. *Stat.* 13 R. 2. c. 3. *Britton* 68. *F. N. B.* 24. There is also a *Verge of Land*; which is an uncertain Quantity directed by the Custom of the Country, from fifteen to thirty Acres, as appears under *Yard-land*. 28 Ed. 1. And the Word *Verge* hath another Signification, of a Stick or Rod, whereby one is admitted Tenant to a Copyhold Estate. *Old Nat. Br.* 17.

Vergers. (*Virgatores*) Are such as carry White Wands before the Judges, &c. *Fleta*, lib. 2. cap. 38.

Veronica, A Word mentioned by our *Historians*, having its Original from this, That as our

Saviour was led towards the Cross, the Likeness of his Face was formed on his Handkerchief in a miraculous Manner, which is still preserv'd in St. Peter's Church at Rome, and called *Veronica*. *Mat. Paris.* Anno 1216. pag. 514. *Brompt.* 121.

Vert, (*Fr. Verd*, i. e. *Viridis*, otherwise called *Green-bue*) In the Forest Laws signifies every Thing that beareth a Green Leaf within a Forest, that may cover a Deer; but especially great and thick Coverts. Of *Vert* there are divers Kinds; some that bear Fruit, which may serve for Food, as Chesnut-Trees, Service-Trees, Nut-Trees, Crab-Trees, &c. For the Shelter of the Game, some called Haut-boys, serving both for Food and Browze; and for the Defence of them, as Oaks, Beeches, &c. and for Shelter and Defence, such as Ashes, Poplars, Maples, Alder, &c. Of Sub-boys, some for Browze and Food of the Game; of Bushes and other Vegetables, some are for Food and Shelter, as the Hawthorn, Blackthorn, &c. And some for Hiding and Shelter, such as Brakes, Gorse, Heath, &c. But Herbs and Weeds, although they be Green, our legal *Vert* extendeth not to them. 4 Inst. 327. *Manwood* divides *Vert* into *Overt-vert* and *Nether-vert*; the *Overt-vert* is that which the Law-Books term Haut-boys; and *Nether-vert*, what they call Sub-boys: And into *Special Vert*, which is all Trees growing within the Forest that bear Fruit to feed Deer; called *Special*, because the Destroying it is more grievously punish'd than of any other *Vert*. *Manw. par.* 2. pag. 33. And *Vert* is sometimes taken for that Power which a Man hath by the King's Grant to cut green Wood in the Forest.

Vervise, A Kind of Cloth, mentioned in the Statute 1 R. 3. c. 8. See *Plonkets*.

Very Lord and *very Tenant*, (*Verus Dominus*, & *verus Tenens*) Are they that are immediate Lord and Tenant one to another. *Broke*. In the Taking of Leases, there is to be a *very Lord* and *very Tenant*; and a Man is not a *very Tenant*, until he hath attorned to the Lord by some Service, &c. *Old Nat. Br.* 19 H. 7. c. 15.

Vested, If an Estate in Remainder is limited to a Child before born, when the Child is born the Estate in Remainder is *vested*, &c. 2 Leon. 219.

Vestry, A Place adjoining to a Church, where the Vestments of the Minister are kept; also a Meeting at such Place: And sometimes the Bishops and Priests sat together in *Vestries*, to consult of the Affairs of the Church; in Resemblance of which ancient Custom, the Minister, Churchwardens and Chief Men of most Parishes, do at this Day make a *Parish Vestry*. By Custom there may be Select *Vestries*, or a certain Number of Persons chosen to have the Government of the Parish, make Rates, and take the Accounts of Churchwardens, &c. And when Rates are made, the Parishioners must have Notice of a *Vestry* held for that Purpose, and then all that are absent shall be concluded by a Majority of those that be present, who in Construction of Law are the whole Parish. *Wood's Inst.* 90. *Vestrymen* are a Select Number of the chief Parishioners in every Parish within the City of London and Suburbs, and elsewhere, who yearly chuse Officers for the Parish, and take Care of its Concernments, &c. by Statute 15 Car. 2. c. 5. On erecting Parishes for the New Churches to be built in or near London and Westminster, the Commissioners for Building the Churches were im-

habitants of each new Parish to be *Vestry-men*; and on their Deaths or Removal, the Majority of the Parishioners to chuse others, &c. And the Parish-Officers, with the *Vestry* or Principal Inhabitants of the new Parishes, are in *Easter-Week* to assess the Rates for the Poor, &c. 9 *Ann. c. 22.* *Vestries* of Parishes are to be consulted by Parish-Officers, and give their Assent, on Hiring of Houses for the better Employing and Maintaining of the Poor. 9 *Geo.*

Vestura, A Crop of Grass or Corn; and Mention is made of *Prima Vestura*, and *Secunda Vestura*, &c. Cartular. Abb. St. Edmund. M.S. fol. 182.

Vesture, (*Vestura*) Signifies a Garment; but in the Law it is metaphorically applied to a Possession or Seisin. *Stat. Westm. 2. cap. 5.* And in this Signification it is borrowed of the *Feudists*, with whom *Investitura* imports a Delivery of Possession, and *Vestura* Possession it self. *Hotom. Vesture of an Acre of Land* is the Profit of it; and it shall be inquired how much the *Vesture* of an Acre of Ground is worth, and how much the Land, &c. 4 *Ed. 1.* 14 *Ed. 3.*

Vetitum namium, Is where the Bailiff of a Lord distrains Beasts or Goods of another, and the Lord forbids his Bailiff to deliver them when the Sheriff comes to make Replevin: The Word *Namium* signifying a Taking or Distress, and *vetitum* forbidden; and the Owner of the Cattle may demand Satisfaction for the Injury, which is called *Placitum de vetito Namio*. Divers Lords of Hundreds and Courts-Baron, had Power to hold Plea de *vetito Namio*: Matilda de Morton *clamat in Manerio de M. duos Law-Days*, & *Placito de Namio vetito, sine Brevi Domini Regis*, &c. 2 *Inst.* 140. Record. in *Thesaur. Scacc.* See *Naam*.

Uffingi, The Kings of the *East-Angles* were so term'd from King *Uffa*, who lived in the Year 578. *Matt. Westm.*

Via Regia, Is the Highway, or common Road, called the King's Way, because authorised by him, and under his Protection: It is also denominated *Via Militaris*. *Leg. Hen. 1. cap. 80.* *Braët. lib. 4.*

Vicar, (*Vicarius, quasi vice fungens Rectoris*) The Priest of every Parish is called *Rector*, unless the *Predial Tithes* are appropriated, and then he is stiled *Vicar*; and when the *Rectories* are appropriated, *Vicars* are to supply the *Rectors* Places. At first a *Vicar* was a meer Curate to the Impropiator of the Church, temporary, and removable at Pleasure; as those who are now Parish-Priests, in antient Times when there were no particular Parishes, were only Curates to the Bishops; but by Degrees the *Vicars* got a settled Maintenance of Glebe, and some Kind of Tithes, and now claim their Dues either by Endowment or by Prescription: And where the *Vicar* is endowed, and comes in by Institution and Induction, he hath *Curam animarum actualiter*, and is not to be removed at the Pleasure of the *Rector*, who in this Case hath only *Curam animarum habitualiter*; but where the *Vicar* is not endowed, nor comes in by Institution and Induction, the *Rector* hath *Curam animarum actualiter*, and may remove the *Vicar*. 1 *Ventr.* 15. 3 *Salk.* 378. In every Church appropriated, one is to be ordained perpetual *Vicar*, and be canonically instituted and inducted, and also endowed at the Discretion of the Ordinary; which Endowment is a Part of the *Rectory*, set out by the Patron, Parson, and Ordinary, for Maintaining the *Vicar*: The Insti-

tution and Induction, &c. of *Vicars* is done in the same Manner as that of *Rectors*; and over and above, they are to take an Oath of perpetual Residency, but this the Bishop may dispense with; the Statutes concerning Pluralities, Dilapidations, &c. relate to them as well as to *Parsons*. 4 *H. 4.* 2 *Roll. Abr.* 337. Upon Endowment, the *Vicar* hath an Equal, though not so great an Interest in the Church as a *Rector*; the Freehold of the Church, Church-yard and Glebe is in him; and as he hath the Freehold of the Glebe, he may prescribe to have all the Tithes in the Parish, except those of Corn, &c. Many *Vicars* have a good Part of the great Tithes; and some Benefices, that were formerly severed by Impropiation, have, by being united, had all the Glebe and Tithes given to the *Vicar*: But Tithes can no other Way belong to the *Vicar* than by Gift, Composition, or Prescription; for all Tithes *de jure* appertain to the Parson; and yet generally *Vicars* are endow'd with Glebe and Tithes, especially small Tithes, &c. And the Endowment of *Vicarages* have been always favour'd in Law, the *Vicars* for the most Part having the Cure of Souls. 2 *Roll.* 335. *Comp. Incumb.* 347. *March Rep.* 11.

Vicarage, (*Vicaria*) Of Places did originally belong to the Parsonage or Rectory, being derived out of it: The *Rector* of common Right is Patron of the *Vicarage*; but it may be settled otherwise, for if he make a Lease of his Parsonage, the Patronage of the *Vicarage* passes as incident to it. 2 *Roll. Abr.* 59. If the Profits of the Parsonage or *Vicarage* fall into Decay, that either of them by it self is not sufficient to maintain a Parson and *Vicar*, they ought again to be reunited: Also if the *Vicarage* be not sufficient to maintain a *Vicar*, the Bishop may compel the *Rector* to augment the *Vicarage*. 2 *Roll.* 337. *Parf. Counsell.* 195, 196. *Stat. 29 Car. 2. c. 8.* On Appropriation of a Church, and Endowment of a *Vicar* out of the same, the Parsonage and *Vicarage* are two distinct Ecclesiastical Benefices: And it hath been held, That where there is a Parsonage and *Vicarage* endow'd, that the Bishop in the Vacation may dissolve the *Vicarage*; but if the Parsonage be impropiated, he cannot do it; for upon a Dissolution the Cure must revert, which it cannot into Lay Hands. *Comp. Incumb.* 2 *Cro.* 518. *Palm.* 219. Though for the most Part *Vicarages* were endowed upon Appropriations, sometimes *Vicarages* have been endowed without any Appropriation of the Parsonage; and there are several Churches, where the Tithes are wholly impropiated, and no *Vicarage* endowed, and there the Impropiators are bound to maintain Curates to perform Divine Service, &c.

Vicarage or not, Is to be tried in the Spiritual Court, because it could not begin or be created but by the Ordinary. 3 *Salk.* 378.

Vicario deliberando occasione cuiusdam Herogitionis, &c. Is an antient Writ that lies for a Spiritual Person imprisoned, mentioned in *Reg. Orig.* 147.

Vice-Admiral, An under Admiral at Sea; or Admiral on the Coasts, &c.

Vice-Chamberlain, A great Officer next under the Lord Chamberlain; and in his Absence hath the Rule and Control of all Officers appertaining to that Part of his Majesty's Household, which is called the Chamber above Stairs. 13 *R.* 2. *cap. 1.*

Vice-

Vice-Constable of England, An Officer whose Office is set forth in *Pat. 22 Ed. 4.*

Vice-Dominus, The same with *Vicecomes* — *Vice-Dominus dictus est Praefectus Provinciae.* Leg. Hen. c. 7. Selden's Tit. Hon. par. 2. Ingulphus.

Vice-Dominus Episcopi, Is the Vicar-General, or Commissary of a Bishop, *Blount.*

Vice-gerent, A Deputy or Lieutenant. *Stat. 31 Hen. 8. c. 10.*

Vice-Marshal, Is mentioned with *Vice-Constable.* Pryn's Animad. on 4 Inst. 71.

Vice-Roy, (*Pro-Rex*) The King's Lord Lieutenant over a Kingdom. *Litt.*

Vice-Treasurer, An Officer under the Lord Treasurer in the Reign of H. 7. See *Under-Treasurer of England.*

Vicinage, (*Fr. Voisinage, Vicinetum*) Neighbourhood, or near Dwelling. *Magn. Chart. c. 14.* See *Visine.*

Vicis & Venellis mundandis, Is a Writ which lieth against a Mayor or Bailiffs of a Town, &c. for the clean Keeping of their Streets. *Reg. Orig. 267.*

Vicount, Signifies as much as Sheriff; also a Degree of Nobility. *Camd. Britan. 170.* See *Viscount.*

Vicountiel, or **Vicontiel**, Is an Adjective from *Vicount*, signifying any Thing belonging to the Sheriff; as Writs *Vicontiel* are such Writs, as are triable in the County or Sheriff's Court, of which Kind there are divers Writs of Nuisance, &c. mentioned by *Fitzherbert.* Old Nat. Br. 109. F. N. B. 184. *Vicontiels* are certain Farms, for which the Sheriff pays a Rent to the King, and he makes what Profit he can of them: And *Vicontiel Rents* usually come under the Title of *Firma Comitatus*; and the Sheriff hath a particular Roll of them given in to him, which he delivers back with his Accounts. 33 & 34 H. 8. c. 16. 3 Ed. 6. c. 4. 22 Car. 2. c. 6.

Vicountiel Jurisdiction, Is that Jurisdiction which belongs to the Officers of a County, as to Sheriffs, Coroners, Escheators, &c.

Victuals, (*Victus*) Sustenance, and Things necessary to live by, as Meat and Provisions. *Victuallers* are to sell their *Victuals* at reasonable Prices, or forfeit double Value: And *Victuallers*, Fishmongers, Poulterers, &c. coming with their *Victuals* to London, shall be under the Governance of the Lord Mayor and Aldermen; and sell their *Victuals* at Prices appointed by Justices, &c. 23 Ed. 3. c. 6. 7 R. 2. 13 R. 2. No Person during the Time that he is Mayor, or in Office in any Town, shall sell *Victuals* on Pain of Forfeiture, &c. But if a *Victualler* be chosen Mayor, whereby he is to keep the Assise by Statute, two discreet Persons of the same Place who are not *Victuallers*, are to be sworn to assise Bread, Wine, and *Victuals*, during the Time that he is in Office; and then, after the Price assessed by such Persons, it shall be lawful for the Mayor to sell *Victuals*, &c. 6 R. 2. c. 9. 3 H. 8. c. 8. If any one offend against these Statutes, the Party grieved may sue a Writ directed to the Justices of Assise, commanding them to send for the Parties, and to do right; or an Attachment may be had against the Mayor, Officer, &c. to appear in B. R. selling of corrupt *Victuals*, or exposing them to Sale, is punishable by Statute 1 R. 3. c. 1. The Prices of *Victuals* in all Places, except Corporations, shall be assessed by the King's Justices, &c. And *Victuals* is not to be transported, by 25 Hen. 8. c. 2. See *Forestallers.*

Vidame, Was the same as *Vice-Dominus*, the Bishop's Deputy in Temporal Matters.

Viduitatis Professio, The Making a solemn Profession to live a sole and chaste Widow; which was heretofore a Custom in England. *Dugd. Warwicksh. pag. 313, 654.*

Vidimus, Mentioned in the 15 Hen. 6. cap. 3. See *Innotescimus.*

Vi & Armis, Are Words used in Indictments, &c. to express the Charge of a forcible and violent Commission of any Crime or Trespas: But in Appeal of Death, on a Killing with Weapon, the Words *Vi & Armis* are not necessary, because they are implied; so in an Indictment of Forcible Entry, alledged to have been made *Manu forti*, &c. 2 Hawk. P. C. 179. 1 Hawk. 150, 220. And where the Omission of *Vi & Armis*, &c. is help'd in Indictments, *vide* the Stat. 4 & 5 Ann.

View, (*Fr. Vene, i. e. Visus*) Is generally where a Real Action is brought, and the Tenant doth not know certainly what is in Demand; in such Case he may pray that the Jury may *view* it. *Briton, cap. 45. F. N. B. 178.* This *View* is for a Jury to see the Land or Thing claim'd, and in Controversy; and lies in Ejectment, Waste, Assises of *Novel Disseisin*, &c. where at least Six of the Recognitors must have the *View* before the Assises. 2 Lill. Abr. 655. Stat. 13 Ed. 1. c. 48. 12 Ed. 2. And though formerly there could not have been a *View* in a Personal Action, but upon withdrawing of a Juror after they were sworn, and Consent of the Parties by a Rule of Court; now by the Act for the Amendment of the Law, it may be granted in any Action brought in the Courts at Westminster, where necessary the better to understand the Evidence upon the Trial; in which Case the Courts may order special Writs of *Distingas* or *Habeas Corpora* to the Sheriff, requiring him to have Six of the Jurors, or a greater Number of them, at the Place in Question, some convenient Time before the Trial; who shall have the Matters shewn to them by two Persons named in the Writ of *Distingas* and appointed by the Court; and the said Sheriff executing the Writ is specially to return the *View* made accordingly, &c. 4 & 5 Ann. c. 16. Upon a *View*, the Thing in Question is only to be shewn to the Jury, and no Evidence can be given on either Side. 2 Lill. 656. But where in Waste, several Places are assign'd, and the Jury hath not the *View* of some of them, they may find no Waste done in that Part which they did not *view*; and in Waste for Wasting a Wood, if the Jury *view* the Wood without entering into it, it is good; also Waste being assign'd in every Room of an House, the *View* of the House generally is sufficient. 1 Leon. 259, 267. If a Rent, or Common is demanded; the Land out of which it issues must be put in *View*. 1 Leon. 56. And if a *View* be denied, where it ought to be granted; or granted, where it ought not to be, &c. it is Error. 2 Lev. 217. See *Viewers*, or *Viewers, Assise, &c.*

View of Frank-pledge, (*Visus Franci Plegii*) Signifies the Office which the Sheriff in his County-Court performs in looking to the King's Peace, and seeing that every Man be in some Pledge, &c. or it is a Power of Holding a Court-Leet, in which Court, formerly all Persons, at the Age of Fourteen, were bound with Sureties or Pledges for their Truth to the King, and the Steward was to certify on *View*. *Bract. lib. 2.* And there is a Writ to exempt a Person from coming to the

the *View of Frank-pledge*, who is not resident within the Hundred; as Men are bound to this *View* by Reason of their Habitation only, and not of Lands held where they dwell not: Which *Writ* is called *Visu Franci Plegii*. Reg. Orig. 175. See *Frank-pledge*.

Vigil, (*Vigilia*) Is the Eve, or next Day before any Solemn Feast, because then Christians were wont to watch, fast, and pray in their Churches. Stat. 2 & 3 Ed. 6. c. 19.

Vi Laica Removenda, A Writ that lies where two Parsons contend for a Church, and one of them enters into it with a great Number of *Laymen*, and holds out the other *Vi & Armis*; then he that is holden out shall have this Writ directed to the Sheriff, that he remove the Force: But the Sheriff ought not to remove the Incumbent out of the Church, whether he is there by Right or Wrong, but only the Force. F. N. B. 54. 3 Inst. 161. and see 5 R. 2. c. 2. And the Writ *Vi Laica removenda* ought not to be granted, until the Bishop of the Diocese where such Church is, hath certified into the Chancery such Resisting and Force, &c. though according to the *New Natura Brevium*, it lieth upon a Surmise made by the Incumbent, or by him that is grieved, without any such Certificate of the Bishop. New Nat. Br. 121. A Restitution was awarded to one who was put out of Possession by the Sheriff upon a *Vi laica amovenda*. Cro. Eliz. 466. 5 Mod. 443.

Vill, or **Village**, (*Villa*) Is sometimes taken for a Manor, and sometimes for a Parish, or Part of it: But a *Vill* is most commonly the Outpart of a Parish, consisting of a few Houses, as it were separate from it. — *Villa est ex pluribus Mansionibus vicinata, & collata ex pluribus Vicinis*. 1 Inst. 115. *Fleta* mentions the Difference between a Mansion, a Village, and a Manor, viz. a Mansion may be of One or more Houses, but it must be but one Dwelling-place, and none near it; for if other Houses are contiguous, it is a *Village*; and a Manor may consist of several *Villages*, or of one alone. *Flet. lib. 6. cap. 51*. And according to *Fortescue*, the Boundaries of *Villages*, is not by Houses or Streets; but by a Circuit of Ground, within which there may be Hamlets, Woods, and Waste-Ground, &c. *Fortesc. in Laud. Leg. Angl. cap. 24*. When a Place is named generally, in legal Proceedings, it is intended to be a *Vill*, because as to Civil Purposes the Kingdom was first divided into *Vills*; and 'tis never intended a Parish, that being an Ecclesiastical Division of the Kingdom to Spiritual Purposes, though in many Cases the Law takes Notice of Parishes as to Civil Purposes. 1 Mod. 250. 3 Nels. Abr. 57. A *Vill* and a Parish by Intendment shall be all one; and in Proccs of Appeal, a Parish may be intended a *Vill*. Cro. Jac. 263. 3 Salk. 380. If a *Venue* be laid in *Grays Inn*, which is no Parish or *Vill*; the Defendant must plead there is no such *Vill* as *Grays Inn*, or it shall be intended a *Vill* after Verdict, &c. 3 Salk. 381. See *Parish*, and *Venire facias*.

Villa Regia, A Title given to those Country *Villages*, where the Kings of England had a Royal Seat, and held the Manor in their own Demesne, having there commonly a free Chapel, not subject to Ecclesiastical Jurisdiction. *Paroch. Antiq. 53*.

Villain, (*Villanus*, (Fr. *Vilain*, i. e. *Villis*) Signifies a Man of servile or base Condition, a Bondman, or Servant. Of these Bondmen or *Villains* there were two Sorts in England; one term'd a

Villain in gross, who was immediately bound to the Person of the Lord, and his Heir: The other, a *Villain regardant* to a Manor, being bound to his Lord as a Member belonging and annexed to a Manor, whereof the Lord was Owner. And he was properly a *pure Villain*, of whom the Lord took Redemption to marry his Daughter, and to make him free; and whom the Lord might put out of his Lands and Tenements, Goods and Chattels at his Will, and chastise, but not maim him: For if he maimed his *Villain*, he might have Appeal of *Maihem* against the Lord; as he could bring Appeal of the Death of an Ancestor against his Lord, or Appeal of Rape done to his Wife. *Bract. lib. 1. cap. 6. Old Nat. Br. 8. Terms de Ley 574, 575*. Some were *Villains* by Title or Prescription, that is to say, that all their *Blood* have been *Villains* regardant to the Manor of the Lord Time out of Mind: And some were made *Villains* by their Confession in a Court of Record, &c. though the Lord might make a *Manumission* to his *Villain*, and thereby infranchise him: And if the *Villain* brought any Action against his Lord, other than an Appeal of *Maihem*, &c. And the Lord, without Protestation, made Answer to it, by this the *Villain* was made free. *Terms de Ley 576*. *Villain Estate* was contradistinguished to free Estate, by the Statute 8 H. 6. c. 11. And the *Villani* were such as dwelt in *Villages*, and of that servile Condition, that they were usually sold with the Farm to which they respectively belonged; so that they were a Kind of Slaves, and used as such: And *Villanage* or Bondage, 'tis said, had Beginning among the *Hebrews*, and its Original of *Chanaan* the Son of *Cham*, who because he had mock'd his Father *Noe* to scorn, was punish'd in his Son *Chanaan* with Penalty of Bondage. *Ibid. 455*. *Villanage* cometh of *Villain*, and was a base Tenure of Lands or Tenements, whereby the Tenant was bound to do all such Services as the Lord commanded, or were fit for a *Villain* to perform: The Division of *Villanage*, by *Bracton*, was into *Purum Villanagium a quo prestatur Servitium incertum & indeterminatum*, & *Villanagium Soccagium*; which was to carry the Lord's Dung into his Fields, to plough his Ground at certain Days, sow and reap his Corn, &c. and even to empty his Jakes, as the Inhabitants of some Places were bound to do, though afterwards turn'd into a Rent, and that *villanous* Service excused. Every one that held in *Villanage*, was not a *Villain* or Bondman; for Tenure in *Villanage* could make no Freeman *Villain*, unless it were continu'd Time out of Mind; nor could free Land make a *Villain* free. *Bract. lib. 2. c. 8. Copyhold Tenures* seem to be sprung from *Villanage*. F. N. B. 28. And the Slavery of this Custom hath been long ago taken off; for we have hardly heard of any Case in *Villanage* since *Crouche's Case* in *Dyer's Rep.* There are not properly any *Villains* now; and the Title and Tenure of *Villanage* are abolish'd by the Stat. of Car. 2. See *Neif*.

Villanous Judgment (*Villanum Judicium*) Is that which casts the Reproach of *Villany* and Shame upon him against whom it is given, as a Conspirator, &c. And the Judgment in such a Case shall be like the ancient Judgment in *Attaint*, viz. That the Offender shall not be of any Credit afterwards, nor shall it be lawful for him to approach the King's Court, and his Lands and Goods shall be seized into the King's Hands, his Trees rooted up, and Body imprisoned, &c.

Staundf.

Staudf. P. C. 157. Lamb. Eiren. 63. Stat. 4. Hen. 5. And the Punishment at this Day appointed for *Perjury*, may partake of the Name of *Villanous Judgment*; as it hath somewhat more in it than corporal, or pecuniary Pain, *i. e.* the discrediting the Testimony of the Offender for ever.

Willein Fleeces, Are bad Fleeces of Wool, shorn from scabbed Sheep. *31 Edw. 3. cap. 8.*

Willeuage, (*Villenagium*) The Tenure of. See *Villain*.

Winagum, (*Tributum a Vino*) A Payment of a certain Quantity of Wine in lieu of Rent, to the Chief Lord of a Vineyard. *Mon. Angl. Tom. 2. pag. 980.*

Winnet, A Flower or Border which Printers use to ornament printed Leaves of Books; mentioned in the Statute *14 Car. 2. cap. 33.*

Violence, (*Violentia*) All Violence is unlawful: If a Man assault another with an Intention of beating him only, and he dieth, it is Felony. And where a Person knocks another in the Head who is breaking his Hedges, &c. this will be Murder, because it is a violent Act beyond the Provocation. *Kel. Rep. 64, 131.* There is a Violence in committing Riots, &c.

Virgata terræ, *Ex 24. Arvis constat, quatuor Virgatæ Hidas faciunt, & quinque Hida feodum Militis.* *Kennet's Gloss.*

Viridario eligendo, Is a Writ that lies for the Choice of a *Verdewor* in the Forest. *Reg. Orig. 177.*

Viridis Roba, A Coat of many Colours; for in the old Books *Viridis* is used for *Varius*. *Braff. lib. 3.*

Virilia, The Privy Members of a Man, to cut off which was Felony by the Common Law, though the Party consented to it. *Braff. lib. 3. pag. 144.*

Vis, (*Lat.*) Is any Kind of Force, Violence, or Disturbance relating to a Man's Person, or his Right in Lands, &c. See *Force*.

Viscount, (*Viccomes*) A Degree of Nobility next to an Earl; which *Camden* says is an old Name of Office, but a new one of Dignity, being never heard of among us 'till the Reign of King *Hen. 6th*, who in his eighteenth Year in Parliament created *John Lord Beaumont, Viscount Beaumont*. *Camb. Britan. 170. Selden's Tit. Hon. 761.* *Viscounts* had their Name from being formerly Governors of Counties; and they are now made by Patent, as an Earl; but their Number is small in this Kingdom in Comparison with the other Degrees of Peerage.

Visitation, (*Visitatio*) Is that Office which is perform'd by the Bishop of every Diocese once every three Years, or by the Archdeacon once a Year, by visiting the Churches and their Rectors throughout the whole Diocese; *Ut populus illorum curæ commissus salubriter a Pastoribus & Ordine gubernetur: Et ne quid detrimenti capiat Ecclesia, &c.* *Reform. Leg. Eccl. pag. 124.* And when a Visitation is made by the Archbishop, all Acts of the Bishop are suspended by *Inhibition*, &c. A Commissary at his Court of Visitation, cannot cite Lay Parishoners, unless it be Church-wardens and Sides-men; and to those he may give his Articles, and inquire by them. *Noy. 123. 3 Salk. 379.* *Proxies* and *Procurations* are paid by the Parsons whose Churches are visited, &c. *Ibid.*

Visitor, Is an Inspector of the Government of a Corporation, &c. The Ordinary is Visitor of Spiritual Corporations; but Corporations in-

tuted for private Charity, if they are Lay, are Visitable by the Founder, or whom he shall appoint, and from the Sentence of such Visitor there lies no Appeal. *3 Salk. 381.* By Implication of Law, the Founder and his Heirs are Visitors of Lay Foundations, if no particular Person is appointed by him to see that the Charity is not perverted. *Ibid.* And where Founders are Visitors of Hospitals, &c. see *Stat. 39 Eliz. cap. 5. 43 Eliz. cap. 4.*

Visitor of Mannors, In ancient Time was wont to be the Name of the Regarder's Office in the Forest. *Manwood par. 1. pag. 195.*

Visne, (*Visnetum*) Signifies a Neighbour-place, or Place near at Hand. *19 R. 2. cap. 6.* See *Venue*.

Visus, View, or Inspection; as Wood is to be taken *per Visum Forestarii, &c.* *Hoved. 784.*

Vitæ pecunia, Anciently applied to Cattle and other live Goods.

Vivary, (*Vivarium*) A Place by Land or Water, where living Creatures are kept: And in Law it is most commonly used for a Park, Warren, Piscary, &c. *2 Inst. 100.*

Vitæ voce, Is where a Witness is examined personally in open Court. See *Deposition*.

Vitæ, A Hulk or Ship of Burden. *Leg. Etheld. cap. 23.*

Village, Is when there is a Want of Measure in a Cask, &c.

Village, The same with *Alnage*. Vide *Alnage*.

Vina ferrea, Is the Standard Ell of Iron, kept in the Exchequer for the Rule of Measure. *Mon. Angl. Tom. 2. pag. 383.*

Umpire. (*Arbiter*) One chosen by Compromise to deal indifferently between both Parties. *Litt.*

Umpirage, Is where there is but one Arbitrator of Matters submitted to Award; and is usually when the Parties submit themselves to the Arbitrament of certain Persons; and if they cannot agree, or are not ready to deliver their Award in Writing before such a Time, then to the Judgment of another as *Umpire*: And this is often the Effect of Bonds of Submission to Arbitration. *1 Roll. Abr. 261, 262.* See *Arbitration*.

Umpire, Signifieth fine Linen, in the Statute *3 Edw. 4. cap. 5.*

Unceasath, (from the Sax. *Un*, a Negative Particle, *i. e.* *Sine*, Ceas, *litis*, and *At* Oath) Is an obsolete Word used where one killed a Thief, and made Oath that he did it as he was flying for the Fact, and thereupon *Parentibus ipsius occisi juret unceasath, viz.* That his Kindred would not revenge his Death; or they swore that there should be no Contention about it. *Leg. Ina cap. 37.*

Unia terræ, Often occurs in the Charters of the British Kings for some Measure or Quantity of Land: It was the Quantity of 12 *Modii*, and each *Modius* possibly 100 Foot square. *Mon. Angl. Tom. 3. pag. 198, 205.*

Uncoze pass, Is a Plea of a Defendant in Nature of a Plea in Bar, where being sued for a Debt due on Bond at a Day past, to save the Forfeiture of the Bond, he says that he tendered the Money at the Day and Place, and that there was none there to receive it, and that he is also still ready to pay the same. This will save the Defendant from the Penalty of his Obligation; and if the Plaintiff now refuseth to receive the Money, but takes Issue upon the Tender, and it is found against him, he loseth his Money.

ney for ever. 7 *Edw.* 6, 6. 9 *Rep.* 79. *Pract. Attorn. Edit.* 1st. pag. 82, 83.

Uncuth, A Saxon Word signifying as much as *Incognitus*, i. e. unknown; and is used in the old Saxon Laws for him that cometh to an Inn Guest-wise, and lies there but one Night. *Braet. lib.* 3.

Unde nihil habet, A Writ of Dower, for which see *Dote unde nihil habet*.

Under-Chamberlain of the Exchequer, vide *Exchequer*.

Under-Sheriff, (*Sub-Viccomes*) See *Sheriff*.

Undertakers, Are such as the King's Purveyors employ'd as their Deputies: And those as undertake any great Work, as draining of Fens, &c. *Stat.* 2 & 3 P. & M. cap. 6. 43 *Eliz.* cap. 11. 12 *Car.* 2. cap. 24.

Under-Treasurer of England, (*Vice-Treasarius Angliæ*) An Officer first created in the Time of King *Hen.* 7th, but some think he was of an ancient Original: His Business was to chest up the King's Treasure at the End of every Term, to note the Content of Money in each Chest, and see it carried into the King's Treasury for the Ease of the Lord Treasurer, as being a Thing too mean for him, but fit to be perform'd by a Man of great Trust and Secrecy: And in the Vacancy of the Lord Treasurer's Office, he did all Things in the Receipt, &c. This Officer is mentioned in several Statutes, and named *Treasurer of the Exchequer* 'till the Reign of Queen *Eliz.* when he was termed *Treasurer of England*. 39 *Eliz.* cap. 7.

Underage, A Word used for Minors, or Persons under Age; not capable to bear Arms, &c. *Fleta*, lib. 1. cap. 9.

Untrid, One that hath no Quiet or Peace. *Sax.*

Ungeld, A Person out of the Protection of the Law, so, that if he were murdered, no Geld or Fine should be paid, or Composition made by him that killed him. *Leg. Æthelred.*

Uniformity (*Uniformitas*) One Form of publick Prayers and Administration of Sacraments, and other Rites and Ceremonies of the Church of England, prescribed by Statutes, to which all must submit. 1 *Eliz.* cap. 2. 14 *Car.* 2. cap. 4. But see *Dissenters*.

Union, (*Unio*) Is a Combining or Consolidating of two Churches into one: Also it is when one Church is made subject to another, and one Man is made Rector of both; and where a Conventual Church is made a Cathedral. *Lyndewode*. In the first Signification, if two Churches were so mean that the Tithes would not afford a competent Provision for each Incumbent, the Ordinary, Patron, and Incumbents might unite them at Common Law, before any Statute was made for that Purpose; and in such Case, it was agreed which Patron should Present first, &c. for though by the Union the Incumbency of one Church was lost, yet the Patronage remain'd, and each Patron might have a *Quare Impedit* upon a Disturbance to present in his Turn. 3 *Nelf. Abr.* 480. The Bishop, Patron, and Incumbent, may unite Churches, without License from the King, by the Statute 37 *H.* 8. The License of the King is not so necessary to an Union, as 'tis to the Appropriation of Advowsons; for an Appropriation cannot be made by them without the King's License, because that is a Mortmain, and the Patronage of the Advowson is lost, and by Consequence all Tenths

and First Fruits. *Dyer* 259. *Moor* 409, 661. By Assent of the Ordinary, Patron, and Incumbent, two Churches lying not above a Mile distant from the other, and whereof the Value of the one is not above six Pounds a Year in the King's Books of First Fruits, may be united into one. *Stat.* 37. *H.* 8. cap. 21. And by another Statute, in Cities and Corporation Towns, it shall be lawful for the Bishop, Patrons, and Mayors, or Chief Magistrates of the Place, &c. to unite Churches therein; but where the Income of the Churches united exceeds 100 *l.* a Year, the major Part of the Parishioners are to consent to the same; and after the Union made, the Patrons of the Churches united shall Present by Turns, to that Church only which shall be Presentative, in such Order as agreed; and notwithstanding the Union, each of the Parishes united shall continue distinct as to Rates, Charges, &c. though the Tithes are to be paid to the Incumbent of the united Church. 17 *Car.* 2. cap. 3.

Union of England and Scotland, When and how brought about, and the Laws relating to it, see *Scotland*.

Unity of Possession, (*Unitas Possessionis*) Is where a Man hath a Right to two Estates, and holds them together jointly in his own Hands; as if a Man takes a Lease of Lands from another at a certain Rent, and after he buys the Fee-simple, this is an *Unity of Possession*, by which the Lease is extinguished, because that he who had before the Occupation only for his Rent, is now become Lord and Owner of the Land. *Terms de Ley*. A Lessee for Years of an Advowson, on the Church becoming void, was presented by the Lessor, and instituted and inducted; and it was held, that this was a Surrender of his Lease, for they cannot stand together in one Person, and by the *Unity of Possession* one of them is extinguished. *Hutt.* 105. No *Unity* will extinct or suspend Tithes, but notwithstanding any *Unity* they remain, &c. tho' a perpetual *Unity* 'till the Dissolution, shall be a Discharge of the Payment of Tithes, by the Statute 31 *H.* 8. cap. 13. 11 *Rep.* 14. 2 *Lill.* 658. *Unity of Possession* extinguisheth all Privileges not expressly necessary; but a Way to a Close, or Water to a Mill, &c. are not extinguished, because they are thus necessary. A Way of Ease is destroy'd by *Unity of Possession*; and a Rent, or Easement, do not exist during the *Unity*, wherefore they are gone. *Latch.* 153, 154. 1 *Ventr.* 95. *Trin.* 7. *W.*

Univerſity, (*Universitas*) Is taken for those two Bodies which are the Nurseries of Learning and liberal Sciences in this Kingdom, viz. *Oxford* and *Cambridge*. And by the 13 *Eliz.* it is Enacted, That each of the *Universities* shall be incorporated by a certain Name, though they were ancient Corporations before; and that all Letters Patent and Charters granted to the *Universities*, shall be good and effectual in Law; That the Chancellor, Masters, and Scholars of either of the said *Universities*, shall enjoy all Manors, Lands, Liberties, Franchises, and Privileges, and all other Things which the said incorporated Bodies have enjoyed, or of Right ought to enjoy, according to the Intent of the said Letters Patent; and all Letters Patent, and Liberties, Franchises, &c. shall be established and confirm'd, any Law, Usage, &c. to the contrary notwithstanding. The *Universities* have the Keeping the Assize of Bread and Beer, and are to punish Offences concerning it: Also they have

have the Assise of Wine and Ale, as well as the Custody thereof: And the Chancellor, his Commissary, and Deputy, are Justices of Peace for the Vill of Oxon, County of Oxon, and Berks, by Virtue of their Offices. See the Stat. 51 H. 3. 31 Edw. 1. 7 Edw. 6. 2 W. & M. and the Chart. 29 Edw. 3. 14 H. 8, &c. And by Letters Patent, Anno 11 Car. 1. granted to the University of Oxford, the old Privileges are explained, and larger granted. The Privilege of the University is allowed to Scholars and Servants, &c. See *Courts of the Universities*.

Uilage, A Saxon Word, denoting a wicked or unjust Law; in which Sense it is used in Leg. Hen. 1. cap. 34.

Unlawful Assembly, (*Illicita Congregatio*) The Meeting of three Persons or more together, by Force, to commit some unlawful Act. Lamb. Vide *Assembly*.

Unques pist, Always ready to perform a Thing. *Kitb. 243*.

Utrum, A Saxon Word, signifying a weak and infirm Man. Sax. Dict.

Ucriferatio, An Out-cry, or Hue and Cry. Leg. Hen. 1. cap. 12.

Uoidance, (*Vacatio*) Is a Want of an Incumbent upon an Ecclesiastical Benefice. Vide *Avoidance*.

Void, and **Voidable**. In the Law some Things are absolutely void, and some are voidable. A Thing is void which is done against Law at the very Time of the Doing of it, and it shall bind no Person: But a Thing which is only voidable, and not void, altho' it be what he that did it ought not to have done, yet when it is done the Doer cannot avoid the same; though in some Act in Law it may be made void by his Heir, &c. 2 Lill. Abr. 653. Where a Grant is void at the Commencement, no Act afterwards can make it good: If a Lease is absolutely void, Acceptance of Rent will not affirm it; it is otherwise when a Lease is voidable, there it will make it good. 3 Rep. 64. A Lease for Life, which is voidable only, must be made void by Re-entry, &c. Ibid. A Deed of Exchange, entered into by an Infant, or one *Non sane memoria*, is not void; but may be avoided by the Infant when arrived of Age, or by the Heir of him who is *Non sane memoria*. Perk. 281. But it hath been adjudg'd, that a Bond of an Infant, or of one *Non Compos*, is void, because the Law hath not appointed any Thing to be done to avoid such Bonds; for the Party cannot plead *Non est factum*, as the Cause of Nullity doth not appear upon the Face of the Deed. 2 Salk. 675. 3 Nels. Abr. 486. A Deed being voidable, is to be avoided by Special Pleading; and where an Act of Parliament says, that a Deed, &c. shall be void, it is intended that it shall be by Pleading, so as 'tis voidable, but not actually vacated. 5 Rep. 119.

A Judgment given by Persons who had no good Commission to do it, is void, without Writ of Error: But an erroneous Attainder is not void, but voidable by Writ of Error, &c. 2 Hawk. P. C. 459. 321.

Voir dire, (Fr. *Veritatem dicere*) Is when it is pray'd upon a Trial at Law, that a Witness may be sworn upon a *Voir dire*; which is, that he shall on his Oath speak the Truth, whether he shall get or lose by the Matter in Controversy; and if it appears that he is unconcern'd, his Testimony is allow'd, otherwise not. Blount. On a *Voir dire*, a Witness may be examined by the

Court, if he be not a Party interested in the Cause, as well as the Person for whom he is a Witness; and this has been often done, where a busy Evidence, not otherwise to be excepted against, is suspected of Partiality. *Terms de Ley* 581.

Volumus, Is the first Word of a Clause in the King's Writs of Protection and Letters Patent; of Protections, some are *cum clausula Volumus*. 13 R. 2. cap. 16. Co. Lit. 199.

Voluntas, Is when a Tenant by Lease holds Lands at the Will of the Lessor; or a Copyholder holdeth his Lands at the Will of the Lord, by Copy of Court-Roll, according to the Custom of the Manor, &c.

Votum, A Vow or Promise, used by *Fleta* for *Nuptia*; so *Dies Votorum*, the Wedding Day. *Fleta lib. 4*.

Voucher, Is a Word of Art, when the Tenant in a Writ of Right calls another into the Court who is bound to him to Warranty, and is either to defend the Right against the Demandant, or yield him other Lands to the Value, &c. and it extends to Lands or Tenements of Freehold or Inheritance, and not to any Chattel, Real, Personal, or Mixt: He that *voucheth* is called the *Voucher*, (*vocans*) and he that is *vouched* is called the *Vouchee*, (*warrantatus*) and the Process whereby the *Vouchee* is called, is a *Summoneas ad Warrantizandum*, on which Writ, if the Sheriff return that the Party hath nothing whereby he may be summoned, then goes out another Writ called *sequatur sub suo periculo*, &c. Co. Lit. 101. There is also a *foreign Voucher*, when the Tenant being impleaded within a particular Jurisdiction, as in London, *voucheth* one to Warranty in some other County out of the Jurisdiction of that Court, and prays that he may be summoned, &c. 2 Rep. 50. In a Writ of Entry in the Degrees, none shall *vouch* out of the Line: And in Writs of Right and Possession, it is a good Counterplea, that neither the *Vouchee* nor his Ancestors had ever Seisin of the Land. Stat. 3. Edw. 1. cap. 40. And the Demandant may aver a *Vouchee* to be dead, and that there is no such Person, where the Tenant *voucheth* a Person deceased to Warranty. 14 Edw. 3. cap. 18. *Single, double and treble Voucher*. See *Recovery*.

Voucher, Is used for a *Leiger-Book*, or Book of Accounts, wherein are entered the Acquittances or Warrants for the Accomptant's Discharge. Stat. 19 Car. 2. cap. 1.

Vor, *Vocem non habere*, A Phrase made use of by *Bracton*, signifying an infamous Person, one who is not admitted to be a Witness. *Bract. lib. 3*.

Upland, High Ground, or *Terra firma*, as it is called by some, contrary to marshy and low Ground. *Ingulph*.

Ufa, Is the River *Isis*, which River was term'd *Isis* from the Goddess of that Name; for it was customary among the Pagans to dedicate Hills, Woods, and Rivers, to favourite Goddesses, and to call them after their Names; and the Britons having the greatest Reverence for *Ceres* and *Proserpina*, who was also called *Isis*, did for that Reason name this River *Isis*: And she being the Goddess of the Night, from thence they computed Days by Nights; as *Seven-night*, &c. Blount.

Ufage, Differs from *Custom* and *Prescription*: No Man may claim a Rent, Common, or other Inheritance by *Ufage*; though he may by *Prescription*. 6 Rep. 65. See *Prescription*.

Ufance,

Uſance, A Calendar Month, as from *May 20*, to *June 20*, and *double Uſance*, is two ſuch Months; Words uſed in *Bills of Exchange*. Merch. Diſt.

Uſe, (*Uſus*) Is in Application of Law, the Profit or Benefit of Lands and Tenements; or a Trust and Confidence repos'd in a Man for the holding of Lands, That he to whoſe Uſe the Trust is made ſhall take the Profits thereof. *West. Symb. par. 1. 1 Inſt. 272.* An Uſe is only a Trust or Confidence which one Man puts in another; and therefore 'tis not a Thing iſſuing out of the Land, but collateral to it, and annexed to the Privy of Eſtate between them, (*viz.*) That he to whom the Uſe is made ſhall have the Profits; and that the Tenant of the Land ſhall make an Eſtate as he ſhall direct: But the *Ceſtui que Uſe* hath neither *jus in Re* or *ad Rem*, his only Remedy being in Chancery to compel the *Ceſtui que Trust* to execute the Uſe. *3 Neſſ. Abr. 487.* The Limitation of an Uſe was at the Common Law but a Matter of Equity: But now Feoffments to Uſes, &c. have the ſame Acceptation as Deeds at Common Law; and Uſes limited by any Conveyance, are govern'd and directed according to the Rules of the Law. *2 Lil. Abr. 664.* There were two Inventors of Uſes; Fear in the Time of Trouble and Civil War, for the ſaving of Inheritances from Forfeiture; and Fraud in Time of Peace, to defeat Debts, Eſcheats, &c. And it is ſaid, the Original of Uſes was the Statute of *Mortmain*, which cramp'd the Clergy ſo much that they were forced to take Shelter under the Laity, and made uſe of them to purchaſe Lands in Trust for them and to their Uſe. Afterwards the Wars between the Houſes of *York* and *Lancaster* coming on, Trusts and Uſes increas'd more than ever; and although the Common Law could take no Cogniſance of them, yet there were always, until King *Hen. 8th* Reign, Clergymen Chancellors, who were ready upon all Occaſions to decree the Performance of the Trust and Uſe. *2 Lil. 662, 663.* It hath been obſerv'd by ſome Writers, that there were no ſuch Things as Uſes at Common Law; the Reaſon was, becauſe the Feoffee was always taken as the Owner of the Land; and it was very inconvenient and abſurd that there ſhould be two ſeveral Fees, and Owners of the ſame Land *ſimul & ſemel*; therefore by the Common Law the Feoffees to Uſes were the very Tenants, &c. But the Statute of Uſes hath united the Eſtate to the Uſe, ſo that now the Feoffees to Uſes have no Eſtate or Intereſt at all, but in reſpect of the contingent Eſtates and Uſes limited in the Deed. *3 Salk. 386.* Becauſe in Time many Deceits were invented, by ſettling the Poſſeſſion in one Man, and the Uſe in another, inſomuch that the Poſſeſſion and the Uſe were divided, which open'd a Gap for Frauds: To avoid theſe Inconveniencies, the Statute of *27 H. 8.* gives the Poſſeſſion to him who has the Uſe, and as before the Statute the Poſſeſſion ruled the Uſe, ſo now the Uſe governs the Poſſeſſion; for this Reaſon in Conveyances it is ſet down in the *Habendum* to whoſe Uſe the Lands are conveyed, and whatever Eſtate a Man hath in the Uſe, the ſame he has in the Poſſeſſion at this Day. *1 Rep. 121. 2 Leon. cap. 25.* The Stat. *27 H. 8. cap. 10.* Enacts, That where any are or ſhall be ſeiſed of Lands, to the Uſe of any other, by reaſon of any Bargain and Sale, Feoffment, Fine, Recovery, Contract, Agreement,

or Will, &c. he to whoſe Uſe the Lands are ſettled in Fee-ſimple, Fee-tail, for Life, Years, or otherwiſe, ſhall be eſteemed in Poſſeſſion of the Land to all Intents and Purpoſes: And where one is ſeiſed of Lands to the Uſe or Intent that another ſhall have an yearly Rent out of the ſame, *Ceſtui que Uſe* ſhall be deemed in Poſſeſſion and Seiſin of the ſaid Rent, and of like Eſtate as in the Uſe, &c. And if there are any Uſes limited in a new Manner, they are void. *1 Rep. 129, 138.* But there are Uſes that are not executed by this Statute; as if Lands are granted to others in Trust, that the Feoffees ſhall take the Profits, and deliver them to the Feoffor and his Heirs; alſo Leaſes for Years of Lands in Uſe, (which Leaſes had their Being before, and are granted over in Uſe and Trust) where the Leſſee is poſſeſſed only of his Term, and not ſeiſed of any Freehold, &c. and there ſtill remains an Uſe of Goods and Chattels Perſonal, which is properly a *Chancery Trust*, wherein the Uſe and Poſſeſſion are divided; tho' in other Caſes the Statute executes Agreements as the Chancery would have done before. *Wood's Inſt. 256, 257.* All Lands of Inheritance, Liberties, Franchiſes, viſible or local, may be convey'd by Way of Uſe: But Inheritances Perſonal, which have no Relation to Lands or local Hereditaments, cannot be conveyed by Way of Uſe. And ſome Queſtions having been made, out of what an Uſe ſhall ariſe, it hath been held, That Uſes ſhall be raiſed only out of a Freehold, that they cannot be raiſed out of a Chattel, nor out of an Uſe, or a bare Right or Power, nor out of an intended Purchaſe, &c. *Moor 509. 1 Leon. 148. 3 Salk. 386.* In Uſes there ought to be Privy of Eſtate to erect the Uſe upon: And there are four Things required to the Execution of a Uſe within the Statute, *viz.* There muſt be a Perſon ſeiſed; but the King, or a Corporation, an Alien, &c. cannot be ſeiſed to the Uſe of another: There is to be a *Ceſtui que Uſe* in Being; for the Words of the Act are, Stand and be ſeiſed to the Uſe of any Perſon or Perſons: There muſt be an Uſe in Eſſe, in Poſſeſſion, Remainder, or Reverſion; and the Eſtate of the Feoffees, &c. out of which the Uſes ariſe, is to be veſted or transferred to *Ceſtui que Uſe*; and if any of theſe fail, the Uſe will not be executed. *1 Rep. 126. 1 Inſt. 19. 2 Cro. 50, 401.* Uſes are in Eſſe, either in Poſſeſſion, Remainder, or Reverſion; or in Contingency, which by Poſſibility may fall into Poſſeſſion, or in Reverſion, &c. A Uſe is alſo expreſs, or implied; Expreſs, as when a Feoffment is made of Land to *A. B.* and his Heirs, to the Uſe of *C. D.* and the Heirs of his Body, &c. Implied, where the Uſe is not declared between the Parties, but is left to the Conſtruction of the Law: And if a Man ſeiſed of Lands makes a Feoffment in Fee, without any Conſideration, and it is not declared to whoſe Uſe, by Implication of Law it ſhall be to the Uſe of the Feoffor, &c. It hath been adjudg'd, that if by Feoffment, or Leaſe and Release, a Man conveys any particular Eſtate mediate or immediate to another Perſon, there the Reſidue of the Eſtate ſhall by Implication remain to the Uſe of the Party himſelf; but where no Eſtate is limited to another, the whole Conveyance is to no Purpoſe, if the Party be conſtrued to have the reſulting Uſe in him; indeed upon a Fine or Recovery, they may have their particular Eſtates in other Reſpects, as barring upon Non-claims or Remainders.

1 Rep. 121. 2 Roll. Abr. 781, 782. 2 Salk. 678. 3 Salk. 587. An *Use* may be raised two manner of Ways, 1st, By Transmutation, or departing with the Possession of the Estate. 2dly, Without Transmutation of the Estate, by keeping the Land in a Man's own Hands, and making the Possession be to the *Use* of another: Those *Uses* that arise by Transmutation of Estate, are by Feoffment, Fine, Recovery, &c. And those which arise without Transmutation, being by Bargain and Sale introlled, and covenant to stand seised to *Uses*. 1 Plowd. 301. 1 Inst. 271. Conveyances to *Uses* are of three Sorts; a Covenant to stand seised; a Feoffment, Fine, or Recovery to *Uses*, and a Bargain and Sale; by which last, a contingent *Use* cannot be supported, though by the two First it may; and there is a Difference between a Feoffment to *Uses*, and a Covenant to stand seised, because the Feoffor departs with his whole Estate, but the Covenantor departs with no more than what is actually vested in the *Cestui que use*. 2 Sid. 64, 129. In Bargains and Sales, and Covenants to stand seised, some Consideration is necessary to make those Deeds operate to *Uses*; the Consideration of Money in a Bargain and Sale, and natural Affection, Blood, Affinity, Marriage, &c. in the Covenant to stand seised: And they may be good to a Man's Wife or Family, without any Consideration, but not to others. Plow. 301. Dyer 169. 3 Lev. 306. The Consideration, or a Reservation of 12 d. a Penny, or a Pepper-corn, are sufficient Considerations to raise an *Use*. 2 Mod. 251. 3 Salk. 387. If a Man covenants in Consideration of Marriage, or of a Sum of Money paid to him, that the Covenantee shall have such Lands; the same shall change the *Use* immediately; for these are good Considerations either to change or raise *Uses*, Dyer 6. But a Person covenanteth to, make an Estate to certain Persons to certain *Uses*, in Consideration of Marriage; no *Use* arises by such bare Covenant, unless the Estate be made accordingly: So where upon Marriage there is a Covenant to levy a Fine, except the Fine be levied; but if a Fine be levied, it shall be to the *Uses*. Dalif. 112. 3 Lev. 306. Cro. Eliz. 401. An *Use* arises when declared by Estate executed, which needs no Consideration: A Fine it self without any Consideration, doth raise *Uses*, where a Marriage is intended; but in other Conveyances, the Consideration of Marriage will not raise an *Use*, if the Marriage take not Effect; because the Consideration must be executed before the *Use* shall arise. 1 Leon. 138. *Uses* may be made to a Man and the Wife he shall marry, or to his first, second, or third Wife, &c. And if Parties to a Deed declare, that one of them shall make a Feoffment, or levy a Fine to the *Use* and Intent that one shall hold the Land for Life, and after his Death another in Tail, and after that a Third in Fee-simple, &c. the Estate settlenth according to the *Uses* declared by the Deed. 1 Rep. 13, 121. A Devise may be to an *Use*, and be so executed: A Man makes a Feoffment to the *Use* of his Will, he hath the *Use* in the mean Time; and when the Feoffor by Will limits the Estate pursuant to his Power, the Estate takes Effect by the Feoffment, and the *Use* is directed by the Will. Lutw. 323. 6 Rep. 17, 18. If *Uses* are settled upon Condition, the Condition must first be performed; and a future *Use* may well rise on the Non-performance of a Condition. 2 Lill. Abr. 668. There may be a future *springing Use*, without a

precedent Estate to support it; as a Man covenants to stand seised after his Death to the *Use* of his Kinsman and his Heirs, the Estate in the mean Time is in him, 2 Lev. 77. An *Use* is construed as favourably as may be, to comply with the Intent of the Party: Intention is the Foundation of *Uses*, but it ought to be out of the Words of the Deed, to be agreeable to Law, and collected and taken from the intire Deed. 1 Mod. 98. Lutw. 700, 790. If the Meaning of the Party doth appear, that he intended to pass his Estate by way of raising an *Use*; there the Words, *Give, Grant, &c.* shall enure as a Covenant to stand seised: But where it doth not appear, that he intended to pass it by way of *Use*; but by Conveyance at Common Law, no *Use* is raised. March. 50. Lands being once sold and settled to *Uses*, the Party that makes the *Use* may not create any further *Uses*: Where the Estate out of which an *Use* ariseth is gone, the *Use* is gone likewise; and *Uses* may be made void by Release, or Power of Revocation. Dyer 186. 1 Inst. 237. No *Use* will prevent Dower of a Woman, after her Husband's Death, &c. See *Covenant to stand seised*.

Superstitious Uses. By Statute, a Devise of Lands or Goods to *Superstitious Uses*, is where 'tis to find or maintain a Chaplain or Priest to pray for the Souls of the Dead, or Lamp in a Chapel, a Stipendiary Priest, &c. These, and such like, are declared to be *Superstitious Uses*; and the Lands and Goods so devised are forfeited to the King. 1 Ed. 6. cap. 14. But a Man devised Lands to Trustees and their Heirs, to find a Priest, or pray for his Soul, so long as the Laws of the Land would permit; and if the Laws would not permit it, then to apply the Profits to the Poor, with Power to convert the Profits to either of the said *Uses*; adjudged, this was not a Devise to any *Superstitious Use*. 3 Nels. Abr. 259. And where certain Profits arising out of Lands are given to *Superstitious Uses*, the King shall have only so much of the yearly Profits, which were to be applied to the *Superstitious Use*; tho' when the Land it self is given by the Testator, declaring that the Profits, without saying how much, shall be employed for such *Uses*, in this Case the King shall have the Land it self. Moor 129. If a Sum certain is given to a Priest, and other Goods which depend upon the *Superstitious Use*, all is forfeited to the King; yet if Land, &c. is given to find an Obit or Anniversary, and for another good *Use*; and there is no Certainty how much shall be employ'd to the *Superstitious Use*, the Gift to the good *Use*, shall preserve the Whole from Forfeiture. 4 Rep. 104. 2 Roll. 205. It has been held, that where a *Superstitious Use* was void, so that the King could not have it; that it was not so absolutely void, as to result to the Heir at Law; and therefore the King may apply it to Charity. 1 Salk. 163. See the Stat. 23 Hen. 8. under *Mortmain*; and the 1 Geo. Title *Forfeiture*.

Uter de Action, Is the Pursuing or Bringing an Action, in the proper County, &c. Broke 64.

Usher, (Fr. *Huissier*, a Door-keeper) Is an Officer in the King's House, as of the Privy Chamber, &c. And there are *Ushers* of the Courts of Chancery and Exchequer.

Ufucaption, (*Ufucaptio*) Signifies the Enjoying by Continuance of Time; a long Possession, or Prescription. *Terms de Ley*.

Usufructuary, (Usufructuarius) One that hath the Use, and reaps the Profit of a Thing.

Usurpation, (Usurpatio) Is the Using that which is another's; an Interruption or Disturbing a Man in his Right and Possession, &c. The *Usurpation* of a Church Benefice is, when one that hath no Right, presenteth to the Church, and his Clerk is admitted and instituted into it, and hath quiet Possession six Months after Institution before a *Quare Impedit* brought: It must commence upon a Presentation, not a Collation; because by a Collation the Church is not full, but the right Patron may bring his Writ at any Time to remove the Usurper. 1 *Inst.* 277. 6 *Rep.* 30. And by *Usurpation*, the Fee of an Advowson may be gained, as well as the Avoidance upon which the *Usurpation* is made; and the true Patron cannot remove the Incumbent to gain the Possession, without a Writ of Right of Advowson, which he is driven to for recovery of the Inheritance. 6 *Rep.* 49. At Common Law the Patron in Fee was put out of Possession by an *Usurpation*, and to recover the Advowson it self by a Writ of Right; but he hath no Remedy for the Presentation *hac vice*, nor if another Avoidance happen, unless he bring his Writ of Right of Advowson, and recontinue the Advowson: If the Patron had the Advowson in Tail, or for Life, this Turn and also his whole Advowson was gone. 3 *Salk.* 388. An *Usurpation* upon a Lessee for Years, gains the Fee-simple, and puts the true Patron out of Possession; and tho' by the Stat. *Westm.* 2. he in Reversion after the Determination of the Lease for Years, may have a *Quare Impedit* when the Church is void, or may present; and if his Clerk is instituted and inducted, then he is remitted to his former Title; yet till that is done, the Usurper hath the Fee, and the Writ of Right of Advowson lies against him. *Hutt.* 66. 3 *Salk.* 389. Upon the Statute 1 *Eliz.* if an *Usurpation* be on a Bishop, it shall bind him; but his Successor may present to the next Avoidance, or bring a *Quare Impedit*, altho' he is out of Possession: All *Usurpations* shall bind the Bishop who suffers them; not their Successors. 1 *Leon.* 80. 2 *Cro.* 673. No one can *usurp* upon the King; but an *Usurpation* may dispossess him of his Presentation, so as he shall be obliged to bring a *Quare Impedit*; tho' it will not so devert his Estate in an Advowson, as to bind his Inheritance, and put him to a Writ of Right. 3 *Salk.* 389. If one presents to a Church in Time of War, the Presentment shall not put the rightful Patron out of Possession: And a Presentation which is void in Law, as in Case of Simony, or to a Church that is full, &c. makes no *Usurpation*. 2 *Rep.* 93. *Wood's Inst.* 160. Also by a late Statute, no *Usurpation* on any Avoidance, shall displace the Estate or Interest of any Person intitled to an Advowson; or hinder him to present upon the next Avoidance, or to maintain a *Quare Impedit* to recover Possession, &c. 7 *Ann.* c. 18.

Usurpation of Franchises and Liberties, Is when a Subject unjustly uses any royal Franchises, &c. And it is said to be an *Usurpation* upon the King, who shall have the Writ of *Quo Warranto* against the Usurpers. See *Quo Warranto*.

Usury, (Usura) Is Money given for the Use of Money, the Interest of it; and is particularly defined to be the Gain of any Thing by Contract above the Principal, or that which was lent, exacted in Consideration of the Loan thereof, whe-

ther it be of Money, or any other Thing. 3 *Inst.* 151. The Lending Money out at Interest, or upon *Usury*, was against the Common Law; and in former Times, if any one after his Death had been found to be a *Usurer*, all his Goods and Chattels were forfeited to the King, &c. And according to several antient Statutes, all *Usury* is unlawful; but at this Time neither the Common or Statute Law, absolutely prohibit *Usury*. 3 *Inst.* 151, 152. Tho' excessive *Usury* is liable to the Forfeiture of treble Value of the Money taken, by Statute; and if Judgment cannot be given on the Statute, if it be found that a Person took Money for Forbearance by corrupt Agreement, Judgment may be given against him at Common Law, which is Fine and Imprisonment. 3 *Salk.* 391. Reasonable Interest may be taken for the Use of Money at this Day; tho' it hath been decreed in Equity, that if on a Bond-Debt, the Interest hath out-run the Penalty, it shall not carry Interest beyond it. 1 *Salk.* 154. The Stat. 27 *Hen.* 8. cap. 9. allowed 10 *l.* per Cent. for Money lent on Mortgages, &c. The 13 *Eliz.* c. 8. ordain'd 8 *l.* per Cent. And the 21 *Jac.* 1. cap. 17. the like Interest. The 12 *Car.* 2. cap. 13. lowered the Interest of Money to 6 *l.* per Cent. And the 12 *Ann.* cap. 16. to 5 *l.* per Centum per Annum. But it is said, that the Statutes 13 *Eliz.* and 21 *Jac.* 1. allow not *Usury*, but punish the Excess of it; and the 12 *Ann.* is called the Statute against *Excessive Usury*. By the Stat. 12 *Ann.* c. 16. no Person shall take directly or indirectly, for Loan of any Money, or other Thing, above the Value of 5 *l.* for the Forbearance of 100 *l.* for a Year, and so proportionably for a greater or less Sum; and all Bonds, Contracts, and Assurances made for Payment of any principal Sum to be lent on *Usury*, above the Rate of 5 *l.* per Cent. shall be void: And whoever shall take, accept and receive by way of corrupt Bargain, Loan, &c. a greater Interest, shall forfeit treble the Value of the Money lent; and Scriveners, Solicitors and Drivers of Bargains, are not to take above 5 *s.* for the Procuring the Loan of 100 *l.* a Year, on Pain of forfeiting 20 *l.* &c. It hath been adjudged on this Statute, that a Contract for 6 *l.* per Cent. made before the Statute, is not within the Meaning of it; and therefore that it is still lawful to receive such Interest, in respect of any such Contract: And if a Man, when Interest was at 6 *l.* per Cent. lent Money on that Rate, and after the Statute comes and sinks the Interest to 5 *l.* per Cent. if he continues the old Interest on that Bond, the Bond shall not be void as *usurious*; but it is said the Party shall be liable to forfeit treble Value. 1 *Hawk.* 246. 1 *Mod.* 69. The Receipt of higher Interest than is allowed by the Statute, by Virtue of an Agreement subsequent to the first Contract, doth not avoid an Assurance fairly made; and a Bond made to secure a just Debt, payable with lawful Interest, shall not be avoided by a corrupt *usurious* Agreement between others, to which the Obligee was no way privy: Nor shall Mistakes in drawing Writings make void a fair Agreement. *Ibid.* A Fine levied, or Judgment suffered as a Security for Money, in Pursuance of an *usurious* Contract, may be avoided by an Averment of the corrupt Agreement; as well as any common Specialty, or parol Contract: And it is not material, whether the Payment of the Principal and the *usurious* Interest, be secured by the same, or by different Conveyances,

veyances, for all Writings whatsoever for the Strengthening such a Contract are void; also a Contract reserving to the Lender a greater Advantage than allowed, is *usurious*, if the Whole is reserv'd by way of Interest, or in Part only under that Name, and in Part by way of Rent for a House, let at a Rate plainly exceeding the known Value; so where Part is taken before the End of the Time, that the Borrower hath not the Profit of the whole Principal Money, &c. 1 *Hawk. P. C.* 248. 3 *Nelf. Abr.* 509. It is not *Usury*, if there be not a corrupt Agreement, for more than Statute Interest; and the Defendant shall not be punish'd, unless he receive some Part of the Money in Affirmance of the *usurious* Agreement. 3 *Salk.* 390. There can be no *Usury*, without a Loan; and the Court hath distinguished between a Bargain and a Loan. 1 *Lutw.* 273. *Sid.* 27. If a Man lend another 100*l.* for two Years, to pay for the Loan 30*l.* and if he pays the Principal at the Year's End, he shall pay nothing for Interest; this is not *Usury*, because the Party may pay it at the first Year's End, and so discharge himself. *Cro. Jac.* 509. 5 *Rep.* 69. And it is the same where a Person by special Agreement, is to pay double the Sum borrowed, by way of Penalty, for Nonpayment of the principal Debt; the Penalty being in Lieu of Damages, and the Borrower might repay the Principal at the Time agreed, and avoid the Penalty. 2 *Inst.* 89. 2 *Roll. Abr.* 801. A Man surrenders a Copyhold Estate to another upon Condition that if he pays 80*l.* at a certain Day, then the Surrender to be void; and after it is agreed between them that the Money shall not be paid, but that the Surrenderor shall forfeit, &c. In Consideration whereof, the Surrenderee promises to pay to the Surrenderor on a certain Day 60*l.* or 6*l.* *per Ann.* from the said Day *pro usu & Interesse* of the said 60*l.* till that Sum is paid: This 6*l.* shall be taken to be *Interesse Damnum*, and not *Lucri*, and but limited as a Penalty for Nonpayment of the 60*l.* as a *Nomine pœne*, &c. 2 *Roll. Rep.* 469. 1 *Danv. Abr.* 44. If one hath a Rent-charge of 30*l.* and another asketh what he shall give for it, and they agree for 100*l.* this is a plain Contract for the Rent-charge, and no *Usury*. 3 *Nelf.* 510. The Grant of an Annuity for Lives, not only exceeding the Rate allowed for Interest, but also the Proportion for Contracts of this Kind, in Consideration of a certain Sum of Money, is not within the Statutes against *Usury*; and so of a Grant of an Annuity, on Condition, &c. *Cro. Jac.* 253. 2 *Lev.* 7. Where Interest exceeds 5*l.* *per Cent. per Annum* on a Bond, if possibly the Principal and Interest are in Hazard, upon a Contingency, or Casualty; or if there is a Hazard that one may have less than his Principal, as when a Bond is to pay Money upon the Return of a Ship from Sea, &c. these are not *Usury*. 2 *Cro.* 208, 508. 1 *Cro.* 27. *Shou.* 8. One hundred Pounds is lent to have 120*l.* at the Year's End, upon a Casualty; if the Casualty goes to the Interest only, and not to the Principal, it is *Usury*: The Difference in the Books is, that where the Principal and Interest are both in Danger of being lost, there the Contract for extraordinary Interest is not *usurious*; but when the Principal is well secur'd, 'tis otherwise. 3 *Salk.* 391. If a Person secure the Interest and Principal, and it is at the Will of the Party who is to pay, it is no *Usury*. *Cro. Jac.* 509. And a Lender accepting a voluntary Gratuity from the

Borrower, on Payment of Principal and Interest; or receiving the Interest before due, &c. without any corrupt Agreement, shall not be within the Statutes against *Usury*. 2 *Cro.* 677. 3 *Cro.* 501. On an Information upon the Statute of *Usury*, he who borrows the Money may be a Witness, after he hath paid the Money. *Raym.* 191. In Action for *Usury*, the Statute against *Usury* must be pleaded; and a corrupt Agreement be set forth: It is not sufficient to plead the Statute, and say that for the Lending of 20*l.* he took more than 5*l.* *per Cent.* without setting forth a corrupt Agreement or Contract. *Lutw.* 466. 2 *Lill.* 672. 3 *Nelf.* 514. And in pleading an *usurious* Contract by way of Bar to an Action, the whole Matter is to be set forth specially, because it lay within the Party's own Privy; but in an Information on the Statute for making such a Contract, it is enough to mention the corrupt Bargain generally, by Reason Matters of this Kind are supposed to be privily transacted; and such Information may be brought by a Stranger. 1 *Hawk.* 248. The Word *Corruptive* is necessary in a Declaration for *Usury*, &c.

Utas, Octava, Is the eighth Day following any Term or Feast; as the *Utas* of St. Michael, &c. And any Day between the Feast and the *Octave* is said to be within the *Utas*: The Use of this is in the Return of Writ; as appears by the Stat. 51 *Hen.* 3.

Utensil, Is any Thing necessary for Use and Occupation; Household-stuff. *Cowel.*

Urfangthes, (*Fur extra captus*) A Liberty to punish Offenders. See *Outfangthes*.

Utlagh, (*Uthlagus*, i. e. *Bannitum extra Legem*) An Outlaw. *Fleta*, lib.

Utlagato capiendo quando Utlagatur in uno Comitatu & postea fugit in alium, An ancient Writ, the Nature whereof is expressed in the Words of the Name. *Reg. Orig.* 133.

Utlawry, (*Utlagaria*, vel *Utlagatio*) See *Outlawry*.

Utlepe, (*Sax.*) Signifies an Escape of a Felon out of Prison. *Fleta*, lib. 1. c. 47.

Uter Barristers, (*Furis consulti*) Are Barristers at Law, newly called, who plead without the Bar, &c. Vide *Barrister*.

Uultiba, A Wound in the Face. — *Uultivam* 50. *sol. componat.* *Leg. Sax.*

Uultus de Luca, The Image of our crucified Saviour kept at *Lucca* in the Church of Holy Cross: And *Will.* 1. called the Conqueror, often swore *per Sanctum vultum de Luca*. *Eadmer.* lib. 1. *Malmsh.* lib. 4.

Uroziun, A Mulct or Fine paid for not marrying. *Litt. Dist.*

W.

Wade, (*Vado*) To wade or ford over a River. *Litt.*

Wastors, (*Wastores*) Are Conductors of Vessels at Sea; King *Edw.* 4. constituted certain Officers with naval Power, whom he stiled *Custodes*, *Conductores* and *Wastores*, to guard our Fishing Vessels on the Coasts of *Norfolk* and *Suffolk*. *Pat.* 22 *Ed.* 4.

Wage, (*Vadiare*, from *Fr. Gage*) Signifies the Giving of Security for Performance of any Thing; as to wage or gage *Deliverance*, to wage *Law*, &c. *Co. Litt.* 294.

Wager of Law, (*Vadiare Legem*) Is where an Action of Debt is brought against a Man, upon a simple Contract between the Parties, without Deed or Record; and the Defendant swears in Court in the Presence of his Compurgators, that he oweth the Plaintiff nothing in Manner and Form as he hath declared: And the Reason of *Waging of Law* is, because the Defendant may pay to the Plaintiff his Debt in private, or before Witnesses which may be all dead, and therefore the Law allows him to *wage* his Law in his Discharge; and his Oath shall rather be accepted to discharge himself, than the Law will suffer him to be charged upon the bare Allegation of the Plaintiff. 2 *Inst.* 45. The Manner of *Waging of Law* is thus: He that is to do it, must bring six Compurgators with him into Court, and stand at the End of the Bar towards the Right-hand of the Chief Justice; and the Secondary asks him, whether he will *wage his Law*? If he answers that he will, the Judges admonish him to be well advised, and tell him the Danger of taking a false Oath; and if he still persists, the Secondary says, and he that *Wageth his Law* repeats after him: *Hear this ye Justices, That A. B. do not owe to C. D. the Sum of, &c. nor any Penny thereof in Manner and Form as the said C. D. hath declared against me: So help me God.* Though before he takes the Oath, the Plaintiff is called by the Crier thrice; and if he do not appear he becomes nonsuited, and then the Defendant goes quit without taking his Oath; but if he appear, and swears that he owes the Plaintiff nothing, and the Compurgators do give in upon Oath that they believe he swears true, the Plaintiff is barred for ever; for when a Person has *waged his Law*, it is as much as if a Verdict had passed against the Plaintiff: If the Plaintiff do not appear to hear the Defendant perform his Law, so that he is nonsuit; he is not barred, but may bring a new Action. 1 *Inst.* 155. 2 *Lill. Abr.* 674. In an Action of Debt on a By-Law, the Defendant *waged Law*; a Day being given on the Roll for him to come and make his Law, he was set on the right Corner of the Bar, and the Secondary ask'd him if he was ready to *wage his Law*; who answering that he was, he laid his Hand on the Book, and then the Plaintiff was called: Then the Judges admonished him and his Compurgators not to swear rashly; and thereupon he made Oath, That he did not owe the Money *modo & forma* as the Plaintiff had declared; and then his Compurgators, who were standing behind him, were called, and each of them laying his Right-hand upon the Book, made Oath that they believed what the Defendant had sworn was true. 2 *Ventr.* 171. 2 *Salk.* 682. The Defendant cannot *wage his Law* in any Action, but personal Actions, where the Cause is secret; and *Wager of Law* has been denied, on hearing the Case, and the Defendant been advised to plead to Issue, &c. Also this *Wager of Law* being abused by the Iniquity of the Times, the Law was forc'd to find another Way to do Justice, and that was by turning Actions of Debt on simple Contract, &c. into Action upon the Case by *Indebitat. Assumpsit*, which hath ousted the Defendant of his *Ley-Gager*. 2 *Lill.* 675, 676.

Wagers. By Statute, all *Wagers* laid upon a Contingency relating to the late War with France, and all Securities, &c. therefore were declared to be void; and Persons concerned

to forfeit double the Sums laid. 7 *Ann. cap.* 17.

Wages, Is what is agreed upon by a Master to be paid to a Servant, or any other Person which he hires to do Business for him. 2 *Lill. Abr.* 677. The *Wages* of Servants, Labourers, &c. is to be assessed by Justices. 5 *Eliz. cap.* 4. 1 *Fac.* 1. *cap.* 6. See *Servants. Wages* of Seamen, vide *Stat.* 4 & 5 *Ann.* 1. *Geo.* c. 25.

Waggons. The 22 *Car.* 2. enacted, That *Waggons* should not be drawn with more than five Horses in Length, under certain Penalties. By the 6 *Ann. cap.* 29. *Waggons* were to be drawn with six Horses, and no more, on Pain of 5 *l.* But Carriages for drawing Hay, Straw, Coal, Timber, Ammunition, &c. were excepted out of the Statute. And by 5 *Geo. cap.* 12. *Waggons* travelling for Hire, shall not be drawn with more than six Horses; and no Cart with above three Horses, on Pain of forfeiting all supernumerary Horses; also Travelling *Waggons* are to have their Wheels bound with Iron, two Inches and a Half broad, at least, or all the Horses shall be forfeited above the Number of Three, &c.

Waifs, (From the Sax. *Wafian*, Fr. *Chose guaiue*, Lat. *Bona Waviata*) Are Goods which are stolen and *waved*, or left by the Felon, on his being pursued, for fear of being apprehended; which are forfeited to the King or Lord of the Manor. *Kitch.* 81. If a Felon in Pursuit *waves* the Goods, or having them in his Custody, and thinking that Pursuit was made, for his own Ease and more speedy Flight, flies away and leaves the Goods behind him; then the King's Officer or the Bailiff of the Lord of the Manor, within whose Jurisdiction they are left, who hath the Franchise of *Waif*, may seize the Goods to the King or Lord's Use and keep them, except the Owner makes fresh Pursuit after the Felon, and sue an Appeal of Robbery within a Year and a Day, or give Evidence against him whereby he is attainted, &c. In which Case, the Owner shall have Restitution of his Goods so stolen and *waved*. 21 *H.* 8. *cap.* 11. 5 *Rep.* 109. Goods *waved* by a Felon, in his Flight from those who pursue him, shall be forfeited: And though *Waif* is generally spoken of Goods 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 *Fugitives Goods*, and not forfeited till it be found before the Coroner, or otherwise of Record, that he fled for the Felony. 2 *Hawk.* 450. 5 *Rep.* The Law makes a Forfeiture of Goods *waved*, as a Punishment to the Owner of the Goods, for not bringing the Felon to Justice: But if the Thief had not the Goods in his Possession, when he fled, there is no Forfeiture: If a Felon steal Goods and hide them, and afterwards flies, these Goods are not forfeited; so where he leaves stolen Goods any where, with an Intent to fetch them at another Time, they are not *waved*; and in these Cases the Owner may take his Goods where he finds them, without fresh Suit, &c. *Cro. Eliz.* 694. 5 *Rep.* 109. *Moor* 785. *Waifs* and *Strays* are said to be *Nullius in bonis*, and therefore they belong to the Lord of the Franchise where found. *Briton, cap.* 17. We read of *Placita Corona & Waif*, in the Manor of Upton, &c. in *Com. Salop.*

Wain, (*Plaustrum*) A Cart, Waggon, or Plough to till Land.

Wainable, i. e. That may be ploughed or manured; Land tillable. *Chart. sine dat.*

Wainage,

Wainage, (*Wainagium*) According to Sir Edw. Coke, signifies the Contenement of a Villain; or the Furniture of his Cart or Wain. 2 *Inst.* 28. And the Villain of any other, if he fall into our Mercy, shall be amerced saving his *Wainage*. Magn. Chart. c. 14. *Wainage* has been also used for Tillage. *Mon. Ang. Tom.* 2. pag. 612. See *Gainage*.

Waive, (*Waivare*) In the general Signification, is to forsake; but is specially applied to a Woman, who for any Crime, for which a Man may be outlawed, is termed *Waive*. Reg. Orig. 132.

Wake, The Eve-Feast of the Dedication of Churches; which in many Country Places, is observ'd with Feasting and rural Diversions, &c. *Paroch. Antiq.* 609.

Wakeman, (*Quasi* Watchman) The chief Magistrate of the Town of Rippon in Yorkshire, is so called. *Camd.*

Wales, (*Wallia*) Is part of England on the West-side formerly divided into three Provinces, *North-Wales*, *South-Wales*, and *West-Wales*, and inhabited by the Off-spring of the ancient Britains, chased thither by the Saxons, called in to assist them against the *Picts* and *Scots*; but now they are incorporated to England. *Lamb. Stat. Wallie*, 12 Ed. 1. The Stat. 28 Ed. 3. c. 2. annexed the *Marches of Wales* perpetually to the Crown of England; so as not to be of the Principality of *Wales*: And by the 27 Hen. 8. c. 26. *Wales* was incorporated and united with England; and all Persons born in *Wales* shall enjoy the like Liberties as those born in England, and Lands descend there according to the English Laws: The Laws of England are to be executed in *Wales*; and the King to have a *Chancery* and *Exchequer* at *Brecknock* and *Denbigh*: Officers of Law and Ministers shall keep Courts in the English Tongue: And the Welsh Laws and Customs to be inquired into by Commission, and such of them as shall be thought fit continued; but the Laws and Customs of *North Wales* are saved. By 34 & 35 Hen. 8. cap. 26. A Division of *Wales* was made into twelve Counties; and a President and Council, shall remain in *Wales* and the *Marches* thereof, with Officers, &c. Two Justices are to be assign'd to hold a Sessions twice every Year, and determine Pleas of the Crown, and Assises; and Justices of Peace shall be appointed as in England, &c. The 18 Eliz. cap. 8. enacts, That the King may appoint two other Persons learned in the Laws, to be Judges in each of the *Welsh* Circuits, which had but one Justice before; or grant Commissions of Association, &c. An Office for Inrollments was erected, and the Fees and Proceedings regulated in passing Fines and Recoveries in *Wales*, by 27 Eliz. cap. 9. Jurors return'd to try Issues in *Wales*, are to have 6 l. a Year of Freehold or Copyhold, above Rerprises: And none shall be held to Bail in *Wales*, unless Affidavit be made that the Cause of Action is 20 l. or upwards. 11 & 12 W. 3. cap. 9. Of Process into *Wales*, Judgments, and Courts there, &c. see 3 *Nelf. Abr.* 519, 520, 522. And *Courts of Wales*, *Prince of Wales*, vide *Prince*.

Walesheria, The learned *Spelman* says signifies *Wallia pavs*: But by others it is interpreted *Parentela Hominis interfecti*; the same with *Valesheria*.

Waliscus, (i. e. *Servus*) A Servant; or any ministerial Officer. *Leg. Ina*, c. 34.

Walkers, Are *Foresters* within a certain Space of Ground, assign'd to their Care in Forests, &c. *Crompt. Jurisd.* 145.

Wall, ~~Sea-Wall~~, A Bank of Earth. See *Water-gage*.

Waltham Blacks. In the Reign of K. Geo. 1. there sprung up a Set of desperate Villains call'd *Waltham Blacks*, headed by one whom they stiled *K. John*; who blacking their Faces, and using other Disguises, robb'd Forests, Parks, and Warrens, destroy'd Cattle, levied Money on their Neighbours, by Threats and Menaces to fire their Houses, and committed divers other Violences and Outrages, to the great Terror of the People; but they were suppressed, and declared *Fellons*, by Stat. 9 Geo. c. 22.

Wang, (*Sax.*) We use for the Cheek, or Jaw wherein the Teeth are set: Hence *Chaucer* called the Cheek-Teeth or Grinders, *Wangs* or *Wang-Teeth*; which is recorded in this old Way of sealing Writings:

And in witness that this is sooth,
I bite the Wax with my Wang-tooth.

Wanga, An Iron Instrument with Teeth. *Consuetud. Dom. de Earend. M.S.* 18.

Wanlafs, Or driving the *Wanlafs*, is to drive Deer to a Stand, that the Lord may have a Shoot; which is one of our ancient customary Tenures of Lands. *Blount's Ten.* 140.

Wapentake, (From the Sax. *Weapen*, i. e. *Armatura*, & *tac*, *tactus*) Is all one with what we call a Hundred; specially used in the North Counties beyond the River *Trent*. *Bract. lib.* 3. *Lamb.* The Words seem to be of Danish Original, and to be called so for this Reason; when first this Kingdom, or Part thereof, was divided into *Wapentakes*, he who was the Chief of the *Wapentake* or Hundred, and whom we now call a High Constable, as soon as he enter'd upon his Office, appeared in the Field on a certain Day on Horseback with a Pike in his Hand, and all the chief Men of the Hundred met him there with their Lances, and touch'd his Pike; which was a Sign that they were firmly united to each other, by the *Touching their Weapons*. *Hoveden. Flea*, lib. 2. But Sir *Thomas Smith* says, That anciently Mustlers were made of the Armour and Weapons of the several Inhabitants of every *Wapentake*; and from those that could not find sufficient Pledges for their good Abearing, their Weapons were taken away, and given to others; from whence he derives this Word. *Rep. Angl. lib.* 2. cap. 16. *Camd. Brit.* 159. 2 *Inst.* 99. *Stat.* 3 Hen. 5. c. 2. 9 Hen. 6. cap. 10. 15 Hen. 6. cap. 7. — *Wapentak hoc est quietancia de sectis & Hundredis quod dicitur Wapentak. M.S. in Bibl. Cotton.*

War, (*Bellum*) A Fighting between two Kings or Princes, in Vindication of their just Rights; also the State of War, or all the Time it lasts. By our Law, when the Courts of Justice are open, so that the King's Judges distribute Justice to all, and protect Men from Wrong and Violence, it is said to be a Time of Peace: But when by Invasion, Rebellion, &c. the peaceable Course of Justice is stop'd, then it is adjudged to be a Time of War: And this shall be tried by the Records and Judges, whether Justice at such a Time had her equal Course of Proceeding or no? For Time of War gives Privilege to them that are in War, and all others within the Kingdom.

dom. 1 *Inst.* 249. In the *Civil Wars* of K. Char. 1. it was computed that there were not fewer than 200,000 Foot and 50,000 Horse in Arms on both Sides; which was an extraordinary Host, considering it compos'd of *Britains*, sufficient to have shaken *Europe*, though it was otherwise fatally employ'd. And in ancient Times, when the Kings of *England* were to be serv'd with Soldiers in their *Wars*, a Knight or Esquire that had Revenues, Farmers and Tenants, would covenant with the King by Indenture inrolled in the *Exchequer*, to furnish him with such a Number of military Men; and those Men were to serve under him, whom they knew and honoured, and with whom they must live at their Return. 1 *Inst.* 71. This was an excellent Institution; but we have had many Statutes which have alter'd this Method of recruiting the Army, by introducing the Lifting of Soldiers, and retaining them by Virtue of Money paid and advanced, &c. See *Laws of Arms, and Soldiers*.

Wara, A certain Quantity or Measure of Ground. *Mon. Angl. Tom.* 2. p. 128.

Ward, (*Custodia*) Is variously used in our old Books: A *Ward* in *London* is a District or Division of the City, committed to the special Charge of one of the *Aldermen*; and in *London* there are Twenty-six *Wards*, according to the Number of the Mayor and Aldermen, of which every one has his *Ward* for his proper Guard and Jurisdiction. *Stow's Surv.* A *Forest* is divided into *Wards*; according to *Manwood*, par. 1. p. 97. And a Prison is called a *Ward*. Lastly, The Heir of the King's Tenant, that held *in Capite*, was term'd a *Ward*, during his Nonage. 32 *Hen.* 8. cap. 46. But this *Wardship* is taken away by the Stat. 12 *Car.* 2. c. 24.

Warda, The Custody of a Town or Castle; which the Inhabitants were bound to keep at their own Charge. *Mon. Angl. Tom.* 1. p. 372.

Wardage, (*Wardagium*) Seems to signify to be free from *Wardship*, &c.

Warden, (*Gardianus*, Fr. *Gardein*) Is he that hath the Keeping or Charge of any Persons or Things by Office; as the *Wardens* of the Fellowships or Companies in *London*. 14 *H.* 8. c. 2. *Wardens* of the Lands contributory to *Rocheſter Bridge*. 18 *El.* cap. 7. *Wardens* of the *Marches of Wales*, &c. 4 *Hen.* 7. cap. 8. *Wardens* of the *Tables* of the King's Exchange. 2 *Ed.* 3. cap. 7. *Warden* of the *Armour* in the *Tower*. 1 *Ed.* 4. cap. 1. *Wardens* of the *Rolls* of the *Chancery*. 1 *Ed.* 4. c. 5. *Warden* of the King's *Writs* and *Records* of his Court of *Common Bench*. *Ibid.* *Warden* and *Minor Canons* of *St. Paul's Church, London*. 22 & 23 *Car.* 2. c. 2, &c. See *Guardian*.

Wardmote, (*Wardmotus*) Is a Court kept in every *Ward* in *London*; ordinarily called the *Wardmote-Court*. *Chart. K. Hen.* 2.

Wardpeny, Money paid and contributed to Watch and *Ward*. *Domesday*.

Wards, Was a Court first erected in the Reign of King *Hen.* 8. and afterwards augmented by him with the Office of *Liveries*; wherefore it was filed the *Court of Wards and Liveries*, now discharged by the 12 *Car.* 2.

Ward-Staff, The Constable or Watchman's Staff: And the Manor of *Lambourn* in *Essex* is held by the Service of watching the *Ward-Staff*, in an extraordinary Manner, when it is brought to the Town of *Aibridge*. *Camd.*

Wareſtare, To plough up Land design'd for Wheat in the Spring, in order to let it lie fallow

for better Improvement; which in *Kent* is called *Summer Land*: Hence *Wareſtabilis campus*, a Fallow Field, *Campus ad Wareſtam*, *Terra Wareſtata*, &c.

Wargus, A banished Rogue. *Leg. Hen.* 1. cap. 83.

Warniſſura, Is used for Garniture, Furniture, Provision, &c. *Pat.* 9 *Hen.* 3.

Warnoth. It is an ancient Custom, if any Tenant holding of the Castle of *Dover* failed in paying his Rent at the Day, that he should forfeit double, and for the second Failure treble: And the Lands so held are called *Terris Cultis & Terris de Warnoth*. *Mon. Angl. Tom.* 2. p. 589.

Warrant, A Precept under Hand and Seal to some Officer to bring an Offender before the Person granting it: And *Warrants* of Commitment are issued by the Privy Council, a Secretary of State, or a Justice of Peace, where there hath been a private Information, or a Witness has depos'd against an Offender. *Wood's Inst.* 614. But a Constable ought not to execute a Justice's *Warrant*, where the *Warrant* is unlawful, or the Justice hath no Jurisdiction; if he doth, he may be punished. *Plowd.* 394. If any Person abuse by throwing in the Dirt, &c. or refuse to execute a lawful *Warrant*; it is a Contempt of the King's Process, for which the Offender may be indicted and fined. *Cromp.* 149. See *Constable*.

Warrant of Attorney, Is an Authority and Power given by a Client to his *Attorney*, to appear and plead for him; or to suffer Judgment to pass against him by confessing the Action, by *Nil dicit*, *Non sum Informatus*, &c. And although a *Warrant of Attorney* given by a Man in Custody to confess a Judgment, no *Attorney* being present, is void as to the Entry of a Judgment; yet it may be a good *Warrant* to appear and file *Common Bail*. 2 *Lill. Abr.* 682. A *Warrant of Attorney* which warrants the Action, is of Course put in by the *Attornies* for the Plaintiff and Defendant; so that it differs from a *Letter of Attorney*, which passes ordinarily under the Hand and Seal of him that makes it, and is made before Witnesses, &c. Though a *Warrant of Attorney* to suffer a *common Recovery* by the Tenant, is acknowledged before such Persons as a Commission for the Doing thereof directs. *West's Symb.* par. 2. Vide *Stat.* 4 & 5 *Ann.*

Warranty, (*Warrantia*) Is a Promise or Covenant by Deed made by the Bargainor, for himself and his Heirs, to warrant or secure the Bargainee and his Heirs, against all Men for the Enjoying of the Thing granted. *Braſt. lib.* 2. & 5. *West's Symb.* par. 1. A *Warranty* is *Real* or *Personal*; *Real*, when it concerns Lands or Tenements, granted in Fee, or for Life, &c. And real *Warranties* are either in *Deed*, as by the Word *Warrantizo* expressly; or in *Law*, by the Word *Dedi*, &c. And a Deed of Gift, and Exchange, have a *Warranty* in *Law* implied. *Litt.* 697. Sir *Edw. Coke* defines a *real Warranty* to be a *Covenant Real* annex'd to Lands, whereby a Man and his Heirs are bound to warrant the same to some other and his Heirs; and that they shall quietly hold and enjoy the Lands, and upon Voucher, or by Writ of *Warrantia Charta*, to yield other Lands and Tenements to the Value of those that shall be evicted by elder Title: And *Warranty* being a *Covenant real*, bindeth to yield Lands in *Recompence*. 1 *Inst.* 365, 384. *Warranty* is also of three Sorts, viz. *Warranty Lineal*, *Warranty Collateral*, and *Warranty* that

that commences by *Disseisin: Warranty lineal* is where a Man seised in Fee makes a Feoffment and binds himself and his Heirs by the Deed to *Warranty*, and hath Issue a Son and dies, and the *Warranty* descends to his Son and Heir; for if no Deed with *Warranty* had been made, then the Right of the Lands should have descended to the Son as Heir to his Father, and he would have convey'd the Descent from Father to Son: This *Warranty* binds the Right of Fee-simple; but not the Right of an Estate-tail, unless the lineal *Warranty* be with Affets in Fee-simple. *Litt.* 697, 703. 1 *Inst.* 374. *Collateral Warranty* is when the Party upon whom the *Warranty* descends, cannot convey the Title which he hath in the Land from him that made the *Warranty*, or shew that he is his Heir, &c. as if Tenant in Tail discontinues or alienates the Lands, and then dieth, leaving Issue, and the Uncle of the Issue releases to the Discontinuee with *Warranty*, and dies without Issue; this is a collateral *Warranty* to the Issue in Tail, and bindeth his Right, without Affets, it descending upon him, and he can't make a Title to the Intail from his Uncle. *Litt.* 704. 1 *Inst.* 373, 376. *Warranty by Disseisin*, is where one that hath no Right to the Freehold of another, entereth and conveyeth it away with *Warranty*; which shall not bind or bar the Person disseised: And if where Tenant for Life, Remainder in Tail, leases for Years with Agreement with the Lessee, that he shall make a Feoffment of the Land, and then he will release with *Warranty*, which is done accordingly; adjudged that this collateral *Warranty* commencing by Disseisin, shall not bind the Heir in Tail, upon whom it descended. *Litt.* 698. *Noy's Max.* 83. *Cro. Car.* 483. *Accomp. Conv.* 1. Vol. 56. All *Warranties* before the Statute of Gloucester, which descended to those who were Heirs to the *Warrantors*, were Bars to the same Heirs to demand any of the Lands; except the *Warranty* began by Disseisin: That Statute hath ordain'd, that the *Warranty* of the Father shall be no Bar to his Son for the Lands which come by the Heritage of the Mother; nor the *Warranty* of the Mother be binding to the Son for the Lands which come by the Heritage of the Father; but neither the Statute 11 H. 7. c. 20. or any other Statute hath provided any Remedy against a collateral *Warranty*, therefore such *Warranty* is yet in Force, and shall be a Bar to the Issue in Tail. *Litt.* *Terms de Ley* 370, 371. But by the 4 & 5 Ann. for Amendment of the Law, *Warranties* made by Tenant for Life, of any Lands, coming or descending on him in Reversion or Remainder, shall be void; and all collateral *Warranties* made of any Lands, &c. by any Ancestor, who hath not an Estate of Inheritance in Possession therein, shall be also void against the Heir. A *Warranty* according Law is intire, and extends to all the Lands, and is a Bar to every Person on whom it descends; and where several have a Right, jointly or severally, every one of them are barred: Though there is this Difference as to *Warranties*; where the Entry is gone, and only a Right of Action is left, there a *Warranty* descending upon the Heir at Law, shall bind: And where there is a Right of Entry, it shall not bind. 8 *Rep.* 54. 2 *Lill. Abr.* 684. And if any Person make a Deed with *Warranty*, by which his Heir should be barred, and after the *Warrantor* is attainted of Felony; his Heir shall not be bound by such *Warranty*, for it cannot descend upon him, the

Blood being corrupted. *Litt.* If a *Warranty* descend upon an Infant, it shall not bind him, in Case his Entry into the Lands be lawful; but he must take Care not to suffer a Descent after his full Age, before he hath made his Re-entry. 1 *Rep.* 140. *Poph.* 71. *Warranty* may be added to any Conveyance of Lands, Tenements, or Hereditaments; and the Form of a *Warranty* is in this Manner — *Et Ego prefatus A. B. & heredes mei predicti. Messuag. & decem acras terra cum pertinentiis suis, prefato C. D. hereditibus & assignatis suis contra omnes gentes Warrantizabimus in perpetuum per presentes, &c.*

Warranty of Goods sold, vide Action on the Case, and Sale.

Warrantia Charta, Is a Writ that lieth where a Man is infeoff'd of Lands with *Warranty*, and then he is sued or impleaded. If the Feoffee be impleaded in Assise, or other Action, in which he cannot vouch, he shall have this Writ against the Feoffor, or his Heirs, to compel them to warrant the Land unto him; and if the Land be recovered from him, he shall recover as much Lands in Value against the *Warrantor*, &c. But the *Warrantia Charta* ought to be brought by the Feoffee depending the first Writ against him, or he hath lost his Advantage. *F. N. B.* 134. *Terms de Ley* 372, 588. And if a Person doth infeoff another of Lands by Deed with *Warranty*, and the Feoffee maketh a Feoffment over, and taketh back an Estate in Fee, the *Warranty* is determined; and he shall not have the Writ *Warrantia Charta*, because he is in of another Estate: Also where one makes a Feoffment in Fee with *Warranty* against him and his Heirs, the Feoffee shall not have a *Warrantia Charta* upon this *Warranty* against the Feoffor or his Heirs, if he be impleaded by them, but the Nature of it is to rebut against the Feoffor and his Heirs. *Dal.* 48. 2 *Lill. Abr.* 684. This Writ may be sued forth before a Man is impleaded in any Action, but the Writ doth suppose that he is impleaded; and if the Defendant appear and say, that he is not impleaded, by that Plea he confesseth the *Warranty*, and the Plaintiff shall have Judgment, &c. and the Party shall recover in Value of the Lands against the Vouchee, which he had at the Time of the Purchase of his *Warrantia Charta*; and therefore it may be good Policy to bring it against him before he is sued, to bind the Lands as he had at that Time; for if he have aliened his Lands before the Voucher, he shall render nothing in Value. *New Nat. Br.* 298, 299. If a Man recover his *Warranty* in *Warrantia Charta*, and after he is impleaded; he ought to give Notice to him against whom he had recovered, of the Action, and pray him to shew what Plea he will plead, to defend the Land, &c.

Warrantia Diei, Is an ancient Writ lying where one having a Day assign'd personally to appear in Court to any Action, is in the mean Time employ'd in the King's Service, so that he cannot come at the Day appointed: And it is directed to the Justices to this End, that they neither take nor record him in Default for that Time. *Reg. Orig.* 18. *F. N. B.* 17.

Warren, (*Warvenna*, from Germ. *Wahren*, i. e. *Custodire*, or the Fr. *Garenne*) Is a Franchise, or Place privileged, by Prescription or Grant from the King, for the Keeping of Beasts and Fowls of the *Warren*; which are Hares and Conies, Partridges, Pheasants, and some add Quails, Woodcocks, and Water-Fowl, &c. *Terms de Ley*

589. 1 *Inst.* 233. A Person may have a *Warren* in another's Land, for one may alien the Land, and reserve the Franchise: But none can make a *Warren*, and appropriate those Creatures that are *Fere Natura*, without Licence from the King, or where a *Warren* is claim'd by Prescription. 8 *Rep.* 108. 11 *Rep.* 87. A *Warren* may lie open; and there is no Necessity of Inclosing it, as there is of a Park. 4 *Inst.* 318. And if any Person offend in a free *Warren*, he is punishable by the Common Law, and by Stat. 21 *Ed.* 3. When Conies are on the Soil of the Party, he hath a Property in them by Reason of the Possession, and Action lies for Killing them; but if they run out of the *Warren*, and eat up a Neighbour's Corn, the Owner of the Land may kill them, and no Action will lie. 5 *Rep.* 104. 1 *Cro.* 548. In Waste, &c. against a Lessee of a *Warren*, the Waste assign'd was for stopping Coney-Boroughs; and it was held, that this Action did not lie, because a Man cannot have the Inheritance of Conies; and Action may be brought against him who makes Holes in the Land, but not against him that stops them, by Reason the Land is made better by it. *Owen* 66. 3 *Nelf. Abr.* 530.

Warscot, Was a Contribution usually made towards *Armour*, in the Times of the Saxons. *Leg. Canut.*

Wart, Seems to be the same as *Ward-pen*; a customary Payment for some Castle-Guard. *Blount's Ten.* 60.

Wash, (*Washum*) A Shallow Part of a River, or Arm of the Sea; as the *Washes* in *Lincolnshire*, &c. *Knight* 1346.

Wassail, (*Sax.*) A festival Song, heretofore sung from Door to Door, about the Time of the *Epiphany*.

Waste, (*Vastum*) Is where any Spoil or Destruction is made in Houses, Lands, Woods, &c. by Tenants to the Damage of the Heir, or him in Reversion or Remainder: Whereupon the Writ or Action of *Waste* is brought for Recovery of the Thing *wasted*, and Damages. *Kitch.* 168. *Waste* in another Signification is taken for those Lands which are not in any Man's Occupation, but lie Common; which are so called, because the Lord cannot make such Profit of them as of other Lands, by Reason of that Use which others have thereof in passing to and fro, &c. but upon this none may build, cut down Trees, or dig, without the Lord's Licence. *Co. Litt.* And *Year, Day and Waste* is a Punishment or Forfeiture belonging to Petit Treason and Felony. *S. P. C. lib.* 3. Action of *Waste* is maintainable against Tenant by the Curtesy, in Dower, for Life, or Years, and treble Damages, recoverable by the Stat. *Gloc.* 6 *Ed.* 1. c. 5. And this Action may be brought by the Heir for *Waste* done in his Ancestor's Time: And be maintain'd by the Reversioner against Tenant for Life or Years, that aliens his Estate; also by one Tenant in Common against another. 13 *Ed.* 1. 20 *Ed.* 1. 11 *H.* 6. c. 5. The Processes in Action of *Waste* shall be Summons, Attachment, and Distress; and a Writ of Inquiry of the *Waste*, &c. At Common Law, there is a Writ of *Waste* for *Waste* done by Tenants in Dower, or by Guardians; and by Statute, the Action of *Waste* lies against Tenants for Life, or Years, &c. But not against Tenant by Statute-Merchant, Staple or Elegit, they not being Tenants for Years; though Trespass lieth against them, or Covenant for voluntary *Waste*: It lies not against Tenant after Possibility of Issue extinct; and the Stat. 13 *Ed.* 1. extends to Jointenants, but not to Coparceners. 1 *Inst.* 54, 200. 2 *Inst.* 299. When Action of *Waste* is brought against any one in the *Tenuit*, Damages are only to be recovered, and not the Place *wasted*; but when brought in the *Tener*, then both are recoverable. 6 *Rep.* 44. 3 *Nelf. Abr.* 532. Tenant by the Curtesy, and the Heir, may join in an Action of *Waste*; and the Tenant shall have *Locum vastum*, and the Heir have Damages. 1 *Leon.* 48. If Tenant by the Curtesy, or in Dower, assign their Estate to another, the Heir shall have Action of *Waste* against them for *Waste* done after the Assignment; for notwithstanding the Assignment, the Privy of Estate still remaineth; but if the Heir grant over his Reversion, then the Privy of Estate is gone, and he cannot bring *Waste* against them. 3 *Rep.* 9 *Rep.* 138. Tenant by Curtesy, in Dower, for Life, Years, &c. must answer for the *Waste* done by themselves, or a Stranger; being left to take their Remedy against the Stranger, if he did *Waste*. 1 *Inst.* 54. 2 *Inst.* 145. If there be Tenant for Life, Remainder for Life, Remainder in Fee, and Tenant for Life commits *Waste*; the Remainder-man for Life dies, or surrenders his Estate, in the Life-time of Tenant for Life, then and not before, he in Remainder in Fee may bring *Waste* against Tenant for Life; because there being an intermediate Estate for Life, it is not *ad exhereditationem* of him in Remainder. 5 *Rep.* 16. A Man makes a Feoffment in Fee, to the Use of himself for Life, and after his Decease to the Use of A. B. and his Heirs; if the Feoffee commit *Waste*, it has been held, that the Feoffee shall have a special Writ against him. *Hell.* 79. In Action of *Waste*, if the Defendant plead he repaired before the Action brought, 'tis a good Plea; but not afterwards. *Jones* 144. And this Plea acknowledges a *Waste*; though by the Plea *Non fecit Vastum* nothing is admitted. *Dyer* 276. 2 *Lutw.* 1539. Where the Defendant in a Writ of *Waste*, loatheth by Default at the Grand Distress, Inquiry shall be made of the *Waste*, and to what Damages; but if he loses by *Nil dicit*, &c. the *Waste* is acknowledg'd, and it shall not be inquired of. 2 *Lill. Abr.* 686, 689. Not only voluntary but permissive *Waste* is punishable; but this Action ought to be brought by one who hath the immediate Estate and Inheritance in Fee-simple, or Fee-tail; and not by Tenant for Life; though a Parson may have it: And if Lessee for Years doth *Waste* and dieth, an Action of *Waste* doth not lie against his Executor or Administrator, for *Waste* done before their Time. *Wood's Inst.* 304, 548. *Waste* may be committed in Houses, by pulling them down, or suffering them to be uncovered, whereby the Timber becomes rotten: But if the House was uncovered when the Tenant entered, it is no *Waste* in the Tenant to suffer the House to fall down. 1 *Inst.* 53. 2 *Inst.* 145. To pull down a House, unless the same be ruinous, and in order to rebuild it of the same Dimensions, is *Waste*: So it is if the Tenant builds a new House; and if he suffer it to be *wasted*, it is a new *Waste*. 1 *Inst.* 53. To permit a House to be burnt by Negligence, &c. if the Tenant do not repair it, 'tis *Waste*: But if the House be destroy'd by Lightning, Tempests, Floods, or Enemies, without any Possibility of the Lessee's Preventing it, this is no *Waste* in the Lessee. *Kelw.* 87. 1 *Inst.* 53. And if the House fall down by Tempest, or be burnt by Lightning, or

or prostrated by Enemies, or the like, without any Default of the Tenant; or was ruinous at his Coming in, and fall down, the Tenant may build the same again with such Materials as remain, and with other Timber, which he may take growing on the Ground, for his Habitation, and it will be no *Waste*; but he must not make the House larger than it was: If the House be uncovered by Tempest, the Tenant must in convenient Time repair it, or 'twill be *Waste*; and though there be no Timber growing upon the Ground, 'tis said the Tenant must at his Peril keep the Houses from *Wasting*. 1 *Inst.* 53. To convert a Brew-house into Tenements, although of a greater Value, is *Waste*: And if a Corn-Mill be converted into a Fulling-Mill, &c. it will be *Waste* in the Lessee; for Things must be used in their natural and proper Manner, and not be altered. 1 *Lev.* 309. *Cro. Jac.* 182. The Taking away or Breaking down Wainscot, Doors, Windows, Benches, or Coppers fixed to the House, is *Waste*: Though a Distinction has been made between outer Doors, and inner Doors, put up by the Lessee, after the Commencement of his Term; the Taking away of one at the End of the Term being adjudg'd *Waste*, and the other not so. 1 *Inst.* 53. *Moor* 177. And altho' where any of these are fixed by the Lessor, it is *Waste* in the Lessee to take them away; yet when they are set up by the Lessee, it hath been lately held, That they may be taken down by such Lessee before the End of his Term, so as he do not thereby weaken the Freehold, but leave the same in as good Plight as it was at the Time he fixed them. 1 *Salk.* 368. The Felling of Timber-Trees, whether Oak, Ash, or Elm, or other Trees in some Counties reputed Timber, or Topping them to sell, or any other Intent but for Repairs of the House, it is *Waste*: It is the same if young Trees are cut where there is other Timber. 1 *Inst.* 53. Timber is Parcel of the Inheritance, and reserv'd by Law to the Lessor: Therefore if it be cut down by a Lessee, the Lessor may take it away; and the Lessee having an Interest only in Trees while standing, as in the Fruit, Shrow'd, Shadow, &c. on this Account if he cuts down Timber-Trees, or doth any other Act whereby they may decay, it is *Waste*: And if the Lessee has covenanted to leave the Wood in as good Condition at the End of the Term as he found it, the Lessor shall presently have an Action of Covenant for Cutting down the Timber; for now it is not possible for him to perform his Agreement, or to leave the Wood as he found the same: But 'tis otherwise, if during the Term the Lessee doth *Waste* in Houses; for those may be repaired before the Term expires. 4 *Rep.* 62. 5 *Rep.* 11, 21. 7 *Rep.* 15. If Timber-Trees be growing in the Hedges of a Field or Close, and the Lessee cutteth them down, the Field shall not be forfeited in an Action of *Waste* brought against the Lessee; but if the Trees cut did grow scatteringly throughout the Field or Close, the whole Field is forfeited by Cutting them down. 2 *Lill. Abr.* 686. Where *Waste* is done in Woods, so much shall be recovered wherein the *Waste* is done; and so it is in Houses: Though if the *Waste* is done here and there through the Whole, all shall be recovered. 1 *Inst.* 54. 2 *Inst.* 303. To cut Willows, Beech, Maple Trees, &c. standing in Defence of a House, or planted for Fencing a Manſor, is *Waste*: So the Cutting down of Fruit-Trees, if they grow in

an Orchard or Garden, although the same be used in Reparations of the House, &c. But it is not so if they grow in a Field. 1 *Inst.* 53. A Tenant may cut down Underwood; tho' where the Law hath appointed a Time for Tenant for Life to fell Underwood, and 'tis not done in that Time, if he do it afterwards 'tis *Waste*: And if a Tenant suffer the young Germins to be destroyed, or stubs it up, it will be *Waste*; as is likewise Stubbing up a Quick-set Hedge, &c. 1 *Inst.* 53, 88. 3 *Nelf. Abr.* 540. Cutting down green Wood, where there is dry; or more Fire-boot than is necessary, is *Waste*: But Tenants may take sufficient Wood to repair the Pales, Hedges and Fences, and what is called Plough-bote, Fire-bote, and other House-bote. 1 *Inst.* 53. The Ploughing of Lands that have not been ploughed up Time out of Mind, is *Waste*; it is also *Waste* to plough up Woodlands: Though the letting arable Lands lie unplough'd is not *Waste*. 1 *Inst.* 53. *Dyer* 37. It has been observ'd, that if a Tenant converts arable Land into Wood, Wood into arable Land, or Meadow into Arable, Arable into Meadow, or Pasture into Arable; these are *Waste*: For they not only change the Course of Husbandry, but also the Proof of the Landlord's Evidence of his Estate. 1 *Inst.* 53. If antient Meadow-Ground, or Brook-Meadow is ploughed up, it is *Waste*: But where Meadow-Ground hath been at any Time arable, or sometimes Meadow and sometimes Pasture; it will be no *Waste* to plough it up. 2 *Roll. Abr.* 814. A Lessee for Years converted a Meadow into a Hop-Ground, and adjudg'd no *Waste*; because it may be easily made Meadow again: But converting it into an Orchard is *Waste*; tho' it may be more profitable. 2 *Leon.* 174. It is *Waste* to suffer a Wall of the Sea to be in Decay, so that the Meadow-Ground is surrounded with Water, and rendered unprofitable; though if the Land be overflowed suddenly by the Violence of the Sea, occasion'd by Tempest, it is not punishable as *Waste*: The same Law is as to the Repairs of Banks or Walls against Rivers; where the Meadows receive Damage. 1 *Inst.* 53. The not Scouring of a Mote or Ditch, by Reason whereof the Grounds of the House are rotten, is *Waste*. *Owen* 43. The Digging for Lime, Clay, Brick, Earth, Stone, or the like; or Mines of Metal, Coal, &c. hidden in the Earth, and that were not open when the Tenant came in, is *Waste*: But the Tenant may dig Gravel, Clay, Earth, &c. for Reparations of the House; as well as he may take convenient Timber. 1 *Inst.* 54. 5 *Rep.* 12. Destroying Deer in a Park, Doves in a Dove-house, or Fish in a Pond, or if such sufficient Stores be not left by the Lessee, as he found when he entered on the Land, it is *Waste*: And so is doing any Thing by which the Lessor is abridg'd of his annual Profits, &c. 1 *Inst.* 53. Action of *Waste* lies in any of the foregoing Instances; and before any *Waste* is done, a Prohibition may be had directed to the Sheriff not to permit it; or he in Remainder, &c. may have an Injunction out of the Chancery to stay the *Waste*, and enter a House or Lands to see if *Waste* is committed, &c. *F. N. B.* 55. 1 *Inst.* 53. 2 *Inst.* 146, 306. 11 *Rep.* 49.

A Lease, without Impeachment of *Waste*, takes of all Restraint from the Tenant of doing it; and he may in such Case pull up, or cut down Wood or Timber, or dig Mines, &c. at his Pleasure, and not be liable to any Action. *Plowd.* 155. But

though the Tenant may let the Houses be out of Repair, and cut down Trees and convert them to his own Use; where a Tenant in Fee-simple made a Lease for Years, *without Impeachment of Waste*, it was adjudg'd, that the Lessor had still such a Property, that if he cut and carried away the Trees, the Lessee could only recover Damages in Action for the Trespas, and not for the Trees: Also it hath been held, that Tenant for Life, *without Impeachment of Waste*, if he cuts down Trees, is only exempt from an Action of Waste, &c. 11 Rep. 82. 1 Inst. 220. 2 Inst. 146. 6 Rep. 63. Dyer 184. And if the Woods are, *To hold without Impeachment of any Writ or Action of Waste*, the Lessor may seize the Trees, if the Lessee cuts them down; or bring Trover for them. Wood's Inst. 551. The Clause, *without Impeachment of Waste*, is common in Leases made on Settlements; and on the other Hand it is as common to provide against Waste by Tenants, where it is not allow'd by Condition, Covenant, &c.

Wassel-Bowl, (From the Sax. *Waf-beal*, i. e. Health be to you) A large silver Cup or Bowl, wherein the Saxons, at their Entertainments, drank a Health to one another, in the Phrase of *Waf-beal*: And this *Wassel* or *Waf-beal* Bowl, was set at the upper End of the Table for the Use of the Abbat, who began the Health or *Poculum Charitatis* to Strangers, or to his Fraternity: Hence Cakes and fine white Bread, which were usually sopped in the *Wassel-Bowl*, were called *Wassel-Bread*. Matt. Paris. 141.

Wassors, Were a Kind of Thieves so called; mentioned among Robbers, Draw-latches, &c. Stat. 4 Hen. 4. c. 27.

Watch, Is to stand Sentry or attend as a Guard, &c. And *Wat king* is properly for Apprehending of Rogues in the Night, as *Warding* is for the Day, and the latter is left to the Discretion of Justices to appoint or alter it at their Pleasure. In all Towns, from the Day of *Ascension* unto *Michaelmas-Day*, *Night Watches* are to be kept, in every City six Men at every Gate; and Four in Towns; and every Borough shall have twelve Men to *watch*, according to the Number of the Inhabitants of the Place, from Sun-setting to Sun-rising; who are to arrest Strangers suspected, and may justify the Detaining them until the Morning. Stat. 13 Ed. 1. c. 4. 5 H. 4. c. 3. Every Justice of Peace may cause these *Night-Watches* to be duly kept; which is to be compos'd of Men of able Bodies, and sufficiently weapon'd: And none but Inhabitants in the same Town are compellable to *watch*, who are bound to keep it in Turn; or to find other sufficient Persons for them, or on Refusal are indictable, &c. Co. Litt. 70. Cro. Eliz. 204. *Watchmen*, see *Constables of London*.

Watches, Made by Artificers, are to have the Makers Names, &c. under the Penalty of 20 l. Stat. 9 & 10 W. 3. c. 28.

Water-Bailiff, An Officer in Port-Towns, for the Searching of Ships: Also in the City of London, there is a *Water-Bailiff* who hath the Supervising and Search of Fish brought thither; and the Gathering of the Toll there arising; and he attends on the Lord Mayor, and arrests Men for Debt, or other Personal or Criminal Matters upon the River of *Thames*. 28 H. 6. c. 5.

Water-gage, A Sea Wall or Bank, to restrain the Current and Overflowing of the Water: And

it signifies an Instrument to gauge or measure the Quantity or Deepness of any Waters.

Water-gang, (*Watergangium*) Is a Saxon Word for a Trench or Course to carry a Stream of Water; such as are commonly made to drain Water out of Marshes. Ordin. Marisc. de Romney. Chart. H. 3.

Water-gavel, Was a Rent paid for Fishing in, or other Benefit received from some River. Chart. 15 Hen. 3.

Water-measure, Is greater than *Winchester-measure*, used for selling of Coals in the Pool, &c. mentioned in the Stat. 22 Car. 2.

Watermen. The Lord Mayor and Court of Aldermen in London, have a great Power in the Government of the *Company of Watermen*, and appointing the Fares for Plying on the *Thames*; and the Justices of Peace for *Middlesex*, and other adjoining Counties, have likewise Authority to hear and determine Offences, &c. *Watermens* Names are to be registred; and their Boats be twelve Foot and a Half long, and four Foot and Half broad, or be liable to Forfeiture. 29 Car. 2. The *Lightermen* on the *Thames*, and *Watermen* are made a Company; and the Lord Mayor and Aldermen are yearly to elect Eight of the best *Watermen*, and Three of the best *Lightermen* to be Overseers and Rulers; and the *Watermen* to chuse Assistants at the Principal Stairs, for preserving good Government; and the Rulers and Assistants may make Rules to be observ'd under Penalties, &c. The Rulers on their Court Days, shall appoint forty *Watermen* to ply on *Sundays*, for Carrying Passengers cross the River; and pay them for their Labour, and apply the Overplus of the Money to the poor decay'd *Watermen*: And where Persons travel on a Sunday with Boats, they are to be allow'd by a Justice, on Pain of Forfeiting 5 s. 11 & 12 W. 3. c. 21. The Fares of *Watermen* assc'd by the Court of Aldermen, are from *London-Bridge* to *Limehouse*, *Ratcliff-cross*, &c. Oars 1 s. Skullers 6 d. *Wapping-Dock*, *Rotherhithe-Church Stairs*, &c. Oars 6 d. and Skullers 3 d. From either Side of the Water above the *Bridge* to *Lambeth* and *Kauz-Hall*, Oars 1 s. Skullers 6 d. All the Stairs between *London-Bridge* and *Westminster*, Oars 6 d. and Skullers 3 d.

Water-Ordeal. A Way of Purgation used by the Saxons. See *Ordeal*.

Water-ledge, (From the Sax. *Waeter*, *Aqua*, & *Schap*, *ductus*) An Aqueduct, or Passage for Water.

Watling-street, Is one of those four Publick Ways, which the Romans are said to have made here: This Street is otherwise called *Werlam-street*. It leads from *Dover* to *London*, and thence to the *Severn*, near the *Wrekin* in *Shropshire*, extending it self to *Anglesey* in *Wales*. The other three Ways were called *Ikenild-street*, the *Fosse* and *Erminage-street*: And by the Laws of King Edward the Confessor, these four Ways had the Privilege of *Pax Regis*. Hoveden 248. Hollingsh. Chron. c. 19. Leg. W. 1. c. 30. 39 Eliz. c. 2.

Waveton, Is used for such Goods as after Shipwreck do appear Swimming on the Waves. Chart. 18 Hen. 8. See *Fetson*.

Wax-handlers. Justices of Peace shall examine the Goodness of *Wax-Candles*; and *Chandlers* are to take but 4 d. in the Pound for their *Candles* above the Price of the *Wax*, on Pain of Forfeiture. Stat. 37 H. 8. *Wax-Chandlers* mixing with their

their *Wax*, Tallow or other deceitful Stuff, shall forfeit the *Canals*; and they are to have Stamps or Marks, which shall not be counterfeited under Penalties, &c. 23 Eliz. 1. 8.

Waxlot, (*Ceragium*) A Duty antiently paid twice a Year for the Charge of Candles in Churches. — *Tributum quod in Ecclesiis pendebatur ad subministracionem Cere & Luminarium.* Spelm.

Way, (*Via*) A Passage, Street or Road. *Litt. See Highway.*

Weald, or *Wald*, In the Beginning of Names of Places, signifies a Situation near Woods, from the Sax. *Weald*, i. e. a Wood: And the woody Parts of the Counties of *Kent* and *Sussex*, are called the *Wealds*; though misprinted *Wildes* in the Statute 14 Car. 2. c. 6.

Wealreaf, (Sax. from *Weal*, i. e. *Strages*, & *Reaf*, *Spoliatio*) Is the Robbing of a dead Man in his Grave. *Leg. Ethelred. cap. 21.*

Wear, A great Dam in a River, accommodated for the Taking of Fish, or to convey the Stream to a Mill. And all *Wears* for the Taking of Fish are to be put down, except on the Sea-Coasts, by the Statutes 9 H. 3. c. 23. and 25 Ed. 3. c. 4. Also Commissions were to be granted to Justices, to keep the Waters, and survey *Wears* and Mills, to inquire of and correct Abuses, pull down *Wears*, &c. 1 & 4 H. 4.

Wed, (Sax.) A Covenant or Agreement; whence to *wedd*, a *wedded* Husband, *wedded* Bond-slave. *Cowel.*

Week, (*Septimana*) Seven Days of Time; four of which *Weeks* make a Month, &c.

Weigh, (*Waga*) Is a Weight of Cheese or Wool, containing Two hundred fifty-six Pounds; and in *Essex* the *Weigh* of Cheese is Three hundred Pounds. A *Weigh* of Barley or Malt is six Quarters, or forty-eight Bushels: And we read of a *Weigh* of Salt, &c. 9 H. 6. c. 8.

Weights, (*Pondera*) and *Measures*, Are used between Buyers and Sellers of Goods and Merchandize, for reducing the Quantity and Price to a Certainty, that there may be the less Room for Deceit and Imposition. There are two Sorts of *Weights* in use with us, viz. *Troy-weight*, and *Averdupois*: *Troy-weight* contains twelve Ounces to the Pound, and no more; by which are weighed Gold, Silver, Pearl, Jewels, Medicines, Silk, Wheat-Bread, &c. and *Averdupois* contains sixteen Ounces in the Pound, by which Grocery Wares, Copper, Iron, Lead, Fleth, Cheese, Butter, Tallow, Hemp, Wool, &c. are weighed; and here twelve Pounds over are allowed to every Hundred; so as One hundred and twelve Pounds make the Hundred *weight*. *Dalt. 248.* *Fleta* mentions a *Weight*, called *Trone-weight*, being the same with what we now call *Troy-weight*; and according to the same Author, all our *Weights* have their first Composition from the Penny Sterling, which ought to weigh thirty-two Wheat-Corns of the middle Sort; twenty of which Pence make an Ounce, and twelve such Ounces a Pound; but fifteen Ounces make the Merchant's Pound. *Fleta, lib. 2. c. 12.* By *Magna Charta*, 9 H. 3. c. 25. 14 Ed. 3. c. 12. 25 Ed. 3. c. 10. 27 Ed. 3. &c. There is to be but one *Weight*, &c. through out the Kingdom; but this is to be understood of the same Species of Goods, otherwise the *Troy* and *Averdupois* *Weights* would not be permitted. Every City, Borough and Town, shall have a common Balance, with common *Weights* sealed; on Pain of 10*l.* the City, 5*l.* the Borough, and

40*s.* the Town. 8 H. 6. c. 5. But only Cities and Market-Towns are enjoined to have common Balances, *Weights* and Measures, by 11 H. 7. c. 4. And by this Statute, *Weights* are to be mark'd by the Chief Officers of Places; and the Mayors and such Officers are once a Year to view all *Weights* and Measures, and burn and destroy those which are defective; also fine the Offenders, &c. And two Justices of Peace have Power to hear and determine the Defaults of Mayors. See the Statutes 17 Car. 1. c. 19. 22 Car. 2. c. 8. &c. and vide Measure.

Wend, (*Wendus*, from the Sax. *Wendun*) Signifies a Quantity of Ground. — *Prædictus Terra amplior Plurima juga in se continens.* Rental. Regal. Maner. de Wye, pag. 31.

Were, (Sax. *Wera*) Is the Sum paid in antient Time for Killing a Man, when such Crimes were punish'd with pecuniary Mulcts, not Death: Or it is *Pretium Redemptionis* of the Offender. *Leg. Ed. Conf. cap. 11.*

Werelaga, (From Sax. *Were*, i. e. *Pretium Capitis Hominis Occisi*, & *Ladian*, *purgare*) Was where a Man was slain, and the Price at which he was valued not paid to his Relations, but the Party denied the Fact; when he was to purge himself by the Oaths of several Persons, according to his Degree and Quality, which was called *Werelada*. *Leg. H. 1. c. 12.*

Wergild, (*Wergildus*) The Price of Homicide; paid partly to the King for the Loss of a Subject, partly to the Lord whose Vassal he was, and partly to the next of Kin of the Person slain. *LL. H. 1.*

West-Saxonage, Was the Law of the West-Saxons. See *Merchenlage*.

Westminster, (*Westmonasterium*, Sax. *West-mynster*, i. e. *Occidentale Monasterium*) The antient Seat of our Kings; and is now the well known Place where the High Court of Parliament, and Courts of Judicature sit: It had great Privileges granted by Pope Nicholas; among others, *Ut amplius in perpetuum Regia constitutionis locus sit atque Repositorium Regalium Insignium.* 4 Inst. 255.

Whales, And Sturgeon, vide *Regal Fishes*.

Wharf, (*Wharfa*) A broad plain Place, near some Creek, to lay Goods and Wares on that are brought to or from the Water. 12 Car. 2. c. 4.

Wharfage, (*Wharfagium*) Is Money paid for Landing of Goods at a *Wharf*, or for shipping and taking Goods into a Boat or Barge from thence: It is mentioned in the Statutes 17 H. 8. c. 26. and 22 Car. 2. c. 11.

Wharfinger, Is he that owns or keeps a *Wharf*. 12 Car. 2. and 22 Car. 2. And *Wharfingers* commonly keep Boats or Lighters of their Own, for the Carrying out and Bringing in of Goods, in which if a Loss or Damage happens, they may in some Cases be made answerable. *Lex Mercat. 133.*

Whitelage (*Rotagium*) *Tributum est quod Rotarum nomine penditur; hoc est, pro Plaustris & Carris transeuntibus.* Spelm.

Whericores, The antient British Chariots, that were used by Persons of Quality before the Invention of Coaches. *Stow's Surv. Lond. pag. 70.*

Whiniard, A Sword, from the Sax. *Winn*, i. e. To get, and *Are* Honour; because Honour is gain'd by the Sword.

Whitthart-Silver, Is a Mulct on certain Lands in or near the Forest of *Whitehart*, paid yearly into the *Exchequer*, impos'd by K. Hen. 3.

upon *Thomas de la Linde*, for killing a beautiful *White Hart* which that King before had spared in Hunting. *Camd. Brit.* 150.

White-meats, Are Milk, Butter, Cheese, Eggs, and any Composition of them, which before the Reformation were forbid in *Lent* as well as Flesh, 'till King *Hen. 8.* publish'd a Proclamation allowing the Eating of *White meats* in *Lent*. *Anno 1543.*

White-rent, A Duty or Rent payable by the *Tinners* in *Devonshire* to the *D. of Cornwall*. See *Quit rent*.

White-spurs, A Kind of Esquires called by this Name.

Whitsontide, The Feast of *Pentecoste*, being the fiftieth Day after *Easter*: And is so called, saith *Blount*, because those who were newly baptized came to the Church between *Easter* and *Pentecost* in white Garments. *Blount's Dict.*

Whitson-farthings, Mentioned in Letters Patent of King *Hen. 8.* to the *Dean of Worcester*. See *Pentecostals*.

Wic, A Place on the Sea-shore, or on the Bank of a River. *1 Inst.* 4. but it more properly signifies a Town, Village, or Dwelling-place; and it is often in the *Saxon* Language made a Termination to the Name of the Town, which had a compleat Name without it, as *Lunden-Wic*, i. e. *London-Town*; so *Ipswich* is written in some old Charters *Villa de Gippo-Wico*, which is the same Thing, for *Gipps* is the Name, and *Gipps-Wic* is *Gipps-Town*.

Wica, A Country House or Farm, and there are many such Houses now called the *Wick* and the *Wike*. *Cartular. Abbat. Glaston.* pag. 29.

Wichencrif, A *Saxon* Word for *Witchcraft*, which occurs in the Laws of *K. Canut.* cap. 27.

Widow, (*Vidua, Relicta*) A married Woman bereft of her Husband, left all alone. *Litt.*

Widow of the King, (*Vidua Regis*) Was she that after her Husband's Death, being the King's Tenant in *Capite*, could not marry again without the King's Consent. *Staundf. Prærog. cap. 4. Stat. 17. Ed. 2. & 32 H. 8. cap. 46.*

Widowhood, (*Viduitas*) The State and Condition of a Widow. — *Sciant quod Ego Margeria de R. in Viduitate & legitima Potestate mea, remisi, relaxavi, &c. Dat. apud, &c. Ann. 9. Hen. 4.*

Wife, (*Uxor*) Is a Woman married; and after Marriage the Will of the Wife in Judgment of Law is subject to the Will of the Husband; and it is said a Wife hath no Will, *sed fulget radiis Mariti*. *Plowd.* 344. 4 Rep. A Wife cannot contract for any Thing; or bring Actions, &c. without her Husband. See *Baron and Feme*.

Wigrebe, (from the Sax. *Wig*, i. e. *Sylvæ*, and *Greve*, *præpositus*) The Overseer of a Wood. *Spelm.*

Will, or Last Will and Testament, (*Testamentum, ultima voluntas*) Is the Declaration of a Man's Mind and Intent, (concerning the Disposition of his Lands or Goods) of what he would have done after his Death. *Co. Lit.* 111. The Common Law calls that a *Will* when Lands or Tenements are given; and where it concerns Goods and Chattels alone, it is term'd a *Testament*: In a *Will* of Goods there must be an Executor appointed; but not of Lands only without Goods, an Executor having nothing to do with the Freehold. *1 Inst.* 111. If Lands are given by *Will*, it is called a *Devise*; and Goods and Chattels a *Legacy*: And there is this Diversity between Lands and Goods given by a *Will*, that when Lands are devised in Fee, or for Life, the

Devisee shall enter without the Appointment of others: In Case of Goods there must be the Assent of the Executor, &c. *Swinb.* 24. If Lands are given and devised by *Will*, the *Will* ought to be proved in the *Chancery*; and of Goods it must be in the *Spiritual Court*. A *Will* both of Lands and Goods may be proved in the *Spiritual Court*. *Ibid.* A *Will* hath not Force 'till after the Testator's Decease; but then without any further Grant, Livery, &c. it gives and transfers Estates, and alters the Property of Lands and Goods, as effectually as any Deed or Conveyance executed in a Man's Life-time; and hereby Descents may be prevented, Estates in Fee-simple, Fee-tail, for Life, or Years, &c. be made: And he that takes Lands by Devise, is in Nature of a Purchaser. *Litt.* 167. A Devisee is in by Act executed in the Devisee's Life-time, though it be not consummated 'till his Death. *Roll. Rep.* At Common Law a Man could not devise by *Will* the Lands which he had by Descent, though he might those which he had by Purchase: Indeed he might devise Lands which he held for a Term of Years, because such an Estate is of little Regard in the Law; but not Lands of which he had the Fee-simple in Possession or Reversion: Yet in certain Borough Towns, the Inhabitants might devise the Houses and Lands which they had by Descent, and this was a Privilege which they claim'd by the Custom of those Places. *3 Nels. Abr.* 550. By the Common Law, if a Man sole seised of Lands in Fee, had devised the same by Testament, this Devise was void; unless the Lands were in some City or Borough where Lands were devisable by Custom; but by Statute 32 & 34 H. 8. All Persons having a sole Estate in Fee-simple, of any Lands, Tenements, &c. may give and devise the same by Last Will and Testament, at their free Will and Pleasure, tho' if any Part of the Lands be held in *Capite* of the King, then the Party can devise but two Thirds of the Whole, the other Third being to descend to the Heir at Law, to answer the Duties of the Crown, &c. One seised in Coparcenary, or as Tenant in Common, in Fee-simple, of Lands, may by Will devise them at their Pleasure by this Statute: But Lands intailed are not devisable, only Fee-simple Lands, and Goods and Chattels; and Wills made by Infants, Feme Coverts, Ideots, Persons of non-sane Memory, are not good in Law. *3 Rep.* 30. An Infant makes his Will for Lands, and when of Age he declares it as his Will, yet it is void; tho' an Infant at fourteen Years of Age may make a Will of his Goods and Chattels. *1 Inst.* 89. *2 Lill. Abr.* 696. A Feme Sole makes a Will, and gives her Lands to A. B. whom she afterwards marries; by this the Will is countermanded, for otherwise she could not after Marriage revoke it; and if she dies in his Life-time, whilst Feme Covert, the Devise is void. *4 Rep.* 60. A Feme Covert cannot make a Will; but the Husband may bind himself by Covenant or Bond to permit his Wife by Will to dispose of Legacies, &c. and this will be such an Appointment as the Husband will be bound to perform; though it is properly no Will, nor ought to be prov'd in the *Spiritual Court*. Of Things in Action, or of what she hath as her own as Executrix, by her Husband's Consent, 'tis said, she may make a Will, and this is a Will in Law. If in other Cases, she disposes of any Thing by the Consent and Agreement of the Husband, the Property passes

passes from him to her Legatee, and it is as the Gift of the Husband. *Cro. Eliz.* 27. *Cro. Car.* 219, 220. 1 *Mod.* 211. 2 *Danv. Abr.* 512. It is not sufficient that the Testator hath his Memory to answer Questions, when he makes his *Will*; he ought to have a perfect Memory and Understanding: But if some Witnesses swear that the Testator was of good and perfect Mind and Memory, and others that he was not; their Testimony is to be preferred, which depose that he was of sound Memory, for the Support of the Testament. 6 *Rep.* 23. *Cro. Jac.* 497. *Swimb.* 67. The Stat. 29 *Car.* 2. cap. 3. for Prevention of Frauds, ordains, That all Devises of Lands or Tenements shall be in Writing, signed by the Devisor, or some other by his express Directions, in the Presence of three credible Witnesses at least; and no *Will* in Writing shall be revoked, but by some other *Will* in Writing, or by cancelling the same by the Testator himself, or by his Directions, &c. and where Nuncupative *Wills* by Word of Mouth only, are made for the Disposition of Chattels above 30*l.* Value, they must be declared in the Presence of three Witnesses, in the last Sickness of the Party, &c. It hath been formerly adjudg'd, if a Man bids another make his *Will*, and before it is done he dies, the *Will* is not good; but if it be drawing up in his Presence, it might be good for the Devises finished. *Plowd.* 10. And if an Attorney takes Notes of a *Will* before Witnesses, when a Person is in his last Sickness, and before the *Will* is perfected such Person dieth, the *Will* made from the Instructions may be a good *Will*, though the Testator did not live to sign it. 3 *Nels. Abr.* 550. A Man being sick said before Witnesses, that he devised all his Lands to his Wife for Life, &c. and wished that a certain Person was there to make his *Will*; who being sent for wrote the *Will* from the Mouth of the Witnesses that heard the Testator declare his Mind; and this *Will* being lost, a Copy was produced and testified to be of the same Effect: It was held in this Case, that an actual Devise by Word, is not sufficient for a Stranger to write a *Will*, but that there ought to be a Writing, and not only a Desire; but the writing this *Will* from the Mouth of the Witnesses, was a good *Will* in Writing: That if a *Will* be in Writing after the Death of the Testator, and 'tis lost or burnt afterwards, it is good, if it can be proved by a Copy; otherwise, if lost or burnt before he died, for then 'tis void. *Allen* 54. 3 *Nels.* 552. The Testator, if he be at that Time of sane Memory, may desire another Person to set his Hand and Seal to his *Will* for him; and if he do it the *Will* is good. 2 *Lill. Abr.* 693. And since the Statute 29 *Car.* 2. a *Will* was made by which Lands were devised, and no Name subscribed to it, but being sealed in the Presence of three Witnesses, was adjudg'd a good *Will*; for the *Will* was written by the Party himself, and his Name in the *Will*, which was held a sufficient Signing. 3 *Lev.* 1. And it is said a *Will* in Writing signed may be good to convey Lands, altho' it be not sealed; the Statute of *Wills* speaking nothing of Sealing. 2 *Danv. Abr.* 542. If a Man makes a *Will* in several Pieces of Paper, and there are three Witnesses to the last Paper, and none of them aver they saw the first, this is not a good *Will*. 3 *Mod.* 263. As to the Subscribing of Witnesses, it is enough that the Testator might see them; it is not absolutely

necessary that he should see them do it; so that it may be in another Room in the View of the Testator, or where the Testator is sick in Bed, and the Curtain drawn. 2 *Salk.* 688. Lands purchased after making a *Will*, cannot pass; for the Testator ought to have the Lands at the Time of the Making: But it hath been held, that a new Publication of the *Will* shall make the Lands pass; and if such Lands are devised for Payment of Debts, &c. Chancery will make the Devise good, without new Publication of the *Will*. 1 *Inst.* 111. *Plowd.* 343. 3 *Rep.* 25. 2 *Chanc. Rep.* 144. A Testator devised by *Will* all Lands, Tenements, and Estate whatsoever, whereof at the Time of his Death he should be possessed; and after this he purchas'd Lands, &c. And it was resolv'd, that a Devise of Personal Things is good, tho' the Testator had them not at the Time of his *Will*; but a Chattel Real, as a Lease for Years, doth not pass: And a Devise of Lands is not good, if the Testator had nothing in them at the Time of making his *Will*. *Gouldsb.* 93. 1 *Salk.* 237. If one devise to a Person by *Will* all his Lands and Tenements, not only all the Lands that he hath in Possession do pass, but all those he hath the Reversion of: But where a Man having Lands in Fee, and other Lands for Years, devises all his Lands and Tenements, the Fee-simple Lands only pass; tho' if he hath only Leases for Years, and no Fee-simple Lands, by the Devise of all his Lands and Tenements the Leases for Years pass, otherwise the *Will* would be to no Purpose. 2 *Danv. Abr.* 527. The Testator was seised of an House in A. and of an House and Lands in B. and devised to W. R. his House in A. with all and singular his Lands, Meadows, &c. in B. and adjudg'd that this House in B. shall not pass; for though by the Feoffment of Land the Houses will pass, *Wills* are to be taken according to the Intent of the Testator; and here the particular Devise of the Lands, Meadows, &c. excludes the general Intendment of the Word *Terra*, which comprehends both House and Lands. 2 *And.* 123. 1 *Nels. Abr.* 652. Words in *Wills* are always construed according to the Intention of the Parties that make them, as near as can be collected; and may have different Construction from those in other Deeds; but the Words and Intent must agree with the Law; and if the Words are insensible and repugnant, they are void. 1 *Inst.* 25. *Plowd.* 162. *Hob.* 34. And the Reason why the Construction of *Wills* is more favourable in Law than any other Deed or Conveyance, to fulfil the Intent of the Testator, is because the Testator is intended to be *inops Concilii*, and in a Hurry, and a Devise is not a Conveyance by the Common Law, but by the Statute. The Devises before the Statute were by Custom, and as Custom enabled Men to dispose of their Estates contrary to the Common Law; so it exempted this Kind of Conveyance from the Regularity and Propriety required in other Conveyances: And thus it came to pass that *Wills* upon the Statute, in Imitation of those by Custom, gained such favourable Construction. 3 *Salk.* 127, 128. A Devise by *Will* to a Man and all his Blood passes a Fee-simple: So a Devise to a Person *in perpetuum*, or to one and his Assigns for ever; but in a Grant it would be only an Estate for Life, for want of the Word *Heirs*. *Lit.* 586. *Vaugh.* 178. Devise of all a Man's Inheritance carries the Fee-simple: Also Lands given to a Person to dispose of at Pleasure, makes a Fee-simple.

Hob. 75. 1 *Salk.* 228. 2 *Nelf.* 837. If a Man devises that A. B. shall be Heir of all his Land, and the Devisor hath Fee, he shall have Fee: But if there are no Words of Inheritance in the Will, the Devisee hath no more than an Estate during Life. *Mod. cap.* 107. 2 *Nelf. Abr.* 745, 746. By Devise to a Person and his Heirs Male, an Estate-tail is created, tho' such a Gift in any other Conveyance would be a Fee-simple, it not being said of what Body. 1 *Inst.* 27. A Devise to one who is Heir for Life, Remainder in Contingency, &c. is good: And Devises to Infants in *Ventre sa mere* are good, and the Land shall descend to the Heir in the mean Time; for the Testator could not intend they should take presently, they must be first in *rerum natura*. *Lutw.* 798. *Raym.* 28. 2 *Mod.* 292. Where a Term for Years is devised by Will to A. for Life, with Remainder to B. this Remainder is good by way of *Executory Devise* for the Residue of the Term. *Raym.* 164. And a Term may be devised to one for Life, with Remainders to several others for Life, where all the Persons are in *esse*; but if a Devise in Remainder be to one for Life, who is not then in Being, there no Limitation of a Term may be beyond it. 1 *Sid.* 451. Devise of a Term to one for Life, and if he dies without Issue, to another and his Issue, &c. is void to the Remainder Man. 1 *Lev.* 290. A Chattel Personal cannot be given to one for Life, with Remainders to others; tho' the Use may be given by Will to one during Life, and the Thing it self afterwards to another. *Noy Max.* 31, 99. Devises may be to one, to the Use of another, and the Use shall be executed. 2 *Leon.* Tho' a Condition in a Will that a Man shall not marry a Person, &c. is unlawful and void; and all Conditions in Wills are odious in Law. *Mod. cap.* 106. A Devise must be not only of a Thing, but to a Person certain, and a Devise to a Man who shall marry my Daughter, or to a Man and his Children, is certain enough. *Swinb.* 293. If where a Legacy is given by Will, the Legatee dies before it becomes due, the Legacy is extinguished and gone. A Man devises 500*l.* to his Daughter by Will, if she attain 21 Years of Age; in this Case, if she dies before that Age the Legacy is gone: But if the Devise had been to be paid her at the Age of 21, then it is *debitum in presenti, & solvendum in futuro*, and her Administrator, &c. shall have it, if she die before 21. 1 *Lill. Abr.* 457. The Testator devised a Sum of Money to a Woman at her Age of 21, or Day of Marriage, and then added these Words, To be paid her with Interest; she died unmarried, and before she was 21 Years old; and it was held that the Money should go to her Administrator; but if these Words had not been added, it would have been otherwise; and so if the Money had been devised to her, when she came of Age, &c. 2 *Ventr.* 342. A Lease was settled by the Father, with Reference to his Will, in which he gave 500*l.* to each of his Daughters, to be paid at the Age of 21 Years; and if any or all died before that Age, then to others; but devised no Maintenance to them 'till their Portions became payable: *Et per Cur.* A Maintenance cannot be decreed, because of the Devise over. *Ch Rep.* 249. If a Man in his Will releases all his Lands in C. to A. B. and his Heirs, it is good; but one cannot release a Debt or Duty by Will, tho' he may give and bequeath it. 1 *And.* 33. 1 *Ventr.*

39. The *Last Will* shall stand in Force; (but if two Wills are made both of one Date, they are both void): And if in a Will there are two Devises of the same Thing, the last Devise shall take Place; for as a latter Will doth overthrow a former, so the latter Part of a Will overthrows the former Part of it. 1 *Inst.* 112. *Plowd.* 341. It has been adjudg'd, that where there are several Devises of the same Thing in one Will, the last must take Place: But where the Devise was of Lands to one in Fee, and in the same Will the same Lands were devised to another, this 'twas said made them Joint-tenants; and if a Devise of Lands is to one Person in Fee, and to another for Life, or Years, both may stand. 3 *Leon.* 11. A Testator having devised all his Lands to A. in Tail, and in the same Will devised Part of his Lands to B. This latter Clause was held an Explanation, *viz.* That A. should have all the Lands, except those devised to B. who shall take by Way of Remainder after the Death of A. without Issue; but it would not have been so if the Devise had been to A. in Fee simple, and afterwards Part of the Lands was devised to B. in Fee, because one Fee-simple cannot be limited after another. *Yelv.* 209. 1 *Nelf. Abr.* 654. In the well-making of a Will, it is good to observe these Rules; That it be done in perfect Memory, and by good Advice; let there be two Parts of it, one whereof to remain in the Hands of the Party as made it, and the other with some Friend, that it may be the less liable to be suppress'd after the Testator's Death; and let the Whole be written in one Hand-Writing, and if it may be, in one Sheet of Paper or Parchment; but if there be more Sheets than one, let the Testator sign and seal every Sheet of the same before the Witnesses present at the Execution, &c.

Form of a Will of Lands, and Goods, Terms of Years, &c.

IN the Name of God, Amen, J. A. B. of &c. being weak in Body, but of sound and perfect Mind and Memory, (Blessed be God) do this Day and Year, &c. make and publish this my Last Will and Testament in manner following, (*viz.*) Imprimis, I give to my Son J. B. the Sum of 500*l.* Item, I give to my Daughter M. B. the Sum of 400*l.* Item, I give to my dear Wife E. B. the Sum of 300*l.* &c. to be paid unto them respectively, within six Months next after my Decease. Item, I give all that my Messuage or Tenement, with the Appurtenances situate, &c. wherein I now live, to my said Son J. B. To hold to him during his Life, and from and after his Decease I give the same to my Daughter M. B. during the Remainder of my Estate and Interest therein. Item, I give and bequeath unto my loving Brother T. B. of, &c. and L. D. of, &c. all that my Leasehold Estate, situate in, &c. To hold to them the said T. B. and L. D. their Executors, Administrators and Assigns, from and immediately after my Decease, for and during the Rest and Residue then to come, and unexpired of the Term to me granted therein; Upon this Trust and Confidence, that they the said T. B. and L. D. and the Survivor of them, and the Executors and Administrators of such Survivor, do and shall permit and suffer her my said Wife E. B. to have, hold and enjoy all my said Leasehold Estate to them given as aforesaid, and to receive and take to her own Use and Bechoof, the Rents, Issues, and Profits thereof, for and during so much

much of the Term to me therein granted, as shall run out and expire in the Life-time of her my said Wife; And after her Decease, upon this further Trust and Confidence, that they the said T. B. and L. D. and the Survivor of them, and the Executors and Administrators of such Survivor, do and shall out of the Rents, Issues, and Profits arising from my said Leasehold Estate, well and truly pay, or cause to be paid unto my said Daughter M. B. or her Assigns, for and during so much of the said Term to me therein granted, as shall run out and expire in the Life-time of her my said Daughter, the yearly Annuity or Sum of 60 l. at the two most usual Feasts, &c. by even and equal Portions; The first Payment thereof to be made at such of the said Feasts which shall first and next happen after the Decease of my said Wife: And upon this further Trust and Confidence, that they the said T. B. and L. D. and the Survivor of them, &c. do and shall permit and suffer my said Son J. B. his Executors, Administrators, and Assigns, to have, hold and enjoy all such my said Leasehold Estate, (charged with the said Annuity of 60 l. per Ann. to my said Daughter) and to receive and take the Overplus of the Rents, Issues, and Profits thereof, to his and their own proper Use and Benefit, from and immediately after my said Wife's Decease, for and during all the Rest, Residue, and Remainder of the Term to me therein granted, which shall be then to come and unexpired. Item, I give all those my Freehold Lands in the Parish of, &c. now in the Possession of, &c. to my Wife E. B. To hold to her during her natural Life, she making no Waste or Destruction thereupon; and from and after her Decease, I give and devise the same to my said Son J. B. for the Term of his natural Life; and after his Decease, I devise the same to my Daughter M. B. during her natural Life; and after the Determination of that Estate, I give and devise the same to the said T. B. and L. D. and their Heirs during the Life of my said Daughter M. to the Intent to preserve and support the contingent Uses and Remainders herein after limited; but nevertheless in Trust, to permit my said Daughter M. to receive the Rents and Profits thereof during her Life; and from and after the Decease of my said Daughter M. then to remain to the first Son of my said Daughter M. and the Heirs of the Body of such first Son lawfully issuing; and for Default of such Issue, then to the Use and Beboof of the second, third, fourth, fifth, and all and every other Son and Sons of my said Daughter M. begotten, the Elder of such Son and Sons, and the Heirs of his Body lawfully issuing, to be always preferred, and to take before the Younger of such Sons and the Heirs of his Body; and for Default of such Issue, then I give the same to J. B. for and during the Term of his natural Life; and after his Decease, to remain to his Issue in Tail in such manner as I have limited the same to my Daughter M. and for Default of such Issue, then to remain to, &c. and the Heirs Male of his Body begotten, &c. And for Default of such Issue, to remain to my own right Heirs for ever. Item, All the rest of my Lands and Tenements whatsoever, whereof I shall die seised or possessed, I give to my said Son J. B. his Heirs and Assigns for ever. Item, I give to, &c. ten Guineas apiece to buy them Mourning. Item, I give to my Servant-Man and the two Servant-Maids that shall be living with me at the Time of my Decease, ten Pounds apiece. Item, I give to the Poor of the Parish where I shall die, the Sum of twenty Pounds. Item, All the Rest and Residue of my Goods, Chattels and Personal Estate, I give to my said Wife E. B. and I make and ordain her my said Wife sole Executrix of this my Will, and

the said T. B. and L. D. Overseers thereof, to take Care and see the same performed according to my true Intent and Meaning; and for their Pains herein, I give and allot to each of them the Sum of, &c. In Witness whereof, I the said A. B. have to this my Last Will and Testament set my Hand and Seal, the Day and Year above-written,

Signed, Sealed, Published and Declared by the said A. B. as and for his Last Will and Testament, in the Presence of us who were present at the Signing and Sealing thereof,

A. B.

T. D.

F. G.

J. H.

Probatum, &c. 5 Dec. Anno 1727.

Win, (*Sax.*) In the Beginning or Ending of Places Names, signifies that some Battle was fought, and Victory gain'd there.

Winches, A Kind of Engines to draw Barges against the Stream of a River. 21 *Faz.* 1. cap. 32.

Windas, or **Windlafs**, Corruptly **Wanlafs**, is a Term for Hunting of Deer in Forests to a Stand, &c. See **Wanlafs**.

Wine, (*Vinum*) Is to be tried twice a Year, viz. at *Easter* and *Michaelmas*, by *Stat.* 4. *Edw.* 3. cap. 22. And the Lord Chancellor hath Authority to set the Prices of Wines by the Butt, Barrel, &c. and Persons selling at greater Prices, shall forfeit 40 l. None shall sell Wine by Retail, but such as are licensed by Justices of Peace, &c. 28 H. 8. cap. 14. 7 *Ed.* 6. cap. 5. The King may Grant Commissions to Commissioners to license Persons to retail Wine; and they may under their Seal of Office grant Licenses, for any Term not exceeding 21 Years, the Revenue whereof is to be paid into the Exchequer; but the Privileges of the Universities, and of the Company of Vintners in London, &c. were saved by this Statute. 12 *Car.* 2. cap. 25. And the Revenue of Wine-Licenses is granted to the King, his Heirs and Successors, by the 22 & 23 *Car.* 2. cap. 6. Merchants, &c. selling Wines by Wholesale or Retail, who shall adulterate the same, or utter any adulterated Wine, are liable to a Penalty of 300 l. 1 *W. & M.* cap. 34.

Winter hemyng, Is a Season between the eleventh Day of November, and the three and twentieth Day of April; which is excepted from the Liberty of Commoning in the Forest of Dean, &c. *Stat.* 20 *Car.* 2. cap. 3.

Wist, A Measure of Land among the Saxons; being the Quantity of Half a Hide, and the Hide 120 Acres. — *Qto virgata unam Hidam faciunt, Wista vero quatuor virgatis constat.* *Mon. Angl.* Tom. 1. pag. 133.

Witam, *Secundum Witam jurare*, Is for a Person to purge himself by the Oaths of so many Witnesses, as the Offence required. Hence **Blod-wita**, &c. *Leg.* 1 *Hz.* cap. 63.

Wita plena, A Forfeiture of fifty Shillings. *Leg.* H. 1. cap. 40.

Witte, A Saxon Word, used for Punishment; a Pain, Penalty, Mult, &c. and **Witefree** is a Term of Privilege or Immunity from Fines and Amercements. *Sax. Dist.*

Witena

Witena-gemot, (Sax. *Conventus sapientum*) Was a Convention or Assembly of Great Men to advise and assist the King, answerable to our Parliament, in the Time of the Saxons.

Witens, Were the Chief of the Saxon Lords or *Thanes*, their Nobles and Wise Men. Sax. *Dict.*

Witenden, A Taxation of the *West-Saxons*, imposed by the publick Council of the Kingdom. *Chart. Ethelwolf. Reg. Ann. 855.*

Withernam, (from the Sax. *Wyther. i. e. altera, & Nam, captio*) Is where a Distress is driven out of the County, and the Sheriff upon a *Replevin* cannot make Deliverance to the Party distrained: In this Case the Writ of *Withernam* is directed to the Sheriff, for the taking as many of his Beasts or Goods that did thus unlawfully distrain into his Keeping 'till the Party make Deliverance of the first Distress, &c. It is a *Taking* or *Reprisal* of other Cattle or Goods, in lieu of those that were formerly unjustly taken and esloined, or otherwise with-holden. *F. N. B. 68, 69. 2 Inst. 140. Stat. West. 2. 13 Ed. 1. cap. 2.* This Writ is granted on the Return of the Sheriff upon the *Alias* and *Pluries* in *Replevin*, that the Cattle, &c. are esloined, by Reason whereof he cannot replevy them; and it appears by our Books, that the Sheriff may award *Withernam* on *Replevin* sued by Plaintiff, if it be found by Inquest in the County, that the Cattle were esloined according to the Bailiff's Return, &c. tho' upon the *Withernam* awarded in the County, if the Bailiff doth return that the other Party hath not any Thing, there shall be an *Alias* and *Pluries*, and so infinite, and no other Remedy there: But on a *Withernam* return'd in the King's Bench, or Common Pleas, if the Sheriff return that the Party hath not any Thing, &c. a *Capias* shall issue against him, and Exigent and Outlawry. *New Nat. Br. 166.* In *Replevin*, &c. the Sheriff returns *Averia elongata sunt* by the Defendant; thereupon a Writ of *Withernam* is awarded; and if he return *Nihil*, the Plaintiff proceeds to Outlawry by *Alias* and *Pluries Capias* in *Withernam*, and so to the Exigent: And there is some Difference where the Defendant appeareth upon the Return of the *Pluries Capias*, and when he stays longer, and appears on the Return of the Exigent and not before; for in the first Case his Cattle shall not be taken in *Withernam*, but he must find Pledges to make Deliverance, or be committed; and in the last Case, he shall not only find Pledges for making Deliverance, but shall be fined, and his Cattle may be taken in *Withernam*: In both Cases, the Plaintiff may Declare for the unjust Taking, and yet detaining of his Cattle, and so go to Trial upon the Right; and if 'tis found for him, then he shall recover the Value of the Cattle with Costs and Damages, or may have the Cattle again by a *Retorn. habendo* directed to the Sheriff; but if it be found for the Defendant, he shall keep the Cattle, and have Costs and Damages for the unjust Prosecution. *1 Brownl. 180. 3 Nels. Abr. 553, 554.* A Defendant in some Cases shall have a Writ of *Withernam* against the Plaintiff; as if the Defendant hath a Return awarded for him, and he sueth a Writ *de retorn. habendo*, and the Sheriff return upon the *Pluries, quod Averia elongata sunt*, he shall have a *Sci. Fac.* against the Pledges which the Plaintiff put in to prosecute, &c. and if they have nothing, then he shall have a *Capias* in *Withernam* against the Plaintiff. *Ibid.*

And the Cattle taken in *Withernam* are to be *ad Valentiam, i. e.* to the Value of the Cattle that were first taken and detain'd; for 'tis to be understood not only of the Number of the Cattle, but according to the full Worth and Value; otherwise he that brings the *Replevin* and *Withernam*, will be deprived of his Satisfaction. *3 Lill. Abr. 690.* Where Cattle have been taken in *Withernam*, they have been by a Rule of Court delivered back and restored to the Owner, on his Payment to the Plaintiff of all his Damages, Costs and Expences. *Ibid.* Cattle taken in *Withernam* may be milk'd, or work'd reasonably; because they are deliver'd to the Party as his own Cattle, &c. *Contra* of Cattle distrained. *1 Leon. 302. See Replevin.*

Withersake, An Apostate or perfidious Renegade. *Leg. Canut. cap. 27.*

Witness, (*Testis*) Is one that gives Evidence in a Cause; an indifferent Person to each Party, sworn to speak the Truth, the whole Truth, and nothing but the Truth: And if he will be a Gainer or Loser by the Suit, he shall not be sworn as a Witness. *2 Lill. Abr. 700. See Evidence.*

Woad, A profitable Herb much used for the Dying of blue Colours, mentioned in the *Stat. 7 H. 8. cap. 2.*

Wold, (Sax.) Signifies a Down, or open Champion Ground, void of Wood; as *Stow* in the *Wolds, Cotswold* in *Gloucestershire, &c.*

Wolfthead, or *Wolferthead* (Sax. *Caput Lupinum*) Was the Condition of such as were Outlawed in the Time of the Saxons; who if they could not be taken alive to be brought to Justice, might be slain and their Heads brought to the King; for they were no more accounted of than a Wolf's Head, a Beast so hurtful to Man. *Leg. Edw. Conf. Bract. lib. 3.*

Women, Laws relating to. See *Baron and Feme, forcible Marriage, &c.*

Wong, A Saxon Word for Field. — *Tres acras Terra jacentes in le Wongs, i. e. in Campis opinor seminalibus.* Spelm.

Wood. The Statutes 43 Eliz. cap. 7. & 15 Car. 2. cap. 2. provide against *Woodstealing*, ordaining Recompence to be made, and inflicting a Penalty of 10*s.* &c. Burning Wood, or Underwood, is made Felony: And Persons maliciously cutting or spoiling Timber-Trees, Fruit-Trees, &c. are to be sent to the House of Correction for three Months, and whipt once a Month. *1 Geo. cap. 48.* Also where Persons destroy Trees, Woods, or break open Hedges, the Owners shall have Satisfaction from the Inhabitants of the Place, as for Dikes overthrown in the Night by 13 Edw. 1. if the Offenders be not convicted in six Months, &c. *6 Geo. cap. 16.*

Wood-corn, A Certain Quantity of Grain, paid by the Tenants of some Manors to the Lord, for the Liberty to pick up dead or broken Wood. *Cartular. Burgi S. Petri M.S. 142.*

Wood-geld, Is taken to be the Gathering or Cutting of Wood within the Forest; or it signifies to be free from Payment of Money, for taking Wood in any Forest. *Crompt. Juris. 157. Co. Lit. 233.*

Woodmote, Is the old Name of that Court of the Forest, which is now called the Court of *Attachments*; and was wont to be held at the Will of the Chief Officers of the Forest, without any certain Time, 'till since the Statute of *Charta de Foresta.* Manwood, cap. 22. pag. 207.

Wool-plea-Court, A Court held twice in the Year in the Forest of *Clun*, in *Shropshire*, for determining all Matters of *Wood* and Agistments there.

Woodward, Is an Officer of the Forest, whose Office consists in Looking after the Woods, and Vert and Venison, and presenting Offences relating to the same, &c. And *Woodwards* may not walk with Bow and Shafts, but with Forest-Bills. *Crompt. Jurisd.* 201. *Manwood*, par. 1. pag. 189.

Wool, Being a Staple Commodity of the greatest Value in this Kingdom, the Employment of our Poor at home, and our most beneficial Trade abroad, depending in a great Measure upon it; there have been divers good Laws made to preserve the same intirely to our selves, and to prevent its being transported to other Nations. The Stat. 27 Ed. 3. declared it Felony to transport *Wool*: But the Felony was repealed by 38 Ed. 3. c. 6. By the 12 Car. 2. c. 32. If any Person shall export any *Wool*, Yarn, &c. he shall forfeit the same, and for every Pound-weight of Goods 3 s. And the Owners of the Ship in which it shall be transported, being privy to the Offence, shall forfeit all their Interest in the said Ship; and the Master and Mariners assisting forfeit all their Goods; and any Persons may seize such *Wool*, and shall be intitled to one Moiety, and the King to the other Moiety of Forfeitures, &c. The 13 & 14 Car. 2. c. 18. made the Transportation of *Wool* Felony again; though this being thought too severe, the 7 & 8 W. 3. c. 28. a second Time repeals the Felony, and ordains, that exporting *Wool* beyond Sea shall incur a Forfeiture of the Vessel, and treble Value; and Persons aiding and assisting, to suffer three Years Imprisonment. By the Statute 9 & 10 W. 3. c. 40. the former Laws are explained, and a further Provision is made against Transporting *Wool*; by obliging Entries to be made of *Wool* thorn, and *Wool* not to be carried near the Sea-Coasts but between Sun-rising and Sun-setting, &c. Unlawful Exporters of *Wool*, where Judgment is obtain'd against them, are to pay the Sum recovered within three Months; or be liable to Transportation for seven Years as Felons. 4 Geo. c. 11.

Wool-buyers, Are such as buy *Wool* in the Country of the Sheep Owners, and carry it on Horse-back to the Clothiers, or to Market-Towns to sell again. 2 & 3 P. & M. c. 13.

Wool-binders, Those that wind up every Fleece of *Wool*, intended to be packed and sold by Weight, into a Kind of Bundle, after it is cleansed as required by Statute, to avoid Deceits by Thrusting in Locks of refuse *Wool* and Thrums to gain Weight: They were sworn to perform this Office truly, between the Owner and the *Wool*-buyer or Merchant, by Stat. 8 H. 6. c. 22. 23 H. 8. c. 17.

Words, Which may be taken or interpreted by Law in a general or common Sense, ought not to receive a strained or unusual Construction: And ambiguous *Words* are to be construed so as to make them stand with Law and Equity; and not to be wrested to do Wrong. A Latin *Word* in Pleading, which signifies divers Things, is well used to express that Thing which is intended to be expressed by it: Uncertain *Words* in a Declaration are made good and certain by a Plea in Bar, where Notice is taken of the Meaning of them; and *Words* which are in themselves uncertain, may be made certain by subsequent or following *Words*. The different Placing of the same

Words may cause them to have a different Sense and Construction: A *Word* which is written short or abbreviated, is not good without a Dash to distinguish it: And senseless *Words* are void and idle; though they shall not hurt where it is good without them. 2 Lill. Abr. 711, 712, 713, 714. Vide *Scilicet*.

Words Defamatory and Criminal making Libels, and High Treason; *Words* how expounded in Wills, &c. See the Heads.

Wormtak. Item est ibidem, apud, &c. de Wormtak vi sol. viii den. solvend. annuatim ad Festum S. Martini. Inquisic. Heref. 22 Rich. 2.

Wort, or **Worthe**, (From the Sax. *Weorth*) A Curtilage or Country Farm. Matt. Westm. 870.

Worthing of Land, Is a certain Quantity of Ground, so called in the Manor of *Kingsland* in the County of *Hereford*: And in some Places the Tenants are called *Worthies*. Consuetud. Maner. de Hadenham in Com. Bucks. 18 Edw. 3.

Wreck, (*Wreccum Maris*, *Wreck de Mer*. sometimes writ *Wreche*, *Werec*, &c. *Seup-werpe*, quasi *Sea up-werp*, i. e. *Ejectus Maris*) Signifies in our Law such Goods as, after a *Shipwreck*, are cast upon the Land by the Sea, and left there within some County; for they are not *Wrecks* so long as they remain at Sea, in the Jurisdiction of the Admiralty. 2 Inst. 167. Where a Ship is perished on the Sea, and no Man escapes alive out of it, this is called *Wreck*: And the Goods in the Ship being brought to Land by the Waves, belong to the King by his Prerogative, or to the Lord of the Manor. 5 Rep. 106. By the Common Law, all *Wrecks* belong'd to the Crown; and therefore they are not chargeable with any Customs, and for that Goods coming into the Kingdom by *Wreck* are not imported by any Body, but cast ashore by the Wind and Sea: But it was usual to seize and forfeit *Wrecks* to the King, only when no Owner could be found; and in that Case, the Property being in no Man, it of Consequence belongs to the King, as Lord of the narrow Seas, &c. *Bract. lib. 2. cap. 5*. And by the Statute of *Westm.* 1. 3 Ed. 1. c. 4. it is enacted, that when a Man, or any living Creature, escape alive out of a Ship cast away, whereby the Owner of the Goods may be known, the Ship or Goods shall not be *Wreck*; but the same shall be kept a Year and a Day by the Sheriff, to be restored to any Person that can prove a Property in the Goods within that Time; and if no Body comes, then the same shall be forfeited as *Wreck*. The Year and Day shall be accounted from the Seizure; and if the Owner of the Goods dies within the Year, his Executors or Administrators may make Proof: And when the Goods are *Bona peritura*, the Sheriff may sell them within the Year; so as he disposes of them to the best Advantage, and accounts for them, &c. 2 Inst. 167. 5 Rep. 106. *Wood's Inst.* 214. If a Man have a Grant of *Wreck*, and Goods are wreck'd upon his Lands, and another taketh them away before Seizure, he may bring Action of Trespass, &c. For before they are seized, there is no Property gain'd, to make it Felony. 1 Hawk. P. C. 94. If Goods wreck'd are seized by Persons having no Authority, the Owner may have his Action against them; or if the Wrong-doers are unknown, he may have a Commission to inquire, &c. 2 Inst. 166. Goods lost by Tempest, &c. and not by *Wreck* if they afterwards come to Land, shall be restored to the Owner. 27 Ed. 3. c. 13. Where a Ship is ready to sink, and all the Men therein,

for the Preservation of their Lives, quit the Ship, and afterwards she perishes; if any of the Men are saved and come to Land, the Goods are not lost: A Ship on the Sea was chas'd by an Enemy; the Men therein for the Security of their Lives forsook the Ship, which was taken by the Enemy, and spoil'd of her Goods and Tackle, and then turn'd to Sea; after this by Strefs of Weather she was cast on Land, where it happen'd her Men safely arriv'd; and it was resolv'd, that this was no *Wreck*. 2 *Inst.* 167. If a *Wreck* happens by any Fault or Negligence in the Master or Mariners, the Master must make good the Loss; but if the same was occasion'd by Tempest, Enemies, &c. he shall be excused: And making Holes in Ships, or doing any Thing wilfully tending to the Loss thereof, is Felony, by Stat. 12 *Ann.* Which Act requires Justices of Peace to command Assistance for preserving Ships in Danger of *Wreck* on the Coasts; and makes Persons carrying away Goods from such Ships, liable to pay treble Value, &c. 12 *Ann.* c. 18. See *Pilot*.

Wreckfree, Is to be exempt from the Forfeiture of ship-wreck'd Goods; which K. *Edw.* 1. by Charter granted to the *Barons of the Cinque Ports*. Placit. temp. Ed. 1.

Writ, (*Breve*, in Sax. *Writan*, *Scribere*) In general is the King's Precept, in Writing under Seal, commanding some Thing to be done touching a Suit or Action, or giving Commission to have it done. *Terms de Ley.* 1 *Inst.* 73. Of *Writs* there are divers Kinds, in many Respects; some *Writs* are grounded upon Rights of Action, and some in Nature of Commissions; some *Mandatory* and *Extrajudicial*, and others *Remedial*; and some are *Patent* or open, and some *Close* or sealed up; some *Writs* issue at the Suit of the Party; some are of Office, some *Ordinary*, and others of *Privilege*; and some *Writs* are directed to the Sheriffs, and in special Cases to the Party, &c. 1 *Inst.* 289. 2 *Inst.* 39. 7 *Rep.* 20. The *Writs* in *Civil Actions* are either *Original* or *Judicial*; *Original Writs* are issued out of the Court of Chancery, for the Summoning a Defendant to appear, and are granted before the Suit is begun, to begin the same; and *Judicial Writs* issue out of the Court where the Original is return'd, after the Suit is begun: The Originals bear Date in the Name of the King; but *Judicial Writs* bear Teste in the Name of the Chief Justice: And it is observ'd, that a *Writ* without a Teste is not good, for the Time may be material when it was taken out, and it is proved by the Teste; and if it be out of the *Common Law Courts*, it must bear Date some Day in Term (not being Sunday) but in *Chancery Writs*, may be issued in Vacation as well as Term-Time, as that Court is always open; also there are to be fifteen Days between the Teste and Return of all *Writs*, where the Suit is by Original; but by Statute Delays in Actions by Reason of fifteen Days between the Teste and Return in Personal Actions, and Ejectments, are remedied. F. N. B. 51, 147. 2 *Inst.* 40. *Lutw.* 337. 13 *Car.* 2. cap. 2. *Writs* in Actions are likewise *Real*; concerning the Possession of Lands, called *Writs of Entry*, or of Right touching the Property, &c. *Personal*, relating to Goods, Chattels, and Personal Injuries; and *Mix'd*, for the Recovery of the Thing, and Damages. 2 *Inst.* 39. After the Action is fixed on, for a Wrong done, or a Right detain'd, such a *Writ* must be taken out as is suitable to the Action; for the *Writ* is different from the

Action, though they are often confounded: The *Writ* is to be grounded upon the Action, and is the Means to bring the Plaintiff to his Right. *Wood's Inst.* 560. The King's *Writs* cannot be denied to the Subject; and it is regularly true that no Man shall be punished for suing of *Writs* in the King's Courts, be it of Right or Wrong: But *Writs* may be abated in several Cases, &c. *Ibid.* An Original *Writ* defective in Form is abateable; but no Abatement of the *Writ* is admitted after Judgment in the Cause, the *Writ* being allow'd by the Pleadings and Proceedings; and a *Writ* that did not pursue the exact Form of the Register, has been held good. 2 *Lill. Abr.* 717. *Hob.* 51. 3 *Nelf. Abr.* 575. *Writs* Judicial, if erroneous, may be amended; Original *Writs* are not amendable, if the Error be by Default of the Party who gave Instructions; yet a new Original may be taken out, where it is not amendable. 2 *Lill.* 716. *Writs* may be renewed every Term, until a Defendant is arrested; but in B. R. if the *Latitat* be not renew'd in five Terms, a new *Writ* is to be taken out, and the Plaintiff may not renew the old one. The Sheriff's Bailiffs cannot execute a *Writ* directed to the Sheriff, without his Warrant; and if in a *Writ* several Persons are included, (for four Defendants may be in one *Writ*) there must be several Warrants from the Sheriff to execute the same. *Comp. Attorn.* All *Writs* are to be return'd and filed in due Time, to avoid *Post-terminum*; and it is very unsafe to keep *Writs* unfil'd, because the Filing them is the Warranty for the Proceedings: And where a *Writ* is issued out directed to the Sheriff, when it comes to his Hands, though the Plaintiff requires the *Writ* back again, the Sheriff must return and file it in the Court where returnable; unless the Plaintiff procure a *Writ of Superseas*. 2 *Lill. Abr.* 720. Attachment lies against Sheriffs, &c. for not executing a *Writ*, or for doing it oppressively by Force, extorting Money thereon, or not doing it effectually, through any corrupt Practice. Vide 8 *Rep.* 86. See *Arrests*, *Variance*, &c.

Writ of Assistance, Is a *Writ* issuing out of the *Exchequer*, to authorise any Person to take a Constable, or other publick Officer, to seize Goods or Merchandize prohibited and uncustomed, &c. And there is a *Writ* of this Name issued out of the *Chancery*, to give Possession of Lands. Stat. 14 *Car.* 2. c. 1.

Writ of Inquiry of Damages, Is a judicial *Writ*, that issues out to the Sheriff upon a Judgment by Default, in Action of the Case, Covenant, Trespass, Trover, &c. commanding him to summon a Jury to inquire what Damages the Plaintiff hath sustained *occasione premissorum*; and when this is return'd with the Inquisition, the Rule for Judgment is given upon it; and if nothing be said to the Contrary, Judgment is thereupon enter'd. 2 *Lill. Abr.* 721. This *Writ* lies on a *Nihil dicit*, *Non sum informatus*, or a Demurrer; but not upon a Verdict: And it is executed before the Sheriff, or his Deputy, at the Time of which both Parties have the Liberty of being heard before the Sheriff, by their Counsel or Attornies, and Evidence may be given on both Sides: It is the Duty of the Jury diligently to inquire what Damages have been sustained by the Plaintiff, and this cannot be without Evidence given them; and if where an *Indebitat. Assumpsit* is brought for 100 *l.* for Goods sold, and the Defendant lets this go. by Default, if the Plaintiff

at the Executing the *Writ* of Inquiry gives no Evidence to the Jury of any Goods sold or delivered to the Defendant: In this Case, the Jury must find some Damages, because the Defendant hath confess'd the Action, and admitted that there is Damage; but there not being any proved, they ought to find only a Penny, or some such small Matter. 2 *L. l. Abr.* 721, 722. If a *Writ* of Inquiry be executed without giving due Notice thereof to the Defendant, it shall be quashed. 2 *Lill.* 721. A Judgment shall not be set aside, after a *Writ* of Inquiry executed. 3 *Salk.*

Writ of Rebellion, A *Writ* out of the Chancery, or Exchequer, against a Person in Contempt, for not appearing in those Courts, &c. See *Commission of Rebellion*.

Arroun, (*Injuria*) Signifies any Damage or Injury. Vide *Tort*.

Arroun, Seem to be Trees that will never prove Timber; such as *wrong* the Ground they grow in. *Kitch.* 169.

Wudeheth, (From the Sax. *Wude*, i. e. *Sylva*) A Felling of Wood. *Leg. Hen.* 1. c. 37.

Wydraught, A Water-Passage, Gutter, or Watering-place; often mentioned in old Leases of Houses, in the Covenant for Repairs, &c.

Wyac, *Wypa*. — *Et totam Wykam cum hominibus, &c.* Mon. Angl. Tom. 2. p. 154. See *Wic* and *Wica*.

Wyte, *Pœna*, *Multa*; — *Saxones duo Multarum genera statuere, i. e. Weram, & Wytam.* Vide *Wite*.

X.

Xantus, Is used for *Sanctus*: *Xanta Dei Lex est qua mortuos vivere docet.*

Xenia, Dicuntur Munuscula, qua a Provincialibus Rectoribus Provinciarum offerebantur: Vox est in Privilegiarum Chartis non insueta; ubi quietus esse a Xenis immunes notat ab hujusmodi muneribus aliisque donis Regi vel Regina prestandis, quando ipsi per pradia Privilegiatorum transferunt. Chart. Dom. Semplingham. Concedo ut omnia Monasteria & Ecclesie Regni mei a Publicis Vestigialibus, operibus & oneribus absolvantur: — Nec Munuscula prebeant Regi vel Principibus, nisi voluntaria. Spelm. Gloss. Nulla autem Persona, parva vel magna, ab hominibus & terra Radingensis Monasterii exigit, non Equitationem sive Expeditionem, non summagia, non Vestigialia, non Navigia, non Opera, non Tributa, non Xenia, &c. Memd. Scacc. Anno 20 Ed. 3.

Xenodochium, Is interpreted an Inn, allow'd by publick Licence for the Entertainment of Strangers, and other Guests: Also an Hospital, In qua valetudinarii & senes, i. e. Infirmi, recipiuntur & aluntur. Vocab. utriusque Juris.

Xerophagia, A Kind of Christian Fast; the Eating of dry Meat. *Litt. Dist.*

Xysticus, Is a Wrestler, or Champion: And *Xystus* was a covered Place or Theatre, where Men used Wrestling and other Exercises in the Winter. *Ibid.* *fir*

Y.

Y and Nay, — *Quod Homines de Rippon sint credendi per suum Ya & per suum Nay, in omnibus Querelis, &c.* Charta Athelstan. Reg. Mon. Angl. Tom. 1. p. 173.

Yard, Is a well known Measure, Three Foot in Length; by which Cloth, Linen, &c. are measured: It was ordained by K. Hen. 1. from the Length of his own Arm. *Baker's Chron.*

Yardland, (*Virgata Terra*) Is a Quantity of Land, different according to the Place or Country; as at *Wimbleton* in *Surrey*, it is but fifteen Acres, in other Counties it is Twenty, in some Twenty-four, and in other Thirty, and forty Acres. *Bract. lib.* 2. c. 10.

Yatch, A *Yacht*, or little Bark; also a Fly-boat, Pinnace, &c. In *Lat.* called *Celox*, à *celeritudine*, from its Swiftnes. *Litt. Dist.*

Yconomus, *Oeconomus*; an Advocate, Patron or Defender. *Vit. Abbat. S. Albani.*

Year, (*Annus*) Signifies properly a Circle; and is the Time wherein the Sun goes round his Compass through the Twelve Signs, viz. Three hundred and sixty-five Days, and about six Hours. A Year is Twelve Months, divided by *Julius Caesar*: And the Church begins the Year on the first Day of *January*, called *New-Year's Day*; but the Civil Account, not till *March* the 25th. It appears by ancient Grants and Charters, that our Ancestors began the Year at *Christmas*, which was observed here till the Time of *Will. 1.* commonly called the *Conqueror*; but afterwards, for some Time the Year of our Lord was seldom mentioned in Grants, only the Year of the Reign of the King. Mon. Angl. Tom. 1. pag. 62. There is a Year of the World, and a Year of Christ: And besides the *Annus Solaris*, the *Lunar Year* being the Time in which any of the Celestial Bodies finish their Course; and thirty Days, by which the Egyptians reckoned. Year is also taken for Time in general; and the Age of Man. *Litt.*

Year and Day, (*Annus & Dies*) Is a Time that determines a Right, or works a Prescription in many Cases by Law; as in Case of an *Estrey*, if the Owner challenge it not within that Time, it belongs to the Lord; so of a *Wreck*, &c. A Year and Day is given to prosecute Appeals; and for Actions in a *Writ* of Right, &c. after Entry or Claim, to avoid a Fine; and if a Person wounded die in a Year and Day, it makes the Offender guilty of Murder, &c. 3 *Inst.* 53. 6 *Rep.* 107.

Year, Day and Waste, (*Annus, Dies & Vastum*) Is a Part of the King's Prerogative, whereby he hath the Profits of Lands and Tenements for a Year and a Day of those that are attainted of *Petr Treason* or *Felony*, whosoever is Lord of the Manor whereto the Lands or Tenements do belong; and the King may cause *Waste* to be made on the Tenements, by destroying the Houses, ploughing up the Meadows and Pastures, rooting up the Woods, &c. except the Lord of the Fee agree with him for the Redemption of such Waste; afterwards restoring it to the Lord of the Fee. *Staundf. Prærog.* 44.

Yeoman, A Derivative of the Sax. *Geman*, i. e. *Communis*; and *Yeomen* are a Degree of Commoners, which *Camden* placeth next in Order to Gentlemen, calling them *Ingenuos*; and this is agreeable to the Stat. 6 R. 2. cap. 4. *Yeomen* are chiefly Freeholders, and Farmers; but this Word comprehends all under the Rank of Gentlemen, and is a good Addition to a Name, &c. 2 *Inst.* 668. Also *Yeoman* signifies an Officer in the King's House, between the Serjeant and the Groom; as *Yeomen* of the *Stirrop*: And there are *Yeomen* of the Guard, &c. 33 *Hen.* 8. c. 12.

Proben;

Yeoven, (From the Sax. *Ceorian*, *Dare*) Is the same with *Given*; and it was formerly used at the End of Indentures and other Instruments instead thereof. — *Yeoven*, the Day and Year above written.

Yew, Is derived from the Greek *ἰστω*, to hurt, and probably because before the Invention of Guns, our Ancestors made *Bows* with this Wood, with which they annoy'd their Enemies; and therefore they took Care to plant the Trees in the Church-yards, where they might be often seen and preserved by the People. *Minsheu*.

Yielding and Paying, (*Reddendo & Solvendo*) Comes from the Sax. *Geldan & Gildan*; and in *Domesday*, *Gildare* is frequently used for *Solvere*, *Reddere*, the Sax. *G.* being often turn'd into *Y.*

Yungman, Mentioned in the Laws of King Hen. 1. c. 15. *Spelman* thinks may be a Mistake for *Inglishman*, or as we now say *Englishman*; But perhaps the *Yingmen* were rather *Youngmen*, printed for *Yeomen* and *Yemen*, in the Stat. 33 H. 8. cap. 10.

Yokest, (Sax. *Forelet*) Is a little Farm, &c. in some Parts of *Kent*, so called from its requiring but a Yoke of Oxen to till it. *Sax. Dict.*

York and Wokshire. Persons inhabiting, or those who have any Goods within the Province of *York*, may by Will dispose of all their personal Estate, &c. 4 & 5 W. & M. cap. 2. And a Registry of Deeds and Conveyances is ordained in the *West-Riding* of *Yorkshire*, by 2 Ann. c. 4. *Yorkshire Cloths*, see Stat. 7 Ann. 1 Geo.

York-Buildings Company, A Corporation or Company erected by Statute for Raising *Thames Water* in *York-Buildings*; and this Company having bought the *Forfeited Estates* in *Scotland* on the Rebellion Anno 1 Geo. 1. to enable them to make good their Engagements to the Government, they were empower'd to dispose of Rent-Charges, grant Annuities, &c. and any Persons may purchase Annuities of the said Company. 7 Geo. cap. 20.

Yugemets, In Latin *Altitonans*, Signifies God; the Thunderer.

Yvernagium, From the Fr. *Hyvernee*, the Winter-Corn Season. See *Hibernagium*.

Yule. In the North of England, the Country People call the Feast of the Nativity of our Lord, by the Name of *Yule*, which is the proper Scotch Word for *Christmas*; and the Sports used at *Christmas* here, called *Christmas Gambols*, in *Scotland*

they term *Yule-Games*. A Statute was made not long since for the Repeal of a repealing Act passed in the Parliament of *Scotland*, intituled an Act for discharging the *Yule-vacance*. 1 Geo. c. 8.

Z

Zabolus, i. e. *Diabolus*, As used in many old Writers, viz. *Edgar* in *Leg. Monach. Hydens.* c. 4. *Oderic Vitalis* 460, &c.

Zachine, A Foreign Coin of Gold. *Merch. Dict.*

Zala, i. e. *Incendium*; from whence we derive the English Word *Zeal*.

Zancha, A Kind of Vesture or Garment. *Litt.*

Zant-kilow, A Measure containing six English Bushels.

Zatovin, Sattin, or fine Silk; mention'd in *Mon. Angl. Tom. 3. p. 177.*

Zealot, (*Zelotes*) Is for the most part taken in pejorem sensum, so that we term one that is a Separatist or Schismatick from the Church of England, a Zealot or Fanatick.

Zeta, A Room kept warm like a Stove; a Withdrawing Chamber with Pipes convey'd along in the Walls, to receive from below either the cool Air in the Summer, or the Heat of Fire, &c. in Winter: It is called by our English Historians a Dining Room or Parlour. *Osborn. vita S. Elphegi apud Wharton. Angl. par. 2. p. 127.*

Zodiack, (*Zodiacus*) A Circle in the Heavens, containing the Twelve Signs through which the Sun passes every Year of Time. *Litt.*

Zuche, (*Zucheus*, *Stips siccus & aridus*) A withered or dry Stock of a Tree. — *Rex, &c. Quia accepimus per Inquisitionem, quod non est ad Dampnum seu prejudicium nostrum aut aliorum, si concedimus dilecto valedito nostro Richard. de S. omnes Zucheos avidos, qui Anglice vocantur Stovenes infra Haiam nostram de Beskwood, infra Forestam nostram de Shirewood, &c. Placit. Forest. Anno 8 Hen. 3.* This seems to have been the Writ of *Ad quod Damnum* issued, on granting of *Zuches* or dead Wood in a Forest, &c. *Rex concessit Thomæ de C. omnes Zucheos avidos, vocat. Stubs, arborum succisurum in Foresta de G. ibidem capiend. per visum Custodis Foresta ultra Trentam. Pat. 22 Ed. 3.*

Zytium, A Drink made of Corn, used by the old Gauls; so called from the Seething or Boiling it, whence *Syder* had its Name.